They should insist first that the legislature set out their purposes as fully as possible and secondly that administrators develop and make known the confinements of their discretionary power. Windeyer J. in the present case emphasized the importance of the Commissioner formulating and making known the considerations by which he is guided in exercising his discretionary authority.

Though the decision in the present case may be unobjectionable it involves issues which will need to be investigated more fully in the future.

MARGARET WIMPOLE

EX PARTE THE ANGLISS GROUP[1]

Administrative law—The Commonwealth Conciliation and Arbitration Commission—Natural justice—Bias

The respondent, the Australasian Meat Industry Employees' Union, lodged an application with the Commonwealth Conciliation and Arbitration Commission in June 1968 to vary the Federal Meat Industry Interim Award 1965. The application would, if adopted, operate to remove any differences in the rate of wages payable under the award to males and females in respect of the same classification and work. In support of this application, the respondent referred to the National Wage case of 1967. In that case the Commission adopted the concept of a total wage but noted that apparent anomalies and different total wages existed between males and females because of the complex history of basic wages, particularly those for females. On its own initiative the Commission followed the *Clothing Trades* decision and granted equal margin increments to adult males and females doing equal work. It also invited the unions, the employers and the Commonwealth to give careful study to the question of the gradual implementation of equal pay.

The applicant, the Angliss Group, sought a writ of prohibition to restrain the President and a Deputy President of the Commission from sitting as members of a Bench to hear and determine the respondent's application on the grounds that the members of the Commission had sat on the 1967 National Wage case and that it was therefore reasonable to suspect that they had prejudged an issue involved in the present application (namely the equal pay question); that this application had been in response to the Commission's invitation to the unions, employers, and the Commonwealth to consider this question; and that justice would not appear to be done if Their Honours were members of the Bench.

The High Court, in a joint judgment, dismissed the motion for prohibition.

Natural Justice

The Court recognized that the principles of 'Natural Justice' applied to the Commission and its members but it pointed out 'that these principles are not to be found in a fixed body of rules applicable inflexibly at all times and in all circumstances'.[2] The Court relied *inter alia* on the observations of Kitto J. in *Mobil Oil Australia Pty. Ltd. v. Federal Commissioner of Taxation*[3] where His Honour noted 'the impossibility of laying down a universally valid test . . . in the infinite variety of circumstances that may exist . . .' and that

[1] (1969) 43 A.L.J.R. 150. High Court of Australia; Barwick C.J., McTiernan, Kitto, Taylor, Menzies, Windeyer and Owen JJ.
[2] (1969) 43 A.L.J.R. 150, 151.
[3] (1963) 113 C.L.R. 475, 504.

'[w]hat is fair in a given situation depends upon the circumstances'. The same line of reasoning was adopted by Lord Reid in *Ridge v. Baldwin*[4] where His Lordship said:

> insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle [of natural justice]. What a minister ought to do in considering objections to a scheme may be very different from what a watch committee ought to do in considering whether to dismiss a chief constable.[5]

The High Court then looked at the role of the Commission: it was a statutory body, it did not sit to enforce existing private rights but rather 'to develop and apply broad lines of action in matters of public concern resulting in the creation of new rights and in the modification of existing rights'.[6] Thus, although technically an administrative tribunal, the Commission's powers under the Act and its functions are sufficiently 'judicial' to be caught by the rules relating to bias. There are two types of bias, the pecuniary bias and the 'real likelihood' of bias. This case is concerned with the latter aspect of bias.

Tribunals, courts and judges are entitled to their own philosophies and opinions and they can have stated rules of policy.[7] The High Court recognized that for the Commission to function properly it was entitled to express views on the desirability of change within its relevant fields of inquiry. The problem lies in determining when opinions and policies amount to more than that and can be said to be tainted by bias. One earlier test, that of a 'real likelihood' of bias, was stated by Devlin L.J. in 1960 in *R. v. Barnsley Licensing Justices Ex parte Barnsley and District Licensed Victuallers' Association*,[8] where His Lordship said:

> [w]e have not to inquire what impression might be left on the minds of the present applicants or on the minds of the public generally. We have to satisfy ourselves that there was a real likelihood of bias—not merely satisfy ourselves that that was the sort of impression that might reasonably get abroad.[9]

However, a newer approach[10] is that not only should justice be done but it should also be seen to be done. In *Lannon's* case, the Chairman of the Fair Rents Assessment Board, a solicitor, had been acting for certain tenants in disputes against the landlords, and he had to give a decision on the proper rent for a similar block of flats to those in which he was living with his father. It was not alleged that there had been actual bias but the Court of Appeal held that he was disqualified from sitting on the Board. Lord Denning noted that

> the court does not look at the mind of the justice himself . . . The court looks at the impression which would be given to other people . . . There must be circumstances from which a reasonable man would think it likely or probable that the justice . . . would . . . favour one side unfairly at the expense of the other.[11]

[4] [1964] A.C. 40.
[5] *Ibid.* 65.
[6] (1969) 43 A.L.J.R. 150, 151. See also *R. v. Torquay Licensing Justices; Ex parte Brockman* [1951] 2 K.B. 784.
[7] *Cf.* the problems of United States judges when accused of bias, or likelihood of bias. They often differ from the situation in this case.
[8] [1960] 2 Q.B. 167.
[9] *Ibid.* 187.
[10] *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon* [1968] 3 W.L.R. 694.
[11] *Ibid.* 707.

The High Court explicitly accepted this reasoning and said that

> [t]hose requirements of natural justice are not infringed by a mere lack of nicety but only when it is firmly established that a suspicion may reasonably be engendered in the minds of those who come before the tribunal or in the minds of the public that the tribunal or member or members of it may not bring to the resolution of the questions . . . fair and unprejudiced minds.[12]

The interesting question which arises is has the High Court, in dismissing the motion for prohibition, applied the test of the mind of the reasonable man (*Lannon's* case), or of the reasonable court (*Barnsley's* case)?

At first glance it would appear that they have followed the older view. The High Court said that the President's former statement

> was clearly open to the inference that the minds of the members of the Commission . . . tended to favour the adoption of the principle of equal pay so soon as the economic and industrial situation of the community would permit . . .[13]

But they noted that the existence of such a general tendency of mind would not justify a 'reasonable apprehension' that a member of the Commission could not fairly approach a matter before it. This was so because the Commission's actions in the 1967 National Wage Case did not *prima facie* mean that it was deliberately attempting 'to implement pro tanto a policy of equal wages'.[14] Rather, the Commission was aware of the enormous implications involved in such a policy and it had made an open invitation to those concerned to fully debate the issues concerned. The High Court noted that it is

> the duty of the members of the Commission always to have and to display a willingness, indeed an anxiety, to give full and fair consideration to every relevant argument that may be addressed to them for a revision or even an abandonment of announced opinions.[15]

Does this imply (a) that the reasonable man would expect a higher degree of impartiality from the Commission in these circumstances than he would of a lawyer, in the position of Mr. Lannon, sitting on a fair rents board, and (b) that the presumption that the higher the court, the harder it is to prove bias, is firmly entrenched in Australian law?[16]

M. LEAH FREEMAN

TAYLOR v. DEPUTY COMMISSIONER OF TAXATION[1]

Completion of gifts in equity—Resolution of Milroy v. Lord[2]

> I take the law of this Court to be well settled, that in order to render a voluntary settlement valid and effectual, the settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him.

[12] *Ex parte The Angliss Group* (1969) 43 A.L.J.R. 150, 152.
[13] *Ibid.*
[14] *Ibid.*
[15] *Ibid.*
[16] See Wade, Note, (1969) 85 *Law Quarterly Review* 24 for an interesting discussion about the test of 'real likelihood'.
[1] (1969) 43 A.L.J.R. 237. High Court of Australia; Barwick C.J., Taylor and Menzies JJ.
[2] (1862) 4 De G. F. & J. 264; 45 E.R. 1185.