



UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



Distr.  
GENERAL

T/1978/8/Add.15  
29 March 1978

ORIGINAL: ENGLISH

First regular session, 1978  
Agenda item 5. Implementation of the  
International Covenant on Economic,  
Social and Cultural Rights

REPORTS SUBMITTED IN ACCORDANCE WITH COUNCIL RESOLUTION 1983 (LX)  
BY STATES PARTIES TO THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS CONCERNING RIGHTS COVERED BY ARTICLES 6 TO 9

AUSTRALIA

/17 March 1978/

INTRODUCTION

The International Covenant on Economic, Social and Cultural Rights was signed by Australia on 18 December 1972 and was ratified on 10 December 1975. It entered into force for Australia on 10 March 1976.

In accordance with Articles 16 and 17 of the Covenant, and with the program set forth in Resolution 1983 (LX) of the Economic and Social Council, Australia hereby submits its report on the measures it has adopted and the progress made in achieving progressively observance of the rights recognised in Articles 6-9 of Part III of the Covenant. Any factors and difficulties affecting the degree of fulfilment of its obligations under these Articles are also identified.

In the preparation of this report the format set out in the Guidelines for Reporting, attached to the Secretary-General's Note on 1 June 1977 to the Foreign Minister (G/SO 221/912) has, where practicable, been followed.

The material included in the report should be considered in the context of the general constitutional and legislative structures in operation in Australia, a brief outline of which follows.

Under the Australian Constitution, legislative power is shared between the federal Government (the Commonwealth) and the Governments of the six constituent States. The Constitution confers on the Commonwealth Parliament specified

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legislative powers while the legislatures of the States exercise the residual powers and, concurrently with the Commonwealth, may exercise some of the powers specifically given to the Commonwealth. However, in the event of an inconsistency between a valid Commonwealth and an otherwise valid State law, the Commonwealth law prevails.

As far as the introductory articles of the Covenant on Economic, Social and Cultural Rights are concerned, Australia's respect for the right of all people to self-determination - which is enshrined in Article 1 - is clearly on record.

Much of what is required by Articles 2.2 and 3 has already been achieved in Australia. A number of important administrative and legislative measures have been introduced at both the Commonwealth and State levels to ensure the enjoyment on a non-discriminatory basis of the rights enunciated in the Covenant. Attention will be drawn to the details of these measures where appropriate in the course of the report on Articles 6-9. However, it is convenient at this stage to identify the various laws that have been enacted by the Commonwealth and State Parliaments to combat discrimination.

#### Commonwealth

Racial Discrimination Act 1975  
Aboriginals and Torres Strait Islanders  
(Queensland Discriminatory Laws) Act 1975

#### New South Wales

Ethnic Affairs Commission Act 1976  
Anti-Discrimination Act 1977

#### Victoria

Ministry of Immigration and Ethnic Affairs  
Act 1976  
Equal Opportunity Act 1977

#### South Australia

Sex Discrimination Act 1975  
Racial Discrimination Act 1976

In addition to the foregoing, the Queensland State Parliament in 1974 passed the Treaties Commission Act. This legislation made provision for a Treaties Commission with functions to examine the implications for Queensland of international treaties and conventions, to report to the Queensland Parliament on legislation to implement such treaties and conventions, and to advise the Queensland Government on related matters.

In 1976 the Parliament of the State of Western Australia enacted the Legislative Review and Advisory Committee Act. The Committee established by this Act is empowered to examine and report on whether any statutory regulations in that State transgress unduly on personal liberties or unduly make rights dependent upon administrative rather than judicial decisions. The Committee is also given similar powers, upon request by the Parliament, to examine and report on State enactments and proposals for future legislation.

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On 1 June 1977, the Commonwealth Government introduced in the federal Parliament a Bill to establish a Human Rights Commission. This is seen as an important step towards Australian ratification of the International Covenant on Civil and Political Rights. In addition to the specific functions it would exercise in relation to that Covenant, the Commission would be empowered to report on action required to be taken by Australia to comply with other relevant international instruments, such as the International Covenant on Economic, Social and Cultural Rights. An improved form of the Bill will be presented to Parliament early in 1978.

Copies of the aforementioned legislation are attached to this report.\*

At the federal level four important principles have emerged as influential in the development of legislative measures in relation to the maintenance of human rights. These are that:

- (1) comprehensive legislation is required to supplement common law guarantees of human rights;
- (2) comprehensive remedies need to be developed for the enforcement of human rights;
- (3) formal administrative machinery needs to be established to investigate infringements of human rights and attempt to achieve a settlement of issues by conciliation; and
- (4) facilities need to be established to foster programs of education and research and other programs on a systematic basis to promote human rights.

The first principle recognises the fact that legislation can deal with specific problems relating to human rights with a particularity and comprehensiveness that could not be achieved solely through judicial interpretation of general guarantees. Moreover, the comprehensive embodiment of rights in legislative form has an important educative value; it can make people more aware of their rights and make infringements of rights more obvious and conspicuous. In relation to the second principle, through it the importance of utilizing a comprehensive framework of practical and effective remedies is emphasized. Legislative guarantees (apart from their use as an educative mechanism) are of little value unless they can be given practical expression. The third principle reflects the view that it is not sufficient to rely merely on legal remedies and judicial review as a means of enforcement. It is considered that administrative machinery should be established to investigate infringements of rights on a systematic basis. Moreover, it is believed that the utilization of processes of mediation and conciliation is often a more satisfactory way of tackling individual infringements of human rights than reliance on legal processes. The fourth principle recognizes the important role to

\* This and other attachments mentioned in the report are available for consultation in the files of the Secretariat in the original language. For a list of the reference material available, see the annex to the report.

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be played by programs of education and research and other programs to promote human rights. Such programs are designed to change community attitudes that result in the denial of rights and are important in the longer-term, to supplement action on individual complaints.

A significant administrative measure introduced by the Commonwealth Government was the establishment of National and State Committees on Discrimination in Employment and Occupation. The main functions of the Committees are to investigate, and to endeavour to settle through conciliation, complaints of discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. Further details of the Committees' functions and procedures are set out at a later stage in this report. The Committees were established to implement International Labor Organization Convention Number 111 on Discrimination (Employment and Occupation) which was ratified by Australia on 15 June 1973.

Finally, it is relevant to note that Australia ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 30 September 1975, and acceded to the Convention on the Political Rights of Women on 10 December 1974. Details as to the implementation in Australia of the principles embodied in these Conventions are given subsequently in the body of this report, particularly in the section dealing with Article 6 of the Covenant.

ARTICLE 6 - RIGHT TO WORK

In accordance with its obligations under article 6 of the Covenant Australia, by means of legislation and various practical measures, has sought to guarantee the right of everyone to gain his living by work freely chosen or accepted. In this section of the report the degree to which this objective has been achieved will be examined - in accordance, for the sake of convenience, with the format of the suggested general guidelines attached to Note G/5C 221/912 of 1 June 1977.

(A) FREEDOM FROM COMPULSORY LABOUR

Australia ratified ILO Conventions No. 29 - Forced Labour, 1930, and No. 105 - Abolition of Forced Labour, 1957, on 2 January 1932 and 7 June 1960 respectively, and abides by its obligations under these Conventions. The Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975 - which was passed to supersede discriminatory Queensland laws directed against Aboriginals and Islanders contains, for example, inter alia the following provision:

Section 10(1) "An Aboriginal or Islander who is on, or is a resident of, a Reserve is not required to comply with any direction to perform work on the Reserve unless ....."

The exceptions concern work to fulfil community obligations arising out of a prison sentence and where

"... it would be unlawful for him to refuse or fail to comply with the direction if he were not on, or a resident of, the Reserve."

(Further material in relation to this Act is contained in subsection B(1) of this section of the report).

Additionally, provisions in domestic civil and criminal law are available to persons who believe their right freely to choose work has been infringed - by, for example, an attempt compulsorily to exact labour not freely chosen. In the event that such an attempt has, as one result, the deprivation of liberty of the individual concerned, remedies such as a writ of habeas corpus or prosecution under the criminal law for offences against the person (assault, false imprisonment) are available.

There is no compulsory military service in Australia. Although the National Service Act 1951-1973 - which in effect provides for compulsory military service - is still in force, the obligations of persons to register or to render service under the Act were terminated by the National Service Termination Act 1973 (section 4).

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**(B) GUARANTEES AGAINST DISCRIMINATION**

As part of its declared policy the Commonwealth Government is committed to the elimination of discrimination in employment and occupation throughout Australia. To implement this policy the National Committee on Discrimination in Employment and Occupation and six State Discrimination Committees were established. This followed the ratification by Australia, in June 1973, of ILO Convention No. 111 - Discrimination (Employment and Occupation) 1958. The Convention is specifically directed against employment discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction and social origin. The Committees investigate and attempt to resolve allegations of discrimination on the above seven grounds and additionally on other grounds such as age, nationality or physical disability. In fact the number of complaints considered which involve discrimination on grounds other than those specified in the Convention represent a significant portion (39 per cent) of the Committees' investigative activities.

The National and the State Committees began their activities in mid 1973. They are established on a non-legislative basis and each enjoys a certain independence in its operations although in accordance with broad guidelines determined by the National Committee. The structure of the Committees is tripartite; there is on each Committee a representative respectively of the Commonwealth Government, of employers organisations and of the trade unions. In the case of State Committees, membership also includes a representative of the respective State Government. Membership of the National Committee includes, in addition, persons with special knowledge of the employment problems of Aborigines, migrants and women. The Committees are serviced by a full-time staff all of whom are officers of the Commonwealth Department of Employment and Industrial Relations.

The receipt and investigation of complaints of alleged employment discrimination, and the resolution through conciliation of these complaints, represent a major part of the work of the State Committees. The National Committee considers complaints referred to it by the various State Committees if they involve policy matters in relation to Commonwealth employment, or if the State Committees have been unable to resolve them. If the National Committee is also unable to resolve a complaint, a report on the matter may be tabled in the Commonwealth Parliament by the Minister for Employment and Industrial Relations. In the period since the Committees were established, it has not been necessary to have recourse to action at the parliamentary level on any of the complaints considered by the Committees.

The National Committee is responsible for interpreting federal Government policy and advising the Government on how it may best be implemented. Furthermore it is at present developing a national program directed towards influencing community attitudes so that discriminatory policies and practices will come to be seen as socially undesirable. In furtherance of this aim the National Committee has taken the following action:

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- . printed cards drawing attention to the Commonwealth Government's policy, as well as to the complaints procedure, and advising persons where to direct their complaints. The cards have been translated into the most widely-used European and Aboriginal languages in Australia;
- . published an information pamphlet - 'Fight Discrimination in Employment and Occupation' - explaining the national policy and the composition and functions of the Committees on Employment Discrimination;
- . published a booklet - 'Guidelines for Eliminating Discrimination from Job Advertisements' - designed to encourage the use of non-discriminatory job advertisements and to assist employers, newspapers and employment agencies in framing such advertisements;
- . embarked on a nationwide press advertising campaign in which a series of large 'announcement' advertisements were placed in the metropolitan and country press throughout Australia, in union and employer journals, and in the major foreign-language newspapers;
- . prepared and distributed and prominently displayed a striking poster entitled 'Fair Go', which draws attention to the Discrimination Committees' activities;
- . called for and received expert advice on how best to develop an advertising campaign designed to influence community attitudes and remove discriminatory behaviour.

The National Committee prepares comprehensive annual reports which examine the activities of both the National Committee and the State Committees. They document inter alia the number and nature of complaints received, contain details concerning complaints successfully resolved, examine developments in legislative and other governmental areas in relation to combatting discrimination, and append valuable statistical tables which summarise in figures the activities and achievements of the Committees for the respective periods covered. The second and third Annual Reports, covering the periods 1974 - 1975 and 1975 - 1976 respectively, are included as attachments to this report.

In the four years of their operation, up to 30 June 1977, the Committees have been noticeably successful in bringing about the elimination of legislative and regulatory provisions, and of policies and practices, inconsistent with national policy on discrimination in employment. Approximately 75 per cent of complaints handled by the Committees on one or other of the grounds stipulated in the ILO Convention concerned discrimination on the grounds of sex. The main complainants were females and the subject matter of their complaints included such matters as the following:

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- . provisions requiring women to resign, or accept a temporary or lower status, on marriage. A large State statutory authority undertook to have the relevant award provision removed to eliminate this practice; a local government council adopted a new set of policy guidelines which deleted all reference to the marriage of female employees; a State Police Department amended its regulations to permit policewomen to continue working after marriage; a large Government insurance company discontinued its policy of requiring females with less than two years' service to resign on marriage; and a major government bank ceased to require female officers to apply for re-appointment on marriage;
- . the classification of certain positions and occupations as being suitable only for males or only for females, without regard to the inherent requirement of the job. A number of State and local government authorities discontinued this practice. Newsagency Registration Boards in two States changed their rules to allow women to be registered as newsagents in their own right;
- . Provisions regulating the Graphic Arts Award. They were amended to delete discriminatory provisions favouring males;
- . regulations governing the employment of females in the Australian Army Reserve. They were amended to permit the recruitment of married women with dependents;
- . the payment of different allowances to married male and married female teacher trainees. A State Education Department decided to pay the same allowance to all married trainees, irrespective of sex;
- . the wording of job advertisements and recruitment literature to refer to only males or only females. Two banks, three large insurance companies, a major manufacturing firm and several government authorities altered their job advertisements; a Commonwealth Government authority amended its recruitment pamphlets to remove discriminatory wording;

The Committees also dealt with a number of complaints of discrimination on the basis of race and colour. One case, for example, concerned a newspaper job advertisement which specified that applicants must not be of a certain race. The company concerned agreed to remove the discriminatory wording in future advertisements. In another case, following an approach by the relevant State Discrimination Committee, a central trade union organisation took action to ensure that the policy of one of its local unions directed against employment of persons from a specified country was discontinued.

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The above are representative examples of the sort of complaints the Committees investigate. The Third Annual Report of the National Committee (attached to this report) should be consulted for details of other examples.

The activities of the National and State Committees to combat discrimination are supplemented by specific legislation in federal and State jurisdictions.

#### (I) Federal Legislation

The Racial Discrimination Act 1975 was enacted by the Commonwealth Parliament to implement the International Convention on the Elimination of All Forms of Racial Discrimination which was ratified by Australia on 30 September 1975.

The Racial Discrimination Act is binding on all residents of Australia as well as the Commonwealth Government and all State Governments (section 6).

Section 9 of the Act makes it unlawful to do an act involving a discrimination, exclusion, restriction or preference, based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights or fundamental freedoms in the political, economic, social, cultural or other field of public life. A human right or fundamental freedom referred to in this provision includes a right of a kind referred to in Article 5 of the Convention, and thus encompasses the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration, to form and join trade unions, and the right to social security.

Section 10 of the Act is designed to guarantee equality of rights, under any law in Australia, including any industrial law, whether Commonwealth, State or Territory, for all persons regardless of race, colour or national or ethnic origin. In addition to laws which are patently discriminatory, this section applies to laws which discriminate as a consequence of the manner in which they operate or are administered.

The Act also contains provisions to deal with specific types of discrimination. Examples of these provisions are sections 14 and 15.

Section 14 makes invalid any provision in rules of a trade union that prevents or hinders a person joining that organization, on the grounds of race, colour, national or ethnic origin. It also makes unlawful any action designed to prevent or hinder a person from joining a trade union on similar grounds.

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Section 15 prohibits discrimination in employment on racial grounds which takes the form of:

- (a) failing to employ a person who is qualified for available work;
- (b) failing to offer the same terms of employment and conditions of work and opportunities for training and promotion; and
- (c) dismissing from employment.

The section additionally proscribes discriminatory practices related to the procuring of persons for employment or aimed at preventing a person from offering for employment or from continuing in employment. Under sub-section 15(3) similar provisions are applied to organisations of employers or employees.

The Act establishes formal administrative machinery for the examination and settlement of discrimination complaints. To this end the Commissioner for Community Relations, who was appointed on 31 October 1975, is empowered under section 20 to enquire into alleged infringements of the Act and to endeavour to effect a settlement of the matters alleged to constitute those infringements.

Section 22 provides that the Commissioner may direct the parties to a dispute, and any other person whom the Commissioner thinks can help with the settlement of the dispute, to attend a compulsory conference. Failure, without reasonable excuse, to attend a compulsory conference as directed, is punishable by a fine of \$250.00.

Because there is some overlap between the machinery established under the Racial Discrimination Act and the activities of the Committees of Discrimination in Employment and Occupation, it has become the practice that the Commissioner refers complaints of discrimination in employment to the Committees for initial investigation.

The combined effect of sections 24 and 25 is that, except in relation to shared accommodation, an aggrieved person, on obtaining a certificate of the Commissioner that he has been unable to settle the matter, may commence civil proceedings in respect of acts alleged to be made unlawful by Part II of the Act in a civil court seeking -

- . an injunction restraining the defendant from repeating the relevant act, from doing an act of a similar kind, or from causing or permitting others to do acts of the same or a similar kind;
- . an order directing the defendant to do a specified act, being an act directed to -
  - (i) placing a person aggrieved by the doing of the relevant act as nearly as practicable in the position in which he would be if the relevant act had not been done; or
  - (ii) otherwise avoiding a detriment to such a person resulting from the doing of the relevant act;

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- . if the doing of the relevant act resulted in the making of a contract or the relevant act was done in pursuance of a contract - an order cancelling the contract, varying any of the contract or requiring the repayment, in whole or in part, of an amount paid in pursuance of the contract;
- . damages against the defendant in respect of -
  - (i) loss suffered by a person aggrieved by the relevant act, including loss of any benefit that that person might reasonably have been expected to obtain if the relevant act had not been done; and
  - (ii) loss of dignity by, humiliation to, or injury to the feelings of, a person aggrieved by the relevant act; and
- . such other relief as the court thinks just.

The Aboriginal and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975 enacted by the Commonwealth Parliament came into operation on 19 June 1975. The Act was designed to meet the situation created by specific provisions of Queensland legislation relating to Aboriginals and Torres Strait Islanders. Section 11 provides as follows:

"A person shall not employ an Aboriginal or Islander in Queensland (whether on a Reserve or elsewhere) unless the terms and conditions of employment are not less favourable than they would be required to be if the employee were not an Aboriginal or Islander, and, in particular, the employee shall be entitled to be paid wages at a rate not less than the rate at which wages would be payable to him if he were not an Aboriginal or an Islander."

(II) State Legislation

Limitations of space have determined that general outline only, not the details, of the important provisions in certain State Acts directed against discrimination will be examined in the succeeding paragraphs. The legislation chosen provides examples of the practice of those States which have specific legislation in this area.

(i) New South Wales

The Anti-Discrimination Act entered into operation on 1 June 1977. It prohibits inter alia discrimination in respect of employment on grounds which include race, sex and marital status. The provisions of the Act do not apply to the activities of certain bodies including statutory authorities, charities, religious bodies, educational establishments, and registered clubs (part VI); nor to private households and employers employing less than five persons. Under sections 60 and 71 respectively an office of Counsellor for Equal Opportunity and an Anti-Discrimination Board, with one full-time and two part-time members, have been set up. The Counsellor is responsible for receiving and investigating complaints alleging infringements of the legislation (see generally Part IX) and, under

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section 92(7), can demand that both the complainant and the respondent appear before him in order to resolve the matter through conciliation. If conciliation fails, the Counsellor must refer the complaint to the Board for inquiry (section 94) and, where appropriate, for solution which includes an award of damages, an injunction, an order of specific performance or invalidation of a part or whole of a contract or agreement (section 113). Under section 118 there is a right of appeal from a decision of the Board to the N.S.W. Supreme Court. Additionally the Board is empowered inter alia to investigate and disseminate knowledge on matters relating to discrimination, to examine areas for improvement, and to develop human rights programs and policies. It is too early yet to assess the effectiveness of this legislation.

The New South Wales Parliament has also enacted the Ethnic Affairs Commission Act 1976 which came into operation on 2 December 1976. The Act provides for the establishment of an "Ethnic Affairs Commission of New South Wales" (section 5) consisting of at least seven and not more than 11 Commissioners appointed by the Governor of New South Wales. In general terms the Commission is to concern itself with ethnic affairs with a view to advising the appropriate Minister on possible legislative, administrative and other initiatives. In particular it is to examine ways of promoting the integration of different ethnic groups and to determine what functions the Commission itself should perform. At the time of writing this report, the Commission had still to report to the Minister on these matters.

#### (ii) Victoria

On 5 May 1977 the Victorian Parliament passed the Equal Opportunity Act, 1977. The Act, which has not yet entered into force, proscribes discrimination on the grounds of sex and marital status in matters concerning, inter alia employment (section 18), commission agents (section 19), contract workers (section 20), partnerships (section 21), professional or other organisations (section 22), employment agencies (section 24) and access to education (section 25). Provisions limiting the scope of the Act are set out in Part V.

Under section 7 of the Act an Equal Opportunity Board is set up. Its function is to engage in educational and publicity activities designed to:

- eliminate discrimination on certain specified grounds
- promote equality of opportunity for men and women
- review legislation with a view to identifying certain forms of discrimination and research factors affecting the operation of the act and performance of its functions (section 15 (2) - (4)).

A Commissioner for Equal Opportunity is to be appointed under section 5 and will be responsible for investigating those matters the Board refers to him (section 35). Under section 40 the Board is empowered to hear and determine complaints which the Commissioner has not been able to resolve. Section 40 (2) lists the types of orders it may make.

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(iii) South Australia

The Racial Discrimination Act 1976 (S.A.) came into operation on 16 December 1976. The Act makes unlawful discrimination on the grounds of race inter alia in respect of employment (section 6). Penalties are imposed for discrimination in relation to access to employment, the terms on which it is offered, access to promotion, transfer or training opportunities, and dismissal.

The Sex Discrimination Act 1975 (S.A.) which came into operation on 12 August 1976, makes unlawful discrimination on the grounds of sex and marital status, inter alia in relation to employment (section 18) and access to education (section 25). The Act applies to employers, employment agencies, trade unions, employer bodies and professional organisations but exempts from its provisions such bodies as the Church and employers employing less than five persons (Part VII). Overlapping provisions in other legislation take precedence but may, as a consequence of overlap, be subject to review. A Commissioner of Equal Opportunity has been appointed under section 6 to receive complaints under the legislation, to make all reasonable attempts to resolve them and, in the event of failure, to refer the matter to the Sex Discrimination Board, which is set up under section 7. Under section 40 (4) it is required to hear and determine such complaints as are referred to it. Remedies available to the Board include the power to award damages or an injunction.

Since the Act entered into force there have been three proceedings instituted in accordance with its provisions. In Re Dawinne Pty. Ltd. (November 1976) which concerned the refusal by a hotel licensee to serve women in the public bar, the case was dismissed on factual grounds. In Re Shearing Contractors Assoc. of S.A. Inc. (December 1976) the Board granted to the Shearing Association an exemption from the application of certain provisions of the Act to its advertisements concerning employment of members of shearing teams. The third case V.M. Woods v. S.R. Grosser has not yet been finalised.

(iv) Western Australia

The most significant legislation in the area of employment discrimination is the women's Legal Status Act. 1923, which had the effect of removing the then existing prohibitions on disqualifications operating to prevent women from exercising public functions, holding judicial office or practising as lawyers.

(III) General Activities

Government instrumentalities carry out periodic reviews of existing legislation, administrative regulations and industrial awards and agreements in order to abolish vestiges of discriminatory practices. One area in which such programs have had obvious success is in the public sector where employment at all levels of the federal and State public services has now been opened to women and permanent appointment is available to married as well as to single women.

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(C) FULL EMPLOYMENT - POLICIES AND PROBLEMS

(I) Early Policy

In May 1945 the White Paper entitled 'Full Employment in Australia' was presented to the Commonwealth Parliament. It advocated as high a level of employment as was possible and consistent with:

- (a) reasonable price stability (i.e. absence of pronounced and sustained upward movement in prices);
- (b) external viability (i.e. maintenance of a level of international reserves adequate to meet short term difficulties).

Consistent with this policy of stable full employment, section 10 (c) of the Reserve Bank Act 1959 - 1973 provides in part:

"It is the duty of the Board, within the limits of its powers, to ensure that the monetary and banking policy of the Bank is directed to the greatest advantage of the people of Australia and that the powers of the Bank under this Act, the Banking Act 1959 and the Regulations under the Act are exercised in such a manner, as in the opinion of the Board will best contribute to

- (a) the stability of the currency of Australia;
- (b) the maintenance of full employment in Australia; and
- (c) the economic prosperity and welfare of the people of Australia."

(II) Level of Unemployment

Between the years 1949 and 1977 the average level of unemployment (i.e. the number of unemployed registered with the Commonwealth Employment Service) was 1.5 per cent of the total labour force, ranging between 0.2 per cent in December 1950 and a high of 5.6 per cent in January 1975. Over the period since July 1976 the average unemployment rate has been 5.0 per cent ranging between 4.3 per cent in October 1976 and 5.7 per cent in January 1977. At end-June 1977, there were 332,793 persons registered as unemployed with the Commonwealth Employment Service (CES), or 5.4 per cent of the estimated work force of approximately 6.2 million. This compares with 265,251 persons, or 4.4 per cent of the labour force at end-June 1976.

Labour demand, as measured by the number of CES unfilled vacancies, has remained unchanged over the period 1976/77. At end-June 1977 CES unfilled vacancies totalled 19,129 compared with 19,194 for end-June 1976.

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Unemployment, particularly among married women, young persons and older workers, has worsened during the 1976/77 period. Table 1 below sets out the level and rate of unemployment for each of these groups and the percentage increase in the level between May 1976 and May 1977

Unemployed Persons by Age and Sex (Selected Groups) May 1976 and 1977\*

<u>Group</u>	<u>Number Unemployed</u> ( <sup>'000</sup> )		<u>Percentage</u> <u>Increase</u>	<u>Percent of Labour</u> <u>Force (1)</u>	
	<u>May 1976</u>	<u>May 1977</u>		<u>May 1976</u>	<u>May 1977</u>
Persons under 20	87.4	113.5	29.9	12.1	15.2
Persons 20 and over	160.1	200.3	25.1	3.0	3.7
Males	132.4	170.3	28.6	3.3	4.3
Females	115.1	143.4	24.6	5.4	6.5
Married women	50.9	61.2	20.2	3.8	4.4
Persons 55 and over	12.6	15.0	19.0	1.8	2.1

(\*) Unemployed in each group as a percentage of the civilian labour force in the same group.

Source: Australian Bureau of Statistics  
The Labour Force, May 1976 and May 1977 (Preliminary)

In line with the continued overall deterioration in the labour market as evidenced by the increase in unemployment, the estimated level of employment increased by only approximately 0.8 per cent in the 12 months to May 1977. Male employment actually declined by 0.1 per cent while female employment increased by 2.4 per cent, due predominantly to a 3.2 per cent rise in the number of employed married women.

(III) Overall Economic Strategy

The first priority of the Commonwealth Government's economy strategy continues to be reduction in the rate of inflation. It is considered that the control of inflation and inflationary expectations, as well as the correction of the real wage imbalance (i.e. the re-alignment of excessive real wages with movements in productivity), are essential prerequisites for a sustainable recovery in economic activity and employment. That is, only when these adjustments are made, can a substantial and lasting reduction in the incidence of unemployment be achieved.

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In pursuance of these goals, fiscal policies remained relatively tight during 1976/77. Indeed, the overall budget deficit in 1976/77 was \$A2,740 m., some \$A845 m. less than in 1975/76. Because of the introduction of indexation adjustments to income tax schedules, as well as the reintroduction of investment allowances and other taxation concessions, this reduction involved significant cuts in a range of Government expenditures as well as a reduction in Australian Public Service staff ceilings of 2.5 per cent.

The Government has clearly stated that its expenditure will not increase in real terms during 1977/78. It is expected that this approach will have a favourable impact on liquidity and inflationary expectations with the probable effect of boosting business confidence. This approach, by reducing the Government's financing requirements, will aid a downward break in official interest rates and ease the competitive pressures on private borrowers in the capital market. Moreover, it is hoped that businessmen will be more certain of the Government's determination to cut inflation and this will lead to greater confidence that interest rates have peaked. Such expectations should further encourage bond sales to the non-bank sector and thereby assist a reduction in official interest rates. This should in turn encourage a reduction in private rates.

These short term objectives conform with the Government's long-term aim - i.e. to reduce inflation and interest rates and thereby encourage both confidence and growth in the currently depressed private sector of the economy.

During 1976/77 the Commonwealth Government aimed to reduce the rate of growth of the broadly defined money supply to within the range of 10-12 per cent per annum. Latest estimates indicate that the money supply grew by 11 per cent during 1976/77 indicating the Government's success in meeting this target. While this policy has necessitated some control over the rate of lending of banks and other intermediaries, monetary policy in general is directed towards ensuring that sufficient funds are available to private enterprises seeking to expand - without however making a full adjustment to the rate of inflation, in order to maintain downward pressures on inflationary expectations.

In addition to the above measures, domestic production and employment have been stabilised in some of the more depressed industries through the introduction of quantitative import restrictions. Information to hand suggests that the November 1976 currency devaluation has yet to have any marked effect on the volume of exports and imports. Nevertheless, with at least moderate growth in the Japanese, United States and West German economies, maintenance of the Government's anti-inflation strategy and a moderation of industrial disputation, the devaluation should start to have a favourable impact on the trade balance and investment during 1977/78.

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In summary, at the heart of the Government's economic strategy is the assumption that only by reducing inflation and the rate of growth of labour costs can Australia hope to return to conditions of sustainable growth and high employment based on buoyant export and domestic markets. Measures taken towards this end have produced progress. Both the Consumer Price Index and the implicit price deflators for consumption expenditure and gross national expenditure indicate a steady decline in the rate of inflation over the past year. The Consumer Price Index (excluding hospital and medical services) increased by 10.2 per cent in the year to the June quarter 1977 compared with 15.4 per cent in the year to the June quarter 1976. The corresponding figures for the implicit price deflators for the year to the March quarters were 10.1 per cent and 15.7 per cent for private consumption and 10.8 per cent and 15.2 per cent for the total gross national expenditure deflator. Similarly, average weekly male earnings increased by 12.2 per cent in the year to the March quarter, the lowest annual rate of growth recorded since the June quarter 1973. Indeed, this compares with an increase of 28.0 per cent in the year to the December quarter 1974.

(D) ORGANISATION OF THE EMPLOYMENT MARKET

(I) Employment Service

The federal Government plays an active role in the development and conduct of manpower policy. Administrative responsibility rests mainly with the Department of Employment and Industrial Relations. In the manpower field the principal functions of this Department include:

- (a) operation of the Commonwealth Employment Service (CES);
- (b) analysis, provision and interpretation of information on the labour market and on changes in employment;
- (c) research and advice on employment and related matters for formulation of economic policy;
- (d) occupational research and information; estimating future trends in labour demand and supply;
- (e) administration of employment training and other schemes related to employment;
- (f) liaison with State Labour Departments generally and through the Department's Labour Advisory Committee (DOLAC);
- (g) provision of the secretariat for the Australian Apprenticeship Advisory Committee (AAAC); and
- (h) administration of the tripartite National Labour Consultative Council.

The Commonwealth Employment Service (CES) is a nationwide, decentralised network of free employment agencies, consisting of some 200 local Employment Offices, eight Branch Employment Offices and approximately 160 agencies. Overall supervision is carried out by the Department of Employment and Industrial Relations.

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The CES was set up pursuant to general provisions in the Social Services Legislation Declaratory Act 1947 and, more importantly the Re-establishment and Employment Act 1945 (sections 47-49). Section 48 of the latter Act lays down its functions which include the provision of employment services and facilities for those seeking or changing employment or engaging labour, and the provision of facilities to help bring about and maintain a high and stable level of employment throughout Australia. Details of the structure, functions and activities of the CES are contained in the reports submitted by the Australian Government pursuant to its responsibilities under ILO Convention No. 88 - Employment Service, 1948.

In October 1975 the Minister for Employment and Industrial Relations arranged for a Review of the Commonwealth Employment Service, to examine its structure, functions and performance in the light of the particular problems to be resolved in the labour market of today. Full details of the Review's terms of reference are set out at pages VII to VIII of its Report (attached to this report) which was submitted to the Minister on 1 June 1977. The recommendations of the Review are set out on pages 219-235 of the Report. A team of senior officers in the Department of Employment and Industrial Relations has been assembled to examine ways to implement the Review's recommendations, and there has been a re-organisation with the Department to enable a senior officer to take over supervisory control of the service.

## (II) Employment Statistics

The Australian Bureau of Statistics (ABS) collects and publishes statistics on a wide range of topics including those relevant to the Government's manpower activities such as the national income, population, employment and unemployment, production figures for manufacturing and other industries, earnings and hours.

Basic manpower information is derived from the Census of Population and Housing, (first taken in 1901) which, since 1961, has been conducted every five years. Census results are supplemented by a regular household sample survey of the population, which collects data in all States, every year at quarterly intervals, on demographic and labour force characteristics. "The labour force survey, "based on these quarterly surveys, is published four times a year, a special bulletin, The Labour Force. Labour force definitions employed in this published survey conform closely to those recommended by the Eighth International Conference of Labour Statisticians held in Geneva in 1954.

Additional information from the quarterly household surveys is used to highlight particular characteristics and problems of the labour force and is published in a special series of occasional bulletins on such topics as Multiple Job Holding, Child Care or Internal Migration.

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Aside from census statistics the ABS produces monthly statistics on wage and salary earners and minimum wage rates, the quarterly and annual information on average earnings, the annual surveys of labour turnover, and the frequent industrial relations statistics.

On the basis of current payroll tax returns from industries and establishments, and special returns from exempted bodies such as government departments and public bodies, the Bureau provides monthly statistics on employed wage and salary earners classified by sex, industry and state. This monthly data is supplemented by the more detailed employment information to be obtained from the annual censuses of the Manufacturing, Electricity and Gas, and Mining sectors, and the periodic Retail and Wholesale Trade censuses. In order to increase the usefulness and comparability of the statistics, the various censuses were conducted on an integrated basis in 1968/69.

Payroll tax data forms the basis for the Bureau's quarterly series on male average weekly earnings. The annual data on average earnings is derived from sample surveys of private employers carried out in October. The information provided is classified according to adulthood, sex and industry. The monthly data, by industry, of minimum wage rates for adult male and adult female wage earners - as distinct from salary earners - is extracted from representative awards, determinations and collective agreements.

Surveys of labour turnover have been conducted in March each year since 1949 (except 1951 and 1954) and in September for the years 1954 to 1966. Estimates are obtained of the number of engagements and separations (expressed as a percentage of average employment during the period under review) for male and female, manual and non-manual workers. They are obtained mainly for a sample survey of private employers.

Statistics of industrial disputes involving stoppages of work of ten man-days or more are collected and published monthly. Detailed information on the duration of disputes, industry groupings, causes of disputes, and methods of settlement are published quarterly.

An additional source of statistical information is the Commonwealth Employment Service, one of whose functions is to compile statistical information concerning the overall condition of the labour market on a national, state and local basis. Given its Charter (see previously) it is well suited to this function. Manpower intelligence, for example on labour shortages or surpluses and dislocations in local labour markets caused by technological change or seasonal conditions, are notified immediately to the CES offices. The offices release statistical information monthly which provides data on available and filled job vacancies in 58 industry groups, on applicants seeking jobs (classified according to their sex, adulthood and occupational grouping) and the success or otherwise of their placement, on part time employment, and on participants in major industrial disputes. The monthly returns include comments on trends or variations perceived, and assessments thereof. In addition the

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CES completes monthly returns relating to unemployed who are school-leavers, aboriginals, apprentices or handicapped persons, and assimilates data on aspects of the employment situation in private factories employing more than 100 or between 50 and 100 employees.

The comprehensive monthly returns are supplemented by mid-month collections of information on unemployed applicants, unfilled vacancies, applicants registered and new vacancies notified. Statistics on the duration of unemployment are collected every second mid-month and every fourth mid-month a broad occupational classification is included in the data collected.

The Department of Employment and Industrial Relations regularly releases much of the data collected in the form of a monthly press statement called "Monthly Review of the Employment Situation" - representative recent examples of which are attached to this report. The Department also releases regular analyses of general statistics on unemployment, labour demand and supply, and the state of the labour market:

Early in 1973 the Minister for Labour set up an independent three-man advisory committee to review the methods of collection, classification and presentation of CES statistics, and to assess their usefulness to economic, employment and manpower policies. The committee's report was released in November 1973. A copy is attached to this report.

### (III) Counselling Services

The CES is charged under the Re-establishment and Employment Act 1945 (section 48 (e)) with the task of providing "occupational advice, vocational guidance and other services to facilitate the engagement in employment and continued employment of persons in the manner best suited to their experience, abilities and qualifications". Vocational counselling programs have been developed under the overall supervision of the Department of Employment and Industrial Relations and are directed principally to clients at the workforce entry stage. Other categories of clients are however also catered for, for example adults re-entering the workforce after a substantial absence, or people experiencing work adjustment problems.

There is a particular emphasis in vocational counselling programs on assistance to young people, particularly school-leavers. Each year the CES registers 100,000 or more school-leavers for employment and gives career information or counsel to an additional 140,000 - 150,000 people. It screens occupational films viewed by some quarter of a million people, organises occupational visits for about 12,000 - 15,000 school-leavers, and arranges for a large number of talks to be given at schools on careers' nights or parents' nights. The Occupational Information Section of the Department of Employment and Industrial Relations also produces, and regularly updates, a comprehensive series of career and occupation information pamphlets which it makes available particularly to school and education authorities. The Department has 15 Vocational Counselling units employing some 72 psychologists supported by clerical staff. These units are located in each capital city (there are two in Melbourne), and in Geelong (Victoria) and Townsville and Toowoomba (Queensland), Launceston (Tasmania), Fremantle (Western Australia), Elizabeth (South Australia) and Darwin (Northern Territory).

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The Vocational Counselling units are functionally responsible to the Chief Psychologist, Applied Psychology Section, Central Office, and administratively to the Director in each State. Their role, which complements that of the Employment Offices, is to provide assistance to those who need specialist or professional help in matters of vocational choice, vocational assessment and vocational adjustment. This is achieved through individual or group counselling or psychometric assessment.

Each year vocational counselling psychologists see about 15,000 - 20,000 new clients, 4,000 - 5,000 parents, and have further interviews with a large number of clients seen previously but who are seeking further help. Slightly more than half of the clients seen (56 per cent in 1975) are referred to the Vocational Counselling units by the Staff of Employment Offices. Others are self- or parent-referred, or are referred by other agencies, principally governmental or rehabilitation authorities, hospitals and welfare agencies. Most of the clients seen are young people but the proportion of older adolescents and adults is increasing. In 1975 56 per cent were under 21 and 44 per cent 21 or over, whereas in 1965 91 per cent were under 21 and 9 per cent were 21 or over.

Besides seeing clients referred to the units, psychologists make regular weekly or fortnightly visits to metropolitan Employment Offices in each region to interview or advise clients with special problems. Similarly visits are frequently made to major rehabilitation centres.

Less frequent visits are made to country centres throughout the year and there is a recognised need for a greater degree of decentralisation of the counselling service to better cater for residents in non-metropolitan areas. In 1975 for example, 72 per cent of clients seen were metropolitan residents whereas 28 per cent (including some actually seen by city Vocational Counselling units) were country residents.

The value of the service is kept under review. For example, in a 1970 follow-up study of clients assisted, 86 per cent of the 908 clients who replied to the survey said they had found the service helpful.

The need to expand Vocational Counselling unit staff and secure greater decentralisation has been recognised and is presently being examined. It is hoped that several new units a year will be opened in succeeding years.

Psychologists with the vocational counselling service also have a secondary function. They act as specialist consultants to the Department of Employment and Industrial Relations to assist with the training of employment officers.

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(IV) Vocational Training Programs

Government initiatives in the field of vocational training programs include the following:

- (i) National Employment and Training System (NEAT);
- (ii) Structural Adjustment Assistance (SAA - now phased out);
- (iii) Relocation Assistance Scheme (RAS);
- (iv) Special Youth Employment Training Program (SYETP) (embraced in the NEAT System); and
- (v) Community Youth Support Scheme (CYSS).

Details of these and other manpower programs were set out in the Australian report for 1974-76 submitted under Article 22 of the Constitution of the ILO concerning the measures to be taken to give effect to the provisions of ILO Convention No. 122 - Employment Policy (see pages 7-17, 19, 21-28 and Appendices 1-4).

(E) TERMINATION OF EMPLOYMENT

Whether or not employment has been validly terminated will be determined, in Australia, by the separate or interrelated operation of applicable domestic law and the various awards, determinations or agreements which may apply in the individual case.

Where a contract in relation to the employment is in force, resort must be had to the terms and conditions set out in it.

However the federal and the State Parliaments have legislated to provide for a system of industrial tribunals which are empowered to make awards, determinations and agreements regulating the terms of employment of workers falling within their ambit. Such awards etc. usually prescribe the conditions to be fulfilled before termination is valid, including such matters as the notice period to be observed (e.g. weekly hiring is usually terminable on a week's notice) or the payment to be made in lieu of notice.

In addition to the applicable laws and awards in force in the various Australian jurisdictions, there are general provisions in the industrial legislation which are designed to protect employees against dismissal under certain specified circumstances. The most important legislation can be listed as follows:

Conciliation and Arbitration Act 1904 (Cth) - section 5;

In New South Wales - Industrial Arbitration Act 1940, as amended - section 95;

In Queensland - Industrial Conciliation and Arbitration Act 1961-1976 - section 101;

In South Australia - Industrial Conciliation and Arbitration Act 1972-1975 - section 156;

In Western Australia - Industrial Arbitration Act 1912-1976 - section 135;

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**In Tasmania - Industrial Relations Act 1975 - section 60.**

In these Acts certain of the remedies available at common law - such as the right to appeal against termination of employment on the grounds of unfair dismissal - have been given legislative force. Section 15 (1) (e) of the South Australian Act, for example, empowers the Industrial Court to order re-employment of a worker if it is adjudged his dismissal was harsh, unjust or unreasonable.

Additional information on Australian law and practice regarding termination of employment was forwarded to the International Labour Office in the law and practice report submitted under Article 19 of the ILO Constitution on Recommendation No. 119 - Termination of Employment, 1963 for the period ending 31 December 1972.

**(F) UNEMPLOYMENT - GUARANTEES AND ASSISTANCE**

Provision is made in both federal and State legislation for the grant of financial assistance to unemployed persons. Information in relation to the type and amount of unemployment benefits payable will be found in the succeeding material provided in relation to Article 9 of the Covenant.

Apart from the financial grants available, unemployed persons are assisted to find employment. The CES plays an important role in the area of job placement and its specific activities include:

- (i) the collection, preparation and distribution of a comprehensive range of information which will allow individuals the widest possible job choice and assist them to make decisions about future career paths or about actual or potential job openings;
- (ii) referral to actual or potential job openings including training vacancies;
- (iii) the provision of advice, counselling and assessment as necessary to assist individual job seekers to develop their employment plans in the light of existing or projected employment conditions;
- (iv) the provision of advice and referral assistance to individuals as necessary, to enable them to obtain rehabilitative, medical, therapeutic or welfare assistance preliminary to, or in conjunction with, placement;
- (v) the provision of assistance to enable job seekers to move to locations where suitable job openings exist;
- (vi) the provision of information and advice to employers on the skills, abilities and availability of persons looking for work;
- (vii) the provision of information and advice to employers on how job specifications might be varied to allow available job seekers to fill available or potential job openings;

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- (viii) the provision of information and advice to management and Government to assist with the development of the placement function.

There are a number of demographic and social factors which operate in the Australian environment to inhibit the activities of the CES. The Australian labour market is not homogeneous. As a result particularly of the pattern of urban settlement in this country - i.e. large aggregations of population located in the various capital cities and regional centres which are geographically dispersed - the labour market consists of a number of independent and separate segments. As well as being segmented it is also stratified, with certain groups and individuals being disadvantaged in terms of access to better jobs, and with employers often unable to locate suitable workers.

While the CES seeks as far as possible to match unemployed workers with suitable employers and to facilitate workers realising their right to work, general factors inhibiting its operation include;

- (i) excess of workers or jobs (overall or in particular areas);
- (ii) an absence of workers with characteristics desired by employers;
- (iii) jobs which are unattractive to workers; and
- (iv) workers and employers lacking knowledge of, and access to, each other.

The Commonwealth Government has, in recent years, adopted a number of measures intended to minimise these difficulties and has had some noticeable success in this regard. The CES is, for example, continuing to improve its methods for pairing job applicant with potential employer, and is looking into the utility of computers in this area. On 1 October 1976 the Commonwealth Government brought into operation the Relocation Assistance Scheme (RAS) to aid unemployed persons who cannot find continuing employment in their present locality. Under RAS they are assisted financially to move to another locality to take up employment or undergo training under NEAT which will lead to employment. The assistance is in relation to fares, removal expenses, costs of re-establishment in the new location and certain associated costs. (Details of the assistance provided and the conditions which govern RAS are set out in Appendix 2 to the report for 1974-76 submitted under Article 22 of the ILO Constitution, concerning Convention No. 122 - Employment Policy 1964).

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ARTICLES 7 AND 8

GENERAL INTRODUCTORY COMMENTS

Discussion in this report concerning the application of articles 7 and 8 of the Covenant will concentrate on the regulations and practices which apply in the federal jurisdictions. It is felt that this approach is justified because of the significance of the Commonwealth arbitral system in the general regulation of Australia's industrial relations. Federal awards provide minimum conditions not only for the disputants but for other people in the same sector of industry, whether they participate in the federal scheme or whether they are outside it: even if they are controlled by State systems it is likely that branches of the federal organisations will be operative in these systems. Moreover the various State tribunals will often deliberately take into account federal trends when making their own dispositions.

Activity in the federal sphere in a large number of instances parallels action taken in State jurisdictions. Where it is considered important these parallels will be pointed out. Similarly some attention will be paid to the more significant differences between practices in the federal and the States' jurisdictions.

ARTICLE 7 - THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

(A) REMUNERATION

(I) Laws and Decisions

(a) Legislation

(i) Federal legislation:

Coal Industry Act 1946  
Public Service Arbitration Act 1920, as amended.  
Public Service Act 1922, as amended  
Conciliation and Arbitration Act 1904, as amended

(ii) State legislation:

New South Wales:

Industrial Arbitration Act 1940, as amended  
Coal Industry Act 1946, as amended

Victoria:

Labour and Industry Act 1958, as amended  
Public Service Act 1958, as amended  
Public Service (Public Service Board) Regulations

Queensland:

Industrial Conciliation and Arbitration Act 1961-1976  
Public Service Regulations of 1958  
Public Service Act 1922-1973

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**South Australia:**

Industrial Conciliation and Arbitration Act 1972-1975  
Public Service Arbitration Act 1968-1975  
Public Service Act 1967-1975

**Western Australia:**

Industrial Arbitration Act 1912-1976  
Public Service Act 1904-1975  
Public Service Regulations 1964  
Public Service Arbitration Act 1906-1970

**Tasmania:**

Industrial Relations Act 1975  
Public Service Act 1973  
Public Service (Equal Pay) Act 1966

**(b) Decisions of Industrial Tribunals**

Commonwealth Arbitration Reports, 1969, Volume 127, page 1142  
(Print No B4237)

Commonwealth Arbitration Reports, 1972, Volume 147, page 172,  
(Print No B8506)

Commonwealth Arbitration Reports, 1974, Volume 157, page 293  
(Print No C769)

New South Wales State Equal Pay Case 1973 - Decision issued on  
17/8/73

New South Wales State Wage Case 1974 - Decision issued on 17/5/74

Victorian Industrial Appeals Court Decision - 3/6/74

Queensland Industrial Commission Decision - 24/5/74

South Australian Industrial Commission Decision - 13/5/74

Western Australian Industrial Commission Basic Wage Case, 1972-  
decision issued on 23/6/72

Western Australian Industrial Commission Basic Wage Case, 1974 -  
decision issued on 28/5/74

Tasmanian Wages Board Decision - 18/5/74

## (2) Introduction

The industrial relations system in Australia consists most importantly of government machinery which has been set up in the different Australian jurisdictions for settling disputes through conciliation and arbitration. Any analysis of the system must, however, also take into account other components of the system including common law principles regulating the individual contractual relationships between employer and employee, the tort liability of employers, and the statutory entitlements of employees, for example to workers' compensation. Operation of the compulsory arbitration systems which have been set up in the federal and State jurisdictions assume the existence of individual contracts of service and, while the award of an industrial tribunal has pre-emptory force in relation to work areas it covers, particular provisions in a contract of service as well as their interpretation in accordance with common law principles, will continue to be important in areas to which the award does not extend.

In Australia the overwhelming majority of Australian workers are employed under terms and conditions of employment contained in industrial awards and agreements. For this reason the material in this section of the report will focus largely on the compulsory arbitration system which has been developed and the rules and standards enforced through it.

## (3) Government Regulation of Industrial Relations in Perspective

Australia has seven separate though related systems of compulsory regulation in force. Each of the six States has, under its own constitution, sovereign power to make all necessary laws for its "peace, welfare and good government". In addition under section 51 of the Constitution of The Commonwealth, the Commonwealth Government has the power "to make laws for the peace, order and good government of the Commonwealth with respect to

....(XXXV) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State."

In 1904 the Commonwealth exercised this power when it enacted the Conciliation and Arbitration Act 1904, which established a federal system of conciliation and arbitration of a fundamentally litigious character. In the four States of New South Wales, Queensland, South Australia and Western Australia litigious systems of conciliation and arbitration have also been set up. In Victoria and Tasmania wages/industrial boards exist which supervise a type of collective bargaining system.

The wages/industrial boards have equal representation of employers and employees with an independent chairman to negotiate conditions of employment. Where they exist there is no government machinery designed specifically to settle industrial disputes. The other four States have chosen to establish arbitration tribunals specifically to settle disputes. In practice these tribunals have tended to function as quasi legislative bodies, in that unions will bring cases before them, even when no real stoppage is threatened, to request the assistance of the tribunal in effect to make a contract of employment (with statutory force) between the parties concerned.

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Industrial relations in Australia are characterized by the dominant part played by the government machinery which provides the framework for practically all industrial negotiations. The wages/industrial boards and arbitration tribunals are empowered to make determinations and awards which are binding as between the parties and legally enforceable. Even where employees are not covered by an actual award their employers often relate their terms of employment to stipulations of a relevant award. The award or determination binds so far as it purports to bind, notwithstanding contrary stipulations in the individual contract of service.

As validly made federal awards prevail not only over inconsistent State awards but also over inconsistent State statutes, federal awards tend to dominate industrial regulation in Australia. Although the Commonwealth's power to legislate must be exercised concurrently with the rights of the States, section 109 of the Constitution of the Commonwealth provides:

"When a law of a State is inconsistent with a law of the Commonwealth the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid".

Section 65 of the Conciliation and Arbitration Act provides that:

"Where a State law, or an order or award, decision or determination of a State Industrial Authority, is inconsistent with or deals with a matter dealt with in an award, the latter prevails and the former, to the extent of the inconsistency or in relation to the matter dealt with, is invalid".

Moreover there is a persuasive line of judicial authority to the effect that the federal award will prevail whenever a State tribunal has sought to make regulations in the same area.

#### (4) Wage Fixation

Industrial tribunals in the federal and in the State jurisdictions are empowered to fix minimum rates of wages. The concept of what are fair and proper wages has been examined in a comprehensive manner, especially by the federal tribunal, whose example has subsequently been followed by the State tribunals. The main principles involved will be examined in succeeding paragraphs in a broad sense. Specialist works such as Sykes and Glasbeek - "Labour Law in Australia", (1972, Butterworth and Co.) should be consulted for a more detailed account.

The tribunals have been concerned mainly with the level of wages for unskilled labour, the fixing of "margins" over and above this level for various categories of skilled labour, the fixing of wages for women and junior workers and the setting of various allowances for special conditions such as discomfort, danger or seasonality.

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Awards and determinations fix minimum rates of pay. There are two types of minimum rates in Australia. The first, the minimum wage, is the general amount fixed as the minimum to be paid to individuals in relation to their age and hours of work. No wage may be paid to an employee which is less than this minimum wage. The second, the "award wage", is the rate fixed by an award for each classification of recipient detailed in the award.

As the rates determined are minimum rates there is scope for the making of "over-award payments". Although these may be fixed unilaterally by the employer, bargaining between unions and employers is usual and the influence such bargains may have on the award rates has of necessity lead to the participation of industrial tribunals in the bargaining process. Many cases brought to the tribunals are not in fact disputes but are framed as such so that the parties can avail themselves of the industrial relations machinery to negotiate mutually satisfactory changes in the terms of employment.

While employers and employees are free to bargain collectively to fix wages rates, if the employment is covered by an award or determination the parties are not permitted to fix rates below those already set. It is an offence to pay less than award wages and there are sanctions prescribed for breaches of award rates under the following acts:

Commonwealth - Conciliation and Arbitration Act 1904, as amended section 119.

In New South Wales - Industrial Arbitration Act 1940, as amended - sections 92 and 93

In Victoria - Labour and Industry Act 1958, as amended - section 199 and 200

In Queensland - Industrial Conciliation and Arbitration Act 1961-1976 - sections 97 and 113

In South Australia - Industrial Conciliation and Arbitration Act 1972-1975 - sections 154 and 171

In Western Australia - Industrial Arbitration Act 1912-1976 - section 99

In Tasmania - Industrial Relations Act 1975 - section 45

The right to bargain collectively to vary award rates is also guaranteed through legislative provision in a number of The Australian jurisdictions (see section 28 of the Commonwealth Act, sections 11 of the N.S.W. Act, section 89(1) of the Queensland Act, section 105 of the South Australian Act and section 37 of the Western Australian Act).

In Victoria and Tasmania the representatives of employers and employees on the tripartite wages/industrial boards are free to make determinations and awards by bilateral agreement, even though the Chairman of the Board may be in disagreement.

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According to the Commonwealth Statistician's most recent (May, 1974) survey of the incidence of awards, determinations and collective agreements, 88.0% of the employees (85% of male and 93% of female workers) covered in the survey were affected by awards or determinations made by, or collective agreements registered with, a federal or State industrial authority. On the basis of the May 1975 Australian work force figures, this percentage represents approximately 4.4 million of the 5 million wage and salary earners in the total labour force of 5.9 million. Additionally most federal and State awards contain a specific minimum adult wage clause. Of those employees who are not covered by award wages most are working in non-unionised areas of employment and have not sought to have an applicable award rate determined. Attached to this report is a representative list, compiled by the Department of Employment and Industrial Relations, of the sort of employees in various State jurisdictions who are "award free".

Particularly in recent years the industrial tribunals and boards have had to direct their attention to the negative effect of inflationary pressures on the real purchasing power of wages. The Conciliation and Arbitration Commission is the federal body set up pursuant to Part II of the Commonwealth Conciliation and Arbitration Act 1904 to "prevent or settle industrial disputes by conciliation or arbitration" (section 18). In its National Wage Case decision handed down on 30 April 1975 the Commission accepted conditionally the notion of wage indexation and formulated a set of principles to be developed if wage indexation was to be introduced on a continuing basis. In its subsequent decision of 28 May 1976 the Commission reexamined its earlier approach and the principles as modified, which it settled upon may be summarised as follows:

1. The Commission will adjust its award wages and salaries each quarter according to the previous quarter's movements of the Consumer Price Index (CPI) unless it is persuaded to the contrary by those seeking to oppose the adjustment.
2. For this purpose, the Commission will sit in April, July, October and January of each year, following the publication of the most up-to-date CPI.
3. Any adjustments in wage and salary award rates on account of CPI should operate, if practicable, from the beginning of the first pay period commencing on or after the 15th of the month following the issue of the quarterly CPI.
4. The form of indexation will be determined by the Commission in the light of circumstances and the submission of the parties.
5. No wage adjustment on account of the CPI will be made in any quarter unless the movement in that quarter was at least 1%. Movement in any quarter of less than 1% will be carried forward to the following quarter or quarters.

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6. Each year the Commission will consider what increase in total wage should be awarded on account of productivity.
7. In addition to the above, the only other grounds which would justify pay increases are:
  - (a) Changes in work value being changes in the nature of the work, skill and responsibility required, or the conditions under which the work is performed. This would normally apply to some classifications in an award although in rare cases it might apply to all classifications.
  - (b) Catch-up of community wage movements in 1974 to enable a firm base on which indexation can be applied.
  - (c) The adjustment of anomalies and resolution of special and extraordinary problems by means of the Conferences already set up for this purpose.
8. Any applications under paragraphs 7 (a) and (b) above, whether by consent or otherwise, will be tested against the principles the Commission has laid down and viewed in the context of the requirements for the success of indexation. This does not mean the frustration of the process of conciliation but it does mean that the Commission should guard against contrived work value agreements and other methods of circumventing the indexation plan.

In essence the indexation system seeks to protect the needs of workers by maintaining the real value of wages as well as awarding wage increases according to increases in productivity. Since the April 1975 decision, the Commission's principles have been widely accepted by wage fixing authorities throughout Australia. While the question of whether or not indexation should be automatically applied to awards and, if so, on what basis, has yet to be finally decided, the Commission indicated in May 1976 that it was prepared to continue the experiment with wage indexation for a further period, although at this stage its operation would remain subject to quarterly review. The Commission did affirm however its belief that the wage indexation system was workable in practice.

Generally speaking the components of workers' remuneration other than regular wages are all carefully detailed in the appropriate awards. In addition to regular wages, employees required to work outside normal hours (on overtime, rest days, public holidays etc.) will usually be entitled to receive payments for such work. The federal Arbitration Tribunal in 1947 decided that a 40 hour week should prevail throughout industry (Standard Hours Inquiry 1947, 59 Conciliation and Arbitration Reports 581). Although the 40 hour week spread through industry, the federal tribunal has always been careful to recognise the non-applicability of the decision to cases where special circumstances exist - as, for example, in the rural industries, which were specifically excluded from the decision in the first place, or the Public Service. One of the side effects of having standard hours in an expanding economy is that frequently there will be a need to perform work which cannot be done inside normal hours. Despite the common incidence of overtime work,

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industrial tribunals have often tended to view it as something not to be encouraged and have determined special rates to apply to it. These vary from time and half to double time for hours worked over and above the ordinary hours and are frequently referred to as penalty rates. (Typical clauses included in federal awards in relation to overtime rates are set out in an attachment to this report). Furthermore, special conditions are often imposed by award for the working of overtime, including provisions for allowances for meals, tea money, and transport from home to and from work.

Ordinary hours' rates are not usually applicable to people who do shift work - i.e. work performed outside the spread of ordinary hours, which is not overtime. People in shift work are normally entitled to penalty rates because they supposedly have lost the advantage of ordinary hours. The relationship between shift work and overtime is usually carefully spelled out in awards.

Special conditions in relation to hours of work and overtime rates are applied to persons in federal Government employment. Payment for overtime is made at the rate of time and a half for overtime worked Monday to Friday, and at the rate of time and a half for the first three hours and double time thereafter for overtime worked on Saturday. Although the prescribed weekly hours of work under relevant determinations are 36½, the prescribed weekly hours before overtime is payable are 38. The rate of pay for holiday overtime duty is double time and a half, and for Sunday overtime duty is double time. These overtime provisions do not however apply to all employees of the Commonwealth Service; regulations prescribe that certain officers shall not be eligible to receive overtime payments, including those whose salary exceeds a specified rate of pay.

#### (5) Statistical Data on Renumeration Levels

In accordance with the suggestions contained in the guidelines concerning Article 7 (paragraph 4 of "A"), attached to this report is a table setting out details of the developments of minimum wage rates applying to representative occupational classifications, in both the public and private sectors of the Australian economy. Details are given for movements in the award rates of pay, quarterly movements in the Consumer Price Index and male average weekly earnings for the period September 1972 to October 1976.

#### (6) Equal Pay Provisions

The principle of equal remuneration for male and female workers for work of equal value is accepted in the federal and in State jurisdictions throughout Australia, and is enforced through industrial awards and agreements.

"Equal pay for equal work" was a right first recognised in the federal sphere by the Conciliation and Arbitration Commission in the Equal Pay Cases 1969 (Commonwealth Arbitration Reports, Vol. 127 p. 1142). The Commission established a set of guidelines to assist in the determination of the applications for equal pay which would follow and ruled that equal pay granted in accordance with these guidelines should be phased in so that full equal pay would

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operate from 1/1/72 for those categories of workers covered. These guidelines did not however aspire to the achievement of full equal pay. The inclusion of principle 9, i.e. that equal pay should not be provided by application of the stated principles when the work in question is "essentially or usually performed by females but is work upon which male employees may be employed", meant that women who were employed as keyboard operators or typists, for example - i.e. in positions usually held by females - were not entitled to the benefits of the 1969 decision.

In the National Wage and Equal Pay Cases 1972 (Commonwealth Arbitration Reports, Vol. 147, 172) the Commission decided it was time to enlarge its concept of equal pay. It viewed its function as "...the fixation of award wage rates irrespective of the sex of the worker...." and it drew up the following new set of guidelines:

1. The principle of "equal pay for work of equal value" will be applied to all awards of the Commission. By "equal pay for work of equal value" we mean the fixation of award wage rates by a consideration of the work performed irrespective of the sex of the worker. The principle will apply to both adults and juniors. Because the male minimum wage takes account of family considerations it will not apply to females.
2. Adoption of the new principles requires that female rates be determined by work value comparisons without regard to the sex of the employees concerned. Differentiations between male rates in awards of the Commission have traditionally been founded on work value investigations of various occupational groups or classifications. The gap between the level of male and female rates in awards generally is greater than the gap, if any, in the comparative value of work performed by the two sexes because rates for female classifications in the same award have generally been fixed without a comparative evaluation of the work performed by males and females.
3. The new principle may be applied by agreement or arbitration. The eventual outcome should be a single rate for an occupational group or classification, it being payable to the employee performing the work whether the employee be male or female. Existing geographical differences between rates will not be affected by this decision.
4. Implementation of the new principle by arbitration will call for the exercise of the broad judgement which has characterised work value inquiries. Different criteria will continue to apply from case to case and may vary from one class of work to another. However, work value inquiries which are concerned with comparisons of work and fixation of award rates irrespective of the sex of employees may encounter unfamiliar issues. Insofar as those issues have been raised we will comment on them. Other issues which may arise will be resolved in the context of the particular work value inquiry with which the arbitration is concerned".

The Commission in its decision, went on to make the following points:

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"We now deal with issues which have arisen from the material and argument placed before us and which call for comment or decision.

(a) The automatic application of any formula which seeks to by-pass a consideration of the work performed is, in our view, inappropriate to the implementation of the principle we have adopted. However pre-existing award relativities may be a relevant factor in appropriate cases.

(b) Work value comparisons should, where possible be made between female and male classifications within the award under consideration. But where such comparisons are unavailable or inconclusive, as may be the case where the work is performed exclusively by females, it may be necessary to take into account comparisons of work value between female classifications within the award and/or comparisons of work value between female classifications in different awards. In some cases comparisons with male classifications in other awards may be necessary.

(c) The value of the work refers to worth in terms of award wage or salary fixation, not worth to the employer.

(d) Although a similarity in name may indicate a similarity of work, it may be found on closer examination that the same name has been given to different work. In particular this situation may arise with generic classifications. A similar situation may arise with respect to junior employees. Whether in such circumstances it is appropriate to establish new classifications or categories will be a matter for the arbitrator.

(e) In consonance with normal work value practice it will be for the arbitrator to determine whether differences in the work performed are sufficiently significant to warrant a differentiation in rate and if so what differentiation is appropriate. It will also be for the arbitrator to determine whether restrictions on the performance of work by females under a particular award warrant any differentiation in rate based on the relative value of the work. We should, however, indicate that claims for differentiation based on labour turnover or absenteeism should be rejected.

(f) The new principle will have no application to the minimum wage for adult males which is determined on factors unrelated to the nature of the work performed.

5. Both the social and economic consequences of our decision will be considerable and implementation will take some time. It is our intention that rates in all awards of this Commission and all determinations under the Public Service Arbitration Act should have been fixed in accordance with this decision by 30 June 1975. Under normal circumstances, implementation should take place by three equal instalments so that one-third of any increase is payable no later than 31 December 1973, half of the remainder by 30 September 1974 and the balance by 30 June 1975. This programme is intended as a norm and we recognise that special circumstances may exist which require special treatment.

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6. Nothing we have said is intended to rescind the 1969 principles applicable to equal pay for equal work which will continue to apply in appropriate cases. We have taken this step because an injustice might be created in cases based on equal pay for equal work where females could become entitled immediately to male rates under those principles."

In the private sector, of the thirteen major federal awards which have been made - affecting the wage rates and conditions of employment of 10,000 or more employees, over 4,000 of which are female - the principle of equal remuneration has been implemented in all except one. In the case of this one exception, the Clerical and Salaried Staff (Wool Industry) Award, 1971, some progress has been made towards realisation of the equal pay principle, but the question has yet to be finalised. Included as an attachment to this report is a list of the major federal awards and the approximate number of female workers covered by each.

In the public sector, following the 1972 decision, the principle of equal pay for work of equal value was fully and immediately implemented for Commonwealth Government employees. Those who had been excluded from the application of the 1967 decision - keyboard, telephonist, cafeteria, cleaning and hospital staff employees - received equal pay immediately following the 1972 decision.

Equal treatment of adult male and female workers in respect of the minimum wage was first considered by the Conciliation and Arbitration Commission in the National Wage Case (1974), in which the Commonwealth Government supported the principle of extension of the adult male minimum wage to adult female workers. The Commission acknowledged this to be a logical extension of the principle it enunciated in the 1972 Equal Pay Case but it went on to say that in view of certain economic considerations, such as the concentration of female workers in certain industries, full equality of minimum wages should not be introduced immediately but should be phased in on the following basis:

"Adult females will be entitled to 85% of the new male minimum wage from the date of its operation: 90% by 30 September and 100% by 30/6/75" (the same date on which equal pay was to be phased in under the 1972 decision).

In the private sector provisions reflecting the Commission's decision were included in most federal awards and agreements and equal minimum wages have now been phased in. Female workers today receive the same minimum wage as their male counterparts.

The preceding material on equal pay relates to federal practice. In the various State jurisdictions, in the public sector (State Government employment) the principle of equal pay for equal work has been accepted and fully implemented.

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In the private sector, industrial tribunals and boards in New South Wales, Victoria and South Australia ensure as a matter of practice full implementation of the principle. In Queensland the Industrial Conciliation and Arbitration Act was amended in 1975 to oblige the State Industrial Commission to fix the same wage rates, irrespective of sex, for employees performing the same work, producing the same return of profit to the employer, or performing work of a like nature and equal value. Awards are now being determined in accordance with this requirement.

In Western Australia and Tasmania no general case concerning implementation of the equal pay principle has been brought before the respective arbitration bodies, and it is consequently as yet undetermined how they will implement the principle.

The equality of minimum wage rates for male and female employees is realised fully in all State jurisdictions except Western Australia. In Western Australia in view of the terms of the existing legislation, the Industrial Commission has not yet felt itself able to discard the "needs component" in the adult male minimum wage rate. However following its decision in 1974 to apply a minimum wage to adult females, the Commission has substantially reduced the difference between male and female minimum wages - from \$11.10 to \$2.80 per week - suggesting at least its sympathy with the principle of equal minimum wages.

Throughout Australia the terms and conditions of employment, aside from wages entitlements, as are specified in federal and State awards or agreements, or in industrial legislation, apply with equal force to the employment of female as well as male workers.

**(B) SAFE AND HEALTHY WORKING CONDITIONS**

The right of all employees to safe and healthy working conditions is protected in Australia through statutory enactment and, at common law, through rules which are designed to penalise employers and compensate employees in the event of failure to meet prescribed standards. Legislative provisions will be found in the following statutes and enactments:

**(i) Federal Jurisdiction**

Conciliation and Arbitration Act 1904 (Commonwealth)  
as amended.

**Australian Capital Territory**

Apprenticeship Ordinance 1936-1974

Machinery Ordinance, 1949-1966

Scaffolding and Lifts Ordinance 1957

Workmen's Compensation Ordinance 1951-1974

Building Ordinance 1972

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Northern Territory

Abattoirs and Slaughtering Ordinance

Apprentices Ordinance

Construction Safety Ordinance

Inspection of Machinery Ordinance

Mines Regulation Ordinance

Workmen's Compensation Ordinance

(South Australia) Factories Act 1907-1910\*

(South Australia) Inflammable Oils Act 1908-1909\*

(South Australia) Lifts Regulation Act 1908\*

(\*These statutes were enacted prior to the Commonwealth Government assuming the administrative responsibility for the Territory and remain in force. The Commonwealth Conciliation and Arbitration Act 1904 applies in the Northern Territory.)

(ii) State Jurisdictions

New South Wales

Apprentices Act 1969, as amended

Factories, Shops and Industries Act 1962, as amended

Industrial Arbitration Act 1940, as amended

Noise Control Act 1975

Rural Workers' Accommodation Act 1926, as amended

Scaffolding and Lifts Act 1912, as amended

Workers' Compensation Act 1926, as amended

Victoria

Boiler and Pressure Vessels Act 1970

Industrial Training Act 1975

Labour and Industry Act 1958

Lifts and Cranes Act 1967

Scaffolding Act 1971

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Queensland

Apprenticeship Act 1964-1974  
Construction Safety Act 1971-1975  
Electricity Act 1976  
Factories and Shops Act 1960-1975  
Industrial Conciliation and Arbitration Act 1961-1976  
Inspection of Machinery Act 1951-1974  
Workers' Accommodation Act 1952-1972

South Australia

Apprenticeship Act 1950-1974  
Boiler and Pressure Vessels Act 1968-1971  
Industrial Safety, Health and Welfare Act 1972-1976  
Inflammable Liquids Act 1961-1976  
Lifts Act 1960-1972  
Liquefied Petroleum Act 1960-1973  
Workers' Compensation Act 1971-1974

Western Australia

Construction Safety Act 1972  
Factories and Shops Act 1963-1976  
Industrial Arbitration Act 1912-1976  
Inspection of Machinery Act 1921-1969  
Machinery Safety Act 1974 (Not yet proclaimed)  
Workers' Compensation Act 1912-1976

Tasmania

Apprenticeship Act 1942  
Factories, Shops and Offices Act 1965  
Industrial Relations Act 1975  
Inspection of Machinery Act 1960  
Scaffolding Act 1960  
Workers' Compensation Act 1927

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These enactments lay down the standards to be met by employers in providing for the safety of their employees, and allow for prosecution of the employer in the event of his breach of the statutory provisions. Their effectiveness must be viewed against a background of the entire network of rules and procedures which exist to protect the employee, of which they are but a part. They operate in conjunction, for example, not only with the common law rules as to breach of statutory duty or vicarious liability, but also the system of social insurance in force through Workers' Compensation legislation, discussed in the material in relation to Article 9. In addition the majority of industrial awards, determinations and agreements contain provisions relating to occupational safety and health matters.

It is not feasible to examine separately each of the various enactments listed. The following brief review of regulations in force in the Australian Capital Territory will however illustrate the form which statutory regulation of working conditions has taken in one Australian jurisdiction.

Section 83 of the Conciliation and Arbitration Act 1904 (Cth.) provides:

"In determining an industrial dispute the Commission shall take into consideration the provisions of any law of a State or Territory relating to the safety, health and welfare of employees (including children) in relation to their employment."

The Building Ordinance 1972 makes provision inter alia for ensuring the structural sufficiency of buildings and to this extent places obligations upon persons to whom builder's licences are granted under the Ordinance.

The Scaffolding and Lifts Act (New South Wales), which applies in the Australian Capital Territory by virtue of the Scaffolding and Lifts Ordinance 1957, details requirements concerning the erection and safety of operation of any crane, hoist, plant or scaffolding in connection with building excavation and compressed air work, and of any lift.

The Scaffolding and Lifts Regulations prescribe measures to be taken by employers and builders to ensure the safety and health of workmen.

The Inspection of Machinery Regulations, administered by the Department of Health and made under the Machinery Ordinance 1949, provide for the fencing of dangerous machinery and the observance of various precautions to minimise the risk of injury. The Boilers and Pressure Vessels Regulations made under the same ordinance deal generally with the installation, use and operation of boilers and pressure vessels.

All of this legislation provides for the appointment of inspectors with general powers of entry and inspection and, in certain circumstances includes a power to do or direct the doing of an act to ensure the safety of workmen through compliance with the legislation. Additional information on inspection procedures will be found in succeeding material.

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Such specific legislative enactments aside, there are also sections in the majority of industrial awards and agreements which bear upon the safety and health of employees, and there is provision for enforcement of these awards and agreements contained in the industrial legislation in force in the various Australian jurisdictions. The Commonwealth Conciliation and Arbitration Act 1904 provides, for example, in section 119 (i):

"Where any organisation or person bound by an order or award has committed a breach or non-observance of a term of the order or award a penalty may be imposed".

Section 138 of the Act punishes intentional obstruction of the award system. Under section 143 of the Act any organisation or person interested may apply to the Federal Industrial Court for deregistration of an organisation, one ground being continued non-observance of an award leading to hindrance in the achievement of an object of the Act (section 143(1)(i)(h) ).

General supervision of compliance with safety and health requirements is the responsibility of the federal and State governments in respective jurisdictions. Industrial statutes normally provide for the appointment of inspectors to examine whether the provisions of the particular act under which they are appointed are being applied. Section 54 of the Conciliation and Arbitration Act 1904 provides for example inter alia:

54 (1) "Where in the opinion of a member of the Commission, a matter concerning the safety of employees or of other persons in or about a place of work arises in or in connection with an industrial dispute, he may request the Secretary to the Department of Employment and Industrial Relations to arrange for an Inspector forthwith to investigate the matter and to report to him as soon as practicable, and the Secretary shall direct an Inspector accordingly".

Section 54 (4) makes provision for the report of an inspector to be made public.

Throughout Australia there is considerable uniformity in the safety standards and requirements which employers must meet. Protective devices in industry are subject to periodic testing by government appointed inspectors who apply uniformly the approvals procedures first proposed in New South Wales. The Standards Association of Australia has issued a set of standards, covering many protective devices, which is also applied throughout the country.

In relation to the question of occupational health, advice and counsel is given throughout Australia by the National Health and Medical Research Council (N.H.&M.R.C.) which was set up by Order of the Governor-General in September 1936. One of its major functions is:



"To enquire into, advise, and make recommendations to the Commonwealth and States on matters of public health legislation and administration, and on any other matters relating to health, medical and dental care and medical research".

As the N.H.&M.R.C. operates only in an advisory capacity, implementation of its recommendations depends upon their enactment in legislative form in the various States or Territories. Recently a model Industrial Safety Health and Welfare Act and regulations has been drawn up and agreed to informally by a meeting of the States' Ministers for Labour. It is planned that it will be used as the basis for future legislation in the area of occupational Safety and Health.

The N.H.&M.R.C. is assisted in its work by a number of expert advisory committees. The Occupational Health (Standing) Committee, set up to advise the Council on all matters relating to industrial hygiene and occupational health, drew up for the Council in 1972 an outline of the organisation and functions of a model occupational health service. The Council accepted the recommended model and has published the report of the Committee in the form of a booklet entitled "Recommended Practice for Occupational Health Services in Australia". The purpose of the booklet is to assist "people in places of employment, including members of managements, unions and nursing and medical professions" in the establishment of new services or the upgrading of existing arrangements. A copy of the booklet is attached to this report.

The Occupational Health Committee has already recommended codes of practice for such matters as the handling of asbestos on the waterfront, the fumigation of ships' cargo spaces and the fumigation of insects in grain and in other products stored in bulk. It has also produced a code of safe practice for the vinyl chloride industry and a document on occupational health aspects and brucellosis. It is currently working on health hazards to workers from inter alia, atmospheric contaminants from benzene and from heat stress and noise pollution.

Other important advisory committees include the Radiation Health Committee which has made recommendations on such matters as:

- employers' responsibility to persons employed in work involving sources of ionizing radiation;
- standards for microwave ovens and colour T.V. receivers;
- minimum age of persons engaged in radiation work.

It has recommended specific codes of practice for -

- the safe use of radioactive luminous compounds
- the control and safe handling of sealed radioactive sources used in industrial radiography

- radiation hygiene in dentistry
- the safe use of X-ray analysis equipment
- the design of laboratories and safe practices in those laboratories.

On 10 September 1974 the federal Government agreed that Ministers should direct departments and statutory authorities for which they have responsibility to apply the "Code of General Principles on Occupational Safety and Health in Australian Government Employment". The Code was developed by a Government sponsored Committee comprising representatives from all involved Government departments and various organisations such as the Australian Council of Trade Unions. The purpose of the Code is to protect persons employed by the federal Government from accidental injury and to promote the maximum degree of health and well-being. It provides for control of the physical environment as well as for training and consultation between management and employees and their maximum involvement in all accident prevention measures.

Statistical information concerning the incidence and nature of industrial accidents and occupational disease in Australia is not uniform throughout the various State jurisdictions, nor is it necessarily up to date. Attached to this report are the most recent available tables of statistics on these matters.

(C) REST AND LEISURE PROVISIONS

(i) Applicable Legislation

(a) Federal Jurisdictions

Australian Capital Territory

Holidays Ordinance 1958

Annual Holidays Ordinance 1973

Long Service Leave Ordinance 1976

Northern Territory

Annual Holidays Ordinance

Long Service Leave Ordinance

(b) State Jurisdictions

New South Wales

Annual Holidays Act 1940, as amended

Building Construction Industry Long Service Payments  
Act 1974, as amended

Long Service Leave Act 1955, as amended

Victoria

Labour and Industry Act 1958

Queensland

Industrial Conciliation and Arbitration Act 1961-1976

South Australia

Industrial Conciliation and Arbitration Act 1972-1975

Long Service Leave Act 1967-1972

Long Service Leave (Building Industry) Act 1975-1976

Western Australia

Long Service Leave Act 1958-1973

Tasmania

Long Service Leave Act 1976

Long Service Leave (Casual Wharf Clerks) Act 1966

Long Service Leave (Casual Employment) Act 1971

In addition to the legislation referred to above, industrial awards, determinations and registered agreements, normally contain detailed provisions governing standard hours of work, the spread of hours, limitations on working hours and penalty payments for overtime work.

(ii) Provisions for Leisure

(a) Legislation and Awards in Federal Jurisdictions

The provisions enforced through ordinance and regulations in the Australian Capital Territory are examined here as examples of the type of provisions which have been enacted in Australia to provide for leisure.

The Annual Holidays Ordinance 1973 entitles an employee, at the conclusion of each year of his employment, to four weeks annual leave (five weeks in the case of a shift worker) for which he receives payment at a rate equal to his ordinary remuneration.

Under the Holidays Ordinance 1958 certain days in each year are designated as holidays in the Australian Capital Territory. Additionally the Minister for the Capital Territory is empowered under the Ordinance to declare other days, not specifically nominated, to be observed as public holidays in the Australian Capital Territory.

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Regulation 45 of the Mining Regulations specifies certain days and periods as holidays on or during which the lessee or holder of a mining claim may cease work in respect of the claim.

The Long Service Leave Ordinance 1976 grants to an employee 3 months leave after 15 years continuous service with the same employer. A payment in lieu of leave becomes available on termination of service after 10 years, under certain prescribed conditions. Payment during long service leave and payments in lieu of leave are assessed according to the ordinary rate of remuneration of the employee (see additional material in following subsection.).

The standard hours of work prescribed under federal awards and agreements is 40 per week and has been since the principle of the 40 hour week was adopted in 1947, by the Commonwealth Court of Conciliation and Arbitration, the predecessor of the present Commission. The majority of awards also provide that ordinary hours of work shall be worked on 5 days of the week, normally Monday to Friday, between stipulated hours and that any time worked outside the spread of hours, on the normal rest days or on public holidays, shall attract penalty rates. (See previous discussion on overtime payments for additional details on this).

Attached to this report are examples of typical clauses governing hours of work which have been included in certain representative federal awards. It should be added that while a "40 hours per week" clause is the standard hours provision included in awards, a very small number (approximately 6) provide for a standard working week in excess of 40 hours, while approximately 15% of federal awards prescribe weekly hours of work of less than 40. These latter awards, in the main, cover employees in local and semi-government instrumentalities and generally provide for a standard working week of from 35-38 hours.

(b) Long Service Leave Provisions in Federal and State Awards

The main impetus for the inclusion of long service leave in employment contracts has come from the State legislatures. The first major enactment in this area was Act No. 50 of 1951 in New South Wales, which inter alia required the State's industrial tribunals to insert long service leave clauses in the awards they made or agreements they approved. In 1953 Victoria granted long service leave to employees independent of awards and all other States subsequently followed this approach; by 1958 every State had such legislation on its books. In general terms the legislation provides that, following 15 years continuous service, the employee is entitled to 13 weeks of paid leave. As is the case under federal awards, in the States an entitlement to a more limited period of long service leave accrues after 10 years of service where certain conditions are fulfilled. In the event of termination of service there is a general prohibition on payment in lieu of the taking of leave if the entitlement has accrued before termination. This is supported on the grounds that long service leave is principally a recreational period not a money benefit.

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In certain States (New South Wales and Queensland), as well as the federal jurisdictions, an employee whose employment has not been terminated is permitted, under varying stipulated conditions, to take on other employment during his period of long service leave. There is also provision in all States and federal jurisdictions for long service leave to be taken in instalments.

In all jurisdictions there are specific rules governing when an interruption of service will or will not amount to a break in the continuity of service for the purpose of entitlement to long service leave.

(c) Specific Provisions in State Jurisdictions

(i) New South Wales

The 40-hour week was introduced into New South Wales by the Industrial Arbitration (Forty Hours Week) Amendment Act 1947. The provisions of this amending Act are now contained in Part VI, Division 1 of the Industrial Arbitration Act 1940, as amended. An examination carried out of 510 New South Wales awards in force in November 1971 showed that three awards provided for standard hours of more than 40, 427 provided for 40 hours, 37 provided for 40 hours or less, and 13 provided for less than 40 hours. New South Wales public servants work a 35 hour week.

(ii) Victoria

Section 30 (1) (a) of the Victorian Labour and Industry Act 1958 empowers wages boards to determine hours of work in the trades for which they have been appointed. The standard hours of work under Victorian determinations are 40 per week and only one determination provides for standard hours in excess of 40 per week (Agricultural and Pastoral Workers Board (44) ). Victorian public servants work a 38 hour week.

(iii) Queensland

Section 14 (1) of the Queensland Industrial Conciliation and Arbitration Acts 1961-76 provides, inter alia that every Queensland award shall be deemed to contain a provision to the following effect or a provision not less favourable than the following:

"(a) employees shall not be worked on more than six out of seven consecutive days, and the time worked by them within any period of six consecutive days shall not exceed forty hours; the time worked on each day shall not exceed eight hours, except in those callings where an industrial union of employees and an employer or association or union of employers otherwise agree..."

Thus, the standard hours of work prescribed in Queensland awards are 40 per week. However, the Act gives the Queensland Industrial Conciliation and Arbitration Commission a discretionary power to fix in excess of 40 hours in a very limited number of cases where rural industries, essential services and domestic service are involved. Queensland public servants work a 36½ hour week.

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(iv) South Australia

Section 28 (1) of the Industrial Conciliation and Arbitration Act 1972-1975 empowers the State Industrial Commission to hear and determine any matter within its jurisdiction. Section 6 defines industrial matters as including the hours of work in any industry, including the lengths of time to be worked and the quantum of work or service to be done, and the wages, allowances, remuneration or prices and what times shall be regarded as overtime. The standard hours of work under South Australian awards are 40 per week. Public servants work a 37½ hour week.

(v) Western Australia

Section 61 (1) (b) of the Western Australian Industrial Arbitration Act 1912-1976 empowers the Western Australian Industrial Commission to enquire into any industrial matter or dispute in any industry and to make an order or award fixing the number of hours and the times to be worked in order to entitle workers to the wages fixed by the Commission. The standard hours of work under Western Australian awards are 40 per week.

Western Australian public servants work a 37½ hour week. Workers covered by awards of the Western Australian Coal Industry Tribunal established under the Mining Act 1904-1971 work a 35 hour week.

For workers employed in factories, shops and warehouses who may not be covered by an industrial award or agreement, the Factories and Shops Act 1963-1970 sets down the hours of work for women and young persons (section 55) and males over 16 years of age (section 56). As far as women and young persons are concerned "no more than 40 hours in a week" is prescribed, with, in the case of women, provision for additional hours to be worked where pressure of work so requires, of up to 56 hours per week; Under section 56 men may be required to work no more than 40 hours per week with provision for overtime work as long as the overall hours per week do not exceed 60 hours, with appropriate penalty rates for overtime.

(vi) Tasmania

Section 29 (2) of the Tasmanian Industrial Relations Act 1975 provides, inter alia, that industrial boards may determine all matters relating to hours and days of work in relation to the trades for which they have been appointed. The standard hours of work under Tasmanian awards are 40 per week.

Tasmanian public servants work a 36½ hour week.

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ARTICLE 8 - TRADE UNION RIGHTS

(A) RIGHT TO FORM AND JOIN TRADE UNIONS

Generally speaking Australian industrial relations are characterised by a movement towards a high degree of organisation and the development of strong and independent workers' organisations at all levels. The Commonwealth Conciliation and Arbitration Act 1904 includes, for example, as one of its chief objectives:

"to encourage the organisation of representative bodies of employers and employees and their registration under this Act." (Section 2 (e) ).

Except in very limited circumstances, for example in relation to members of the armed forces, under Australian law no restriction is placed on the right of citizens to associate with each other for lawful purposes. Legislation in all States and Territories provides generally that the usual objectives of trade unions are such lawful purposes.

Australian legislation is based on United Kingdom legislation, principally the Trade Union Acts 1871 and 1876. The 1871 Act provided that the purposes of trade unions, registered or unregistered, were not unlawful merely because they were in restraint of trade. "Trade Union" was defined as: "such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

To further remedy problems which had beset trade unions the statute provided for a system of their registration. If the unions availed themselves of this opportunity certain legal rights accrued, such as a trustee could bring or defend any judicial action concerning property rights and claims by the registered trade union. Trade Unions acquired through the legislation a number of the legal attributes normally associated with a legal person endowed with all the capacities that the law may bestow on an individual or company - for example they could sue and be sued in their own name and injunctions could be granted against them on application; they could be sued in contract by an expelled member etc.

The 1876 amending act introduced provisions relating to membership and amalgamation rights and altered the definition of trade union to include any such combination whether they would or would not, if the 1871 Act had not been passed, have been deemed to be unlawful combinations.

These two statutes are important in Australia where they are still the model on which State legislation as to the status of trade unions (outside the arbitration system) is based. The State legislation is, as follows:

Trade Unions Act 1958 (Victoria)

Trade Union Act 1881-1959 (New South Wales)

The Trade Union Act 1876-1935 (South Australia)

Trades Union Act 1902 (Western Australia)

Trade Union Act 1915 (Queensland)

In addition, the South Australian Trade Union Act, as amended by the Trade Union Ordinance 1922, is applicable to the Northern Territory, and the N.S.W. Trade Union Act to the A.C.T. by virtue of the Seat of Government Acceptance Act 1909.

In general under this legislation, a trade union which has a minimum number of members (usually seven) may apply for registration as long as its purposes are lawful. The Acts provide that the purposes of a trade union shall not be unlawful merely because they are in restraint of trade. Most statutes provide for a minimum age limit for trade union members and allow that persons under 21 may, depending upon the rules of the particular union, be excluded from membership.

The overall position throughout Australia following passage of the respective Trade Union acts is that there are no substantive or formal conditions which must be fulfilled by organisations of workers and employers when they are being established. There are, on the other hand, certain formalities which must be satisfied if an organisation decides to register itself under the legislation.

Overriding this statutory machinery is the Australian arbitral system, additional material on which will be found in the section of this report dealing with Article 7. Organisations of workers or employers may, if they wish, choose to be registered under the industrial conciliation and arbitration legislation of the federal and State Governments. Registration is voluntary and is not a pre-requisite for lawful establishment and operation.

There are no restrictions, apart from those imposed under the rules of the relevant organisation concerned, on the right of persons to join organisations of their own choice. In fact through the industrial legislation in force in respective jurisdictions this right of an employee, who is not of bad character, is actually guaranteed. Section 144 of the Commonwealth Conciliation and Arbitration Act for example purports to confer not only the right to admission to membership but to confer on each person admitted to membership a right to remain a member so long as he complies with the rules of the organisation.

#### **(B) RIGHT OF THE TRADE UNIONS TO FEDERATE**

In Australia there are no restrictions on the right of trade union organisations to establish and join federations and confederations, nor on the right of these to affiliate with international organisations.

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The majority of Australian trade unions are affiliated with one or more peak councils such as:

The Australian Council of Trade Unions

The Council of Australian Government Employees' Organisations

Australian Council of Salaried and Professional Associations

(C) RIGHT OF TRADE UNIONS TO FUNCTION FREELY AND TO STRIKE

Restrictions imposed on the freedom of action of trade unions are designed principally to control use of strikes and other concerted pressure tactics, and owe their genesis largely to English common law principles, together with statutory rules based on the English model.

The civil proceedings in tort which may under certain circumstances be available to persons suffering damage as a result of industrial action are briefly described in the following paragraphs.

(1) Conspiracy

The tort of conspiracy may involve an intention to injure based on motives which are not justifiable ('conspiracy to injure') or it may involve an act which is itself contrary to law either as a means or an end ('conspiracy by illegal means').

(i) Conspiracy to injure

A combination which has as its object the injuring of the trade, custom, livelihood or the economic or financial interests of another, is actionable if it causes damage but it is a defence that the motive of the combiners was to protect their trade or ordinary group interests.

(ii) Conspiracy by illegal means

A combination which has as its object an unlawful purpose or the injuring of the trade, custom, livelihood or the economic or financial interests of another by illegal means is actionable if it causes damage: Williams v. Hursey 103 C.L.R. 30. The defence involving an examination of motives is not here available. Thus, if a number of employees combine to strike against an employer and the strike is illegal under a Commonwealth or State statute, the employer can bring an action in respect of any damage to his business which results from the strike.

(2) Interference with Contractual Relationships

If a person is bound by a contract to another it is a tort to induce that person to break his contract. The other party to the contract has an action against the inducer for damage he suffers as a result of a breach. In the case of a trade union directing or

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requesting employees to cease work in breach of their contract of employment, the inducement of the breach would be the combined action for union purposes. The tort is different from the tort of conspiracy; the fact that the union is acting in its own interests and not just to harm another does not justify the inducement.

The tort may also be constituted by a 'secondary boycott' where, for example, a union induces a supplier or wholesale or retail outlet to break its contract with the employer.

The tort is now generally described as 'interference with contractual relationships' rather than 'inducement of breach of contract' because, in an English case, a union has been held liable where it induced a supplier to discontinue supplies to an employer even though, under an exemption clause, the suspension of supplies did not amount to a breach of contract: Torquay Hotel Ltd. v. Cousins (1969) 2 Ch. 106. In appropriate cases a court will grant an injunction restraining the continuation of the interference: Wooley v. Dunford (1972) 3 S.A.S.R. 243.

### (3) Intimidation

Following Rookes v. Barnard (1964) A.C. 1129 the position in England appeared to be that, where an unlawful act was threatened against an employer, unless the employer should take certain action to his own detriment or to the detriment of a third party, and, as a result of the threat, the employer took that action, the person or union who made the threat would be liable, at the suit of either the employer or the third party, for the tort of intimidation in respect of any damage to the trade or economic interests of the employer or the third party respectively. In that case the 'unlawful act' was a threat to break a contract of employment. This position was modified by the U.K. Trade Disputes Act, 1965 and by subsequent decisions. Whether Rookes v. Barnard will be followed in Australia is not yet clear.

Having described in general terms the actions in tort available to regulate the functioning of trade unions, it is important also to observe that in recent times tort actions for damages in Australia have been rare. With the introduction of the compulsory arbitration system in this country employers have tended instead to favour resort to the penal provisions of arbitration statutes. Organisations are free to operate outside the conciliation and arbitration system if they choose. If they wish to enjoy the protection of the respective system in States where conciliation and arbitration systems operate (i.e. not Victoria or Tasmania), they are required to register themselves in accordance with the appropriate legislative provisions (see for example section 132 of the Commonwealth Conciliation and Arbitration Act 1904) and in so doing they subject themselves to the restrictive provisions also in force.

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In view of the dominant role played by the federal conciliation and arbitration system in Australia's industrial relations system particular attention will be paid in the following paragraphs to the federal machinery for controlling the activities of registered organisations.

A primary aim of conciliation and arbitration legislation has been to control strikes and lockouts and to provide machinery which would enable parties to come to amicable or arbitrated agreement. While the right to strike is not outlawed, under the federal legislation penalties are prescribed for breaches of federal awards. Awards usually contain what are known as "bans clauses" which provide in effect that parties to an award shall work in accordance with it and not interfere with it in any way. Through such clauses strikes are made in effect breaches of an award which will attract the respective legislative penalties (the main penal provisions in the federal Act are sections 109, 111, 119 and 143, and have previously been examined in relation to Article 7).

The effect to be given to breaches of bans clauses is regulated in accordance with section 33 of the Commonwealth Conciliation and Arbitration Act 1904 which provides inter alia

"This section applies in relation to a term of an award, however expressed, by virtue of which engaging in conduct that would hinder, prevent or discourage -

- a) The observance of an award;
  - b) the performance of work in accordance with the award; or
  - c) the acceptance of, or offering for, work in accordance with the award,
- is to any extent prohibited". (section 33 (1) )

Section 33 goes on to provide that, before an application can be made to the Federal Industrial Court for the imposition of a penalty, the prospective applicant (who must be a party bound by the award) must first give notice to the Industrial Registrar appointed under the Act that such conduct detailed in section 33 (1) is, or will be, being committed. Once notice is given a Presidential Commissioner is appointed to take charge and to take all steps he thinks necessary to settle the problem, using any of the powers that a Commissioner would have available to him - i.e. the penal powers are not to be invoked unless there has been an opportunity for additional conciliation and arbitration. If no satisfactory solution can be found in this manner the Commissioner may issue a certificate to the effect that conduct interfering with observance of an award exists. The aggrieved party may then apply for the imposition of a penalty by the Industrial Court. The Court, has a complete discretion as to what penalty should be imposed up to a prescribed maximum.

Generally speaking, in the State jurisdictions where a conciliation and arbitration system has been set up, the respective legislation provides, as in the federal sphere, for registration of trade unions under certain conditions, for procedures aimed at preventing action contrary to an award, and for the imposition of

penalties for such contravention. In Victoria and Tasmania, where a Wages/Industrial Boards system is in operation there are no controls aimed specifically at trade unions. The system neither depends upon nor requires the organisation of employers and employees into groups. The protection given under it is derived from agreement between parties, as opposed to external imposition by a non-interested party and the determinations embodying this agreement co-exist with regulation of conditions through federal awards, so that the federal arbitral controls are really the operative factor in relation to trade union regulation.

Aside from provisions in the conciliation and arbitration legislation in effect in the respective Australian jurisdictions there are a variety of legislative provisions in other federal and State statutes which also have some bearing on the right of trade unions to function freely.

The Commonwealth Crimes Act 1914, as amended, contains general provisions designed to ensure protection of the Constitution and, more specifically, of certain public and other services. Sections 30 (j) and 30 (k) of the Crimes Act are criminal in character and are sanctions against industrial action which disrupts the transport of goods or conveyance of passengers in interstate or overseas trade or commerce. Consequently these provisions are not linked in any way with industrial relations tribunals. The success of prosecution will depend upon the available evidence.

Under section 30 (j) the Governor-General is empowered to make a proclamation where he is 'of the opinion that there exists in Australia a serious industrial disturbance prejudicing or threatening trade or commerce with other countries or among the States'. Upon the making of a proclamation, it then becomes an offence for a person to take part in, or to incite to, urge, aid or encourage the taking part in a strike in relation to employment in, or in connection with, the transport of goods or the conveyance of passengers in interstate or overseas trade or commerce. The maximum penalty for an offence under the section is imprisonment for one year.

Section 30 (k) of the Commonwealth Crimes Act provides that whoever, by violence to the person or property of another, or by spoken or written threat or intimidation of any kind of whomsoever directed, or, without reasonable cause or excuse, by boycott or threat of boycott of person or property -

- . obstructs or hinders;
- . compels or induces any person employed in or in connection with; or
- . prevents any person from offering or accepting employment in or in connection with,

the transport of goods or the conveyance of passengers in overseas trade or commerce shall be guilty of an offence punishable by imprisonment for one year. This section does not rely on the making of a proclamation; it has a continuing operation.

In some State jurisdictions special provisions are included in certain statutes to protect essential services against disruption. In South Australia, for example, section 261 of the Criminal Law Consolidation Act 1935-1976 penalises in certain circumstances an employee engaged in carrying on or conducting railways or tramways or supplying gas or water who wilfully or maliciously breaks his contract of service or hiring. There have been no prosecutions under this section of the act. Similarly in Victoria section 11 of the Essential Services Act 1958 provides in effect that where a strike occurs in an essential service (defined in section 3), unless authorised by a majority of the employees concerned at a secret ballot conducted by the Chief Electoral Officer, every person who, and the trustees of any trade union which, or any officer of which, instigates or takes part in such a strike are liable to a penalty of not more than \$2,000 in the case of trustees and officers and \$100 in the case of the other persons. A similar provision relating to lockouts by employees in an essential service is to be found in section 13. The Act came into operation on 5 October 1977.

Certain legislative provisions in the various Australian jurisdictions which concern the rights and duties of public servants also have bearing on the operations of trade unions. The Public Service Act 1922 (Cth.), as amended, provides in section 66:

"Any officer or officers of the Commonwealth Service directly fomenting, or taking part in any strike which interferes with or prevents the carrying on of any part of the Public Service or utilities of the Commonwealth shall be deemed to have committed an illegal action against the peace and good order of the Commonwealth, and any such officer or officers adjudged by the Board, after investigation and hearing, to be guilty of such action, shall therefore be summarily dismissed by the Board from the Service, without regard to the procedure prescribed in this Act for dealing with offences under the Act."

Section 99 (a) of the New South Wales Industrial Arbitration Act renders illegal:

"Any strike by employees of the Crown or of any Minister, trust, commission, or board exercising executive or administrative functions on behalf of the Government of the State (including the Commissioner for Railways and the Commissioner for Road Transport and Tramways, the Maritime Services Board of New South Wales, the Metropolitan Water, Sewerage and Drainage Board, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, the Metropolitan Meat Industry Commissioner, the Hunter District Water Supply and Sewerage Board), or by the employees of any city, shire, or municipal council or of a statutory board or committee representing the interests in any combination of shires or municipalities, or by employees engaged in any contracts for military or naval purposes."

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No particular restrictions are imposed on the exercise of rights mentioned in this section of the report by members of police forces in the federal and State jurisdictions. The large majority of members of Australian police forces belong to their own police unions or associations and enjoy freedom of association and the right to organise, subject only to the sorts of provisions which have been introduced to regulate the right to strike by persons engaged in essential and community services.

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ARTICLE 9 - THE RIGHT TO SOCIAL SECURITY

(A) GENERAL INTRODUCTION

Under the Australian federal system of government there is a division of responsibility between federal and State Governments for the provision and implementation of programs designed to guarantee the right of all people in Australia to social security.

Section 51 of the Commonwealth Constitution provides that the federal Parliament shall have power to make laws with respect inter alia to:

"(xxiii) Invalid and old age pensions

(xxiiiA) The provision of maternity allowances, widows' pensions, pharmaceutical, sickness and hospital benefits, medical and dental services, (but not so as to authorise any form of civil conscription), benefits to students and family allowances."

Pursuant to laws enacted in accordance with these powers, the federal Government, through the appropriate Departments, principally those of Social Security and Health, is responsible for the administration of the following:

- . sickness benefits;
- . maternity allowance;
- . invalid pensions;
- . age pensions;
- . funeral benefits;
- . employment injury benefits for federal Government employees;
- . unemployment benefits;
- . widows' pensions and supporting parents' benefits;
- . family allowances;
- . double orphan's pensions;
- . handicapped child's allowance;
- . various additional medical and health schemes.

There is no government financed social insurance scheme at present in operation in Australia. In contrast to the type of insurance schemes operating in other countries, in Australia, pensions, benefits and allowances are payable to all persons who satisfy certain stipulated conditions of eligibility regardless of their ethnic grouping, occupational status, or in most cases their contribution to financing the system. As a rule payments are financed out of general

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revenue and there is no requirement except in the case of certain of the medical and health schemes, (which will be identified) that applicants are to have made specific contributions, even in the form of taxes, to be entitled to payment.

The conditions of eligibility are designed to ensure that payments are made only in the contingencies they are intended to cover and, in the case of payments also based on income criteria, to people whose own financial resources are limited. People who are unable to provide for themselves and their dependants (if any) and who are not eligible for one of the listed pensions or benefits due to the nature of the particular circumstances causing hardship, may be eligible to receive a special benefit.

The adequacy of social security payments is kept under review. In recent years noticeable improvements in the system have included the following:

- the introduction (in July 1973) of a benefit for lone mothers not entitled to a widow's pension, and its extension (in November 1977) to lone fathers;
- the replacement (in June 1976) of child endowment and tax rebates for children with a new system of family allowances, thereby assisting low-income families unable to take full or any advantage of the tax rebates; and
- substantial increases in pension and benefit rates (see Social Security Annual Report 1976-77, pages 88-91, which is attached to this report), and their indexation in October 1976.

The major social security payments, with the exception of the additional medical and health schemes referred to in the preceding list, are provided for in the Social Services Act 1947 (Commonwealth), as amended, and are examined in detail in the following paragraphs. Information concerning the numbers of persons receiving federal Government payments administered by the Department of Social Security is contained in the attached copy of the Annual Report of the Department of Social Security for 1976-77.

Provision for the various additional medical and health benefits schemes referred to is to be found mainly in the following acts, as well as in the regulations made thereunder:

National Health Act 1953-1977 (Cmth.)

Health Insurance Act 1975 (Cmth.) as amended,

Tuberculosis Act 1948 (Cmth.) as amended,

Nursing Homes Assistance Act 1974 (Cmth.)

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The schemes cover certain dental and pharmaceutical benefits, nursing home and domiciliary nursing care benefits, and government assistance to certain specific groups of people such as tuberculosis sufferers and persons with impaired hearing.

State Governments are responsible for introducing legislation to regulate employment injury benefits, except in respect of injuries to federal Government employees. As a general principle State legislation requires employers to provide these benefits and to insure privately against the contingency of payment.

In the Australian Capital Territory and the Northern Territory the Workmen's Compensation Ordinances covering payment of benefits to private, as opposed to federal, employees are administered by the federal Government and are, in effect, similar to the comparative legislation in the States.

Payment of employment injury benefits for federal employees wherever they may work is the responsibility of the federal Government and is covered respectively by the Seamen's Compensation Act 1911, as amended, and the compensation (Commonwealth Government Employees) Act 1941, as amended.

Provision of respective benefits by federal and State Governments is examined in greater detail in the following paragraphs. Copies of the legislation referred to are included in this report as attachments.

#### **(B) CASH SICKNESS BENEFITS**

Payment of sickness benefits is regulated in accordance with the Social Services Act 1947, Part VII. The benefit is payable to persons who are temporarily unable to work because of illness or accident and who suffer loss of income as a result.

Section 108 of the Act governs eligibility and, in summary, provides that an applicant must:

- . be at least 16 years of age but below pension age (65 for men, 60 for women); and
- . have been resident in Australia for at least one year immediately prior to the date of claiming the benefit or intend to reside in Australia permanently (i.e. the criterion here is one of residence, not of nationality)
- . be suffering an incapacity not brought about with a view to obtaining a sickness benefit.

Section 117 requires an applicant to support his claim with a certificate issued by a legally qualified medical practitioner.

The rates of benefit payable are governed by sections 112, 112A and 112AA and, as from November 1977, the maximum rates payable are

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- . \$49.30 a week standard (single person 18 years or more;
- . \$82.20 a week married (including an additional benefit of \$41.10 for a dependent spouse); and
- . \$36.00 a week for a single person under 18 years.

The maximum benefit may not exceed the rate of income per week which it is determined the applicant has lost by reason of his incapacity (section 113), and, in any case, will be reduced by the amount by which that person's weekly income exceeds \$6 (or \$3 a week where that person is under 21 and has one or both parents living in Australia). "Income" as from November 1977 includes the income of the claimant's spouse.

Benefit rates may be supplemented, subject to a special income test, by up to \$5 a week where the recipient has already been receiving the benefit for six weeks or more and is paying rent. (section 112A). Moreover the specified rates are increased by \$7.50 a week for each child under 16 in the care of a recipient or dependent student aged 16 or more. (section 112 (5) ).

Except for single persons under 18 years, the benefits rates are increased automatically every May by the rate of increase in the Consumer Price Index between the preceeding June and December quarters, and every November by the rate of increase in the Consumer Price Index between the preceeding December and June quarters (section 112AA - inserted in October 1976).

In determining eligibility there is no longer any discrimination on the basis of sex. The provision in section 110 which had disqualified a married woman from receiving the benefit if her husband was able to maintain her has now been removed by the most recent amendment to the Act, in November 1977.

It should be noted at this point that, aside from an entitlement to sickness benefits, an eligible claimant will probably also be receiving reimbursement of a large proportion of medical and/or hospital costs incurred. It is a requirement in Australia that all persons contribute either to the Government-run, or to a private, health insurance scheme which provides coverage of, at a minimum, the costs of medical and hospital care. For those not privately insured, basic cover is provided by the Government's 'Medibank' Scheme, which is financed by a health insurance levy of up to 2.5% on taxable income. The levy is considered part of income tax and the usual practice is for an employer to deduct it from the employee's salary to a maximum of \$150 a year for single people and \$300 a year for a family. However, people on incomes below certain stipulated levels are not required to pay the levy but are deemed to be levy payers and therefore entitled to Medibank benefits. Material explaining the way in which the Medibank Scheme operates (including its special application for age pensioners) is attached to this report.

(C) MATERNITY BENEFITS

The Social Services Act 1947, Part V, governs the conditions for payment of maternity benefits. In general terms, a lump sum payment called a maternity allowance is payable to a woman who gives birth in Australia or on board a ship proceeding to or from Australia and who, on the date she lodges her claim, is residing in Australia or is in Australia with the intention of remaining here (section 85 (1)). There is provision in section 85 (2) to prevent the possibility arising of eligibility for dual maternity benefits.

Section 87 regulates the amount payable as follows:

- . \$30 if the mother has no other children;
- . \$32 if she has one or two other children;
- . \$35 if she has three or more other children.

In the case of multiple births, the amount payable is increased by \$10 for each additional child born. The allowance is not subject to an income test.

Under section 86 a maternity allowance shall not be granted to an alien unless she or her husband have resided in Australia for at least 12 months immediately prior to the birth, or unless she is likely to remain in Australia. Where neither of these conditions is met the allowance may be paid 12 months after the date of her arrival in Australia. In the case of an alien, therefore, residence rather than nationality determines eligibility. The criterion of residency is also important in applying other provisions in Part V, for example section 92 - "payment of maternity allowance in respect of birth during temporary absence from Australia".

(D) INVALIDITY BENEFITS

The conditions governing payment of invalidity benefits are set out in the Social Services Act 1947, Part III.

An invalid pension is payable to persons 16 years or over who are permanently blind or permanently incapacitated for work to a degree not less than 85% (sections 23 and 24).

A period of continuous residence in Australia is not a requirement for eligibility except where the blindness or incapacity occurs outside Australia (section 25). Pursuant to amending provisions introduced in November 1976 an income test is now applied to assist in determining the eligibility of claimants, in place of the earlier means test on income and property. Section 28 provides that the maximum rate of pension is reduced by one half of the excess of the person's income over a prescribed figure - \$20 a week for a single person, \$17.25 a week for a married person. The income of a married person is deemed to be one half of the income of both partners to the marriage (section 29). In the case of a pensioner with children, \$6 a week per child of that person's income is disregarded in assessing the income figure (section 29). Where the claimant is permanently blind the income test will be applied only to wife's pension, guardian's allowance and additional pension for children other than the first payments which are explained in the following paragraphs.

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The maximum rates of pension are set out in sections 28 and 28A. As from November 1977 these are:

- . \$49.30 a week standard; and
- . \$41.10 a week married.

These rates are increased by \$7.50 a week for each child under 16 years or dependent student aged 16 or more. If an invalid pensioner with children is single, the rate is further increased by an additional payment known as guardian's allowance. The maximum rate of guardian's allowance is \$6.00 a week if one or more children is invalid or under 6 years of age, and \$4.00 a week in other cases.

Under Division 5 of Part III of the Act, an invalid pensioner's wife not entitled in her own right to an invalid or age (or Repatriation service) pension is entitled to a wife's pension of up to \$41.10 a week, subject to the same income test as the invalid pension; the income test applies to wife's pension irrespective of whether the husband is permanently blind (section 31).

Under Division 4A, an invalid pensioner paying rent is entitled to supplementary assistance of up to \$5.00 a week (\$2.50 a week for each partner in the case of a pensioner couple); a special income test applies to this payment irrespective of whether the pensioner is permanently blind.

Under section 28A (inserted in October 1976), the standard and married rates of invalid pension are increased automatically every May, by the amount of the increase in the Consumer Price Index between the preceding June and December quarters, and every November, by the increase in the Consumer Price Index between the preceding December and June quarters. This provision does not apply to guardian's allowance, additional pension for children, or supplementary assistance.

An invalid pensioner, on reaching age pension age (65 for men, 60 for women), becomes entitled to age pension if he or she meets the necessary residence qualifications. An age and invalid pension cannot, however, be paid simultaneously to the same person, so that, in practice, invalid pension entitlement ceases when a person reaches age pension age unless the person is not qualified for age pension and is permanently blind or permanently incapacitated for work.

Under Part IVAA of the Act, an invalid pensioner who leaves Australia continues to be eligible for the pension so long as he or she meets all conditions of eligibility. The position is similar in the case of wife pensioners.

There is no discrimination made on the basis of nationality in determining eligibility for invalid pension.

Under Part VIIA of the Act, sheltered employment allowance is payable to a person under pension age who is engaged in sheltered employment and would otherwise be qualified to receive an invalid pension. "Sheltered Employment" is defined in section 133 D as paid employment, provided to disabled persons by an approved organisation at any premises where a substantial number of disabled people are

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employed. The rates of allowance and conditions of eligibility are generally the same as in the case of invalid pension, except that no supplementary assistance is payable. Instead, a person entitled to sheltered employment allowance receives an incentive allowance of \$5.00 a week free of income test (section 133 JA).

Under Part VIB of the Act, handicapped child's allowance is payable to a person who has the custody, care and control of a handicapped child. Details of this allowance are included under the heading "Family Benefits".

#### (E) OLD AGE BENEFITS

The conditions governing payment of old age benefits are set out in Part III of the Social Services Act 1947.

An age pension is payable to men who have reached the age of 65 years, and women who are 60 years or over. Ten years continuous residence in Australia is usually a prerequisite for eligibility, although there is provision for payment to persons resident in Australia for a continuous period of five years and additional periods adding in the aggregate to more than ten years (section 21). Sections 21A and 22 lay down additional rules concerning eligibility.

Except for people aged 70 and over, and the permanently blind, under Part III, Division 4 of the Act, the eligibility of claimants to receive specific amounts is determined in accordance with the same income test applied in the case of invalidity benefits (see previous paragraphs). In the case of people aged 70 and over the income test applies only to wife's pension, guardian's allowance and additional pension for children (see below); the position is the same for the permanently blind, except that additional pension for one child is also free of the income test.

Under the income test the maximum rate of pension is reduced by one-half of the excess of the person's income over a prescribed figure - \$20 a week for a single person, \$17.25 a week for a married person (section 28(2)). In the case of a married person, his or her income is deemed to be one-half of the combined income of both partners to the marriage (section 29). If the pensioner has children, \$6.00 a week of income is disregarded for each child (section 29).

The maximum rates of pension are governed by sections 28 and 28A of the Act and from November 1977 are as follows:

- . \$49.30 a week standard; and
- . \$41.10 a week married.

These rates are increased by \$7.50 a week for each child under 16 in the care of a pensioner, or dependent student aged 16 or more. If an age pensioner with children is single, the rate is further increased by an additional payment known as guardian's allowance. The maximum rate of guardian's allowance is \$6.00 a week if one or more children is invalid or under 6 years of age, and \$4.00 a week in other cases.

Under Division 5 of Part III, an age pensioner's wife not entitled in her own right to an age or invalid (or Repatriation service) pension is entitled to a wife's pension of up to \$41.10 a week, subject to the same income test as the age pension; the income test applies to wife's pension irrespective of whether the husband is permanently blind or has reached 70 years.

Under Division 4A of Part III, an age pensioner paying rent is entitled to supplementary assistance of up to \$5.00 a week (\$2.50 a week for each partner in the case of a pensioner couple). A special income test applies to this payment irrespective of whether the pensioner is permanently blind or has reached 70 years.

Under section 28A (inserted in October 1976), the standard and married rates of pension are increased automatically every May by the rate of increase in the Consumer Price Index between the preceding June and December quarters, and every November by the rate of increase in the Consumer Price Index between the preceding December and June quarters.

Under Part IVAA of the Act, an age pensioner who leaves Australia continues to be eligible for the pension so long as he or she meets all the conditions of eligibility. The position is similar in the case of wife pensioners.

There is no distinction made on the basis of nationality in determining eligibility for age pension.

#### **(F) UNEMPLOYMENT BENEFITS**

Part VII of the Social Services Act 1947 makes provision for the payment of unemployment benefits to those persons who are willing and able to work but are unable to find employment.

Section 107 provides that a claimant, to be eligible, must:

- . be at least 16 years of age but below age pension age (65 for men, 60 for women);
- . have been resident in Australia for at least one year immediately prior to the date of claiming the benefit or intend to reside in Australia permanently;
- . be unemployed and not because he is a direct participant in a strike; and
- . be capable of undertaking, and willing to undertake, suitable work and have taken reasonable steps to obtain such work.

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The maximum rates of unemployment benefit are governed by sections 112 and 112AA and, from November 1977, are as follows

- . \$49.30 a week standard (single person 18 years or more);
- . \$82.20 a week married (including additional benefit of \$41.10 for a dependent spouse); and
- . \$36.00 a week for a single person under 18 years.

These rates are increased by \$7.50 a week for each child under 16 years in the care of a recipient, or dependent student aged 16 years or more.

Except in relation to claimants under 18 years of age, the rates of unemployment benefit payable are increased automatically every May and November by the rate of increase in the Consumer Price Index, between the preceding June and December quarters and every November by the rate of increase in the Consumer Price Index between the preceding December and June quarters (section 112AA inserted October 1976).

Under section 114 an income test is applied to determine the specific benefits actually received by individual claimants. The maximum benefit will be reduced by the excess of the claimant's income over \$6.00 a week, or \$3.00 a week in the case of a claimant under 21 with one or both parents living in Australia. 'Income' of the claimant includes the income of the claimant's spouse.

A person not in receipt of a social security pension, supporting parents benefit or Repatriation Service pension, and who is not entitled to unemployment or sickness benefit, may be granted a special benefit if, because of age, physical or mental disability or domestic circumstances, that person is unable to earn a sufficient livelihood for himself and his dependents, if any. The rate of special benefit payable in any given case is a matter for the discretion of the Director-General of the Department of Social Security, but may not exceed the rate of unemployment or sickness benefit which could be paid to that person if he were qualified to receive it (sections 124 and 125).

(G) SURVIVORS' BENEFITS

Under Part IV of the Social Services Act 1947 a woman whose husband dies becomes entitled to widow's pension if she satisfies certain conditions of eligibility. Under Part IVA of the Act, a man whose wife dies becomes entitled to supporting parent's benefit if he is responsible, has the care of the children and meets certain other conditions of eligibility. Widows' pensions and supporting parents' benefits additionally are paid, in other prescribed cases, where a family loses one or other parent. Details of both these payments are included in the following section on "Family Benefits".

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Under Part VIA of the Social Services Act 1947, double orphan's pension is payable to a person who has the care of a child whose parents are both dead or are deemed to be both dead. Details of this payment are included under the "Family Benefits" section, as the conditions for eligibility are linked to those for family allowances.

Funeral benefits are payable under Part IVA of the Act. Under section 83B, an amount of up to \$40.00 is payable to a pensioner who pays or is liable to pay the funeral expenses of another pensioner or the spouse or child of himself or another pensioner. In this context, the term "pensioner" refers to an age, invalid, Repatriation Service, wife or widow, pensioner, or recipient of supporting parent's benefit, who satisfies a special income test (sections 83A and 83CA).

Under section 83C, an amount of up to \$20 is payable to any person who pays or is liable to pay the funeral expenses of a deceased age, invalid or wife pensioner (or Repatriation service pensioner) who satisfies the special income test in section 83CA.

A benefit may be payable under both sections 83B and 83C but the total benefit cannot exceed \$40.00 (section 83D).

#### **(H) FAMILY BENEFITS**

##### **(i) Widows' Pensions**

Pursuant to the provisions of Part IV of the Social Services Act 1947, pensions are payable to widows and to certain other women who have lost the support of a male breadwinner and whose income does not exceed certain limits.

To be eligible for a widows' pension a claimant must fall into one of the following three categories (section 60):-

Class A - a widow with at least one dependent child who is a child of the widow or a child who entered her care before she became a widow.

Class B - a widow of at least 50 years of age who has no child or, if she has a child, the child does not qualify her for a Class A pension.

- a widow whose Class A pension ceases after 45 years of age because she no longer has a qualifying child.

Class C - a widow under 50 years of age who has no child and is in necessitous circumstances within the 26 weeks following her husband's death.

For all classes, the term 'widow' includes a woman who was the common-law wife (dependent female) of a man for at least three years immediately before his death (section 59). For Class A

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and Class B, it includes a wife who has been deserted for six months, a divorcee, a woman whose husband has been imprisoned for six months and a woman whose husband is in a mental hospital (sections 59 and 60). 'Child' includes a full-time student aged 16 or more (section 59A).

During the first six months after desertion by, or imprisonment of, her husband, a "widow" is not entitled to a widows' pension. If she has children, however, she may receive assistance from the government of the State in which she resides (or, in the Australian Capital Territory and the Northern Territory, from the federal Government). The federal Government reimburses the State Governments for up to one-half of such assistance under the States Grants (Deserted Wives) Act 1968.

No period of residence is required as long as the woman and her husband were residing permanently in Australia when she became a "widow". In other circumstances however, a residence qualification is applicable (section 60).

The maximum rates of pension payable to widows in categories A and B are subject to an income test, which was introduced in November 1976 to replace the previously applied means test on income and property. Under section 63 the maximum rate of pension payable is reduced by one half of the amount by which the claimant's income exceeds \$20 a week. In assessing the income of a pensioner with children, up to \$6.00 a week per child may be disregarded (section 64).

While the pension payable to persons in category C is not subject to an income test, it is provided that such persons, to be eligible for the pension, must be in necessitous circumstances.

As from November 1977 the maximum rate of widow's pension is \$49.30 a week (section 63) plus \$7.50 weekly per child under 16 years or dependent student aged 16 or more. In the case of a widow with dependent children the maximum rate is further increased by an additional allowance of \$4.00 a week, or \$6.00 where one or more children is invalided or under 6 years of age. Moreover, in accordance with the terms of section 65A, a widow pensioner paying rent may be entitled to supplementary assistance of up to \$5.00 weekly, subject to the application of a special income test.

Computation of the maximum rates of pension payable is closely linked to the specified maximum rates of age or invalid pension. These rates increase automatically in accordance with increases in the Consumer Price Index (section 28A - see previous sections). In practice this means that the maximum widow's pension payable will also increase accordingly, at six monthly intervals. However, consistent with the treatment of age and invalid pensioners, this automatic increase in rates will not apply to the additional pension for children, to mother's allowance or to supplementary assistance.

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The nationality of the applicant is not relevant in determining eligibility to receive this pension. Moreover, in accordance with the terms of Part IVAA of the Act, a widow pensioner will not be disqualified from receiving the pension merely because she leaves Australia.

This payment is made to assist women in particular necessitous circumstances. A broadly equivalent payment, the supporting parents' benefit, exists inter alia to assist men in comparable difficulties. This benefit is discussed in the following paragraphs.

(ii) Supporting Parents' Benefits

Supporting parents' benefits are payable to men and women who do not qualify for other pensions administered by the Department of Social Security (or for a Repatriation service pension), who are bringing up children as single parents, and whose income is within certain prescribed limits. Provision for payment of supporting parents' benefits is contained in Part IVAAA of the Social Services Act 1947.

Supporting parents' benefits were introduced in November 1977. Prior to this time, a benefit known as supporting mother's benefit was payable, but only to entitled female claimants. The amending legislation had the broad effect of extending the benefit to men who are bringing up children alone.

Women eligible for supporting parents' benefits are described as "supporting mothers". They include unmarried mothers and mothers who are deserted de facto wives, separated wives and de facto wives of prisoners (section 83AAA). The benefit becomes payable to a supporting mother six months after she becomes eligible to receive it - for example due to the birth of a child or separation from her husband.

During the six months waiting period, a "supporting mother" may receive assistance from the government of the State in which she resides or, when in the Australian Capital Territory and the Northern Territory, from the federal Government. In accordance with the States Grants (Deserted Wives) Act 1968 the federal Government reimburses the State Governments for up to one-half of such assistance payments made.

Men who are eligible are described as "supporting fathers". They include widowers with children, as well as other men who, in other circumstances, are bringing up children alone (section 83AAA).

In the case of a widower, the benefit is payable from the date of death of the wife if the child has reached the age of six months at that date. In other cases, the benefit becomes payable six months after the father has ceased to live with a woman as her husband or de facto husband. In the case of a father who has never lived with a woman as her husband or de facto husband, benefit is payable from the date his child reaches the age of six months.

During any waiting period, a supporting father may be entitled to receive a special benefit, payable under section 124 (Part VII) of the Act, except where the government of the State in which he resides provides assistance to supporting fathers. The federal Government is (at the time of writing this report) planning to discuss with the States the possibility of supporting fathers becoming entitled, on the same terms as supporting mothers, to receive State assistance during such waiting periods. In accordance with section 83AAE of the Social Services Act, supporting parents' benefits are subject to the same income test which is applied to payment of widows' pensions under Division 3 of Part IV of the Act - i.e. the maximum rate of supporting parents' benefit is reduced by one-half of the amount by which the person's income exceeds \$20.00 a week (section 63). In assessing this income up to \$6.00 a week per child may be disregarded (section 64).

The maximum rate of supporting parents' benefit is the same as that of widows' pension - i.e. \$49.30 a week, plus an additional \$7.50 a week per child under 16 years in the care of the beneficiary or dependent student aged 16 years or more. The maximum rate is further increased by an additional allowance of \$4.00 a week, or \$6.00 a week where one or more children is invalided or under 6 years of age. Moreover a supporting parent paying rent may also be entitled to assistance of up to \$5.00 a week, subject to the application of a special income test.

As is the case with widows' pension, the computation of the maximum rates of supporting parents' benefits payable is closely linked to the specified maximum rates of age or invalid pension (section 63), which increase automatically in accordance with increases in the Consumer Price Index (section 28A). This means that the maximum supporting parents' benefits payable will also increase accordingly at six monthly intervals, though the automatic increase will not apply to the additional pension for children, to the additional allowance, or to supplementary assistance.

In accordance with Part IVAA of the Act a recipient of supporting parents' benefits who leaves Australia will continue to be eligible to receive the benefit as long as other conditions of eligibility are still met. Nationality is not one of the criteria for eligibility.

#### (iii) Family Allowances

Under Part VI of the Social Services Act 1947 provision is made for payment of family allowances, technically called child endowment, to a person who has custody, care and control of a child under 16 years or a full-time student under 18 years, or on whom a student aged 18 years or more but under 25 years is wholly or substantially dependent.

Family allowances are, as a general rule, paid to the mother, in accordance with section 94(2) which provides that, except in cases of separation, where a husband has the custody, care and control of a child that child will be deemed, for the purposes of the allowance, to be in the custody, care and control of the wife.

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Presence in, and residence in or the intention to reside in, Australia are general conditions for eligibility (section 96). Under certain circumstances an approved institution may be entitled to receive family allowances for child inmates (section 95 (1) ).

Under the provisions of section 95 (2) family allowances are paid at the following weekly rates to families with numbers of children as follows:

one child                \$3.50

two children            \$8.50

three children        \$14.50

four children         \$20.00

A further \$7.00 a week is paid for each additional child after the fourth child.

The rate for a child in an institution is \$5.00 a week (section 95 (3) ).

Family allowances are not subject to an income test. Residence in Australia rather than nationality of the claimant is now the primary requirement for eligibility. By amending legislation, introduced on 5 June 1976, certain provisions of the Act, which had precluded payment of family allowances for children of alien fathers, were repealed (section 104AA). Moreover the amending legislation made provision for family allowances to be paid to claimants who are residents of Australia, in respect of children living overseas, where the claimant or spouse contributes regularly to the maintenance of the child (section 104AA). Residence for the purposes of this section means residence as it is defined in the Income Tax Assessment Act 1936-1976 (section 6 (11) ) which includes a person whose domicile is in Australia or who has been in Australia, even intermittently, for more than one-half of the year of income, unless his permanent place of abode is outside Australia.

(iv) Double Orphans' Pensions

A 'double orphan' is a child, including an adopted child, both of whose parents are "dead" within the meaning of section 105A of the Social Services Act 1947. In Part VIA of the Act, provision is made for the payment of a pension to assist with the upkeep of such children.

Section 105 B(1) provides that a person or institution qualified to receive child endowment under part VI (see previously) in respect of a child who is also a double orphan may receive, in addition, a double orphans' pension in respect of that child. The rate of pension is \$11.00 per week (section 105.C) and the amount payable is not subject to an income test.

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The pension is paid in respect of children under 16 and full-time students under 25 years of age, both whose parents are "dead", or one of whose parents is dead and the other is missing, or is a long-term inmate of a prison or mental hospital (sections 105A and 105B).

The same residence requirements for payment of family allowances apply to payment of double orphans' pensions.

(v) Handicapped Child's Allowance

Handicapped child's allowance is payable to the parents or guardians of a severely physically or mentally handicapped child under 16 who is living in the family home and needs constant care and attention. Provision for handicapped child's allowance is contained in Part VIB of the Social Services Act 1947.

The allowance is, in effect, an addition to family allowances for the parents or guardians. Under section 105K, it is payable only in respect of a period for which the parents or guardians are also entitled to family allowances for the child. The residence conditions relating to payment of handicapped child's allowance are the same as for family allowances.

The Social Services Act was amended in November 1977 to grant to the Director-General of the Department of Social Security a discretion to approve the grant of a handicapped child's allowance, wholly or in part, where a person has the custody, care and control of a substantially handicapped child and, as a consequence, suffers severe financial hardship (section 105JA).

The rate of handicapped child's allowance is \$15.00 a week (section 105M).

(1) ADDITIONAL MEDICAL AND HEALTH SCHEMES

(i) Pharmaceutical Benefits

In accordance with the provisions, as amended, of Part VII of the National Health Act 1953-1977 (Clth.) a comprehensive range of drugs is available, on a doctor's prescription, free to pensioners who satisfy certain eligibility requirements, and, at a cost partly government subsidised, to all other persons. During the 1976-1977 period the total cost to the federal Government of benefits supplied under this scheme to other than eligible pensioners was \$111.1 million; the cost of supplying pharmaceutical benefits to pensioners and their dependents was \$115.2 million.

(ii) Nursing Care Benefits

In Part V of the National Health Act 1953-1977 (Clth.) provision is made for federal Government subsidy under specified circumstances, of the costs incurred by patients and/or by nursing homes in respect of nursing home care. Nursing homes which satisfy certain eligibility criteria may receive a daily Commonwealth benefit payment for each uninsured patient, in accordance with the amounts and conditions set out in sections 47-50. The benefits are

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designed to help the nursing home meet its costs by supplementing the fees it can charge patients. Section 48 provides inter alia

Section 48 (1) "Where the proprietor of a nursing home charges fees in respect of nursing home care for a patient during a period without deducting the amount of any Commonwealth benefit payable to him in respect of that patient for that period, the Permanent Head may, in his discretion, direct that the Commonwealth benefit so payable be not paid to the proprietor but be paid to the person to whom the fees were charged.

(2) Where -

- (a) the proprietor of a nursing home has been paid a Commonwealth benefit in respect of a patient for a period; and
- (b) the proprietor has charged fees in respect of nursing home care for that patient during that period without deducting that Commonwealth benefit, the proprietor shall, on demand by the Permanent Head, repay to the Commonwealth the amount of that Commonwealth benefit."

Benefits are payable by the Commonwealth Government only in respect of uninsured patients. Private hospital benefits organisations pay the nursing home benefits in respect of patients insured with them. The same rate of benefit applies however for payments emanating from either source.

The nursing home benefits scheme is comprehensive and, at the present time, operates to cover the full nursing home fees charged to some 70% of patients (taking into account their contribution) in private nursing homes.

Nursing homes which are operated by religious charitable or non-profit organisations may be entitled to benefits under the Nursing Homes Assistance Act 1974, but as an alternative, not in addition, to those paid pursuant to the National Health Act (section 4). In essence, under the former Act approved nursing homes - conditions of approval are similar to those set out in the National Health Act - may apply for Commonwealth assistance to meet their annual financial deficits, following collection from their patients of the set fees, or partial contributions thereto.

In the event that patients requiring nursing care are looked after in their own homes rather than admitted to a nursing home, persons undertaking their care may be eligible to receive the Domiciliary Nursing Care Benefit of \$14 a week. In this case persons requiring the care must be 65 years or over, suffering from such illness or disability as would normally justify their admission to a nursing home, and must receive attention on a regular basis by a registered nurse. Additionally the care required must be of a continuing nature (see generally Part V, Division 5B, sections 58 A - J of the National Health Act 1953-1977 (Cith.))

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(iii) Tuberculosis Allowances

Section 9 of the Tuberculosis Act 1948 (C th), as amended, provides as follows:

Section 9 (1) "Subject to the next sub-section, allowances shall be payable to, or in respect of, sufferers from tuberculosis and their dependents for the purposes of -

- (a) encouraging such sufferers to refrain from working and to undergo treatment;
- (b) minimising the spread of tuberculosis; and
- (c) promoting the treatment, after care and rehabilitation of sufferers from tuberculosis."

Section 9 (2) provides that these allowances are to be paid under terms and conditions and at rates, not exceeding those prescribed, laid down by the Commonwealth Director General of Health.

The scheme is administered by the Department of Health in conjunction with State and Territory officials, including the respective Directors of Tuberculosis, and allowances are prescribed and paid by the Department of Social Security, subject to a means test on income. Some 300 patients receive the allowance at any one time and the cost is approximately \$1 million per annum.

(iv) Hearing Aids

The National Health Act 1953-1977 (Clth), Part II, section 9A provides inter alia:

Section 9A (1) "The Minister may, on behalf of Australia, arrange for -

- (a) the supply by Australia of hearing aids and such other medical or surgical aids, equipment or appliances as are prescribed to persons who require them; and
- (b) the making of any modifications to a building, vehicle or equipment that are necessary for the treatment or rehabilitation of a sick or disabled person."

Aids, equipment or appliances remain the property of the Australian Government.

The Government exercises selectively its discretion to provide hearing aids pursuant to this legislation and, as a matter of policy, it supplies them to groups determined to be in most immediate need of government assistance - mainly invalid pensioners and persons under 21 years of age. The number of calaid hearing aids fitted in 1976-1977 was 29,585 and the number of such aids on loan as at 30 June 1977 was 150,061.

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(v) Australian School Dental Scheme

The Commonwealth Department of Health is primarily responsible for financing and co-ordinating the Australian School Dental Scheme which was first brought into operation mid 1973, pursuant to a direction of the federal Government, and which has, as its ultimate objective, the provision of free dental treatment to, and the dental education of, all children under 15 years of age. Legislation to set out the precise parameters of the scheme is at present being drawn up. The actual administration of the scheme in each State is the responsibility of the relevant State Health Authority. In 1976 a total number of 298,003 children received dental treatment under the scheme and, as at 31 December 1976, the scheme was operating to cover approximately 15% of the national primary school population, compared with 12% as at 31 December 1975. It is anticipated that the great majority of primary school children will be covered by the late 1980's.

(vi) Other National Health Programs

The Department of Aboriginal Affairs, with the assistance of the Department of Health, finances the operations of eight Aboriginal Medical Services - located respectively in Brisbane, Sydney, Melbourne, Perth and in the regional centres of Townsville, Shepparton, Bairnsdale and Alice Springs. These Services which evolved as a result of initiatives taken by the aborigines themselves, complement the existing health services available by tailoring the health care provided to the specific cultural and social needs, sensitivities and expectations of the aboriginal people. The Services provide a wide range of care including medical and dental services, health, education and training programs, nutrition and food supplementation, alcohol counselling and family planning advice.

There are other health programs in operation which also concentrate particularly on the provision of health services to aborigines. The Department of Aboriginal Affairs made a grant of \$25,000 to the Royal Australian College of Ophthalmologists to enable it to set up the National Trachoma and Eye Health Program. Subsequently the Health Department provided a \$1.4 million grant to assist operation of the program for the period 1975-1976 to 1977-1978. Trachoma and other eye diseases are most prevalent among aborigines. These grants have enabled the College, in co-operation with the various State and Territory health authorities, Aboriginal organisations and the National Aboriginal Consultative Committee, to treat an estimated 35,000 people, mainly aborigines, since the program's inception in May 1976.

(J) EMPLOYMENT INJURY BENEFITS

(i) Federal Legislation

(a) Workers Compensation for Federal Employees

The main provisions regulating payment to federal employees of employment injury benefits, or workers compensation, are contained in the Compensation (Commonwealth Government Employees) Act 1971, as amended.

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The Act provides for payment of benefits to approximately 450,000 persons employed by Commonwealth Government departments, instrumentalities and statutory authorities and, in addition:

- . members of the defence force;
- . members of the Commonwealth, A.C.T. and Northern Territory police forces;
- . holders of statutory offices
- . persons who constitute, or are members of, authorities established by the Commonwealth Government; and
- . certain classes of voluntary workers and persons who render assistance to certain law enforcement officers (section 7).

Compensation is payable for an injury or a disease which can be attributed to certain stipulated circumstances. There is a liability to pay where Commonwealth employees:

- (a) sustain personal injury arising out of, or in the course of their employment, while travelling to or from their employment or, in certain circumstances, their place of employment or living accommodation at the place of employment such as, for example, working camps or army barracks; or while attending or travelling to or from a school, college or university at the request of, or with the approval of, the employing department or authority; a place for medical consultation for, or for medical treatment of, a compensable condition; a place for the purpose of collecting salary or wages (section 8).
- (b) contract a disease or suffer an aggravation, acceleration or recurrence of a disease and the employment was a contributing factor (including diseases prescribed in the regulations, to the contraction of which specified kinds of employment are deemed to be a contributing factor, unless the contrary is established).
- (c) suffer loss of, or damage to, artificial limbs and aids in accidental circumstances, without sustaining personal injury.

(see generally Part III).

Details of benefits payable under the Act will be found as an attachment to this report.

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The provisions of the legislation apply without distinction to both nationals and non-nationals employed by the Commonwealth. Benefits under the legislation are payable to persons covered by the Act regardless of where they reside, with the qualification that such benefits are generally paid quarterly, in arrears, to persons residing overseas. This is designed to cover the situation where an employee is entitled under the legislation to a pension for a disability, and is required to undergo periodic re-examination to ensure that the disability is still present.

Benefits payable to survivors under the legislation are paid without regard to the country of residence of the recipient.

Section 7 (7) provides that the Act does not apply to a member of Parliament or Minister of State, a Judge, or a seaman to whom the Seamen's Compensation Act 1911-1971 applies.

Section 4 of the Seamen's Compensation Act 1911, as amended, provides that this Act applies to:

- (a) seamen employed on ships registered in Australia
  - (i) that are engaged in trade and commerce with other countries, or among the States, or between a State or a Territory forming part of the Commonwealth and a Territory (whether forming part of the Commonwealth or not); or
  - (ii) that are within the territorial waters of a territory forming part of the Commonwealth or whose first port of clearance and whose port of destination are in such a Territory.
- (b) the employment, under articles of agreement entered into in Australia, of seamen on a ship not registered in Australia, that is engaged in trade and commerce among the States, or between a State and a Territory forming part of the Commonwealth, under a licence granted under the Navigation Act; and
- (c) the employment, for the purposes of a delivery voyage of a ship, of seamen engaged in Australia, on terms entitling them to free transport from or to Australia to join the ship, or after leaving the ship.

Pursuant to section 3 of the Act, "seamen" is defined as meaning "...a master, mate, engineer, radio officer, apprentice, pilot or other person employed or engaged in any capacity on board a ship in connection with the navigation or working of a ship."

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The Act establishes a liability on shipowners to pay compensation where seamen:

- (a) sustain personal injury by accident arising out of or in the course of their employment or while travelling to or from their employment; or
- (b) contract a disease or suffer an aggravation, acceleration or recurrence of a disease, or the disease is due to the nature of the employment in which the seamen are engaged.

Details of the scale and conditions of compensation payable under the legislation are set out in the schedules to the Act. In accordance with paragraph 19 of the First Schedule:

"If a seaman receiving a weekly payment ceases to reside in Australia, he shall cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the seaman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as are prescribed, his identity and the continuance of the incapacity in respect of which the weekly payment is payable."

(b) Workers' Compensation in Australian Territories

Section 122 of the Commonwealth Constitution provides that the federal Parliament "may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth ....."

(i) Australian Capital Territory

The Australian Capital Territory Workmen's Compensation Ordinance 1951-1975, applies to any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is express or implied, is oral or in writing, but does not include:

- "(a) a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business;
- (b) an outworker; or
- (c) any person employed in the service of the Commonwealth".

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In accordance with section 7 of the Ordinance, compensation is payable for personal injuries by accident, arising out of or in the course of employment. For the purposes of the legislation, injury is defined as meaning "... any physical or mental injury and includes aggravation, acceleration or recurrence of a pre-existing injury."

Pursuant to section 9 of the Ordinance, compensation is payable also where,

- (a) a worker is suffering from a disease and is thereby incapacitated for work; or
- (b) the death of a worker is caused by a disease; and that disease is due in both cases to the nature of the employment in which the worker was employed, as if the disease were a personal injury by accident arising out of or in the course of employment.

The amount of compensation which is payable varies according to the nature and extent of the injury. In addition, the medical costs of the employee are payable by the employer. The amount of compensation payable is indexed to have regard to variations in the Consumer Price Index for Canberra, as published periodically by the Commonwealth Statistician.

The ability of the employer to fulfill his obligations under the Ordinance is guaranteed by the requirement in section 18A that the employer must take out a policy of insurance for the full amount of his liability under the Ordinance, although the Minister of State for the Interior is empowered to exempt an employer from this requirement where the employer is able to meet from his own resources any liability which arises. In the event that an employer has not taken out the requisite insurance policy and is consequently unable to pay a compensation claim, the employee may make a claim against a Nominal Insurer appointed under section 18, and money paid out to the employee by the Nominal Insurer is a debt recoverable by the Insurer from the employer.

Paragraph 14 of the First Schedule to the Ordinance provides inter alia that -

"If a workman receiving a weekly payment ceases to reside in Australia, he shall thereupon cease to be entitled to receive any weekly payment, unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature or that his absence from Australia is desirable for recuperative purposes....."

As regards death and other lump sum benefits, the legislation provides that the benefits shall be paid to the beneficiary, as defined by the Ordinance. Once liability has been established, the place of residence of the recipient is irrelevant.

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(ii) Northern Territory

Section 7 of the Northern Territory Workmen's Compensation Ordinance, 1949-1975 provides that employers within the Territory are liable to pay to employees compensation, in accordance with the legislation, for personal injuries by accident arising out of or in the cause of employment. Section 9 of the Ordinance provides that where

- (a) a worker is suffering from a disease and is thereby incapacitated for work; or
- (b) the death of a worker is caused by a disease, and the disease is due to the nature of the employment in which the worker is employed;

the employer is liable to pay compensation as if the disease were a personal injury by accident arising out of or in the course of his employment. For the purposes of the legislation "injury" means any physical or mental injury and includes aggravation, acceleration or recurrence of a pre-existing injury.

Benefits payable under the Ordinance vary in accordance with the nature and extent of the injury, and are set out in section 10 and the Second and Third Schedules.

The legislation applies without distinction to both nationals and non-nationals employed in the Territory. However, there is a residence requirement. Paragraph 13 of the Second Schedule provides in part:

"If a workman receiving a weekly payment ceases to reside in the Territory, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature or that his absence from the Territory is desirable for recuperative purposes..."

As regards death and other lump sum benefits, once the entitlement to compensation is established under the Ordinance, payment is made to the injured person or his dependants regardless of their place of residence.

The Ordinance is applied equally and without discrimination to aboriginal residents of the Northern Territory, an important consideration in the light of the large number of aboriginals who live in this part of Australia. The provisions of the Ordinance have been specifically drafted to ensure their applicability to persons of the aboriginal race. In the definition section (section 6 (i)), for example, it is provided that:

"member of the family .... in relation to a workman who is an aboriginal native of Australia, includes a relation of the workman whether by blood, tribal marriage or custom...."

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In order to ensure that the employee will receive the compensation to which he is entitled the Act obliges an employer to take out an insurance policy to cover the full amount of his liability under the Ordinance, although the Administrator of the Northern Territory may exempt an employer from this requirement where the employer is able to meet, from his own resources, any liability which arises (section 18). In the event that an employer has not taken out the requisite insurance policy and is consequently unable to pay a compensation claim, the employee may make his claim against a Nominal Insurer appointed under section 17 for the purposes of the Ordinance, and money paid out to the employee by the Nominal Insurer is recoverable by the Insurer as a debt from the employer.

(ii) State Legislation

Within their respective jurisdictions State Governments are responsible for payment of employment injury benefits to other than federal employees. The State Acts dealing with this matter are as follows:

Victoria	- Workers' Compensation Act 1958, as amended
New South Wales	- Workers' Compensation Act 1926-1970  - Workmen's Compensation (Broken Hill) Act 1920, as amended
Queensland	- Workers' Compensation Acts 1916 to 1966, as amended
South Australia	- Workmen's Compensation Act 1932-1969, as amended
Western Australia	- Workers' Compensation Act 1912-1970, as amended
Tasmania	- Workers' Compensation Act 1927, as amended

In general terms these various Acts provide for a scheme of monetary compensation for a worker who suffers injury which in some way is linked to his work, or the journey to or from work. The nature and degree of the link required is spelled out in some detail in the different Acts. The worker's entitlement is not to damages assessable by a court but rather to certain benefits which, whether they take the form of weekly payments or compensatory lump sums, consist of specified amounts (subject only to a small degree of elasticity in some cases) which cannot be exceeded. Employers are ultimately responsible for payment of benefits to eligible workers and are required to take out insurance against such liability.

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The State Acts differ in their details although, as amended and modernised, they show a distinctly more uniform pattern than they did in their original form. It is not proposed to examine in detail the schemes implemented in each of the States. The relevant State legislation is attached to this report. In this section of the report a brief examination will be made of two only of the State schemes, as examples of the kind of protection afforded to workers throughout Australia.

(i) The Scheme in Victoria

In accordance with the provisions of the Workers' Compensation Act 1958 (Vic), as amended, any person (except an outworker) who has entered into, or works under, a contract of service or apprenticeship or otherwise with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is express or implied, is oral or in writing, is entitled, subject to section 6, to compensation for a personal injury arising out of or in the course of his employment. Where the worker's death results from, or is materially contributed to, by the injury, the compensation is made in the form of a lump sum payment, in accordance with the provision of the clauses of section 9.

Section 12 provides, in effect, that where:

- (a) a medical practitioner certifies that a worker is suffering from a disease and is thereby disabled from earning full wages at the work at which he was employed; or
- (b) the death of a worker is caused, or is materially contributed to, by any disease,

and the disease is due to the nature of any employment in which the worker was employed at any time prior to the date of the disablement, the worker or his dependants are entitled to compensation as if the disease were a personal injury arising out of or in the course of that employment.

"Injury" is defined to include:

"...any physical or mental injury, and without limiting the generality of the foregoing, includes -

- (a) a disease contracted by a worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor; and
- (b) the recurrence, aggravation, or acceleration of any pre-existing injury or disease, where the employment was a contributing factor to such recurrence aggravation or acceleration -

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and for the purposes of this interpretation the employment of a worker shall be taken to include any travelling referred to in sub-section (2) of section 8 of this Act."

Depending in part upon the nature of the injury and in part upon its gravity and effect upon the employee's capacity to continue or resume working, a recipient of compensation might be entitled either to a lump sum payment or to a weekly payment, or to both. As regards lump sum payments, the practice is that once the entitlement to compensation is established the benefit is paid regardless of the place of residence of the recipient. There are exceptions to this practice, for example in relation to lump sums payable to a person under the age of 21 years. Section 34 provides that the amount shall be paid into the custody of the Workers' Compensation Board and shall, subject to the rules and provisions of the Act, be invested, applied or otherwise dealt with at the discretion of the Board for the benefit of the persons entitled thereto.

The situation differs in the case of weekly payments. Weekly benefit payments will not be made to persons residing outside Australia except where the injury giving rise to the entitlement is of a permanent nature. Section 10 provides in part:

"If a worker receiving a weekly payment ceases to reside in Australia, he shall thereupon cease to be entitled to receive any weekly payment unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the worker shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter, so long as he proves, in such manner and at such intervals as may be prescribed by rules made by the Board, his identity and the continuance of the incapacity in respect of which the weekly payment is payable."

Important amendments were made to the Victorian Workers' Compensation legislation in 1970 following the West Gate Bridge collapse disaster which caused heavy employee loss of life. As a result of these amendments it is now the case that an award of compensation under the Act is not an obstacle to an employee wishing to institute common law proceedings as well (section 79). Similarly the award of a judgment for damages against an employer no longer precludes further proceedings for compensation under the Act. The relationship, however, between the respective sums to which one employee may be entitled at common law and under the Act in respect of the one injury, and the amount by which an award of one sum will lessen the other, is carefully delineated in the Act.

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(ii) The Scheme in South Australia

The Workmen's Compensation Act 1971 completely repealed prior legislation and restated the law. One of the important changes introduced was removal of the provision that an employee may prove, as a defence to a compensation claim, that the employment did not in any way contribute to the injury - i.e. under the new act, what is important is the fact that the injury arose in the course of the employment, not the degree to which the employment contributed to it (section 9). Another major change was the inclusion of "disease" in the definition of "Injury", though in the case of disease there must be an aetiological link between it and the employment (sections 8 and 90-95). In another basic change the provision in the old Act for arbitration of compensation claims by a local court judge was replaced by a provision giving the Industrial Court of South Australia jurisdiction to hear and determine any question or dispute arising out of the claim (sections 21-25).

The new Act has subsequently been amended and is referred to as the Workmen's Compensation Act 1971-1974. Under its terms, any person who has entered into or works under a contract of service, or apprenticeship, or otherwise with an employer, whether by way of manual labour, clerical work or otherwise, and whether remunerated by salary, wages, commission or piece work rates or otherwise, and whether the contract is express or implied, or is oral or in writing, is entitled, in accordance with section 9, to compensation for personal injury arising out of, or in the course of, this employment. The definition of worker does not cover outworkers, specified casual employees, seamen (in some circumstances) and fishermen having a share in the profits on gross earnings.

Section 90 of the Act provides that compensation is payable to workers even where the injury is a disease that is of such a nature as to be contracted by a gradual process.

Under the legislation, compensation may take the form of

- (a) a lump sum payment;
- (b) a weekly payment; or
- (c) a combination of both.

While entitlement to payment of compensation is not dependent on the nationality of the person injured or, in the case of death, on the nationality of the survivors, payment of the benefit may, in certain circumstances, be conditional on the place of residence of the recipient. Section 56 provides inter alia:

- "(1) If a workman receiving a weekly payment ceases to reside in the Commonwealth, he shall thereupon cease to be entitled to receive any weekly payment, unless a medical referee, on a reference made in accordance with Rules of Court, or as may be determined by the Court in any particular case, certifies that the incapacity resulting from the injury is likely to be of a permanent nature.

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- (2) If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves in such a manner and at such intervals as may be prescribed by Rules of Court, or as may be determined by the Court in any particular case, his identity and the continuance of the incapacity in respect of which the weekly payment is payable."

It follows that a worker whose incapacity is temporary, and who leaves Australia, has no entitlement to weekly benefits during that absence.

In the case of lump sum payments, other than payments for death, the position is that once the entitlement to compensation is established under the Act, payment is made without regard to the place of residence of the recipient. In the event of death of the worker, payment of benefits will be made, unless otherwise ordered, to the Industrial Court of South Australia, which will then invest the sum, or apply it in any other manner it sees fit, for the benefit of persons entitled to it according to the provisions of the Act (section 75).

These, then, are the broad outlines of two Workers' Compensation schemes in operation in Australian jurisdictions. As was mentioned above there are differences of detail to be found in the schemes operating in other Australian States. In Tasmania, and Western Australia, for example, provision exists for weekly payments to be made to entitled workers for temporary incapacity, even where such persons are non-residents of the respective states. (section 25 Workers' Compensation Act 1927 (Tas) and section 29 (3) and paragraph 12 of the First Schedule of Workers' Compensation Act 1912-1975 (W.A.) ). Further analysis of the schemes is not possible within the scope of this report. The details however are contained in the attached legislation.

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Annex

LIST OF REFERENCE MATERIAL a/

SECTION I - INTRODUCTION

1. The Commonwealth Constitution
2. Ethnic Affairs Commission Act 1976 (N.S.W.)
3. Anti-Discrimination Act 1977 (N.S.W.)
4. Equal Opportunity Act 1977 (Vic.)
5. Ministry of Immigration and Ethnic Affairs Act 1976 (Vic.)
6. Sex Discrimination Act 1975 (S.A.)
7. Racial Discrimination Act 1976 (S.A.)
8. Treaties Commission Act 1974 (Qld.)
9. Racial Discrimination Act 1975 (Clth.)
10. Aborigines and Torres Strait Islanders (Queensland Discriminatory Laws) Act 1975 (Clth.)

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a/ This reference material is available for consultation in the files of the Secretariat in the original language, as received from Australia.

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SECTION 2 - ARTICLE 6

11. Defence Act 1903-1970 (Clth.) and Defence Amendment Acts 1976 and (No.2) 1977
12. National Service Act 1951-1968 (Clth.) and National Service Act 1971
13. National Service Termination Act 1973 (Clth.)
14. 'Equality in Employment' - Second Annual Report of the National Committee on Discrimination in Employment and Occupation 1974-75
15. National Committee on Discrimination in Employment and Occupation - Third Annual Report 1975-76
16. Women's Legal Status Act 1925 (W.A.)
17. 'Full Employment in Australia' - Command paper No.11, F2834, 30 May 1945
18. Reserve Bank Act 1959-1973 (Clth.)
19. 'Monthly Review of the Employment Situation' - July 1977 - Dept. of Employment and Industrial Relations
20. Provisional Commonwealth Employment Service Statistics, end-August 1977
21. 'The Review of the Commonwealth Employment Service' - Report, June 1977
22. Report of the Advisory Committee on Commonwealth Employment Service Statistics - November 1973
23. Re-establishment and Employment Act 1945-1952 (Clth.), and amendments
24. Industrial Arbitration Act 1940 (N.S.W.)
25. Industrial Arbitration (Employment Agencies) Amendment Act, 1975 (N.S.W.)
26. Industrial Conciliation and Arbitration Act 1961 - 1976 (Qld.), with regulations and rules
27. Industrial Arbitration Act, 1912-1973 (W.A.), and amendments
28. Industrial Conciliation and Arbitration Handbook (S.A.)

SECTION 3 - ARTICLE 7

29. Conciliation and Arbitration Act 1904 (Clth.)  
- Consolidation, March 1977
30. Coal Industry Act 1946-1973 (Clth.)
31. Public Service Act 1922-1973 (Clth.) and  
amendments
32. Public Service Arbitration Act 1920-1969 (Clth.)
- 33 - 35 Reports of hearings before the Commonwealth  
Conciliation and Arbitration Commission.
36. Representative list of 'award free' employees  
in State jurisdictions
37. Overtime - Selected Federal Awards
38. Award Wage and Price Movements
39. Statistics of Employees affected by major federal awards  
providing for equal pay
40. Scaffolding and Lifts Act 1912-1948 (A.C.T.)
41. Building Ordinance 1972 (A.C.T.)
42. Inspection of Machinery Regulations - Safety Provisions,  
Part III
43. Boilers and Pressure Vessels Regulations (A.C.T.) -  
Parts II - V
44. Workmen's Compensation Ordinance 1951- 1959 (A.C.T.),  
and amendments
- 45 - 49 Statistics concerning industrial accidents and  
occupational diseases in the States
50. Annual Holidays Ordinance 1973 (A.C.T.)
51. Holidays Ordinance 1958 (A.C.T.)
52. Long Service Leave Ordinance 1976 (A.C.T.))
53. 'Recommended practice for occupational health services  
in Australia' - National Health and Medical research  
Council
54. 'Occupational Safety and Health in Australian  
Government Employment' - Code of general principles
55. Hours of work - Selected federal awards
56. Overtime - selected federal awards

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SECTION 4 - ARTICLE 8

- 57. Crimes Act 1914-1966 (Clth.)
- 58. Trade Unions Act 1958 (Vic.)
- 59. Trade Union Act 1881 (N.S.W.) as amended

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SECTION 5 - ARTICLE 9

60. Social Services Act 1947 (Clth.) and amendments
61. Social Security Annual Report 1976-77
62. List of benefits available under Compensation (Commonwealth Government Employees) Act 1971
63. National Health Act 1953-1973 (Clth.) amendments, and statutory rules under the act
64. Nursing Homes Assistance Act 1974 (Clth.), and statutory rules thereunder
65. National Health (Pharmaceutical Benefits) Regulations, 1960 (Clth.)
66. Health Insurance Act 1973 (Clth.), amendments and statutory rules under act
67. Seaman's Compensation Act 1911-1970 (Clth.), and amendments
68. Compensation (Australian Government Employees) Act 1971-73 (Clth.), and amendments
69. States Grants (Deserted Wives) Act 1968 (Clth.)
70. Details concerning 'Medibank' scheme
71. Workmen's Compensation Ordinance 1951-1965 (A.C.T.), and amendments
72. Workmen's Compensation Ordinance 1949-1970 (N.T.), and amendments
73. Workers' Compensation Act 1912-1973 (W.A.), and amendments
74. Workmen's Compensation Act, 1971-74 (S.A.)
75. Workers' Compensation Act 1916-1974 (Qld.), and amendments
76. Workers' Compensation Act 1927 (Tas.), as amended and Workers' Compensation Regulations thereunder
77. Extracts from Workers' Compensation Act, 1926 (N.S.W.) as amended

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