FXRY RYAN, D.P. The Remuneration Act 1979.

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THE REMUNERATION ACT 1979

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I INTRODUCTION

On the evening news of Tuesday 24 July 1979, it was announced that when the House resumed that evening, the Prime Minister, the Rt Hon. R. D. Muldoon, would make a statement of national importance on the wages issue.

To the background of continuing industrial unrest that had been a feature of the on-going award-setting Drivers' negotiations, and to the background of a Federation of Labour application to the Arbitration Court for consideration of a minimum living wage (in place of the usual general wage order application), the Prime Minister duly made a two minute ministerial statement in the House.

In that statement, the Prime Minister announced the Government's intention to repeal the General Wage Orders Act 1977, and to introduce new legislation to authorise the making of regulations that would in turn authorise a general increase of 4.5% to be applied to all wages and salaries fixed by awards or collective agreements. The new legislation would also include provision to influence wages by regulation, and to retain powers to control prices should that prove necessary. Further, he announced he proposed to call a conference of employers, trade unions, and the Government, to consider new methods of fixing wages and salaries.

The Prime Minister considered that the background against which the Government had reached these decisions demanded a full and detailed public explanation, and that he would make on a television and radio address at 9.30 p.m. that evening.

As the announcement itself indicates, the intention to legislate had arisen as a matter of urgency, and indeed the Employers' Federation, the Federation of Labour, the Parliamentary Opposition and other interested unions and organisations were attentive listeners to the statement and to the simultaneous radio and bi-channel television address later that evening.

On the following Friday, 27 July 1979, the Remuneration Bill was introduced, and within the space of the following eleven days had received a second reading, had passed through the Committee stage of the House, was read a third time, and passed by Parliament.

On 10 August 1979 the Governor General gave the royal assent to the Remuneration Act -

> "An Act to authorise the making of regulations for the purpose of promoting stability in rates of remuneration and other conditions of employment in New Zealand and to repeal the General Wage Orders Act 1977."

In viewing the legislative process as it relates to any particular enactment, it is usually possible to discuss the history of its construction and the various influences in the course of its development and passage through the House.

In the case of the Remuneration Act however, because of its urgency, the circumstances of the announcement of the Government's intention to legislate, and because of the lack of consultation in its enactment, it is the Act itself which has been regarded as a statement of Government intention and influence (particularly in the year following its enactment), and for those parties hitherto affected by it (alluding to the introduction of repealing legislation on 14 August 1980) their lack of influence in the issues which the Act had entailed.

It is therefore appropriate to commence with a study of the provisions of that statement, since, in the circumstances of introduction, it stands as the major pointer to the influences leading to enactment, parties having influence in that enactment, and as a commentary on the legislative process in light of such an enactment.

The paper will therefore consider the provisions of the Remuneration Act itself, and then review the previous legislation and the circumstances leading up to the Introduction of the Remuneration Bill. Consideration will then be given to the passage of the Bill through the House, to be followed by an analysis of the various influences in the legislative process. The paper will then conclude with an evaluation of that process as it related to the passing of the Remuneration Act.

II THE REMUNERATION ACT 1979

As the full title of the Act states, one of the purposes of the Remuneration Act 1979 (Short Title) is to authorise the making of regulations for the purpose of promoting stability in rates of remuneration and other conditions of employment in New Zealand.

Section 4(1) is the general empowering subsection which provides that the Governor General may, from time to time, and by Order in Council, make such regulations ('remuneration regulations') as appear to him to be necessary or expedient for the purpose of promoting the stated purposes of the Act.

'Remuneration', as defined in section 2, means -

> "salary or wages and all other payments of any kind whatsoever payable to any employee, or to the holder of any office, for his services; and includes any payment by way of expenses, refunds, or allowances to meet expenditure incurred."

Professor Alexander Szakats[1] noted that the 'excessively broad interpretation' altered the very concept of "remuneration" and cut through the well-established principle that refunding of expenses does not come under it.

> "While the Wage Adjustment Regulations 1974 especially exclude 'any payment by way of expenses, refunds or allowances to meet expenditure already incurred', the Act, repeating these very words, pointedly includes such payments. This provision probably aims at the growing practice of granting generous allowances without the requirement of proved expenditure in lieu of salary increases. Undeniably, some expenses and allowances may come into the category of additional remuneration, but this is no reason to treat genuine refunds in the same manner."[2]

'Conditions of employment' includes the conditions on which any office is held. When read with section 3 ('This Act binds the Crown') and section 7 expressly exempting judicial and other statutory officers[3] from regulations affecting salaries, it is clear that the scope of the Act was intended to cover both private and public employment, with the scope of regulations extending to State employees however high their position[4]. Mr Bolger, the Minister of Labour, himself saw section 3 as "continuing to meet the Government's objective of having industrial relations systems linked between the public and private sectors".[5]

The only limiting criterion for the general power of the Governor General to make regulations is for the combined purposes of promoting stability in remuneration rates and in other conditions of employment. The subjective view of the Governor General as to when regulations are necessary or expedient is therefore not open to objective evaluation.

The judgment of the House of Lords in Liversidge v. Anderson [1942] AC 206, followed by the New Zealand Court of Appeal in Jensen v. Wellington Woollen Co. [1942] NZLR 394, established that where power has been given to a Minister to issue such regulations as appear to him to be necessary or expedient for a particular purpose, the Courts are not competent to inquire into the Minister's state of mind. Professor Szakats argued that this principle a fortiori would apply to the collective mind of the Cabinet where regulations take the form of an Order in Council. In light of the provisions of section 4(1) of the Remuneration Act then -

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(1) - Professor of Law, University of Otago.
(2) - [1979] NZLJ 390; 391.
(3) - Viz. the Controller and Auditor-General, and the Ombudsmen.
(4) - The First Schedule includes among other Acts that may be affected, the State Services Act 1962, the State Services Conditions of Employment Act 1977 and the Higher Salaries Commission Act 1977.
(5) - NZPD Vol.424' 2028 (2nd Reading)

> "Government policy cannot be a justiciable issue and no regulations may be called in question by application for review before any Court."(6)

Section 4(2) provides specific regulatory powers anticipating the purposes for which the regulations might be issued, though without limiting the general power conferred by section 4(1). Regulations then, may be made for the regulation, or provide for the regulation of (a) rates of remuneration or levels of remuneration or both, and of (b) conditions of employment. Any instrument may, as provided by any regulation, be nullified or amended, in whole or in part, whether or not it is filed, registered, or approved under any Act (c), and regulations may provide for the appointment of officers and committees and other bodies (including tribunals), and for the defining of their functions and powers (d). Any persons or classes of persons may be exempted by provision in any regulation (e) and regulations may prescribe offences in respect of contravention of or non-compliance with regulations so made, providing that fines shall not exceed $1,000 and $20 for every day where the offence is a continuing one (f).

The words "levels of remuneration" as introduced in section 4(2)(a) would appear to provide that regulations may be made for the purpose of promoting stability in the rates and/or levels of remuneration in terms of occupational relativities, and/or in terms of relativities of industrial groupings. There is, however, no requirement that such rates or levels should bear any relationship to economic factors.

The definition of 'instrument' (section 2), means -

> "any award, agreement, determination, or decision (whether that award, agreement, determination, or decision is recorded in writing or not, or in any regulation or Order in Council) that fixes rates of remuneration, or other conditions of employment, of an employee or holder of an office, or of more than one employee or holder of an office."

As Professor Szakats notes, the wording of "agreement... that fixes rates of remuneration... of an employee" makes the intention clear. The idea itself was not novel(7), but the definition may be seen as an innovation in that the instrument itself need not determine rates and other conditions of employment, but may fix only other conditions which do not directly relate to pay, as the separate provisions of section 4(2)(b) relating to conditions only, indicate. (8)

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(6) - NZLJ op.cit; 391
(7) - NZLJ op.cit; 391
(8) - c.f. Wages Adjustment Regulations 1974 Reg.2 "Instrument" Para.(d), covering "any agreement, whether in writing or not, made between a worker and an employer"

Further, although legislation relating to such statutory protected basic conditions as entitlement to holidays and matters of safety and health does not come within the scheduled list of Acts in respect of which regulations are to prevail in the event of conflict(9), the Industrial Relations Act 1973 does so feature. Sections 93 - 95 of that Act (providing for the 40 hour five day week and for public holidays) could therefore legitimately fall within the scope of any remuneration.

Under section 4(2)(c), any individual employment contract providing for remuneration, either in accordance with, or independently from, a collective instrument, can be negatived (including the non-remunerative terms). The same applies to collective agreements whether filed or registered with, or approved by, the Arbitration Court or another industrial tribunal. However, determinations of the Arbitration Court, tribunals specified in section 6 of the Act, and tribunals not otherwise listed in the First Schedule, are exempted from the overriding effect of any regulations, although any subsequent agreement reached between employer and employee will not be so exempt.

Clause 6 as it appeared in the Remuneration Bill when introduced had not provided for exemption from cancellation of determinations of wages and conditions of employment of the tribunals listed. Further, instead of the words "decided on the merits" in section 6(1) as enacted, the Bill had provided for the exemption of rates and conditions "determined" by such tribunals, and had not included specific provisions relating to agreed terms (as between the parties) incorporated in awards or principal orders by the tribunals listed. Amendments and new paragraphs were introduced by way of a Supplementary Order Paper at the Committee stage of the House.

By virtue of section 6(1) as enacted, only those determinations of the specified tribunals "decided on the merits... and not merely embodied in an agreement filed or registered with, or approved by" those tribunals are not to be affected by regulation. As a result, conciliated collective agreements otherwise deemed awards(10) are "reduced to the fragile status of mere agreements".(11)

Furthermore, in wage-settling matters, parties cannot place before a tribunal merely the contentuous issues having agreed upon the majority, thereby changing the status of an agreement into that of a determination. The potential scope of regulatory power under section 4(2)(c) is therefore very wide when held in relation to the free wage bargaining system, and to the role of the Arbitration Court as existed at the time of the Act.

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(9) - section 4(6) and First Schedule

(10) - Industrial Relations Act 1973,s.82(9) as inserted by s.10(2) of the Indust.Relations Am.Act(No.2)1976 - a conciliated collective agreement "shall be deemed to be and be known as an award made by the Court".

(11) Szakats NZLJ op.cit;392

In light of the wording of "or providing for the regulation of" in section 4(2)(a)-(c), and in light of section 4(2)(d) and section 4(3), it is apparent that the task of actually determining rates and levels of remuneration may be delegated to an authority, tribunal, person or body, with functions and powers as spelt out in the appropriate regulation. Such functions and powers again may be determined as the Governor General deems necessary and expedient for the purposes of the Act.

Under section 4(2)(e), although any person or classes of persons may be specifically exempted from remuneration regulations, there are, however, no criteria specified for making such a decision.

Specific offences may be provided by regulation for the necessary and expedient purport of the regulations in the circumstances in which they are made(12). Under section 8 of the Act, every offence against any remuneration regulations (with the general principles of agency also applying) is to be punishable on summary conviction. In contradistinction, in relation to worker participation in illegal strikes, the Dunlop Report(13) of only the previous year had recommended that, in the interests of improving industrial relations in the freezing industry, criminal fines should be replaced by a civil penalty. In adopting that recommendation, the Legislature subsequently decriminalised the process of enforcement, even though the amounts remained the same(14).

Finally, in respect of the specific regulatory powers, section 4(2)(e) provides for the regulation of "such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration." As Professor Szakats indicates -

> "This might be called a superabundant clause, inserted ex abundanti cautela in case the general power conferred by subsection (1) and the specific powers enumerated in subsection (2) would not answer all possible contingencies"(15).

As to the effect of regulations made under the Remuneration Act, under section 4(5) any provision which is made by or pursuant to regulations "shall come into force

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(12) - e.g. S.R 1979/211 (Bulk Freight Forwarders) Regs 19-22
S.R.1980/24 (Engine Drivers, Boiler Attendants, etc.) Regs 5 & 6
S.R.1980/29 (N.Z. Forest Products) Regs 28& 29 (withdrawn S.R. 1980/45)

(13) - Sir William Dunlop 'The Application of Penalty Provisions in the Industrial Relations Act' 1978.

(14) - Industrial Relations Act sections 81, 125, 125A

(15) - NZLJ op.cit; 392-3

on a date to be specified in that behalf in the regulations, whether that date is before, on, or after the date on which the regulations are made". The section effectively provides the power to regulate wages retrospectively, and further, in the event of regulations conflicting with the provision of any Act specified in the First Schedule relating to rates of remuneration or conditions of employment, or conflicting with any procedures and bodies providing for the determination of such matters, then the regulations made under section 4 shall prevail(16). Finally, the exemption from regulation of determinations of tribunals under the provisions of section 6(1) "shall not absolve any of those bodies from the obligation to observe the provisions of any remuneration regulations."(17)

As Professor Szakats points out -

> "The repeal of the General Wage Orders Act 1977 should be regarded as merely the natural conclusion consequent upon the purpose of the new statute."(18)

This is effected by section 9 of the Remuneration Act, and, in light of the intention of the Government to provide for a 4.5% general wage and salary increase, and to make provision for subsequent general increases, section 5 of the Act takes the place of the previous General Wage Orders legislation. It is under this section that the subsequent 4.5% general wage increase was made in August 1979, and a further 4% in July 1980(19).

Section 5(1) provides that regulations may effect "or provide for" a general increase in rates of remuneration determined by awards and collective agreements. Although the subsequent general increases have been made by Order in Council under section 5(1), in light of section 4(2)(d) and section 4(3) as discussed, the delegation of the task of determining general increases to a body set up by regulation may be permitted.

Furthermore, section 5 does not contain guidelines for potential wage adjustment (cf General Wage Orders Act) and the provisions of section 5 do not limit the provisions of section 4, particularly in relation to the application of the general increase and the extent to which rates of remuneration not determined by awards or collective agreements may be affected by any such general increase.

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(16) - Section 4(6).
(17) - Section 6(6).
(18) - NZLJ op.cit; 390
(19) - S.R. 1979/170, S.R. 1980/144

The Remuneration Act then confers in the Government alone the power to provide for general increases in the remuneration of employees or holders of offices under any award or collective agreement, and gives the executive potential overriding powers in respect of rates and levels of remuneration and other conditions of employment, by way of regulation. Regulatory powers may therefore override the terms of individual employment contracts, thereby affecting, not only the individual employer/employee relationship, but also traditional industrial interconnections in employer/union relationships.

III PREVIOUS LEGISLATION

The Arbitration Court had been set up by the 1894 Industrial Arbitration and Conciliation Act with the power to enforce collective agreements. In 1918 the Court was further empowered to amend award rates. During the 1920s through to the early 1940s, the Arbitration Court had also been given power to make general increases in wages as and when successive Governments had deemed necessary(20).

With the advent of war, however, wages were regulated by Executive regulation, that power culminating in the Economic Stabilisation Act 1948, "an Act to make provision for economic stabilisation" authorising the Governor General by Order in Council to make such regulations as appeared to him to be necessary or expedient for the general purpose of the Act (the promotion of economic stability in New Zealand). General increases issued by the Arbitration Court under Economic Stabilisation legislation were generally designed to ensure a minimum living wage for low-paid workers. By the 1960s, however, general increases were being used as a method of compensating all workers for the rise in the cost of living.

In 1969 the General Wage Orders Act was passed, making formal the powers that have existed under the Economic Stabilisation Act in respect of general increases. During the 1970s, however, on account of a more fluctuating economy and changes in industrial bargaining power, successive Governments used the G.W.O. system to compensate workers for the cost of living, while at the same time controlling wages by regulation. During that time also, the Arbitration Court itself went through a process of reconstitution and except for a brief period of eight months, the General Wage Order Act was held in suspension(21).

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(20) - I.C. & A. Amendment Acts providing for increases 1921-22, 1931, 1936, 1940.

(21) - Stabilisation of Remuneration Act 1971
Stabilisation of Remuneration Regs. 1972
Economic Stabilisation Regs. 1973
Industrial Relations Act 1973
Wage Adjustments Regulations 1974.

Under the Industrial Relations Amendment Act 1977, the Arbitration Court was reconstituted with its original full jurisdiction, and by the General Wage Orders Act 1977 (lifting regulatory restrictions) was vested with the power of making a just and equitable review of all rates of remuneration. Furthermore, the Industrial Relations Amendment Act introduced a consistent system of conciliation and arbitration in that a right of appeal was provided to the Arbitration Court from the public sector tribunals having award-making powers.

Following the 1977 legislation then, free wage bargaining was again restored, although in the interests of economic stability, the Government retained the right to selectively intervene by regulation made under the Economic Stabilisation Act.

IV BACKGROUND

(i) Indications of Government Policy

In late 1978 Mr Jim Bolger assumed the office of Minister of Labour. Early in that new role Mr Bolger was faced with the resolution of a number of potential industrial conflicts. Following the threatened strike by bank officers in the last shopping days of Christmas 1978, Mr Bolger was reported as saying that "it is essential that the parties to a dispute endeavour to resolve their difficulties through the conciliation and mediation services where they are available, and through the staff of the (Labour) Department, and that the Minister is not involved in the early stages. But if we are running out of time, the Minister has a responsibility to exercise some influence over the parties involved."(23)

Later in March 1979, Mr Bolger presented five guidelines to good industrial relations providing that "responsible wage bargaining" was carried out in the absence of any negotiation by threat or industrial blackmail(24). The guidelines entailed -

(1) commitment to talk even when progress seemed impossible;

(2) that it is not possible to legislate to solve all industrial disputes;

(3) the system of industrial negotiations by its very nature is dependent upon a curtailment of the absolute freedom of the other side;

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(23) - Evening Post, 22.12.78
(24) - "Post 7.3.79, in an address to Wgtn Branch of Inst. of Personnel Management.

(4) the Government's power to assist in finding solutions in disputes is shared by employers and organised labour;

(5) relativity arguments are not merely resolved by legislation or wishful thinking. Mr Bolger also added that it was too optimistic to expect real progress in industrial relations until some restructuring and modernising had been carried out in the trade union movement.

Mr Bolger considered that on the one hand New Zealand is ideally placed with the 'egalitarian structure of our society' to make rapid progress involving employers and employees more closely in the day to day affairs of business, but that where disputes arose, the parties must find a solution themselves within the existing industrial framework. On the other hand, he could see that the continued existence of a voluntary system of arbitration in which both employers and unions agreed to, was 'obviously' being undermined(25), suggesting that the approximately 300 unions independently negotiating awards should be better organised into industrial rather than occupational groupings(26).

The new round of award negotiations for the 1979/80 year were to begin in May, which had become usual because of expiry dates, the Drivers negotiations setting the trend for following negotiations. The previous year had seen a steep increase in the average percent increase in award rates(27), and in March 1979 the Prime Minister indicated that that round had been too high in light of the ability of the economy to sustain such increases, and considered that the new round should not be as high. If such a trend arose, then the Government had two options, (1) direct wage restraints; (2) increased direct taxation(28). Likewise, Mr Bolger in April said in Parliament that the economy could continue to deteriorate unless wage increases were held to the rate of growth in productivity(29).

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(25) - at this stage there were disputes involving ferry engineers, ANZ Bank Engineers, refrigerated lorry drivers, brewery boiler attendants, MAF vets., Auckland & Chch freight forwarders and commercial printers.

(26) - "Post" 27.3.79

(27) - Negotiated wage increases in the 1977/78 round were around 8%, and in the 1978/79 round 10-12% (plus the effect of a GWO in July 1978).

(28) - "Post" 14.3.79.

(29) - Address-in-reply debate 31.4.79.

(ii) Economic Strategies

In January 1979 the New Zealand Planning Council had released a discussion paper examining the economic implications of the "double-counting" of General Wage Orders in award negotiations suggesting that wage increases should be linked to the increase in productivity, and that the Arbitration Court should have strengthened powers in monitoring awards(30).

(iii) Balance in Bargaining

In May the Federation of Employers issued a discussion document entitled "Balance in Bargaining"(31), a document expounding the Employers' concern at the inability of "free wage bargaining" to adjust to the economic realities facing New Zealand. The Federation saw the major problem areas as:

- an inflexible system of wage relativities with built-in inflationary features (particularly the general wage order system);
- settlements under "free wage bargaining" bearing little relation to the overall economic situation, to industry capacity to pay, or to productivity, thereby adding to inflation, reducing living standards and causing unemployment;
- the conciliation and arbitration system extending privileges to all unions, but with those unions which abused these privileges gaining the most out of the system;
- too many separate pay determinations procedures fixing the wages of the same person; and
- too many awards and collective agreements.

The document strongly argued that wage and salary movements have to be related to economic reality, and although firmly believing a free and responsible wage bargaining system, is preferable to any of the alternatives, argued that the then present wage-fixing system was manifestly incapable of gearing such movements to the country's economic capacity, or to the need to bring down the rate of inflation(32).

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(30) - "Economic Strategies - 1979" - Government Printer
(31) - N.Z. Employers' Federation, Wgtn (1979)
(32) - ibid p.10.

The Federation was concerned that the balance of bargaining power between unions and employers had shifted markedly in favour of unions, particularly those on the 'militant' fringe, with that power being used in such a way that made even an apparently innocuous settlement significant for the whole economy(33).

The Federation saw the thrust of the paper as being that there was still a middle road between bureaucratic controls and industrial anarchy. Accordingly, the Federation proposed(34) -

- tripartite consultations between the Government, unions and employers before each wage round to assess the capacity of the economy to sustain wage increases;
- modified conciliation and arbitration procedures where the parties could elect to resort to conciliation and arbitration (with renunciation of the right to strike or lock-out) or to resort to a two party collective bargaining process (with the right to strike or lock-out), but with stricter terms of negotiability and enforcement;
- amalgamation of awards and employers into industry groups; and
- a code of conduct for the resolution of disputes.

The document was presented to the Government, and discussions with the Employers Federation followed. The Government, although in agreement with the basic arguments, did not agree with the total package. In particular, the Government did not agree with the proposed options in bargaining procedures, seeing the unrealities in maintaining a sharp differentiation between two methods of industrial negotiation. Further, the question of renunciation of the right to strike or lock-out received a mixed reception from Government officials.

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(33) - ibid; pps 14-15 "The employer is in a weaker position than the union. In these inflationary times, low profitability and inadequate case flow have weakened the ability of employers to withstand even short stoppages. The more so for capital intensive companies."

(34) - ibid; pps 16-20.

(iv) Minimum Living Wage Proposals

In opening the Drivers' Federation Conference on 4 April 1979, the (then) Secretary of the Drivers' Federation, Mr Ken Douglas, argued the concept of a minimum living wage(35), indicating that in some quarters of the union movement, consideration was being given to a new method of wage determination.

That indication was again given by the newly elected President of the Federation of Labour at the FOL Annual Conference in May out of which arose the resolution -

(1) that the 1979 General Wage Order be based upon the concept of a 'Minimum Living Wage' which is defined as the monetary amount of tax-paid weekly income required to adequately feed, clothe and house a single income family and provide for them with the necessary social services;

(2) that in determining the criteria for the 'Minimum Living Wage', the following factors should be taken into account.

(i) That such a wage should be earned without overtime.

(ii) That adjusting the Minimum Living Wage for family size should be a function of the tax structure.

(iii) That rewards for service and margins for skill should be additional to the Minimum Living Wage and that this campaign be continued until the objective of official recognition and payment of the Minimum Living Wage is attained(36).

It appears that the Minimum Living Wage concept had its genesis in a Harbour Board Employees Union remit to the 1979 Annual Conference, and that the FOL Executive had taken it up as a recommendation to delegates. It would also appear, however, that there may have been some misunderstanding as well, particularly in that some delegates thought it to be ancilliary to an intended general wage order application that would also be made to take account of the cost of living up till the time of application.

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(35) - "Post" 4.4.79.
(36) - FOL Minimum Living Wage Document, June 1979.

Following the Conference, the Federation of Labour took its Minimum Living Wage proposals to the Government in early June. At that meeting the Federation of Labour explained the concept and informed the Government of its intention to take its case to the Arbitration Court, the proper forum in which the matter should be argued (the Minister of Finance having the power to present argument before the Court, under the provisions of the General Wage Order Act).

The talks were conducted with the Federation of Labour having some difficultyin making clear its views (noting also that the Prime Minister had had limited communication with Mr Knox in his capacity as the newly elected President of the FOL). By the end of the meeting the principle was clear, and an undertaking was given by the FOL to forward its intended broadsheet to the Government. There was also some confusion as to an FOL undertaking to return for further talks with the Government, the Minister of Labour certainly being under that impression(37), although it would seem that others attending the talks were of the opinion that no such guarantee was given.

An FOL broadsheet was duly circulated in late June, the document explaining the plight of the low-paid worker, and the intention to ask the Arbitration Court, when applying for a general order, to raise all the minimum rates in Awards and Collective Agreements to the minimum living wage. Workers above that minimum would then negotiate wage increases to maintain relativities (e.g. of skill margins) through their industry awards, while the rates of those on a minimum living wage as established at the time of the General Wage Order, would move during annual award negotiations.

The Government saw difficulties arising from the proposals, but indicated its interest in the minimum wage as an after tax concept. On the basis of the FOL proposals, the gross earnings of those affected would have to rise steeply, and the statutory minimum wage under the Minimum Wage Act doubled. The Government saw that as imposing"some very real rigidites" on the labour market (e.g. would affect recruitment, compress margins for skill and thereby distort relativities) and would, by proposing a large increase in total wage costs lead to an inflationary push that would be damaging to the economy as a whole.

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(37) - NZPD

The Government considered that distortion of relativities could be avoided if the increase in lower paid rates flowed through to other members of the workforce, noting, however, that this would defeat the FOL's argument about the social objectivies of its proposal. Rather, the Government considered what had to be asked was how much each individual could expect to get out of the economy if the country was not getting more out of the international economy(38). Furthermore, the Prime Minister had indicated that the concept of a minimum wage after tax should be incorporated with the General Wage Orders Act(39), indicating it would appear that the proposals required further examination, and that the Prime Minister also had anticipated further talks with the F.O.L.

The Federation also had had informal discussions with both the Employers' Federation and the Public Service Association and Combined Services Union. The Employers' likewise showed interest in the concept, but did not believe it to be acceptable as proposed. The Employers considered that the introduction of the minimum wage would prove to be yet another inflationary mechanism that would entail the passing on of higher wages to other sectors of the community (the consumer and the exporter in particular), and that, because of its inflationary effect, and the prospect of above minimum wage rates being pushed higher, the proposals would not in effect necessarily provde the lower paid worker with better wages.

Discussions with the PSA and CSU were apparently tense with these organisations not expressing favour with the Federation of Labour's package. As the public service organisations depend upon the movement of wages in the private sector for general increases in their wages and salaries, they were therefore jealous of retaining percentage increases, a high proportion of their members already close to or above the minimum wage as proposed by the FOL.

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(38) - "Post" 10.7.79 (Hon. Mr Talboys as Acting P.M.)
(39) - "Post" 27.6.79, in an address to the N.Z. Society of Accountants.

(v) Industrial Activity

Contemporoneous with the discussions relating to wage-fixing, the Government had introduced legislative measures which affected relations with the union movement in both private and public sectors. On 8 June the Fishing Industry (Union Coverage) Bill was introduced, excluding all existing unions from coverage of the fishing industry, and to provide the machinery for the registration of a single union (with the consent of the Minister of Labour) to cover that industry. Further, arising out of the NZE Department Workers' housing dispute, the Government had promulgated a new Part VIII of the State Services Conditions of Employment Act 1977 (introducing punitive powers), and introduced the PSA withdrawal of Recognition Bill (which would have, inter-alia, withdrawn recognition of the PSA as a negotiating body in that dispute), both on 22 June.

Meanwhile, the negotiation of the Drivers' award, which had commenced on 29 May, was beginning to "hot-up". Negotiations were becoming increasingly difficult, and strike action had been threatened since 18 June. Following rejection of the Employers' latest offer on 2 July, the Drivers' Union announced a 48 hour strike from midnight 9 July, with the possibility of further stoppages.

(vi) The Events of July

On 4 July, Mr Bolger returned to New Zealand from an overseas trip, denying that he had returned to a major industrial crisis in New Zealand. Industrial troubles were not unique to New Zealand he said, but in this country they were always referred to as crises. In reality they were part and parcel of the democratic society(40).

On the Monday, 9 July, with the Prime Minister attending a conference of the South Pacific Forum, Cabinet had seen the situation as "sufficiently serious to warrant disturbing the Prime Minister in Honiara"(41). After speaking to Mr Talboys and Mr Bolger by telephone, the Prime Minister, speaking to journalists at Honiara said "we are going back to wage fixing by regulation, unless the Federation (of Labour) pulls back (on the Drivers' strike)... I have asked Mr Bolger to call Mr Knox up in the morning and tell him this is the end of the line on free wage bargaining"(42).

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(40) - N.Z. Herald 4.7.79
(41) - Dominion 14.7.79
(42) - "Herald" 10.7.79

That same day, however, in the interests of its membership, and in line with its stated intention, the Federation of Labour lodged with the Arbitration Court its application for a hearing of the minimum living wage as the basis of a general order.

Mr Talboys, as Deputy Prime Minister, expressed the Government's concern at the effects of such an application(43) with the Leader of the Opposition, Mr Rowling, coming out in its support. Meanwhile Mr Bolger had duly told Mr Knox that the Government's introduction of free wage bargaining in 1977 was on the basis of a "responsible approach" from unions, and that the Government did not view the Drivers' action as responsible. In turn, Mr Knox sought an assurance (no doubt impossible for Mr Bolger in the circumstances) that the Government would consult with the FOL before any regulations to remove free wage bargaining were introduced.

Speaking at an Auckland National Party on 13 July(44), Mr Bolger claimed that the emphasis in free wage bargaining had shifted from "responsible" to "anything goes" wage bargaining, and that in light of the then present low productivity in New Zealand, with wages increasing 16.1% to the year ended April 1979, and the Consumer Price Index rising only 10.4%, New Zealand could not sustain that kind of wage increase. Further, he stated that:

> "If the 1977 formula is starting to weaken, if it is not measuring up to what is needed in 1979, we have to look at alternatives.... We must have national unity to meet our problems."

Further, Mr Bolger recognised that while the strike had a legitimate role in protecting workers from unreasonable employers (here recall the Government's views on the Employers' 'Balance in Bargaining'), it should not be used to make reasonable employers capitulate at the bargaining table." Rather, a major obstacle to solving industrial conflict was the unwillingness of unions to take disputes to the Arbitration Court.

> "If there's one idea we must get across, it is that we have a fair and impartial Arbitration Court and that it is a logical course to refer an award

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(43) - See footnote 38.
(44) - "Star Weekender" 14.7.79.

> dispute to the Court.... When organised labour can't settle arguments with conciliation, the next step must be the Arbitration Court."

On 16 July, Mr Bolger took to Cabinet a report on wages policy, including matters of dissatisfaction with the current trends and the question of increases above the rise in the cost-of-living. Before presenting that report, however, Mr Bolger told reporters that he would not be making any specific recommendations for changed wage-fixing procedures at that stage.

The use of the term "at this stage" does not exclude, however, an intention to do something at a later stage, and against such consideration may be held the Prime Minister's statement at the same time, and again from Honiara, to the effect that if some of the militant unions persisted with strikes, then the Government could be forced to return to wage restrictions(45).

On 17 July, the Drivers again rejected a further offer by Employers. The talks were adjourned sine die, and further sporadic strike action was predicted by the Drivers' Federation advocate who in turn regarded the final offer by Employers as "the gun at the head approach" to wage negotiations. On the other side the Employers were asking how the country could substantiate the sort of increases being asked (the Drivers were seeking 21% compared to the final offer of 9.5% by Employers), so early in the wage round.

Mr Bolger commented that the Government's threat of a return to wage controls depended on the form of any action taken ("we will respond according to what happens"), and again repeated his statement that the need was to get through to the unions the idea that arbitration by the Court was a reasonable and fair response when agreement could not be reached between the two parties(46).

On 19 July representatives of the Employers' Federation, FOL, CSU and Treasury met with the Judge of the Arbitration Court in Chambers, to discuss procedural matters, and to fix a date for hearing of the FOL's application.

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(45) - "Post" 16.7.79.
(46) - "Herald" 18.7.79.

The Treasury was not then ready to proceed (it appears on the ground of having to complete extensive analysis of the minimum living wage concept), and consequently the hearing was set down for 31 July.

Also, on the same day union advocates met to discuss a unified strategy on collective bargaining in award negotiations. The President of the FOL indicated that the Federation was not prepared to accept Government threats of wage-fixing or deregistration. "The Government with its attitude is threatening. That's not free wage bargaining.... To me and to the FOL this is one of the most important conferences that we've (union advocates) ever held. There's no doubt it's a forerunner of many to come."(47)

In the House also that same day (19 July) Mr Stan Rodger, by way of question, asked Mr Bolger for an explanation of a "Dominion" report of 11 July on the Government moving when something was disruptive enough to end free wage bargaining(48).

Hon J. B. Bolger (Minister of Labour): "I interpreted the question posed by the journalist... to be whether the Government would intervene in the day-to-day wage negotiations to determine whether free wage bargaining would continue, and I affirmed that it was not our intention to do so. I did, however, go on to say we would decide when major economic issues were at stake and were being aggravated by unnecessary industrial action."

Mr Stan Rodger: "Have there been any subsequent events that would warrant the Minister changing the opinions he expressed to the press at that time?"

Hon J. B. Bolger: "No"

Mr Isbey: "When the Minister denied his intention of interfering with free wage bargaining was his statement a reprimand to the Prime Minister who is continually threatening to end free wage bargaining?"

Hon J. B. Bolger: "No"

On the evening news of Tuesday, 24 July 1979, it was announced that when the House resumed

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(47) - "Post" 19.7.79.
(48) - NZPD Vol.424, p.1660.

that evening, the Prime Minister, the Rt Hon. R. D. Muldoon, would make a statement of national importance on the wages issue.

(Vii) Ministerial Statement(49)

The Prime Minister argued that there had been a considerable element of cost of living increases in wages negotiated, industry by industry, quite part from what had been awarded in General Wage Orders and that wage rates had kept pace with prices since the last GWO.

Therefore, the Government had decided to repeal the General Wage Orders Act 1977, but in light of the anticipated wage order following the FOL application, 4.5% in wages and salaries fixed by awards or collective agreements would be made by regulation authorised under new legislation to be introduced. The new legislation would also include provision to influence wages by Regulation in the same manner as had been done in the past by Regulations made under the Economic Stabilisation Act, and would retain powers to control prices.

The Prime Minister refused to debate the matter further (Mr Speaker noting the extraordinary procedures relating to Ministerial statements), stating that it was appropriate that the matter should be made public in the House, which would later have the opportunity to debate the new legislation, but that he did not believe he should take the time of the House to make the much fuller statement he would make on radio and television. The Prime Minister did state that the Government wished to be fair to wage and salary earners, and at the same time not to get into the position in which a wage explosion endangered the stability of the economy more than it was endangered by other factors, principally the (then) rapid increase in the price of oil. Further, the Prime Minister did not wish to introduce controversial legislation on either of the following days set aside for private members and estimates.

During the later broadcasts, the House remained in session (Mr Speaker did count sufficient numbers for a quorum), debating the Appropriation Bill (Finance Statement). Messrs T. de V. Hunt and Falloon on the Government benches added support

(49) - NZPD Vol.424, p.1760.

to the ministerial statement, speaking of unsubstantiated wage claims, criticising the minimum wage claim, and applauding the resolute and strong action the Government had taken in the interests of the economy and the people of New Zealand. Further, Mr Falloon indicated that that action might only be the beginning, because "what flows from the announcement to abolish and repeal the general wage order legislation of 1977 might prove to be the demise of free wage bargainning, unless a responsible view is taken by the Federation of Labour."(50)

(viii) The Broadcast

The Prime Minister indicated his intention to talk about "the economic affairs of New Zealand". He then described the wage-price spiral and its effect on the economy (the inability of the exporting sector to pass on increases in prices). In relation to the then present wage-bargaining situation, Mr Muldoon wished to prevent recent increases in non-recurring items (electricity, postal rates, etc.) from entering the wage-price spiral, and that taxation and welfare policies were the appropriate methods to assist the lower income and larger families.

Although he saw 'merit' in the FOL's proposed minimum living wage, and shared the Federation's deep concern for the difficulties faced by low income families ("The Government has no objection to the spirit or intention of this application") the Prime Minister regarded that the introduction of such a minimum wage through the Arbitration Court was an inadequate and indeed harmful way in which to attack the problem.

He argued that the social needs of particular groups of workers could not provide the basis for across-the-board wage determinations, that a single wage rate could not cater for the whole range of family circumstances and that compressions of margins for skill would ultimately have disadvantageous repercussions on the structure of the workforce and the economy.

The Prime Minister, in setting wages rate increases against increases in the C.P.I., argued that wages (in awards and collective agreements in the private sector) had kept ahead

(50) - ibid; p.1783.

of prices in the previous year. Because there had also been a certain amount of double-counting of GWOs in award negotiations, the General Wage Orders Act 1977 would be repealed. The 4.5% increase to be authorised by regulation under the new legislation represented the rate of inflation for the quarter just ended. However, the Prime Minister considered that that adjustment went beyond what could be justifiable in the case that was to have been heard by the Court (i.e. the smaller 2.7% increase of wages over prices).

Further, the Government had taken account of the level of wages emerging in the current award negotiations (which "appeared to be in the order of 10%"). The general adjustment plus award increases pointed to an overall increase in wages which he believed "acceptable", but "on the high side" when all the unpublicised extras were accounted for.

As for wage regulations, the Prime Minister considered that the most likely instance where these wage controls would be used would be in the case of unions who used strike action to force wage settlements in excess of what would otherwise be negotiable.

In conclusion, the Prime Minister pointed out that no criticism was implied of the Arbitration Court which, in light of its precedents from the past (an implied reference to the 1968 'nil' wage order and the Court's inexperience in considering family circumstances), the Court would have been unlikely to agree to the case put forward by the FOL.

Rather, the consultative process he considered was likely to give much more satisfactory results for all parties. To that effect the Prime Minister indicated that he would be calling for consultations with the unions and employers in the common interest of the general health and development of the economy. He hoped that all interested parties would be prepared to sit down and with creative Government involvement work towards a "system of remuneration" that is fair to all and penalises none.

In interviews(51) following, Mr Knox expressed his dissatisfaction,indicating that in light of previous threats by the Prime Minister, wage restrictions were anticipated, and that the union movement would not sit idly by.

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(51) - Eyewitness SPTV
Checkpoint 2YA

Mr Jim Rowe, Executive Director of the Employers' Federation, welcomed a conference indicating that the Government's action would certainly cause less problems than the FOL's minimum living wage concept, and in agreement that wages were not the way in which to look after the plight of lower paid and single family earners. Mr Tizard slated the Prime Minister's use of the public announcement and the Government taking power to itself to change the ground rules. In his first major appearance as the recently-elected Secretary of the FOL, Mr Ken Douglas focused on the avoidance of established industrial procedures (the Industrial Relations Council and the Arbitration Court), and the Federation's moves to remove anomalies in the relativities system of wage bargaining.

V THE REMUNERATION BILL

(i) Passage Through the House

For the Government, the debates were led by a strong debating team of Messrs Bolger, Talboys, Templeton, Holland and Thomson, with the Prime Minister also, who was overseas for much of the time as the Bill progressed through its various stages. This indicates a representation of Finance, Labour and State Services portgolios. For the Opposition, debate was led by the then Labour Caucus Committee (Messrs Faulkner, Isbey, Stan Rodger, Butcher and Mrs Batchelor), with lawyers O'Flynn, Lange and Caygill in support.

The Remuneration Bill was proposed by the Government to be an up-to-date version of the Economic Stabilisation Act 1948, that wage levels, wage increases and wage relativities - indeed, the whole aspect of remuneration (hence the inclusion of 'conditions of employment' also being subject to potential regulation) - can play such an important part in the management of New Zealand's economy that without such regulatory power the Government would be helpless. The Remuneration Bill then was a version of the Economic Stabilisation Act for 1979 (at least) to regulate employers buying industrial peace and employees exercising industrial muscle(52).

It was the wish of Mr Bolger, and that of the

(52) - NZPD, Vol.424; e.g. Bolger p.2184 (3rd Reading) Holland p.2171 (3rd Reading).

Government, however, that the regulation-making powers would be used sparingly, if at all, in the future, because it was the objective of the Government not to control or interfere with responsible free wage bargaining. Indeed the Bill did not regulate or impose wage controls, and therefore made no change whatsoever to the then free wage bargaining system. Other than for the setting of a general order, the Government saw it as desirable that the regulatory powers would not be needed for any other function in the future(53).

That of course depended upon the actions of employers and employees in conciliation (some speakers alluded the control of militants and communists). The power to regulate was therefore both a balancing factor in free wage bargaining and a provision to encourage use of the Court of Arbitration and the other arbital bodies when disputes arose. The Bill preserved the authority of the Court and those tribunals to make pronouncements when a case is put before them. The development of effective wage-fixing for the next decade was one of the key tasks facing the country (as Mr Templeton argued), and the Bill was designed to rebuild the conciliation and arbitration system(54).

It was conceded, however, that the Bill was not perfect, but a move in the right direction to control the wage-inflation spiral. The Prime Minister indicated that there were already mechanisms available for controlling prices (explaining the lack of price regulatory power as he had indicated in the broadcasts of 24 July) and that the Bill was designed as a holding measure until a more permanent method of wage-fixing arose out of discussions. The building and improving of wage and salary negotiating mechanisms would therefore also include the question of general increases. The general wage order system had outlived its usefulness under the present system of bargaining, and therefore equity of general increases and the separating of the cost of living factor from award negotiations was a matter to be included in the proposed tripartite and consultations(55).

The Labour opposition strongly contested the removal of the General Wage Order system

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(53) - e.g. Bolger, pps 2027-29 (2nd Reading)
(54) - e.g. Templeton, p.2038 (2nd Reading), Holland p.2171 (3rd Reading)
(55) - e.g. Templeton, p.2038 (2nd Reading), Muldoon, p.1860 (1st Reading), Bolger 1867 (1st Reading)

which by and large had been effective, firstly without putting anything in its place, and secondly, removing such powers from the Court of Arbitration and placing the power of general increases in Executive discretion. This would remove from negotiations the question of the increase in cost of living and would give no guarantee that union representatives would be heard by the Government, nor that a judicial decision would be made as to such compensation(56).

Further, the Bill was seen as a blatant interference in the jurisdiction of the Arbitration Court itself. In querying the interpretation of "determined" as it appeared in the Bill as introduced, the opposition pointed out the imprecision in this area(57). Subsequent amendment was made at Committee stages however, having the effect of also making subject to regulation those provisions which the award-making tribunals had hitherto had the power to include in, or determine as, awards(58).

The extent of Clause 4 (in light of the Acts held to be subject to regulations where in conflict, and in particular the Industrial Relations Act) was also questioned(59), and the lack of definition and criteria in relation to matters of stability, rates of pay and duration of regulations was criticised.

The argument of the Opposition may be summarised as the interference of the Bill in tradition and generally effective negotiation, conciliation and arbitration process, and that the Remuneration Bill was a distorted image of powers under the Economic Stabilisation Act (which included provision for consideration of factors other than wages, for instance, prices and rents). As Mrs Batchelor argued, the Bill should have been called the "More Power to the Government Bill".(60)

Finally, the Government took urgency in the second reading and Committee stages, the Opposition unsuccessfully moved that the Bill should be referred to the Labour Committee of the House, and that the proceedings during the hearing of evidence be open to accredited representatives of the news media, and the Opposition primarily argued against Clauses 4, 6 and 9 (the general regulatory powers, the role of the Arbitration Court and wage-fixing tribunals, and the repeal of the General Wage Orders Act) in the Committee stage.

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(56) - e.g. Faulkner, p.1862 (1st Reading)
(57) - Tizard, p.1864 (1st Reading)
(58) - see discussion this paper p.5.
(59) - particularly O'Flynn p.2059 (2nd Reading).
(60) - p.2050.

(ii) Events During Passage of the Bill

The Federation of Labour immediately consulted the Minister of Labour following the announcement, in what may be seen as an official protest, and an effort to have the Bill withdrawn, and requested that a meeting of the Industrial Relations Council be convened under the Industrial Relations Act. There were differing points of view within the Federation of Labour with some argument for proceeding with the hearing in the Arbitration Court, and, if necessary, seeking a Writ of Mandamus, thereby gaining maximum capital out of the Government's interference in the bargaining process.

The FOL executive, however, opted for the established procedure of formally stating its grievances in the Industrial Relations Council.

The IRC was duly convened on Tuesday, 31 July, following the introduction of the Bill, and on the day the hearing was to have commenced in the Arbitration Court. Out of that Council arose the resolutions:

(1) That this meeting of the Industrial Relations Council calls on the Government to suspend the passage of the Remuneration Bill until such time as adequate consultations take place between the central organisations.

(2) That the central organisations meet as a working party of the Council as soon as possible to consider how best to preserve free wage bargaining in New Zealand, and to report back to the Council.

The FOL, which had requested withdrawal of the Bill, then withdrew from the IRC, which has since fallen into disuse, with the parties meeting with the Government rather than in an industrial relations forum (the meeting of 31 July indicates to what extent the parties could influence Government within that forum). The Minister of Labour did, however, offer the parties time to make submissions before the reading of the Bill a second time.

To that effect the Employers' Federation addressed a memorandum to Mr Bolger on 3 August 1979, the day the second reading commenced. The Employers expressed their concern at the lack of procedures and safeguards in Government interference in wage negotiations and in conditions of employment (suggesting notice provisions), the industrial strife which may arise out of the power to

legislate retro-actively, the requirement for the tribunals in Clause 6 to have regard to regulations made under the legislation (suggesting that a requirement that those tribunals should have regard to the general purposes of regulations, and take account of matters or criteria specified in such regulations, in order to preserve the orbital powers of those tribunals in wage-fixing matters), and that provisions relating to general increases might have been better provided for by amendment to the General Wage Orders Act.

Finally, immediately prior to the commencement of the second reading, the CSU approached the Government (hitherto not consulted either) and expressed their concern about the legislation and their desire to be consulted during the discussions that were to follow the passing of the Bill. Accordingly, the Minister of Labour, Mr Bolger, gave the CSU an assurance on behalf of the Government that they would be consulted and would not be forgotten.

VI EVALUATION OF CONTRIBUTION AND INFLUENCE

(i) Government Departments

Departmental officials would appear to have been of major importance in the consideration and evaluation of wage-fixing and economic policies. Representatives of the Department of Labour, Treasury and the Prime Minister's Department were involved at all times in discussions with the Employers' Federation and with the FOL on their respective bargaining in the balance and minimum living wage proposals. Departmental officials also held independent inter-departmental talks, either at the request of the Government to evaluate policies and to prepare 'position papers', or at their own initiative to prepare the background for Ministerial advice.

Although the indications are that there was agreement as to the nature of the problem (the question of relativities, the effect of general wage orders and the question of militancy in negotiations), it appears also, however, that there was some difference in viewpoints as to how the situation should be resolved. The indications are that the Department of Labour opted for a moderate position in the interests of industrial

harmony (essentially a consultative policy), while the Treasury and Prime Minister's Department considered that firmer intervention was necessary in the interests of the economy.

The role of the Departments may be seen as primarily advisory, the decision on alternative options ultimately being a matter for political decision.

(ii) Ministers

In considering the Prime Minister and the Minister of Labour, their attitudes may be seen to a certain degree as an extension of the Departmental views and their particular areas of concern. The hats of Prime Minister and Minister of Finance were both entwined in the personality of Mr Muldoon. The circumstances leading to the introduction of the Bill could be seen as requiring both political leadership and economic management. As Minister of Labour, still relatively new to the portfolio and facing other industrial issues at the same time, Mr Bolger was clearly concerned for the maintenance of working industrial relations. In the circumstances, however, it is clear that Mr Bolger had to concede that while the measures proposed had an industrial relations component, they also had a "very big economic component"(61).

Mr Bolger's attitudes in news reports appear always conciliatory ("There is always room for consultation in industrial relations" - Dominion 31.7.79), and subject to Cabinet discussion. On the other hand, the Prime Minister was more assertive, especially in his use of the media to indicate his views on the Drivers' negotiations, and in demanding contact before Cabinet Decisions (Honiara, during the debates and later during the Drivers' negotiations). Such contact and assertion obviously arises out of the interests of his portfolios, however,it would appear from the news reports quoted earlier and his demands from overseas at the time of threatened use of regulation relating to the Drivers' settlement, that the acquiescence of Cabinet was always assumed.

Indeed, an editorial in the Evening Post on 25 July went so far as to say of the Prime Minister:

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(61) - The Dominion 2.8.79.

> "He is the Government and he uses his supreme position as he alone thinks fit. Why, it could fairly be asked, is there need for a Cabinet, specially a Minister of Labour, or, for that matter, a Court of Arbitration?"

Accepting some journalistic licence, the Prime Minister's influence continued to bear, and seemed to increase through to the later Kinleith dispute in early 1980, and is still evident in the current wage negotiations.

It may therefore be assumed that the "very big economic component "in industrial relations was a major issue in the Remuneration Bill, and that the Prime Minister had the major influence in the political decision. As Dr Rod Alley, political scientist, noted in an interview following the television broadcast "Just before going on air, we called Mr Bolger for his reactions to this, and he struck me as someone rather bemused by the whole thing. He said "talk to the Prime Minister", and we said well obviously you're the Minister of Labour, what's your view of this, and he didn't have very much to say. I thought that response, as he read his newspaper in the House as the thing was being announced tonight was fairly indicative."(62) It would appear that one of Mr Bolger's earlier guidelines to good industrial relations to talk even when progress seemed impossible had now been superceded by the public interest in the economy.

(iii) Cabinet

It would appear, however, that there may have been other points of view in Cabinet. The proposals were studied by the Cabinet Economic Committee, and it would appear from the debates in the House that agreement was reached on the Remuneration Bill only on the basis of a halting measure in order to work out a wages policy that might suit all parties and the economic interest. Such points of view may be evidenced in the Cabinet's handling of the Drivers' dispute (avoiding the use of regulation) and the support for the current policy discussions.

To that extent then, Mr Bolger, in particular, and the Deputy Prime Minister, Mr Talboys (as evidenced by his statements to the Press and his debate in the House to the effect that

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(62) - Transcript, Audio Monitor Ltd. Checkpoint 24.7.79.

"nobody had said that the Remuneration Bill was the answer"(63)) may have played an important moderating role in Cabinet deliberations. In light of Departmental discussions with close Ministerial involvement, the swift course of events at the time, and in light of subsequent events (regulations and policy discussions), the ultimate political decisions on the course and content of action must be attributed to the full Cabinet.

(iv) Caucus

In light of the development of the proposals and the strength of the debating team, the extent of Caucus influence at the introduction of the Bill would appear to be minor, presumably as a sounding board for reception of the Bill (i.e. a confirmation process to present a united government front), and as a method of informing MPs and the Party of the need for such legislation. As evidenced by the debate continued in the House during the television and radio broadcast, Messrs Falloon and T. de V. Hunt argued very much along the lines of the general principles and attitudes of the Government, as contained in the Prime Minister's announcement.

Variables in the degree of Caucus influence, however, are the depth of relevant information and the degree to which MPs as representatives of the Party may accept proposals. The influence of Caucus, however, proved greater later in the day (indicating minimal caucus influence in the Remuneration Bill) when it "privately rebuked Cabinet" for its handling of the Kinleith dispute(64).

The Kinleith regulations had been referred to the Statutes Revision Committee which had comprised other than Cabinet Members among its numbers. The Committee received a comprehensive Department of Labour report which (while the Prime Minister was disclosing a list of prominent trade unionists who were Socialist Unity Party Members, and associating them with the Kinleith dispute)(65) indicated that the dispute was based on legitimate industrial issues (viz.parities). Further, the Committee criticised the effect of certain of the regulatory powers in the Bill(66).

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(63) - "Press" 9.8.79.
(64) - Dominion 11.7.80.
(65) - "Press" 18.3.80. Dominion 26.3.80.
(66) - Statutes Revision Committee, report to Parliament 10.7.80.

Despite questions of full and detailed information and assessment of policy alternatives by Caucus in July 1979, it is still debatable whether Caucus, in light of the circumstances at that time, would have exercised any determining influence over the Cabinet decision.

(v) Parliamentary Counsel

Within the process outlined, it is understood that the Parliamentary Counsel was given general written and verbal instructions by the Department of Labour. The matter was obviously political, and to that extent Parliamentary Counsel would have had limited power to influence content, the legislation itself reflecting powers the Cabinet considered politically appropriate for the circumstances.

In light of draughting practices since the Algie Report (1962), the extent of Executive power contained in the Bill, and the consequential effect such power may have had on arbitrating bodies, the legislation must have placed Parliamentary Counsel in an invidious position.

The Public Issues Committee of the Auckland District Law Society (24 October 1979), the Statutes Revision Committee (the Kinleith Regs), Professor Szakats (Professor of Law, Otago)(67), and Tony Black (Editor, NZLJ)(68) have since criticised the provisions of the Act. Issues covered by this representation of legal interest include -

(1) the question of wages policy and differences in philosophy, being matters for Parliament to debate, with interested bodies having an opportunity to participate and comment,rather than such matters remaining entirely at the discretion of the Executive;

(2) the subjectively worded powers vested in the Governor General erode the power of the Courts to check on whether regulations made are within the law;

(3) the power of the Executive to override by regulation conflicting procedures in other Acts, and to influence or prevent particular hearings by statutory Courts and Tribunals, strikes against democratic and parliamentary principles.

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(67) - [1979] NZLJ 390
(68) - Editorials [1979] NZLJ Nos 15, 16.

Indeed, Tony Black concluded that "the best that can be said of the Economic Stabilisation Act is that it is one of the heavier avian corpses hanging about the neck of open government. The Remuneration Act will be another."(69)

It may be noted that in April 1980 the Minister of Justice, the Hon. J. K. McLay, announced new procedures for the making of statutory regulations. These procedures provide for a full report to Cabinet on consultations, level of disagreement, purpose and justification, and further, that at least 14 days be allowed between the date of making the regulation and the date on which they come into force. As Tony Black has noted in respect of that delay, however, "will economic regulations prove an exception to the rule?", and, further, "But what is needed even more urgently is a means of ensuring that regulations remain as subordinate legislation and are not used, as happens all too frequently, in place of principal legislation. So how about following up with repeal of the Economic Stabilisation Act 1948?"(70) Such comments as to the scope of regulations would likewise apply to the Remuneration Act 1979.

In light of the above comments and subsequent developments, it would appear clear that the Parliamentary Counsel was not an influencing factor in the structure of the Bill, rather the Bill reflected an instruction to draught legislation giving the Government similar regulatory power in relation to wage-fixing, as it has in relation to the general economy under the Economic Stabilisation Act.

(vi) The Opposition

The role of the Labour Party in the Remuneration Act was limited to providing argument in the House. The Labour Party argued chiefly against the general principles contained in the Bill, rather than a detailed clause by clause analysis that may have (as the amendments to Clause 6 indicated) strengthened the Bill. This, of course, leaves an opposition in a difficult position, namely, permitting details to pass rather than suggesting amendments which may either indicate a tacit if partial acceptance of the Bill, or which may indicate an area which, although clarifying the effect of provisions, may lead to a redrafting to the advantage of the Government, and to the disadvantage of those to be subject to the legislation.

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(69) - ibid.No.15(21/1979).

(70) - 1980 NZLJ 162-3.

A deputation of the Party's Labour Committee (which provided the debators and the strategy of the Opposition debate) met with the FOL on the day following the broadcasts. Mr Rowling had supported the minimum living wage concept, but the Labour Party's policy, other than an indication of respect for the principles of free wage bargaining and support for the GWO system, was never argued as an alternative policy. The approach of the Opposition was clearly to vote against the principle of the proposed legislation.

In considering the legislative process, the Remuneration Act reflects the little power an opposition has to make its views heeded in the decisions of Government, especially when the issues involved are political issues arising out of competing policies propounded by the respective protagonists involved. In such circumstances the Opposition is therefore no doubt prudent in arguing on the basis of principle, especially where the matter may be best resolved by the inter-action, with the Government, of those protagonists concerned, and especially when the Opposition itself may not fully sympathise with the views of those protagonists.

In the face of the public appeal that the Government had made (the need for moving against strong-arm tactics and the economic effects of the FOL's policies), on account of the Government's decision to legislate with speed, and because of matters of political expediency (if the Opposition supported interference, it would alienate the union movement, and, if the Opposition supported the FOL policies, it may be seen as lack of political leadership in wages policies, and may be seen as sanctioning negotiation by force), the Opposition exerted little influence, although it may be seen to have performed well its role as Parliamentary watchdog on potentially oppressive legislation.

(vii) Central Organisations

Although deeply interested, there was little contact between the Government and the Employers' Federation, and the FOL. Further in the later stages of July relations between the FOL and the Employers' Federation had cooled, the FOL seeing the Employers moves in the Drivers' negotiations as being counter-productive to early settlement. There was certainly no consultation by Government as to bringing in

the legislation. The provisions of the Act would clearly indicate that. Likewise, the Prime Minister's remarks in an interview after his broadcast -

> "Jim Bolger got hold of Jim Knox at some kind of a cocktail party (actually the opening of Watersiders' Federation new building in Wellington), about half past five or six o'clock tonight and had a little chat with him and told him what we were going to do... and that's about as far as it goes." (my brackets)(71)

The Employers' arguments were known, and in light of the minimum living wage application the Government had no doubt considered that no agreement could be reached on wage-fixing (either in or out of the IRC) before the wage round got fully underway in September.

The coincidence of the application of the 4.5% general increase (3 September) and the new wage round was no accident. Further, the Prime Minister was aware that certain unions had depended on percentage increases (e.g. tradesmen, engineers) to maintain relativities, and therefore that the minimum living wage application would not give them a similar guarantee. The further indication by the Prime Minister of an acceptable 10% rise in the wage round, therefore, provided what may be seen as a sweetner to the union movement, and may be seen as an important factor in the lack of an assertive FOL response on the introduction of the Bill. Given Walkland's comment that "The most effective time for groups to operate is after a decision to legislate has been taken, but before a Bill has actually been drafted and published"(72), but taking into account the complexities of the issues that required resolution, it is unlikely that the FOL would have changed the resultant course of events.

The approach of the CSU to the Government indicates the degree of consultation with that major bloc of employees who, by virtue of Clause 3 of the Bill, were to be affected by its provisions. It may be said that Government consultations with parties involved was inverse to the actual scope of the Remuneration Bill.

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(71) - Audio Monitor Ltd. Eyewitness 24.7.79.
(72) - Walkland S.A. The Legislative Process in Great Britain G. Allen & Unwin, London 1968, p.38.

The central organisations then did not have any direct influence in the content of the legislation (despite the Employers' submissions). However, the known Employers' proposals may clearly be seen as an element of support.

(viii) The Media

The Media played an important role in the announcement of the legislation. The Broadcasting Corporation treated it as a news item, Mr Cross stating that -

> "On a Government action of considerable national importance affecting every New Zealander, broadcasting enabled the community to be fully and intelligently informed on all known significant facts of the issue".(73)

The broadcast,therefore, was not an emergency broadcast under section 36 of the Broadcasting Act.

The delivery to the BCNZ of a defmation writ (in respect of comments Listener Columnist Tom Scott had made about the Prime Minister in relation to the PSIS 'collapse') on the same day as the Prime Minister approached Mr Cross with his request, may be seen as an accident of history. Later, Journalist Warren Mayne of the Dominion was served with a writ of defamation at the suit of Mr Cross, following an article to the effect that Mr Cross may have been under undue pressure as a result of the coincidence of request and service.

While granting the Prime Minister's request, Mr Cross also wrote to the Minister of Broadcasting prior to the announcements, stating the Corporation's "right and proper role".(73). (Later the BCNZ redrafted its procedures in respect of such requests,(the 'announcement' clearly falling within them). Further, Mr Cross, following a complaint from Mr Rowling, offered Mr Rowling equal time on television the next night. Mr Rowling refused, not wishing to become an 'accomplice after the fact' in debating matters on television which should be aired in the House.

The episode must, however, raise the fact that the Media can be an important tool for the Government to inform the public and interested Parties of its actions without consultation with them, and without Parliamentary debate.

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(73) - reported in NZPD Vol.424, p.2160.

Generally, radio and T.V. presented interviews and research type commentary. In the daily newspapers the statements of all parties received attention, and were given prominence according to editorial slant. A reading of the newspaper reports, as indicated, reflects the growing Government concern with the events of July 1979, in light of earlier statements it had made on matters of the economy and industrial relations. The argument against such broadcasts is that the announcement, therefore, could have been made in the ordinary manner, to be reported according to the newsworthiness as decided by the 'fourth estate', rather than by a decision by the politicians as to how the media should report particular issues.

VII CONCLUSIONS AS TO INFLUENCE

The Bill may be seen as arising out of the Government's concern at the effect on the economy of the July 1978 General Wage Order, together with the increased wage increases in the 1978/79 wage round.

The "trigger" would appear to have been a combination of what were seen to be militant unions obtaining high wage settlements as a result of threatened industrial action, and the application for a minimum living wage by the Federation of Labour. In light of statements made by the Prime Minister, and the Minister of Labour, it may be argued that the Government would most likely have taken some form of legislative action in either case.

The "trigger" may firstly be seen purely as an economic issue in that the Government argued that high wages spurred the rate of inflation in an economy,which it was argued, could not sustain them. Secondly, the matter may be seen as a question of the relativities of craft-based employee unions. In this respect both the increases gained in wage rates in the award round, and the concept of a minimum living had ramifications for the continuance of relativities within the wage-fixing system. Added to both these factors is the issue of compensation for the rise in the cost of living, and whether such compensation in itself is an integral or additional factor in setting wages.

The matter then is a question of a wages policy within which the Parties may achieve an agreeable curtailment of the absolute freedom of the other, whilst achieving benefits mutual to both Parties, all within limits which the economy may sustain. It may therefore be argued that in light of the indications that the structure of free wage bargaining,as it existed in

July 1979 , was no longer capable of achieving those objects,that the Remuneration Act represented:

(a) The permitting of the process of free wage bargaining to continue, but giving to the Government the power of selective intervention, and

(b) a halting device to allow for the development of a wage-fixing structure.

The current negotiations would certainly appear to confirm that view.

It would appear that the FOL application for the minimum living wage forced the issue, however, and made action by the Government in light of its economic policy imperative. Caught in the situation of both employer and employee organisations producing separate policies and caught in the situation of itself considering a solution to the wage-fixing problem (the inter-Departmental discussions), it would seem that the Government deemed that decisive, rather than consultative action, was required. In light of the course of events, and the issues involved, it would appear that the Remuneration Act primarily arose out of industrial and economic concerns, but that the economic factor was certainly decisive. The Remuneration Act however was very much an act of Cabinet.

VIII EVALUATION OF THE LEGISLATIVE PROCESS

"The extent of the Government's consultation with groups is a function, not of its political weakness, but of its political strength."(74)

Secure in its monopoly of political authority, the Government, as Walkland notes, can afford to consult group and Parliamentary opinion widely, knowing that ultimately its view of the matter may prevail. Although in the field of industrial relations the Government may have to steer a course dependent upon the actions and policies of the major protagonists in the field, consultation with such groups seen to have a right to influence policy is more likely to gain the widest possible consent for a government policy, before the initiation of formal legislative procedures.

The Employers' Federation had affirmed its view that free wage bargaining was the best structure for wage-fixing, but that the structure as at May 1979 was incapable of gearing wage-fixing movements to the economy. Further, the FOL had also resolved in May to campaign for the official recognition of the minimum living wage.

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(74) - Walkland S.A. op cit; 42.

Mr Bolger, the Minister of Labour, had earlier indicated in his guidelines to good industrial relations that there must be a commitment to talk, even where there appears to be no progress towards a solution, that employers and employees alike share the responsibility of the Government to find solutions, and that the problems in relativities do not disappear by wishful thinking or merely by legislating. In light of such concerns, and in light of the Government's concern at the events of June and July 1979, it may be argued that the Government was in a position to formally consult the parties to map out the wages policy that it had declared was required. The policy of taking action depending on what happens certainly militates against gaining the co-operation of all parties otherwise unsure as to what the Government policy actually is.

Because of circumstances (the minimum living wage application and continuing industrial action), it may be argued that such consultation at that time was impossible. There are of course arguments to the contrary, namely, the right of the Government to be heard in the Arbitration Court, the fact that industrial action is part and parcel of a democratic society, and in light of the resolution arising out of the IRC and the current negotiations, that discussion with employers and employees was a possibility, either before or after introduction of the Bill.

As indicated, however, the Remuneration Act itself did not impose wage controls, nor regulate wages, nor change the then system of free wage bargaining. It did, however, repeal the General Wage Orders Act 1977, but otherwise had no legislative effect on wage negotiations until such time as regulations under the Act were made by Order in Council.

In this respect the Act may be seen to be an Act of'political law'rather than 'legal law' ("A rought test of whether we are dealing with 'legal law' or only 'political law' might be: which is more important? What the Statute actually says, or the fact that the Statute was passed? Was the Government in question making law, or was it staging a political event?")(75). The concept of 'political law' then, extends further than what the legislative provisions state, and in this light the legislation may be part only of a more comprehensive statement by the Government.

Such a statement may include re-emphasis of the political authority of the Government, as in an interview following the Broadcast:(76)

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(75) - Policing The Crisis - Mugging, The State, and Law and Order. S. Hall and oths. p.84.
(76) - Audio Monitor Ltd, Eyewitness 24.7.79.

Anncr: Mr Muldoon, you have on a number of occasions talked about de-registration (Muldoon interjects with "ah yes, ah yes"). You've been concerned with unions who are going for too much, and you've made it very clear that you are prepared to use a big stick.

Muldoon: Yes, indeed. No shadow of doubt about that... because we will not accept this idea of strike action, to gauge out pay settlements that the less militant unions can't get. And, I don't think the public want to see that.

Anncr: This is going to safeguard something for the weak unions and hold the strong unions down?

Muldoon: Oh, I wouldn't say hold them down... perhaps you know, wag the little finger at them.

Later in a talk to an Employers' Federation meeting on 25.3.80, the Prime Minister referred to SUP involvement in the New Zealand Forest Products dispute in which the Government had made regulations under the Remuneration Act:

> "The SUP is still in the act - but they're not going to get away with it... it is important for all of you to understand that there is no easy way with these people, and I think the public are starting to realise that as well".(77)

Another possibility is that the Government is putting together in a piecemeal way "the necessary legal constraints to be applied at some particular future time"(78), either in the interests of attracting foreign investment to New Zealand, or to provide the necessary power for the Government to pursue its economic and energy policies without such interference as is considered disadvantageous to the future well-being of New Zealand. In this light the Remuneration Act may be considered alongside the Fishing Industry (Union Coverage) Act 1979, the later Commerce Amendment Act 1979 introducing penalty provisions for employers agreeing to unjustifiably high wage settlements and the later National Development Act 1980.

Whatever interpretation is made of the circumstances of the introduction of the Bill (Mr Rowling thought it should have been called the "Recovery before the National Party Conference (if possible) Bill")(79),

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(77) - Dominion 26.3.80.
(78) - Mr Douglas, Sec.FOL, in interview.Salient VUW 28.6.80.
(79) - "Post" 25.7.79.

it is clear that the Remuneration Act is a statement to the effect that the (then) structure of wage-fixing required reconsideration and that the question of a wages-fixing policy should be a matter for tripartate discussions between the Government, the Employers and the FOL.

Following the wages policies talks of 1980 (a commitment by the FOL arising out of the Kinleith settlement), and Government agreement on repeal of the Remuneration Act, and reforms to the wage system incorporating the viewpoints of both the FOL and the Employers' Federation, it may be said that the economic factor in industrial relations is indeed an important and large factor, but also that industrial relations is an important factor in economic matters.

The Remuneration Act, therefore, as both a legislative statement and a political statement, points to the desirability of Government consultation with interest groups, particularly those recognised as having the right to influence policies affecting the public interest, prior to the commencement of formal legislative procedures. Further, the Act also points to the desirability of debating in Parliament differences in philosophy and policy, and the actual merits of particular enactments. Conversely, the Remuneration Act points to the fact that the Government may disregard such facets of the legislative process and place in the Executive power to control by regulation, passed in the peace and quiet of the Cabinet Room, as it appears necessary or expedient to the Executive.

The Remuneration Act 1979 has been a poor reflection of the legislative process, and,consequently on those grounds,rather than as part of a wages policy deal, may be seen as fit for repeal.

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