CHAPTER 3

OUTER LIMITS OF INTEREST ARBITRATION: AUSTRALIAN, CANADIAN, AND UNITED STATES EXPERIENCES

I. Notes on the Australian Scene

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In order to understand the industrial relations scene in Australia, it is necessary to understand the institutional framework of tribunals. There are a number of tribunals, both federal and state, which handle industrial disputes, but the Australian Conciliation and Arbitration Commission is the predominant one. It is composed of a president, ten deputy presidents, and 25 commissioners. The president must be a lawyer; eight of the deputy presidents are lawyers and all have the title and status of judges. Of the other deputy presidents, one is a well-known labor economist and the other is an expert in the industrial relations field. They, too, have the status of judges. The 25 commissioners come from a variety of backgrounds including unions, employer organizations, employers, and the public sector. However, upon appointment they lose their representative status and are not to be seen as union or employer representatives. One of the deputy presidents and two of the commissioners are women.

All members of the Commission are appointed by the central government. They are appointed until the age of 65 years and have a virtually unchallengeable tenure of office.

The Commission is divided into panels, each of which consists of a deputy president and two or three commissioners. The president arranges the panels and assigns to each a group of industries which then become the responsibility of the panel.

There is a statutory requirement that when an employer or a union becomes aware of an industrial dispute, the dispute must

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be reported to the Commission. Members of the Commission are also required to keep themselves informed of matters relating to their industries and can act on their own motion. When a dispute has been reported, it is referred automatically to the deputy president in charge of the appropriate panel who decides which member of the panel will deal with it. That member then arranges appropriate action to handle the matter.

There is a further statutory requirement that the first step should be conciliation. Therefore, the parties are required to confer either with or without the Commission member to attempt to settle their differences. Failing this, the matter will go to arbitration by the member concerned. However, if he has been in the conciliation conferences, objection can be taken to his arbitrating, in which case another member of the Commission takes over.

The arbitration is normally an open hearing, though the Commission has power to sit in private. The hearing rooms are like court rooms and are often called "courts." They physically resemble other courts inasmuch as the Commission sits on a bench, there is a bar table, and so on. This is because the arbitration is essentially conducted as an adversary proceeding, and broad Commission proceedings follow the pattern of ordinary litigation—for example, oral evidence under oath, addresses, and the like. However, to the lawyers, proceedings before the Commission are quite dissimilar to those in the courts. The rules of evidence are not enforced, there is often hearsay evidence, there is tender of documents without proof, and there is a great deal of latitude allowed to those appearing. Lawyers are permitted to appear by leave of the Commission and consent of all parties or, if there is no consent, there are special circumstances which make legal representation desirable. In fact, in almost all cases of moment there is legal representation of one or all parties, and a small bar has grown up which specializes in industrial matters.

It is also quite common for inspections of work to take place to assist the Commission to determine the matter. These, again, are quite informal and are not subject to the stricture that they must be supported by oral evidence in a formal way. Indeed, statements, generally unsworn, made by both employers and employees about the work are often taken down during an inspection and subsequently treated as part of the evidentiary material.

When the arbitration has been completed, the Commission, after taking time to consider the matter, will give its decision and the reasons for it. The decision may take a number of forms, the most important one being an award. A complete award as a matter of law contains the minimum contract of employment which may be entered into for the particular job or jobs covered by the award. Common clauses include rates of pay, hours of work, annual leave, and special payments for particular kinds of unpleasantness or arduousness. Many awards of the Commission are quite long and complex, this being the result of many years of having to deal with special situations that require special remedies. The employees bound by the award are usually bound by reference to the union to which they belong, and the employers bound are either named or bound as members of the employer organization to which they belong.

It should be emphasized that the award is the minimum contract of employment. It is legally permissible for an employer to offer and for an employee to accept better terms of employment than the award specifies, and this happens quite often. Another important fact is that the provisions of an award can be enforced by special and simplified means; for example, an employee claiming underpayment can recover by a much simpler method than he could at common law, but the claim would have to be confined to underpayment according to the award.

In addition to proceedings before a single member, which is the norm, there is an internal appeal system within the Commission to a Full Bench, which comprises at least three members, of whom two must be presidential members—that is, the president and a deputy president or two deputy presidents. The composition of appeal benches is a matter for the president, as is also the time and place of hearings. There is a strict time limit on the making of appeals, 21 days, and the appeal will not be considered unless the Full Bench, in hearing, is of the opinion that the matter is of such importance that it is in the public interest to do so.

There is another procedure whereby a matter before a single member can, on the application of a party or the Minister of Industrial Relations, be referred to a Full Bench of the Commission. Whether or not the matter is referred is a decision for the president to make, who, before referring it, must be of the opinion that the matter is of such importance that, in the public interest, it should be referred. There is also a provision that

empowers the president himself to refer a matter to a Full Bench, and the Minister of Industrial Relations may seek a review of a particular matter by a Full Bench.

Finally, there are certain fundamental matters of industrial significance which can be dealt with only by a Full Bench. They are standard hours of work, increases in rates of pay based on grounds related to the national economy, minimum wages, and annual leave or long-service leave. Individual members of the Commission can deal with these matters only if they are giving effect to principles laid down by a Full Bench.

Conferences

The procedures outlined above are rather simpler than those often found in actual practice. The movement from conciliation to arbitration does not mean that conciliation has ceased. At all times during arbitration proceedings, even before a Full Bench on reference or appeal, if the parties or the Commission sees an opportunity to resolve a situation by conciliation, a conference will take place. This happens quite often, especially before individual members, and results in either a complete agreement on all issues or an agreement on some, leaving the remainder to be arbitrated.

Conferences usually deal with individual disputes, although even in those cases there may be many issues to be talked about. However, the conference approach has been used by the Commission for the purpose of exploring the possibility of consensus on much broader issues. Hence, in 1977 a conference called by a Full Bench was convened under the chairmanship of the president to consider broad-ranging issues; it became known as the "Inquiry into Principles of Wage Fixation." Present at the conference were representatives of four leading trade union councils, namely, the Australian Council of Trade Unions, the Council of Australian Government Employee Organisations, the Australian Council of Salaried and Professional Associations, and the Council of Professional Associations, as well as representatives of the Australian Public Service Federation (state public servants), the National Employers Policy Committee, the Master Builders Association of Australia, the Commonwealth government, and the governments of the states of New South Wales, Victoria, Queensland, South Australia, and Western Australia.

The conference started on 25 May 1977 and continued until 13 April 1978. Its purpose was to see what degree of consensus could be reached among all the parties in the industrial relations area about the proper principles to be applied in the fixation of wages. Each party was invited to submit written papers expounding its particular views, which were circulated and discussed and, in some cases, were replied to in writing. The papers were produced in a volume separate from the report itself, and they disclose the care with which submissions were made.

Although a considerable amount of disagreement remained, the amount of agreement was most useful. In two areas about which it was considered there might be significant disagreement, agreement was readily reached. One was that award wages should continue to be expressed as total wages as distinct from an earlier and long-continued practice of expressing them as a basic wage and a secondary wage. That is of real practical importance because, under the old system, the basic wage was altered more frequently than the secondary wage and often on different criteria. The other was that national wage cases should continue to be at the core of a methodical system of wage fixation.

The matters which were not agreed to were the subject of a hearing before a Full Bench of the Commission (comprising seven members) which resulted in an arbitrated decision on all relevant outstanding matters. On the question of an orderly and central wage-fixing system, the Full Bench decided that it should continue.

Since then the principles of wage fixation have been the subject of further conferences and inquiries, and these have led to the formulation of a revised set of principles, announced on 7 April 1981. The main points are set out in Appendix 1 to this paper.

Types of Proceedings

There are, speaking very broadly, three types of proceedings that come before the Commission:

1. Factory disputes where the issues are likely to be reasonably confined.

2. Industry disputes when a claim is made to cover wages and working conditions for a whole industry. In these cases issues are normally much wider than in the factory disputes and the proceedings are more complex. In both of these cases, however,

there will be the mix of conciliation and arbitration that I have mentioned earlier.

3. National wage cases are cases in which the level of wages generally is considered in relation to the broadest issues regarding the national economy and independently of any particular industry. There had been national wage cases of varying kinds occurring yearly from the early 1960s until 1975. In April of that year the Commission decided that it would adopt a new approach which continued, with various modifications, until September 1978 when a new form evolved. The package was further modified in April 1981.

Relationships with Governments

The Commission and its predecessor were established by the central government, under its power in the Constitution to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state." The power, which has been the subject of innumerable decisions of the High Court of Australia, does not permit the Commonwealth government to legislate directly on industrial matters except with respect to its own employees or in its own territories. It can only set up machinery to deal with industrial disputes.

This has resulted in the creation of a body—namely, the Commission—whose decisions may have significant economic repercussions. The Commission has attempted on a number of occasions to spell out its relationship with the government. In its National Wage decision of May 1976, the Commission said:

> "First, the Commission is a body independent of governments, unions and employers. It should not be seen as an arm of government which formulates wage decisions simply to 'fit in' with economic policy. The Commission treats all submissions on their merit.
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> "Second, in relation to the Commonwealth's submission that in the present circumstances we should give greater weight to economic considerations, while the distinction between economic and industrial arguments is useful for analytic purposes, the economic consequences of any decisions which the Commission makes on wages cannot be evaluated in isolation from the industrial consequences, because of their interaction. In practice, the task of the Commission is to weigh all the relevant considerations in order to come to a decision which may reasonably be expected to produce

the best overall result. What may appear from a certain viewpoint to be the best wage decision for economic recovery, may turn out to be wrong when industrial considerations are brought to bear on the decision.

"Third, in formulating a set of principles for wage fixation we have tried to approach the question of wage fixing not as the resolution of each dispute as an isolated and independent case but as the determination of inter-related matters within a 'system' in which short term advantages or disadvantages may have to be balanced against long term costs or gains. We have taken this approach in the light of the experience of self-defeating sectional wage settlements of the last few years culminating in the wage explosions of 1974. We believe that this approach will enable the Commission to perform its task of preventing and settling industrial disputes in a more rational, more orderly and more equitable manner with advantages to the economy and to industrial relations.

"Fourth, we should emphasise that it is not for the Commission to offer advice on the proper economic policy for the Government to pursue. But the Commission believes it should draw attention whenever necessary to the industrial implications of economic policies in so far as they bear on wage demands and on the decisions of the Commission. We pointed out in our April 1975 decision that we were impressed with the contention that 'the size of wage demands, especially in a period of rapid price change, is related to the level and structure of personal income taxation; and that the viability of our wage fixing principles will depend in part on the Government's constant sensitivity on this point. . . . It goes without saying that fiscal action which adds to costs and prices will have a direct and rapid effect on wage movements through indexation.' "

Its relationship with state governments is a little more complex. As will have been seen, they participate in national wage cases and in other significant cases and make submissions, but, in addition, because awards of the Commission have the force of federal law, these awards can and in some cases do render inoperative state laws to the extent of any inconsistency.

Compulsory Arbitration

The Australian system is often described as compulsory arbitration. This description not only overlooks the fact that conciliation is most significant, but it also overstates the compulsory nature of the jurisdiction. There are, however, some degrees of compulsion.

First, there is a requirement on unions and employers to notify the Commission of disputes, and it is these notifications

which start the whole procedure of the Commission outlined above. There is no special form or method of giving notice, though, in the case of applications for complete new awards or national wage cases, there are accepted forms.

There is a proceeding, called a compulsory conference, whereby a member of the Commission can require people to attend and for which there is a penalty for nonattendance. Compulsory conferences are not infrequent, but the question of penalty does not arise because the summons are normally obeyed.

The Commission also has the power common to most tribunals of being able to summon before it witnesses and to compel the production of documents.

Awards made by the Commission are binding upon the parties to the dispute, including members of organizations bound by the award. Awards may be cancelled for various kinds of noncompliance, but this is quite rare.

The Conciliation and Arbitration Act contains a number of provisions imposing penalties for breaches of the act and nonobservance of awards, but in practice these have not been used against unions for the past decade.

Unions and the System

Central to the workings of the system is the registering of organizations of both employees and employers. Without such bodies, the system could not work because the dispute making and settling requires some representation; in other words, it cannot be done between individuals.

There is a central register on which can be put organizations of employers who have on average not less than 100 employees throughout the preceding six months and organizations of employees comprising not less than 100 members. There is a formal registration proceeding at which objections to the registration are heard and decided by the industrial registrar, subject to appeal. The registration of an organization gives it corporate status.

The act requires that the rules of an organization shall provide for proper election of officers, including the secret ballot, and if the election is direct as distinct from collegiate, by secret postal ballot. There are quite a number of other statutory requirements with which union rules must comply. There is also

a prohibition on the incitement to boycott awards or to encourage members not to comply with them.

The statute prohibits rules of certain kinds and, in particular, rules that are "oppressive, unreasonable or unjust." Members of organizations can and do challenge rules under this provision. A member can also apply for an order requiring compliance with rules.

Individuals are entitled by law to become members of an appropriate union and, if that is refused, they can seek a court declaration of entitlement. Conscientious objectors can obtain a certificate from the registrar that conscientious beliefs do not allow them to be members of organizations. There are other provisions in the act prescribing that organizations shall keep certain records, including accounting records and audits. There is also provision for judicial inquiries into disputed union elections, in which cases a new election may be ordered.

Finally, there is a power to cancel the registration of a union on a number of grounds, one being that it has failed to comply with the act, and another that it has willfully neglected to obey a court order.

Public Interest

The theme of the public interest runs through the statute creating the Commission. In the definition clause, for instance, the expression "industrial matters" is defined to include "having regard to the interests of the persons immediately concerned and of society as a whole."

There are references to the public interest in both the reference and appeal provisions. There cannot be a reference to a Full Bench unless the president has formed the opinion that, in the public interest, it should be referred, and an appeal is not considered unless the appeal bench decides that the matter is of such importance that, in the public interest, it should be considered.

The Commission has the power to decline to deal with an industrial dispute on the ground, amongst others, that further proceedings are not desirable in the public interest.

In a proceeding before a Full Bench, the Minister for Industrial Relations has the statutory right to intervene in the public interest on behalf of the Commonwealth government.

The expression "public interest" has never been defined by the Commission because it has taken the view that each case should be decided on its own facts.

Interest Arbitration

When considering any limitations on interest arbitration in Australia, it is necessary to bear in mind that there are legally established tribunals that are constantly dealing with disputes about interests. It follows that the limits on interest bargaining are to be found in the jurisdictional limitations of the tribunals rather than in any philosophical concept. Jurisdiction limitations arise from a combination of the Australian Constitution and the statutes which create the various tribunals. Central to these limitations is the word "industrial." I do not propose to go into the constitutional limitations. It is sufficient to say that the Australian Constitution gives limited power to the central government and the residue to the states. In the field of industrial relations, the power of the federal government is somewhat circumscribed and, as a result, some matters cannot be dealt with by the Australian Commission. Conversely, there are some jurisdictional limitations on the state systems, but it would not be fruitful to attempt to explore this constitutional maze.

The important and only general restraint is found in the word "industrial." All acts of Parliament creating the various Australian tribunals are essentially based on the concept of what is commonly called the master and servant relationship. If something arises out of that relationship, then the tribunal can deal with it. In some limited situations, the matter is taken further by deeming certain relationships to be that of master and servant. For instance, taxi drivers who own their own vehicles can be deemed to be employees, although the legal relationship is not one of master and servant. Therefore, if there is a dispute over matters arising out of the relationship of master and servant, it is industrial and capable of being dealt with by an industrial tribunal. Such a dispute may be about an individual or a whole union membership; that is, it may be a factory or an industry dispute, but nevertheless it can be dealt with. It is necessary to interpolate that there is no clear distinction drawn between interests and rights disputes and, on occasion, one may merge with the other. The legal capacity of an individual to enforce his rights in the civil courts is not really taken away, but except for

claims as definite as an underpayment of wages, claims tend to be brought to the industrial tribunal. What may originate as a "rights" dispute may become an "interest" dispute. For example, the basic contract (commonly known as an award) may give rise to a "rights" dispute in an industry, but the result may be that the basic contract is varied so that what started as a dispute over a right may result in an alteration of the contract itself.

The word "contract" is not commonly used in Australia. The great bulk of the workforce is covered by "awards" that have been made by the various tribunals, some by consent, some by arbitration, and others by a mixture of both. Parenthetically, the word "arbitration" in the Australian scene tends to mean the creation of rights, not the ascertainment of them. There still is the common law concept of "arbitration" as a noncurial method of dealing with disputed issues, but in common parlance it means the act of creating rights arising from disputes about interests.

The law prescribes that an award must be made for an expressed period of time, but power is given to vary awards during their currency—and this frequently happens. As a result, the actual termination of an award may not be very important because it will have been kept up to date by variations during its currency. Although in some industries the unions insist on reconsidering many major conditions, particularly wages, on the expiry of an award, some unions do not.

There are, however, two limitations. The first, which is not very significant, is that the industrial tribunals will not normally act on the motion of an individual. Central to the whole arbitration system is the creation of unions. The system has both fostered them and, in the eyes of some, weakened them. It has fostered their creation because a system such as the Australian one must rely on representative parties and not on individuals. The allegation that the system has weakened them comes from the view that the mere existence of a permanent umpire to rule on disputes tends to make those involved in the system too reliant on that umpire.

The trade union movement has been, broadly speaking, based on the U.K. system. Thus, Australia has a mix of craft unions and industry unions. The craft unions, as their name implies, are related to the occupation of their members, and they tend to represent similar tradesmen—for example, fitters irrespective of the industry in which they are employed. Fitters in the metal

fabricating industry as well as in many other industries in which they perform maintenance functions are all members of the same union. There are, however, some industry unions. It is part of the centralized system that unions become registered with industrial tribunals at both the state and federal levels. Their right to represent their members is determined by their registered constitution, and there are no problems of recognition except in the vexed areas where registered unions' rules are not mutually exclusive or where new processes or industries have occurred. Optimally, there should be only one union for each type of job, but this degree of perfection has not been achieved and, indeed, some of Australia's most intransigent problems come from demarcation disputes between two unions.

The Australian system would not work without unions, and the Australian system is heavily unionized. In 1901, 6.1 percent of the workforce belonged to unions; in 1978 the figure had increased to 57 percent. At the same time the number of unions had grown to 372. Thirty percent of the unions have a membership of less than 500, and only 3.2 percent have a membership of more than 80,000. Trade unions are significant in both the white-collar and blue-collar fields, and in both the public and private sectors. Many of them have identifiable political affiliations, the great bulk of them supporting the labor party.

Another limitation on jurisdiction can be more serious, although it is fairly vague. It has been held that industrial tribunals cannot interfere with managerial rights and that employers must be able to conduct their businesses without interference by tribunals. There is no clear-cut line between managerial and nonmanagerial. Every decision by an arbitration tribunal to some extent interferes with managerial rights. Nevertheless, there is an insistence that there is this limit to the powers of an arbitration tribunal, indefinite though it may be. An example of this limitation is the decision that an award requiring butchers' shops to close on Saturday mornings is not an industrial matter because it does not involve the master-servant relationship (R. v. Kelly (1950) 81 CLR 64).

In practice, awards cover many facets of the master-servant relationship. It is not possible to give details of all the subject matters dealt with, but it may be of interest to know the subject matters covered by one of our principal awards, namely, the Metal Industries Award 1971. It is to be noted that this award is alive and well, although nominally it ceased to exist on 30 June

1972. As a matter of law, all awards continue to remain in effect after their expiry date until superseded, and as a matter of practice unions and employers are content to allow the award to continue by keeping it up to date with variations. The award itself is over 100 pages of print, but as a matter of interest and to show the detail that is covered in awards, appended are both the index to the award and the clause describing its incidence (see Appendix 2).

There are, however, some clear limitations on the power. The tribunal cannot make awards for superannuation because, ex hypothesi, superannuation occurs after the relationship of master and servant has ended (*Hamilton Knights* case (1952) 86 CLR 283). On the other hand, the right to wear a union badge while on duty can be the subject of an arbitration decision (*The Tramways* case (1913) 17 CLR 680). Some state government employment cannot, by its nature, be in an industry, but some government employment can (Engineers case (1920) 28 CLR 129). The list could go on, but the principle is clear. If the matter is industrial, that is, if it involves the relationship of master and servant and it is in industry, then the tribunals have jurisdiction.

It should be added that the tribunals do not form part of the ordinary court system and that, except in limited ways, their decisions are not subject to appeal. However, the High Court of Australia has jurisdiction to prevent the Australian Commission from wrongly exercising jurisdiction and to compel it to exercise jurisdiction. This is done through prerogative writs, and there is a fairly steady flow of them. Subject to such jurisdictional restraints, decisions of the tribunals cannot be challenged in the ordinary courts.

APPENDIX 1

PRINCIPLES OF WAGE DETERMINATION

In considering whether wages, 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. It would be inconsistent with these Principles for wages, salaries or conditions to be awarded or changed extravagantly, the effect of which would be to frustrate the Commission's general intentions.

Regardless of the reasons for increases in labour costs outside national productivity and indexation, regardless of the source of the increases (award or overaward, wage or other labour cost) and regardless of how the increases are achieved (arbitration, consent or duress), unless their impact in economic terms is negligible, the Australian economy cannot afford indexation.

In the event of industrial action taking place on a scale such as to signify general rejection of the Principles, the Commission will declare these Principles to be formally abandoned. Where industrial action of a serious and protracted nature is confined to specific industries or groups of employees, a party may apply for the benefits of any national wage adjustment to be withheld from these industries or groups.

National Adjustments

1. First Review

(a) Upon publication of the March quarter CPI, other than in exceptional and compelling circumstances, the Commission will adjust its award wages and salaries for 80 percent of the December and March quarterly movements in the six-capitals CPI. . . .

2. Final Review

(a) Upon publication of the September quarter CPI, the Commission will give consideration to adjusting its award wages and salaries for: the 20 percent remaining from December and March quarterly movements in the six-capitals CPI, the total June and September quarterly movements in the six-capitals CPI, [and] productivity movements.

(b) The Commission will treat price movements as of prime importance. Relevant to the Commission's consideration will be the state of the economy and any question of discounting. . . .

Other Adjustments

In addition to the above increases, the only other grounds which would justify increases in wages or salaries are:

3. Changes in Work Value

Changes in work value arising from changes in the nature of work, skill and responsibility required, or the conditions under which work is performed.

4. Anomalies

The resolution of anomalies and special and extraordinary problems by means of the Conference already established to deal with anomalies and in accordance with the procedures laid down for them.

5. Inequities

(a) 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. . . .

(b) In dealing with inequities, the following over-riding considerations shall apply: the pay increase sought must be justified on the merits, there must be no likelihood of flow-on, the economic cost must be negligible, [and] the increase must be a once-only matter.

(c) The requirements of (a) and (b) above shall be observed in the Anomalies Conference and by a Full Bench to which an inequities application might be referred. The peak union councils must initiate these claims and, in particular, assist in the resolution of issues as to possible flow-on.

6. Allowances

Allowances may be adjusted from time to time where appropriate, but this does not mean that existing allowances can be

increased extravagantly or that new allowances can be introduced, the effect of which would be to frustrate the general intention of the Principles. . . .

7. First Awards and Extensions of Existing Awards

(a) In the making of a first award, the long-established principles shall apply, i.e., the main consideration is the existing rates and conditions (General Clerks Northern Territory Award). (111 CAR 916)

(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.

APPENDIX 2

METAL INDUSTRY AWARD 1971

PART 1 – WAGES EMPLOYEES

1. – TITLE

This award shall be referred to as the "Metal Industry Award, 1971". (A1)

2. – ARRANGEMENT (C1)

Metal Industry Award, 1971—Contd.

Metal Industry Award, 1971—Contd.

AMENDED – 7.2.80

Metal Industry Award, 1971—Contd.

AMENDED – 7.2.80

Metal Industry Award, 1971—Contd.

3. – INCIDENCE OF AWARD (E4)

(a) This award shall apply in the States of New South Wales, Victoria, Queensland, South Australia and Tasmania.

(b) Subject to the exceptions and exemptions prescribed by this award, the industries and callings covered by this award are the engineering, metal working and fabricating industries in all their branches, and all industries allied thereto and include –

1. Mechanical and electrical engineering.
2. Shipbuilding and repairing.
3. Smithing.
4. Boilermaking and erection and repairing.
5. Bridge and girder construction and erection, and repairing.
6. Steel fabrication, construction and erection, and repairing.
7. Welding.
8. Tool, die, gauge and mould making.
9. Sheet metal working.
10. Metal moulding.
11. Diecasting.
12. Stovemaking and repairing.
13. Agricultural implement making and repairing.
14. Metal pressing and stamping.
15. Porcelain enamelling.
16. Manufacture of porcelain enamels, oxides, glazes and similar materials.
17. Metal machining.
18. Ironworking.
19. Iron and steel pipe making and fabrication.
20. Window frame making and repairing.
21. Safe and strong-room making and repairing.
22. The manufacture, erection and installation, maintenance and repair of all forms of electrical machinery, apparatus and appliances, including valve and globe manufacturing.
23. Radio, telephone and x-ray manufacturing, maintaining and repairing.
24. Manufacture of insulation materials and articles.
25. Wet and dry battery manufacturing and repairing.
26. Manufacture, erection, installation, maintenance and repair of electrical advertising equipment including neon signs.
27. Manufacture, erection, installation, maintenance and repair of fluorescent lighting.
28. The drawing and insulation of wire for the conducting of electricity.
29. The manufacture and repair of recording, measuring and controlling devices for electricity, fluids, gases, heat, temperature, pressure, time, etc.
30. The production by mechanical means of industrial gases (other than coal gas).
31. The making of canisters, drums and other metallic containers.
32. Galvanising, tinning and pickling.
33. Electroplateware manufacturing.
34. Electroplating of all types.
35. Processing of metals such as sherardizing and bonderizing.
36. Lift and elevator making, repairing and maintenance.
37. Plastic moulding, casting or fabricating in synthetic resins, or similar materials and including the production of synthetic resins, powders, tablets, etc., as used in such processes.
38. Melting and smelting of metals.
39. Refrigerator manufacturing, maintaining and repairing.

Metal Industry Award, 1971—Contd.

40. Perambulator manufacturing and repairing.
41. Making, manufacture, installation, maintenance and repair of ventilating and air-conditioning plant and equipment.
42. Metal furniture manufacturing and repairing.
43. Kitchenware manufacturing.
44. Metallic toy and sporting goods manufacturing.
45. The making, assembling, repairing and maintenance of vehicles (except where such work is at present covered by another Federal award.)
46. The manufacture of bolts, nuts, screws, rivets, washers and similar articles.
47. The manufacture of bright steel bars, rods, shafting, etc.
48. Making, manufacture, installation, maintenance and repair of scales and machines for measuring mass and equipment.
49. Making, manufacture, installation, maintenance and repair of watches and clocks, including cases.
50. Making, repairing, reconditioning and maintenance of motor engines, and/or parts thereof, and of the mechanical and electrical parts including the transmission and chassis of motor cars, motor cycles and other motor driven vehicles.
51. The making of metal motor-body parts.
52. Japanning, enamelling, painting and etc. of metallic articles.
53. Hand and machine engraving.
54. Badge and name-plate manufacturing, including chemical engraving.
55. Manufacture, testing and repair of water fittings.
56. Manufacture of any article or articles from metal wire.
57. Installation of all classes and types of electrical wiring equipment and plant, and the repair and maintenance thereof.
58. Generation and distribution of electric energy.
59. Manufacture of ceramic articles for use in the metal trades industries.
60. Making, manufacture, treatment, installation, maintenance, repair and reconditioning of any article, part or component, whether of metal and/or other material in any of the foregoing industries.
61. Sorting, packing, despatching, distribution and transport in connection with any of the foregoing.
62. Making, manufacture, installation, construction, maintenance, repair and reconditioning of plant, equipment, buildings and services (including power supply) in establishments connected with the industries and callings described herein and maintenance work generally.
63. Every operation, process, duty and function carried on or performed in or in connection with or incidental to any of the foregoing industries.

All descriptions of industry or callings set out in this clause wherever expressed may be read either alternatively or collectively in any combination whatsoever.

4. – PARTIES BOUND (E3)

This award shall be binding upon –

(a) Elsewhere than in Queensland –

(i) The organisations of employees mentioned in Schedule "A" and the members thereof respectively;

(ii) all employees whether members of an organisation of employees mentioned in Schedule "A" to this award or not, engaged in any of the occupations, industries or callings specified herein;

(iii) Metal Trades Industry Association of Australia, Metal Industries Association, South Australia, Metal Industries Association, Tasmania and the Victorian Chamber of Manufactures and members of such organisations of employers; and

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(iv) the employers specified in Schedule "B".

(b) In Queensland –

(i) Metal Trades Industry Association of Australia and the members thereof as to all employees whether members of an organisation of employees or not engaged in any of the occupations, industries or callings specified herein; and

(ii) the organisations of employees mentioned in Schedule "A" hereto and the members of such organisations of employees.

5. – DATE AND PERIOD OF OPERATION

This award shall come into operation on and from the beginning of the first pay period to commence on or after 24th November, 1971 and shall remain in force until 30th June, 1972.

6. – CONTRACT OF EMPLOYMENT

WEEKLY EMPLOYMENT

(a) Except as provided in sub-clause (c) hereof employment shall be by the week. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the week.

PART TIME EMPLOYMENT OF FEMALES

(b) (i) A female employee may be engaged by the week to work on a part-time basis for a constant number of hours less than forty each week. A female so engaged shall be paid per hour one fortieth of the weekly award wage prescribed herein for the work she performs.

(ii) A female engaged on a part-time basis shall be entitled to payments in respect of annual leave, public holidays and sick leave arising under this award on a proportionate basis calculated as follows:–

(1) Annual Leave (E8)

Subject to the provisions of Clause 25 –

- Where the female has completed twelve months' service on or after 1st December 1974 – four weeks' leave at the number of fixed hours normally worked each week.
- Where the female has complete twelve months' service on or after 8th April 1974 and prior to 1st December 1974 – three weeks' leave plus 1/12th of a week's leave for each month of service completed on or after 1st January 1974 at the number of fixed hours normally worked each week.
- Where the female is entitled to pro-rata leave on termination or at a close down in accordance with this award for each completed week of service she shall receive an entitlement in accordance with the following formula –

$$\frac{\text{Number of fixed hours worked each week} \times 4}{52}$$

(2) Public Holidays

Where the normal paid hours fall on a public holiday and work is not performed by the female she shall not lose pay for the day.

Where the female works on the holiday she shall be paid in accordance with Clause 22 of this award.

(3) Sick Leave

During the first year of any period of service with an employer she shall not be entitled to leave in excess of the fixed number of hours worked

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each week. Provided that during the first six months of any period of service with an employer, sick leave shall accrue at the rate of one-sixth of the fixed number of hours worked each week for every completed month of service. Provided further that on application by the employee during the seventh month of employment and subject to the availability of an unclaimed balance of sick leave the employee shall be paid for any sick leave taken during the first six months and in respect of which payment was not made.

During the second and subsequent years of any period of service with an employer she shall not be entitled to leave in excess of an amount calculated as follows –

$$\frac{\text{Number of fixed hours worked each week} \times 8}{5}$$

(4) Bereavement Leave (C1)

Where a part-time female employee would normally work on either or both of the two working days following the death of a close relative which would entitle an employee on weekly hiring to Bereavement Leave in accordance with clause 26 of this award, the female shall be entitled to be absent on Bereavement Leave on either or both of those two working days without loss of pay for the day or days concerned.

(iii) A part-time female who works in excess of the hours fixed under her weekly contract of employment shall be paid overtime in accordance with Clause 21 of this award.

(iv) The unions respondent to this award are at liberty to apply to vary the provisions of this clause at any time should the circumstances relating to the employment of females on a part-time basis so require.

CASUAL EMPLOYMENT (E8)

(c) A casual employee is one engaged and paid as such. A casual employee for working ordinary time shall be paid per hour one-fortieth of the weekly award wage prescribed herein for the work which he or she performs, plus 20 per cent.

TERMINATION OF EMPLOYMENT

(d) (i) Employment except in the case of casual employees, shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wage as the case may be.

(ii) Notwithstanding the provisions of paragraph (i) hereof the employer shall have the right to dismiss any employee without notice for malingering, inefficiency, neglect of duty or misconduct and in such cases the wages shall be paid up to the time of dismissal only.

(iii) Where the employee has given or been given notice as aforesaid he shall continue in his employment until the date of the expiration of such notice. Any employee who having given or been given notice as aforesaid without reasonable cause (proof of which shall lie on him) absents himself from work during such period shall be deemed to have abandoned his employment and shall not be entitled to payment for work done by him within that period. Provided that where an employer has given notice as aforesaid, an employee other than a casual employee, on request, shall be granted leave of absence without pay for one day in order to look for alternative employment.