APPENDIX B

REPORTS OF OVERSEAS CORRESPONDENTS*

The End of Australian Incomes Policy

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My 1975 report on Australia outlined the introduction by the Arbitration Commission of a package of principles based on the assumption that uniform national wage adjustments related to consumer price and national productivity movements would constitute the bulk of wage increases. These adjustments would be determined quarterly in relation to the consumer price index movement and annually in connection with productivity change. Increases beyond these adjustments would need to be, in overall terms, small and related to local issues pertaining to job reevaluation (known here are "work value" adjustments), special allowances, and the like. These would be determined in accordance with narrowly prescribed principles. There was also a special provision to deal with "anomalies and inequities."

The Commission was persuaded to embark on this concept because of the inflationary and self-defeating effects of sectional (by industry or occupations) wage adjustments which, by the pressure of coercive comparisons (known here as "comparative wage justice"), tend to be generalized. The indexation package was intended to provide a "more orderly, more rational, more equitable and less inflationary" approach to wage fixation. In embarking on this approach, the Commission laid the basis for the development of an incomes-policy package: it would prescribe general and particular wage movements along the lines indicated, provided that appropriate "supporting mechanisms" were in place. These included the continuation of price surveil-

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lance by the Prices Justification Tribunal, sensitivity of the federal government on the relationship between taxation levels—direct and indirect—and wage claims, and the willingness of state wage-fixing tribunals to follow the lead of the federal tribunal—the Arbitration Commission.

The consensual approach taken by the Commission was not only dictated by the lack of legal powers to enforce the principles, but more importantly by the recognition that the success of a wages or incomes policy depends substantially on the willingness of major parties—unions, employers, and governments —to abide by prescribed rules.

The concept embarked upon in April 1975 came to an end in July 1981. During this time, the principles were altered marginally: six-monthly adjustments took the place of quarterly consumer price adjustments, and various principles were extended and clarified. For the first three years the indexation package approach, as it came to be called, worked reasonably well. The rate of inflation, which had peaked at about 17 percent, came down to just over half that rate, despite the effect of increases in indirect taxes and exchange-rate depreciation on the consumer price index. Strike activity also fell markedly. These results were noted in my 1976–1977 report. But thereafter the concept came under increasing pressure and moved from crisis to crisis. The state of the economy and the monetary and fiscal measures applied by the federal government dictated the granting of less than full indexation in order to ease the growing unemployment problem. In the eyes of the government and many employers, the Commission did not go far enough in restraining wages, while the unions and their members became increasingly discontented with a system which did not at least ensure that real wages would be maintained. The increasing weight of taxation added to the workers' disenchantment. Strike activity began to rise, fuelled in part by the concerted move in the metal industry and elsewhere for a reduction in the standard working week from 40 to 35 hours.

In June 1979 the Commission announced that it was on the brink of abandoning the "centralized orderly system based on indexation" essentially because "one side wants indexation without restraints while the other wants restraints without indexation." The Commission asked the parties to show why the system should not be discarded. A conference and lengthy hearing disclosed that all the parties wanted an orderly centralized

system to continue. In the circumstances, the Commission persisted with the system, but ordered a fuller debate on the principles in 1980. It made a number of observations about "certain essential requirements for the survival of such a system" in the following terms:

"1. The quest for perfection is illusory and counter-productive. Ideal solutions as seen by each side must be adjusted for what is economically necessary and industrially workable. Alternative economic options may have to be taken in the interest of more acceptable industrial requirements. Inflation cannot be brought to heel too quickly by wage decisions without adverse industrial effects and consequential adverse economic effects. On the other hand, wage and conditions claims must be based on realistic expectations of what the country can afford. In short the preferred choices of employers, unions and governments may have to give way to what is necessary if a centralized system is to exist at all.
"2. The operation of a centralized system must be subject to rules to be applied and observed consistently at all levels of the system. Experience has shown that actions which breach the letter and spirit of the rules are contagious and lead to the breakdown of the system.
"3. Costs to the economy arising from stoppages and bans threaten not only improvements in real wages and conditions but even the maintenance of existing standards. This is not a moral judgment but a matter of hard economic reality.
"4. There may be no workable method in a centralized system which will allow the cost of breaches of the rules to be borne only by those responsible for such action. The problem of finding disincentives for industrial action may, therefore, be vital to the equitable operation of a system.
"5. The power of the Commission to compel compliance is limited. It relies on the effective support of all those who wish to see an orderly system survive. Tacit approval is not enough. Unless the level of industrial disputes is contained and the processes of conciliation and arbitration accepted as the means of resolving issues in dispute, there does not seem much point in searching for a centralized system."

The inquiry which followed resulted (April 1981) in a reframing of the principles which provided for two half-yearly reviews every year. The first would apply 80 percent of the consumer price index increases of the preceding two quarters semi-automatically; the second review would consider the remaining 20 percent of this increase together with the subsequent two quarterly CPI increases and national productivity increases for the years.

However, subsequent events provided that the concept of a centralized system of wage fixation was not sustainable. More and more claims were made at company and industry levels and often settled outside the principles. In abandoning the system in July 1981, the Commission said:

> "Since April 1975 the Commission has operated a centralized system of wage fixation based on indexation. It was expected that such a system would be more orderly, more rational, more equitable and less inflationary and would therefore reduce industrial disputation.
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> "The essential feature of such a system was the need to regulate and limit wage increases outside National Wage to allow high priority to be given to the maintenance of real wages. It was accepted by all that a set of rules would be necessary to achieve this priority.
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> "The viability of the system depended on the voluntary cooperation of all participants in industrial relations including those not directly represented at National Wage hearings. Monitoring of sectional claims through the processes of conciliation and arbitration was fundamental to its operation.
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> "From time to time since 1975, the Commission has pointed to the fragility of the package and in June 1979 the Commission came to the brink of abandoning the system. A decision about whether we should persist with the system was given as recently as April this year. The Commission refashioned some of the principles to strengthen the priority for the maintenance of real wages but the essential requirements of the package were otherwise unaltered.
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> "The events since April have shown clearly that the commitment of the participants to the system is not strong enough to sustain the requirements for its continued operation. The immediate manifestation of this is the high level of industrial action in various industries including the key areas of Telecom, road transport, the Melbourne waterfront and sectors of the Australian Public Service. In many cases action was taken on the pretext that the claims could not be processed because of the principles. Some of these disputes have resulted in substantial increases being agreed without regard to the test of negligible cost or the implications of flow-on.
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> "To accommodate these strong pressures the ACTU and the Commonwealth proposed widening the safety valve provided by the principles dealing with anomalies and inequities. The belief that the answer lies in greater flexibility of the kind proposed is illusory. Such flexibility would resolve sectional claims at the expense of national adjustments and destroy the priority expected of a centralized system. It cannot be otherwise.
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> "For these reasons we have decided that the time has come for us to abandon the indexation system.
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> "Now that we have taken this step the guidelines will no longer apply in proceedings before the Commission or the Public Service Arbitrator. The Commission will deal with applications as filed,

members of the Commission will sit alone or on Full Benches and the various provisions of the Conciliation and Arbitration Act will apply. For instance the concept of the 'interests . . . of society as a whole' (section 4) will still permeate activities of the Commission and of course Full Benches will still be required pursuant to section 39 to have regard to the state of the economy with special reference to likely effects on the level of employment and inflation.

"Any application for adjustment of wages or conditions on economic grounds will not be heard before February 1982."

My 1976–1977 report concluded as follows:

"As in other countries, the question whether it is possible to engage reflationary measures while keeping prices on a downward path has been the center of public controversy. In Australia, this controversy assumed special significance because wage-fixing institutions have established a sense of unity and coherence of wage principles which some believe could well withstand the pressure of economic recovery on cost. This is especially so, in view of the prospects of tapping the unit-cost advantages of fuller capacity use."

The Australian experiment was not sustainable for several reasons—unwillingness by unions and employers to accept the necessary degree of rigidity in the application of wage-fixing rules, unwillingness by state tribunals to continue to follow the lead of the federal Commission, and unwillingness of the government to trade off the taxation needs of demand management in favor of taxation requirements of wage restraint.

Since the abandonment of the indexation system, collective-bargaining-type settlements have taken place in a number of key industries, including the metal industry which has traditionally been a pattern-setter for the rest of the workforce. The metal-industry 12-month agreement included an immediate wage increase of about 11 percent, a wage increase of about 6 percent effective from 1 June 1982, and a reduction in standard hours from 40 to 38. An important feature of the agreement was an undertaking given by the unions that no further claims would be made for the 12 months except in the event of "an unforeseen change of an extraordinary nature in the economic circumstances." In such an event, the parties have agreed to abide by arbitration should they not be able to settle the issue agreement.

The metal-trades agreement has become a model for many other agreements, though not all have included a reduction in hours. These agreements have been taken to the Commission for ratification to give them the legal force of arbitrated awards. Although the size of the wage increase in these agreements

could accelerate inflation if generalized, in ratifying them the Commission has been moved by consideration of industrial peace flowing from ratification. It has also been influenced by a general climate of opinion, generated principally by the federal government, for greater decentralization in wage-fixing, including more collective bargaining on American or Japanese lines. And it should be remembered that the Commission is, after all, a Conciliation *and* Arbitration Commission and that one of the objects of the Act under which the Commission operates is "to encourage, and provide means for, conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes."

The analogy with America and Japan is, of course, simplistic. The very presence of arbitration tribunals affects the style and nature of collective bargaining in Australia,[1] which, in turn, affects the claims before arbitration tribunals. Thus, the unions which have not been able to secure agreement on wage increases on the metal-industry standard have applied for a catch-up by arbitration at a national wage hearing currently in progress. What the outcome will be remains to be seen. The state tribunals, which are independent of the Commission, have in many cases awarded increases commensurate with the metal-industry standard. These developments have occurred despite rising unemployment, currently at a postwar record of 7 percent, and accelerating inflation, now over 10 percent. The next 12 months will show whether in a deteriorating economic climate the metal-industry standard can be resisted in the rest of industry. In the Australian context, as distinct from the American or Japanese context, an interaction between wage-fixing tribunals and collective-bargaining units has in the past been a fact of life. Whether it will continue to be so in the present circumstances will be clear in the next few months.

In my 1976–1977 report, I outlined legislation introduced by the federal government directed at greater control of union power. Some four years later it is difficult to discern any tangible results of this legislation. The same government has recently foreshadowed further laws directed to the same end.

First, the government proposed to stop the granting of union preference in awards of the Commission. The present Act con-

[1]See my paper, *The Coexistence of Compulsory Arbitration and Collective Bargaining*, in Essays in Honour of Kingsley Laffer, ed. W. A. Howard (London: Oxford University Press, 1982).

tains a provision for the award by the Commission of union preference. It is in line with one of the objects of the Act "to encourage the organization of representative bodies of employers and employees and their registration under this Act." Some may say that a denial of a discretion available to the Commission to award union preference is inconsistent with this object of the Act. The issue is not easily resolved. On the one hand, arbitration depends on the existence of unions to process claims and grievances on behalf of individual or groups of workers. It would be clumsy, if not unworkable, otherwise. On the other, arbitration does not depend on 100 percent union membership.

A further point to be borne in mind is that the strong and militant unions do not rely on the preference provision of the Act to ensure a union shop. They ensure it by dint of their industrial power. It is generally the weaker unions in the white-collar areas who have sought union preference as an award entitlement in order to bolster their finances. The proposed legislation may not in the end achieve the intention of weakening the power of the stronger and more militant unions.

The second piece of proposed legislation is to encourage the development of industry and enterprise unionism, the latter presumably by providing for something like the American bargaining-unit concept. This move is partly inspired by the face of American and Japanese unionism. But it may underrate the weight of history against any forced change in union structure. The Australian Council of Trade Unions (the Australian equivalent of the AFL-CIO, but with more authority over its affiliate union members) has had among its objectives the establishment of industry-based unions since 1927 when it was formed. But little has changed over the years. Union amalgamations have occurred, but they have largely been the consolidation of occupational unions *across* industries. Inertia, vested interests, political and personal differences have stood in the way of industrial unionism. It is difficult to believe that the legislative initiative foreshadowed by the government will change this situation. Any forced-draft approach, especially coming from a government which is not regarded generally by the trade union movement as sympathetic to it, may have destabilizing effects on industrial relations. Experience suggests that perceived threats to union security may encourage militancy, and it is not clear whether employers generally would welcome any forced change in the current structure of unions despite its many shortcomings.

The third piece of legislation to be introduced relates to the right of an employer to stand-down (lay off) its employees as a result of a strike either of its other employees or employees elsewhere. At present, awards may contain a stand-down clause or they may be varied to include such a clause in the event of a strike. The employer is thereby given the right to stand-down (i.e., not to pay wages to) any employees who cannot be usefully employed because of "any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible." But the continuity of employment is not interrupted by a stand-down.

The rationale of such a clause in a weekly contract of employment is obvious: the employer is not obliged to terminate employment on a week's notice and incur the extra cost of such notice, and the employee's accrued rights with respect to paid leave (annual, sickness, long-service) are not ended by being stood down.

Where no such provision exists in an award, an employer may seek at very short notice to have one inserted. The Commission does not grant the application automatically. It must be persuaded that there is a real prospect that the workers concerned cannot be usefully employed and that, in consequence, the employer will suffer economically. This procedure has worked reasonably well in the past and can be set in motion quickly. Many employers do not invoke their rights under the clause or seek its insertion in a hurry, partly from fear that it may provoke strike action subsequently. Thus, the Waterside Workers' Federation (our longshoremen's union) has a policy that a stand-down in any port will result in a strike at all ports.

Legislation to confer on employers the right to stand-down without resort to the Commission may be effective where unions are weak, but may not make any real difference where unions are strong and resist the stand-down. Furthermore, an attempt to impose what may be regarded as the doctrine of "collective responsibility" on unions generally may not necessarily stay the hands of strong unions. But it could create bitterness among those who are stood down because other workers, for whose cause they may not have any sympathy, are on strike.

The dilemma often facing the employer is understandable. And while the legislation will generally not make his lot any easier, it may assist the employer in those cases where a union resorts to filibustering before the Commission—calling evi-

dence and dragging proceedings out virtually until the strike is settled.

I should finally record my pleasure at meeting a group of a dozen or so members of the NAA, led by Arnold Zack, who visited Australia in May 1981 for a week. It was a pleasure also to have enjoyed the company of Ben Aaron on his rather longer stay in Australia. I hope they found the highly concentrated experience of comparative labor relations rewarding.

Arbitration—The Changing Scene in Great Britain

SIR JOHN WOOD*

Those unfamiliar with the structure of industrial relations in Great Britain, or merely familiar with some of its idiosyncracies, must find it difficult to understand the apparently unstructured and haphazard use of arbitration. Even those working within the system find it difficult to say why arbitration still lacks a clearly established role.

Two general characteristics of the system add to the complexity. It is well known that no clear distinction is made between disputes of right and disputes of interest. This lack of clarity will remain so long as collective agreements are not regarded as legally binding. Each dispute about the interpretation of an existing agreement takes on the character of a fresh negotiation. This is felt by some to be a foolish, indeed amateurish, lack of formality and precision. To others, and they appear to be in the majority, the system is beneficially flexible and stresses "mutuality"—that is to say, the joint regulation of problems. Whatever the merits of that majority view, and it appears to be receiving increased criticism, it means that the arbitrator has failed to secure a regular place in the system as interpreter of disputed collective agreements. That is to be regretted.

More confusing still is the other important characteristic—the existence of a somewhat distinct type of arbitration, usually referred to as unilateral arbitration. In classical voluntary arbitration, the two parties agree to submit their difference to an arbitrator, usually promising to accept his award. Unilateral arbitration allows one party to insist upon arbitration. This form

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