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Sumptuary law by any other name: manifestations of sumptuary regulation in Australia, 1901-1927

Caroline Irene Dick
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Faculty of Law, Humanities and The Arts

**SUMPTUARY LAW BY ANY OTHER NAME:
MANIFESTATIONS OF SUMPTUARY REGULATION
IN AUSTRALIA, 1901-1927.**

Caroline Irene Dick

**This thesis is presented as part of the requirements for the
award of the Degree of Doctor of Philosophy
University of Wollongong**

June 2015

ABSTRACT

It is generally considered that sumptuary law is an archaic form of governmental intervention that targeted the personal lives of people living in the early modern period in Europe, and has no modern significance. This thesis examines the post Federation period, between 1901 and 1927, to reveal that the sumptuary impulse was alive and well in modern Australia. This impulse was now transmuted by a new patrician elite into a form of social and legal regulation in order to control the clothing and entertainment choices of working Australians. The impulse was sustained through taxation and fiscal legal mechanisms (ie: tariffs), wage cases, and through the agency of wartime regulations. All of these measures recall the sumptuary laws of early modern Europe.

This period saw the fabric of Australian society undergo enormous social and political change. To a large extent, this change was prompted by the availability of unprecedented economic opportunities and personal freedoms. An increase in the attraction and availability of imported luxuries led the government to increase tariffs as part of their settled policy of protectionism. This thesis argues that, during this period of socio-economic development, protectionism shared many of the discursive features of the sumptuary laws of the early modern period. This association became even more evident during World War I, when government often relied on moral regulation to constrict the consumption practices of the Australian people to address wartime shortages and to provide for the military needs of the Empire.

This thesis accepts that protectionist policies did not *aim* to control the moral and personal behaviour of the individual but rather sought to protect nascent or struggling domestic industries. It was in the *effect* of these policies where the sumptuary impulse was apparent. By the beginning of the 1920s, this policy of protectionism, with frequent increases in tariffs on imported clothing, changed the language and method of the sumptuary impulse into one of rationality. These types of measures existed in a direct line back to the early sumptuary laws, one facet of which sought to protect industries. However, by the mid-1920s, the association began to wane when moralisation served a secondary role in protectionist discourse. By 1927, the regulatory objective became pure rational protectionism rather than the moralisation that was evident throughout the first two decades following Federation.

THESIS CERTIFICATION

CERTIFICATION

I, Caroline Irene Dick, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, Humanities and the Arts, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Caroline Irene Dick

26 June 2015

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I dedicate this thesis to my late darling mother Beryl Kinch (nee Aroney, born Alenie Moustakas). My mother was born in 1919, during the period examined by my thesis. As a result, the early post-Federation period holds a great significance for me. Mum was a bright and intuitive lady who had little but gave a lot.

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WORKS PUBLISHED IN THE COURSE OF THIS RESEARCH

Parts of this thesis are based on material that has been published in peer reviewed journals during the course of this research. The details are as follows:

Chapter 4 – Caroline Dick, ‘Taxation in Australia up until 1914: The Warp and Weft of Protectionism’ (2014) 12 *eJournal of Tax Research* 104

<<https://www.business.unsw.edu.au/research/publications/atax-journal/past-issues>>.

The following are non-peer reviewed conference papers/presentations delivered during the course of this research:

Caroline Dick, ‘Dressing Up with Foucault’ (Paper presented at Work in Progress Conference, University of Queensland, July 2010).

Caroline Dick, ‘Wearing the Burden: Tariff Regulation on Clothing and its Effects on the Working-Man in Australia, 1921-1927’ (Paper presented at the Law and History Conference, Melbourne, 13–15 December 2010).

Caroline Dick, ‘Clobber: The Paradox of Protectionist Tariffs on Clothing in Australia, 1921–1927’ (Paper presented at the 22nd Annual Conference of the Australasian Tax Teachers’ Association, Melbourne Law School, 19–21 January 2011).

Caroline Dick, ‘Not Just Another Australian Couple’ (Paper presented at the Ceremonies of Law Conference, University of Wollongong, 7–9 December 2011).

Caroline Dick, 'Not Just Revenue Raising: Taxation as a Way of Regulating Dress' (Paper and Poster presented at the 23rd Annual Conference of the Australasian Tax Teachers' Association, University of Sydney, January 2012).

Caroline Dick, 'Easy Money: The Australian Tariff from 1915–1930 (Paper presented at the 24th Annual Conference of the Australasian Tax Teachers' Association, University of Auckland Business School, 23–25 January 2013).

Caroline Dick, 'Testing the Fabric: Prescribing Female Dress in Early "Living Wage" Cases' (Paper presented at the Annual Postgraduate History Conference, University of Sydney, 27–28 November 2014).

Caroline Dick, 'The Mother(land) Leads the Way: A Sumptuary Impulse Bound Up with Slouch Hats and Khaki' (Paper presented at the 33rd Annual Australia and New Zealand Law and History Society Conference, Coffs Harbour, 10–13 December 2014).

Caroline Dick, 'Sumptuary Law at the Movies: the *Entertainments Act 1917* (Cth)' (Paper presented at the 27th Annual Conference of the Australasian Tax Teachers' Association, University of Adelaide, 19–21 January 2015).

1 INTRODUCTION

Sumptuary laws did not so much ‘die’ as undergo a process of transfiguration or metamorphosis such as the original is barely recognizable in the resultant, just as the butterfly can barely be imagined from the chrysalis.¹

1.1 Purpose of the chapter

This chapter introduces this thesis, sets out the thesis argument and marks out its place in the literature in the field of sumptuary law.² This literature serves as the backdrop to the original research conducted as part of this thesis. It lays out the thesis’ framework, and sets out its scope and limits. It also outlines its structure and methodology. In doing so, it sets out how the sumptuary impulse, reminiscent of the sumptuary laws of the early modern period in Europe, re-emerged in the early years of post-Federation Australia in the transformed sense as identified by Alan Hunt.

The period under examination, between 1901-1927, shows that the sumptuary impulse was alive and well in modern Australia. This impulse was now transmuted by a new patrician elite into a form of social and legal regulation in order to control the clothing and entertainment choices of working Australians. The impulse was sustained through taxation and fiscal legal mechanisms (ie: tariffs), wage cases, and through the agency of wartime regulations. All of these measures recall the sumptuary laws of early modern Europe. As will be seen, the timeframe is not accidental. It begins with Federation and ends with the move of government to

¹ Alan Hunt, *Governance of the Consuming Passion: A History of Sumptuary Law* (MacMillan Press, 1996) 361.

² From the Latin *sumptuariae lex*.

from Melbourne to Canberra, and with the emergence of a more formal institutional setting in which government took place. It also charts the impact of legal and extra-legal actors who exerted influence on law and policy in the period, especially the Melbourne-based elite that sought to control social movements, economic policy and the law. This interconnected set of actors spoke to the sumptuary impulse revealing that, whilst sumptuary law had been rescinded, its pull remained alive within Australian society and law during the post-Federation period.

1.2 Introduction to this thesis

This thesis examines how ideas based within long-discarded sumptuary laws re-emerged in Australia in the period 1901-1927. This thesis argues that during this period, many of the laws, policies and interventions, successful and unsuccessful, were aimed at regulating the private and public lives of the Australian people through interventionist processes that were closely akin to the interventionist sumptuary laws of the early modern period. These measures were often exercised through seemingly rational policies that were under the guise of the war effort, wage management, and economic policy, but were also practically designed to interfere in, and regulate, the public and private social and economic lives of the population.

But there was something different about this population that frustrated some of these interventions. Unlike the populations of early modern Europe, or indeed some of their contemporaries in Europe in the first two decades of the 20th century, Australians, including women, had suffrage. Attempts to regulate the conduct of a population who could vote meant that the sumptuary impulse was not always successful. For instance, it will be seen in chapter 6 how the Hughes government established the ill-fated Luxuries Board as part of its policy to control the importation of luxuries, especially women's apparel. It also attempted to adjust social behaviour through the imposition of taxation on amusements pursuant to the *Entertainments*

Tax Act 1916 (Cth), and when it sought to impose taxation on unmarried men; the so-called Bachelors' Tax.³ Flurries of letters to newspapers decried these interventions as a return to the sumptuary era. Other interventions into female dress also revealed that patrician women were prepared to control the desires of working class women to emulate styles of fashionable dress in a clear return to the language of the sumptuary laws of the early modern period.⁴

Later, by the beginning of the 1920s, a policy of protectionism, with frequent increases in tariffs on imported clothing, changed the language and method of the sumptuary impulse into one of rationality. These types of measures existed in a direct line back to the early sumptuary laws, one facet of which sought to protect industries, such as the English wool industry of the 16th century.⁵ This thesis argues that during this period of socio-economic development, protectionism shared many of the discursive features of the sumptuary laws of the early modern period. This association became even more evident during World War I, when government often relied on moral regulation to constrict the consumption practices of the Australian people to address wartime shortages and to provide for military needs. It is accepted that protectionist policies in Australia did not so much *aim* to control the moral and personal behaviour of the individual but rather sought to protect nascent or struggling local or domestic industries. However, by the mid-1920s, the association began to wane when moralisation served a secondary role in protectionist discourse.

The 1921 Greene Tariff⁶ and the establishment of the Tariff Board in 1922 were expected to alleviate concerns about national security and economic viability by motivating industrial development and increasing Australia's workforce.⁷ However, this was not always the case because of increased tensions between government and

³ *Income Tax Assessment Acts 1915-1916* (Cth).

⁴ See below Chapters 3 and 8.

⁵ See below Chapter 2.

⁶ This Tariff was named after Sir Walter Massy-Greene (1874-1952), the Minister of Trade and Customs in 1921.

⁷ Leon Glezer, *Tariff Politics: Australian Policy-making 1960-1980* (Melbourne University Press, 1982) 8.

the Tariff Board regarding the efficacy of imposing prohibitive tariffs to support inefficient industries at the expense of the consumer. The increased controversy over protectionism culminated in 1927 with the appointment of the Brigden Committee⁸ to report to the Bruce Government on the effects of the tariff.⁹

By 1930, the Federal Government had introduced a new taxing regime.¹⁰ It seems that by this time prohibitive tariffs were not only continuing to adversely affect the consumer but were also occasioning a substantial a loss of revenue. Government accepted that it was no longer able to depend on customs duties to raise revenue and decided to look to other more formal and dependable sources of revenue.¹¹ Faced with a budget shortfall and “a financial depression without parallel in the 30 years’ life of the Commonwealth”,¹² the Scullin Government, in 1930, introduced a sales tax of 2 ½ per cent on the sale prices of commodities sold in Australia.¹³ This manoeuvre, and the shift to rational language of formal regulatory mechanisms seemingly buried sumptuary concepts, but as Hunt suggests,¹⁴ sumptuary law will transform and metamorphose, and as will be briefly noted at the end of this thesis, it has now returned in another new guise in the 21st century.

1.2.1 The Journey

When I commenced my doctoral studies, I had planned to investigate the broad question of whether taxation on clothing had a sumptuary effect on certain sections of the Australian population. Initially, I planned to focus on researching archival material concerning the taxation of dress from Federation until 2000, when the GST regime (with its implications for private forms of regulation *vis-a-vis*

⁸ Hunt, above n 1.

⁹ Glezer, above n 7, 11.

¹⁰ *Sales Tax Assessment Act (No 2) 1930* (Cth).

¹¹ *Ibid.*

¹² Commonwealth, *Parliamentary Debates*, House of Representatives, 9 July 1930, 3888 (Mr Scullin).

¹³ *Sales Tax Assessment Act (No 2) 1930* (Cth).

¹⁴ Hunt, above n 1.

intellectual property laws) was introduced. As a taxation specialist, I had a deep interest in ‘sumptuary law’. It seemed that there might be some potential for exploring the question of whether the taxation of clothing in Australia (via tariffs on imported clothing) could have a sumptuary effect. In other words, could taxation of clothing regulate the type of clothing that certain people could afford to wear or limit what was available for them to purchase?

It became apparent through archival and documentary research that the language of sumptuary law was being used in Australia in the two decades following Federation until about 1927 when its effect began to noticeably wane. My research unearthed evidence of sumptuary-like forms of regulatory intervention sparked by the exigencies of war and by the contestation over female dress in early female living wage cases.¹⁵ My thesis question expanded to include other manifestations of sumptuary regulation as well as the taxation of dress during the period from Federation until the move of the Commonwealth government to Canberra in 1927.

The period from the end of First World War to 1927 saw great social and economic developments surrounding the regulation of clothing: the establishment of the Tariff Board, a dramatic increase of tariffs on imported clothing and in some cases, the absolute prohibition into Australia of certain types of clothing during the period leading up to the Great Depression. The archived records of the Tariff Board’s Apparel Hearings, which took place in the mid-1920s, revealed the regulatory effect of increases in tariff duties on clothing on the lower classes and in particular, on the working man. It was through these documents that the influence of two people - one a Tariff Board member and the other his wife - on the law and policy relating to the clothing choices of working people became apparent. This couples’ influence was both extra-legal and informal as well as formal and influential.

Herbert Brookes, an inaugural member of the Tariff Board who sat on the Board from 1922 until 1927, was one of these members of the Board who recommended that tariffs on imported goods such as machinery, clothing and luxury

¹⁵ See below Chapter 5.

items be increased.¹⁶ He was well connected by his marriage to Alfred Deakin's daughter, Ivy and his political and social network was extensive and powerful. The Melbourne-based Herbert and Ivy Brookes were involved in the political, economic and social movements of their time. Ivy was a highly influential advocate for patriotic causes and was involved with socio/political organisations such as the Housewives Association. The story of this couple now sits as a thread through this thesis, their influence cutting across the time period of the study as exemplary exponents of the sumptuary impulse that shaped law and non-legal regulatory mechanisms of this era.

1.3 Originality and significance of this study

This thesis shines a new light on the forms of law that took shape in the first three decades of a federated Australia. It reveals how seemingly rational law returned to ideas based on sumptuary concepts, now not exercised by an undemocratic ruler, but through the actions of patrician and elite members of the community over other less well-off individuals. In doing so, it brought class and economic distinctions within the seeming egalitarian character of the Australian polity, by limiting and/or discouraging access to luxury items.

The thesis reveals the attitudes underpinning the law of this period. It shows the gendered effects of Federal protectionist taxing policies, the prescriptive regulation of female dress in early wage cases,¹⁷ and a number of war-time measures, some successful and others not, were unequivocal sumptuary projects.¹⁸ The thesis reveals material that has been previously unexamined, such as Prime Minister

¹⁶ See below Chapters 3 and 8.

¹⁷ Gail Reekie, "Decently Dressed? Sexualised Consumerism and the Working Woman's Wardrobe 1918-1923" (2006) 61 *Labour History* 42. Gail Reekie has examined the debates before the NSW Board of Trade about what constituted appropriate attire for working women.

¹⁸ Including the establishment of the Luxuries Board in 1917 and the enactment of the *Entertainments Tax Act 1916* (Cth). The Anti-Shouting laws were proposed in the last years of the war but were never enacted.

Hughes' personal and confidential files concerning the establishment of the Luxuries Board.¹⁹ Furthermore, most of my research derives from previously unexplored archival material and newspaper articles accessed through the online Trove database. This material yielded new connections between government policy and the sumptuary imperative.

As a result, the thesis adds to the present conventional account of Australian tax history. It demonstrates that the protectionist objectives of early tariff policies were often accompanied by sumptuary imperatives. It reveals that during the early decades following Federation that the logic and practices behind the taxation of dress were remarkably similar to sumptuary regulation: taxation not only underpinned protectionism and generated revenue but it also regulated social behaviour. This study shows that taxation acted as a powerful, intrusive and often inequitable tool to effectively modify or discourage taxpayers' behaviour to reflect both government policy objectives, as well as to act as a device to preserve a hierarchy of social place or status that is usually marked by wealth, power and class.

This thesis also goes some way to unpick the past rhetoric of masculinist tariff policy and repopulates the previously narrow narrative of taxation history by [re]placing women, albeit sometimes as victims, within its discourse.²⁰ Whilst feminist scholars such as Judith Grbich, Clare Young and Miranda Stewart²¹ have done much to restore women's presence in fiscal discourse, this thesis unearths a lost account of the sumptuary effects of regulatory measures on women's lives in the early twentieth century. On the other side of the ledger, this thesis provides a fresh body of knowledge about the role that Australian institutions, such as the Arbitration Court and The Tariff Board, and individuals played in the regulation of women's dress in the early post-Federation period. At the same time, it shows that upper-class

¹⁹ See below Chapter 6.

²⁰ See below Chapters 5 and 9.

²¹ Judith E Grbich, "Taxation Narratives of Economic Gain: Reading Bodies Transgressively" (1997) V *Feminist Legal Studies* 131; Claire F L Young, "What's Sex got to do with it? Tax and the 'Family' in Canada" (2006) 2 *Journal of the Australasian Tax Teachers Association* 16; Miranda Stewart, "Are You Two Interdependent?" Family, Property and Same-Sex Couples in Australia's Superannuation Regime" (2006) 28 *Sydney Law Review* 437.

women were actively engaged as moral regulators of working class women through dress, and this thesis links the private and public connections between the Brookes' through the institutional and personal interventions into law.

1.4 Methodology and Scope of the study

1.4.1 Introduction

The thesis is framed against Genovese's concept of jurisography.²² Genovese argues that "we need more than the traditional records of law to tell an adequate history of jurisprudence".²³ She suggests that the duties that attach to the office of jurisographer "involve examining how jurisprudence was written, thought and practiced in time and place, and paying attention to how those traditions have been inherited."²⁴ As such, this thesis is a genealogical study that draws upon taxation history, social history, cultural history, legal history, biography, as well as the assumed form through which law takes place, the economic and political, in order to uncover and reveal the forms through which law is created. The thesis builds upon Hunt's contention that legal regulation and government are situated within a larger framework of moral, economic, social and political mechanisms.

Thus, whilst law "traditionally insisted on [its] own formal integrity",²⁵ a characteristic of most taxation law scholarship,²⁶ it must be recognised that to fully understand the purpose and effect of the interventionist sumptuary impulse in Australia after Federation, one must accept that law is a product of culture. Law is inseparable from the interests, goals, machinations and motivations that meld and

²² Ann Genovese, "Critical decision, 1982: remembering *Koowarta v Bjelke-Petersen*" (2014) 23 *Griffith Law Review* 1.

²³ Ibid 4.

²⁴ Ann Genovese and Shaun McVeigh, "Nineteen eight three: A jurisographic report on *Commonwealth v Tasmania*" (2015) 24 *Griffith Law Review* 1, 2.

²⁵ Naomi Mezey, "Law as Culture" (2001) 13 *Yale Journal of Law & the Humanities* 38.

²⁶ See below Chapter 4.

influence social life.²⁷ To understand the law relating to the interventionist sumptuary measures, one must appreciate that law and government policy, although open to conventional legal analysis, may be more usefully interpreted and critiqued in the context of the social and cultural world in which they arise, exist and resist.

1.4.2 Sources

The key objective of my study is to examine and assess the sumptuary effects of government interventions in Australia in the early decades of the twentieth century. Data for this study was collected from both primary and secondary sources. However, whilst this study draws upon the earlier work of Alan Hunt, Frances Baldwin, Shann and Margaret Maynard,²⁸ it relies primarily on data, including published and unpublished letters, diaries and reports, collected from archival depositories such as the National Archives and the National Library, Canberra. Archived records used in this study provide some degree of contemporaneity and authenticity. Further data was extracted from Parliamentary debates and media reports that were sourced from online Hansard and Trove databases. A search of the case law proved unfruitful though there is at least one case that makes an express reference to sumptuary law.²⁹ The few cases that touch peripherally on the taxation of clothing do not reference policy or provide commentary on this relationship.³⁰

This thesis draws upon a broad range of historical material. Much of it can be categorised as the [un]picked threads of discourse (evidence) hidden within oft forgotten archival boxes and overlooked texts, images, official records, repealed

²⁷ Austin Sarat and Thomas Kearns, *The Cultural Lives of Law* (Stanford University Press, 1998) as quoted in Mezey, above n 25, 38.

²⁸ Alan Hunt, above n 1; Frances Baldwin, *Sumptuary Legislation and Personal Regulation in England* (Johns Hopkins Press, 1926); Edward Shann, *An Economic History of Australia* (Cambridge University Press, 2nd ed, 1948); Margaret Maynard, *Fashioned from Penury: Dress as Cultural Practice in Colonial Australia* (Cambridge University Press, 1994).

²⁹ *Farey v Burvett* (1916) 21 CLR 433. Griffith CJ noted that sumptuary laws have been common war measures noting that ‘The legislative act now in question is in substance a sumptuary law’.

³⁰ *W & A McArthur Ltd v Queensland* (1920) 28 CLR 530; *Ince Bros v Federated Clothing & Allied Trades Union* (1924) 34 CLR 457.

legislation and newspaper reports. These threads constitute “[t]he surviving residues of past thoughts and things [that] represent a tiny fraction of previous generations’ contemporary fabric.”³¹ These threads are then interpreted and rewoven into a narrative tapestry that depicts and explains some of the manifestations of sumptuary regulation that occurred in Australia between 1901 and 1927. Some of the threads of this narrative are taken from official publications such as statistical records and parliamentary speeches relating to the imposition of tariffs on clothing. Other contemporaneous material exists within academic journals such as *The Economic Record* and within the social commentary found in popular newspapers and magazines. In drawing upon these materials, Tosh’s caution has been heeded with respect to certain of the materials as they were not only composed with a view to their impact on contemporary opinion but they often only contain what governments were prepared to reveal.³²

Throughout the thesis, I have given voice to the many people who feature significantly within my account of sumptuary regulation. In many instances, their opinions and actions were so important that they were recorded in *Hansard* and in newspaper reports. However, time has often forgotten them and their contributions, and the reports contained in these publications documents remain the only vestiges of their public and private lives. I have extensively used newspaper reports because they are documents rich in information and because often there is no other extant research material available. These primary sources have proved to be inherently fruitful for my research.

There are of course limitations with relying upon historical records, most of which are more than one hundred years old. Neuman suggests³³ that a major issue with archived materials is “that only a fraction of everything written or used in the

³¹ David Lowenthal, *The Past is a Foreign Country* (Cambridge University Press, 1985) 191-192.

³² John Tosh, *The Pursuit of History: Aims, Methods and New Directions in the Study of Modern History* (Longman, 5th ed, 2010) 65.

³³ W Neuman, *Social Research Methods: Qualitative and Quantitative Approaches* (Pearson Education, 6th ed, 2006) 435.

past has survived into the present”³⁴ and often, more importantly, is that “what has survived is a non-random sample of what once existed.”³⁵ No narrative can fully recover the totality of any, or all, past events. However, whilst evidence used in this study might be incomplete, elusive or somewhat non-representative of all sides of the story, this form of historiography seeks to give some explanation and understanding of the past and context in which early Federal governments used sumptuary regulation to intervene in the lives of the Australian people.

Though certain material is easily available in digital form, in particular Hansard and newspapers that are available through Trove, other material can only be located in the original handwritten or typed form. There are limitations to this type of research, including the practical limitation of time that restricted the amount of data discovered and analysed. The search and location of primary documents was a time-consuming task because relevant documents were sometimes stored under unrelated subject names and often stored in an arbitrary or ad-hoc manner. A further problem was found with the filing of duplicated documents in ancillary files of the Tariff Board for the Apparel Hearings in 1925. In addition, many of the papers archived by the National Archives, the National Library and other institutions may have been culled, and some documents were faded³⁶ and fragile.

Other material drawn upon was the recollections, statements and files of some of the stakeholders in the tariff regime. These writings took the shape of memoirs, autobiographies and archived personal papers of Herbert and Ivy Brookes.³⁷ Tosh suggests that it is in such materials that “men and women record their decisions, discussions and sometimes their innermost thoughts, unmindful of the eyes of future historians.”³⁸

³⁴ Ibid.

³⁵ Ibid.

³⁶ Many of these documents were very faint. It was not possible to copy them and it often they were almost impossible to read.

³⁷ Rohan Rivett, *Australian Citizen: Herbert Brookes 1867-1963* (Melbourne University Press, 1965) 96-99.

³⁸ Tosh, above n 32.

These documents (and biographies) could be said to have limited value, as memory is imperfect and recollections are sometimes distorted, selective or self-serving. For instance, Rohan Rivett's biography of his brother-in-law Herbert Brookes painted the latter in a very sympathetic light.³⁹ Rivett's account focused more on Brookes' largesse, his public service and his synergetic relationship with his wife rather than his astute ability to influence leaders such as Hughes and Deakin to embrace policies that furthered Brookes' own political and business interests.

Despite these limitations, these sources have immeasurable worth because of their contemporaneity and because it was possible to extract key elements from them of personal and public past experience that contributes to an informed, albeit partial, explanation of the economic, political and social reality that existed at the time.

1.4.3 Beyond the scope of the thesis

Originally the scope of my thesis was much broader than it is at present. Early into my research it became obvious that it was necessary for me to limit the scope of my research into the incidence of sumptuary regulation to the period ranging from Federation in 1901 until 1927, as noted above, though the sumptuary impulse has 'erupted' in Australia at other times.⁴⁰

As mentioned earlier in this chapter, this study cuts across many disciplines. It necessarily draws on scholarship based in Australian history, politics, economics and social/cultural studies as source materials. Though there is a large body of scholarship on dress, costume and fashion, the thesis again draws on this scholarship rather than seeking to undertake a study of the field in areas such as psychology,⁴¹ fashion theory,⁴² class,⁴³ law⁴⁴ or costume studies.⁴⁵ Similarly, whilst much of the

³⁹ Rivett, above n 37.

⁴⁰ During World War II, the sumptuary impulse manifested itself in legislation concerning the regulation of amusements, clothing and other consumption practices. See below Chapter 7.

⁴¹ J C Flugel, *The Psychology of Clothes* (Hogarth Press, 1966).

⁴² Roland Barthes, *The Language of Fashion* (Bloombury, 2004).

study examines the sumptuary effect of the imposition of tariff taxation on imported clothing, this study will not explore the broad issue of taxation of ‘textiles’ in a doctrinal sense as it relates to clothing, fashion, accessories and ornamentation.

1.5 Literature Review

For the purpose of this literature review I will discuss the existing literature under separate ‘threads’.

Sumptuary Law

The current literature on sumptuary law,⁴⁶ is shaped largely by Alan Hunt’s influential *The Governance of Consumption: sumptuary laws and shifting forms of*

⁴³ Pierre Bourdieu, *Distinction: A Social Critique of the Judgment of Taste* (Harvard University Press, 1984).

⁴⁴ Gary Watt, *Dress, Law and Naked Truth: a cultural study of Fashion and Form* (Bloomsbury, 2015).

⁴⁵ Margaret Maynard, *Fashioned from Penury: Dress as Cultural Practice in Colonial Australia* (Cambridge University Press, 1994).

⁴⁶ Hunt, above n 1; Frances Baldwin, *Sumptuary Legislation and Personal Regulation in England* (Johns Hopkins Press, 1926); Lucille M Ponte, “Echoes of the Sumptuary Impulse: Considering the Treads of Social Identity, Economic Protectionism, and Public Morality in the Proposed Design Piracy Prohibition Act” (2009) 12 *Vanderbilt Journal of Entertainment and Technology Law* 48; Peter Goodrich, “Signs Taken for Wonders: Community, Identity, and A History of Sumptuary Law” (1998) 23 *Law and Social Inquiry* 725; Wilfred Hooper, “The Tudor Sumptuary Laws” (1915) 30 *English Historical Review* 433; Reed Benhamou, “The Restraint of Excessive Apparel: England 1337-1604 (1989) 15 *Dress* 27; Maria Giuseppina Muzzarelli, “Reconciling the Privilege of a Few with the Common Good: Sumptuary Laws in Medieval and Early Modern Europe” (2009) 39 *Journal of Medieval and Early Modern Studies* 597; Catherine Kovesi Killerby, *Sumptuary Law in Italy 1200-1500* (Clarendon Press, 2002); James Brundage, “Sumptuary laws and prostitution in late medieval Italy” (1987) 13 *Journal of Medieval History* 343; Donald Shively, “Sumptuary Regulation in Early Tokugawa Japan” (1964-65) 25 *Harvard Journal of Asiatic Studies* 123; Stella Mary Newton, *The Dress of the Venetians 1495-1525* (Scolar Press, 1988); Paul Raffield, “Reformation, Regulation and the Image: Sumptuary Legislation and the Subject of Law” (2002) 13 *Law and Critique* 127; Noel Cox, “Tudor sumptuary laws and academical dress: An Act against wearing costly Apparel 1509 and an Act for Reformation of Excess in Apparel 1533” (2206) 6 *Transactions of the Burgon Society* 15; Herman Freudenberger, “Fashion, Sumptuary Laws, and Business” (1963) 37 *Business History Review* 37; N B Harte, “State Control of Dress and Social Change in Pre-Industrial England”, in D C

regulation. This foundational scholarly work, along with Frances Baldwin's 1920s study of English sumptuary law,⁴⁷ marks out the field. The key concepts that emerge from this literature reveal that sumptuary law is both a political, social and economic intervention, and one that is worthy of consideration as a form of law. The contrary view is that sumptuary law was a form of governance that was both anomalous and bizarre,⁴⁸ and has no significance in more modern times.⁴⁹ This view suggests that the "dusty historical relics of pre-industrial societies"⁵⁰ are to be seen as characteristic of the way early unenlightened governments controlled the private lives of their citizens.

Indeed, during the latter phases of the timeframe of this study in 1926, the American scholar Frances Baldwin argued that sumptuary regulations as "ordinances"⁵¹ were paternal, and "from a modern point of view...burdensome and unnecessary."⁵² In 1996, Hunt suggested that such an imposition of such restrictions on personal behaviour and expenditure "would strike...twentieth century citizens as objectionable in principle and faintly ridiculous."⁵³

Baldwin and Hunt justify their position in part by pointing to the demise of sumptuary laws. Each explore reasons why sumptuary laws in their early forms seem to be ineffective and prone to failure.⁵⁴ Hunt suggests that one of the main reasons that these sumptuary laws regulating dress failed was that there was a lack of consistent enforcement.⁵⁵ The records show very few prosecutions for breaching these laws.⁵⁶ Hunt attributes much of the problem with ineffective enforcement of these laws with the lack of public support and suggests that they often they provoked

Coleman and A H John (eds), *Trade, Government and Economy in Pre-Industrial England* (Weidenfeld & Nicolson, 1976).

⁴⁷ Baldwin, above n 46.

⁴⁸ Hunt, above n 1.

⁴⁹ Ibid.

⁵⁰ Ponte, above n 46, 48.

⁵¹ Baldwin, above n 46, 9.

⁵² Ibid.

⁵³ Hunt, above n 1.

⁵⁴ Ibid 325-356; Baldwin, above n 46.

⁵⁵ Hunt, above n 1, 93.

⁵⁶ Ibid 325-356; Baldwin, above n 46.

a converse effect;⁵⁷ the more some consumables were prohibited for certain classes, the more they became attractive to them.

The limitations of this sumptuary account

However, it seems as if the demise of sumptuary concepts is overstated, as Hunt himself acknowledges that sumptuary regulation continued to coexist with readily distinguishable economic protectionism⁵⁸ and that “the sumptuary ethic remained intact long after the waning of sumptuary legislation.”⁵⁹ Whilst he considers that the connection between protectionist and sumptuary law continued to play an important part in the later history of sumptuary regulation he treats protectionism and sumptuary law as remaining located “within distinct discursive traditions”.⁶⁰ He argues that whilst sumptuary law focuses on consumption, protectionism is instead concerned with the control of consumption as a means “to some politico-economic objective such as protecting domestic industry or starving some enemy of import revenue.”⁶¹ Hunt made no attempt to examine the sumptuary *effect* of protectionism, nor did he explore taxation of dress as a sumptuary project. He insisted that a study of protectionism was “outside”⁶² the concerns of his research. However, these observations suggests that there is scope to consider the relationship between sumptuary law and protectionism, and this thesis moves to consider if there is a link.

This thesis reveals that the close link between protectionism and other forms of state intervention mean that it is difficult to delineate between these forms of

⁵⁷ Hunt, above n 1, 325-356.

⁵⁸ Ibid.

⁵⁹ Ibid 359.

⁶⁰ Ibid 302.

⁶¹ Ibid 302. Similarly, Baldwin examined the incidence of price-fixing in the early modern period and suggested that price fixing regulations were neither sumptuary laws nor attempts at personal regulation. See Baldwin, above n 46, 174. Whilst I acknowledge that price-fixing of food was historically and economically significant during the period of sumptuary regulation, I will not address this topic any further in this research.

⁶² Hunt, above n 1, 367.

regulatory activity and sumptuary regulation. It is notable that preoccupations with morality, luxury, extravagance and, in some instances, social hierarchy were central discursive features of these interventionist policies in Australia in the period studied. While protectionism may not overtly seek to regulate what individuals could wear or how they chose to appear to others, the thesis suggests that protectionist measures concerning the importation of imported clothing often had this same sumptuary *effect*. Similarly, whilst the decisions of arbitration courts in early female living wage cases were made ostensibly to set a 'living wage' for female workers in various industries, these decisions also had a sumptuary *effect*. The process of setting a female living wage was concomitant with judicial officers setting prescriptive sumptuary standards for women's dress.

Consequently, it is mostly in the *effects* of government policies and legislation where those similarities or parallels with the assumptions and tenets of the traditional sumptuary law paradigm can be observed. This is not to say that the Australian government was not also actively engaged in overt sumptuary projects during this period. For instance, the establishment of the Luxuries Board and laws proposing to curtail the practice of standing treat for servicemen were both unequivocal interventionist sumptuary measures that sought to curtail private wartime spending and to modify consumption practices, particularly those of women and the lower classes.⁶³

As will be seen in chapters 4, 6 and 7, Australian policy makers, legislators and the judiciary were often not only concerned with economic, industrial or other public projects, but also displayed a desire to, both consciously and less consciously, protect public morals in the sense of seeking to determine forms of conduct. Moralising threads were often seamlessly interwoven into legislative and other interventionist projects. For instance, in Chapter 7 we see that the Australian Government ostensibly sought to use the *Entertainments Tax Act 1916* (Cth) to raise tax to support the war effort. However, the Act also had the *effect* of discouraging the

⁶³ See below Chapter 6.

lower classes from ‘wasting’ their resources on frivolous and ‘unworthy’ entertainment, particularly during the sombre war years. Indeed, this form in which sumptuary regulation appears and reappears bears out Peter Goodrich’s observation, suggesting that:

It is that law of manners, the moral and the symbolic capital of the good citizen, the daily constraint of violence and desire, that the history of sumptuary law foretells and in some measure subtends.⁶⁴

This research reveals that tariffs on imported clothing in an Australian context proved to be much more effective than the sumptuary laws of the early modern period in controlling the type of clothing that people wore. There was less opportunity for those targeted by prohibitive tariffs to resist the machinations of the administrative and legal machinery that implemented the imposition of tariffs on third party clothing importers. Furthermore, the lower classes, unlike the wealthy classes, had little or no opportunity to access cheaply-made apparel from overseas sources via alternative means.

Taxation

*As an object for research, taxation can be seen to represent an interdisciplinary problem.*⁶⁵

The study of taxation law and its history appears to have remained mostly one-dimensional. Prebble asserts that tax law is ectopic or anomalous in that “the usual relationship between law and the activity it regulates is absent in the area of taxation.”⁶⁶ Vosslander suggests that taxation studies can be ectopic in another sense because “they often fail to locate taxation within the human, social context

⁶⁴ Goodrich, above n 46, 725.

⁶⁵ Margaret Lamb (ed), *Taxation: Interdisciplinary taxation research* (Oxford University Press, 2005) 3.

⁶⁶ John Prebble, “Income taxation: A structure built on sand” (2002) 24 *Sydney Law Review* 301.

within which it is legislated, assessed and paid.”⁶⁷ He further contends that taxation, sometimes described as “a prime mover of history”⁶⁸ is ignored in the discussions of history. In other words, the study of taxation is often dislocated from the world in which it exists.

According to Vosslander, “history and taxation rarely mix.”⁶⁹ History books rarely only mention taxation except in passing or in terms of some archaic tax that might amuse the reader. Taxation texts, on the other hand, concentrate mainly on the analysis and application of fiscal legislation without reference to the social and political context that prompted or fostered such legislation. Occasionally, a few pages at the beginning of a taxation text are sacrificed to provide a thumbnail, cursory and somewhat inadequate sketch of the history of taxation. More often than not, the sketch is a bare “list or narration of facts, generally with little interpretation or analysis.”⁷⁰ For instance, in *Australian Taxation Law*⁷¹ the authors only devote two pages to the complete history of taxation in Australia (1788-2015).

As suggested by Lamb, mono-disciplinary approaches to the study of taxation are likely to appear linear and lacking perspective or context.⁷² It is the contention of tax academics such as Harris and Prebble, that to properly understand the aims and effects of taxation, the researcher must focus not only on the context within which taxation arises but also on those who enact such laws, as well as those affected by them. Vosslander argues that: “the focus moves from the ‘what’ of tax to such questions as why a particular tax arose or changed when it did, and who was affected by it and what they thought.”⁷³

⁶⁷ Robert Vosslander, ‘Putting taxation in its place: personal income taxation and history (A work in progress)’ (Paper presented at Australasian Tax Teachers’ Association Conference, University of Tasmania, 23-25 January 2008) 7.

⁶⁸ Ibid.

⁶⁹ Ibid 5.

⁷⁰ Ibid 8.

⁷¹ Robin Woellner, Stephen Barkoczy, Shirley Murphy, Chris Evans and Dale Pinto, *Australian Taxation Law* (CCH Australia Ltd, 25th ed, 2015) 8-10.

⁷² Lamb above n 65.

⁷³ Vosslander, above n 67, 9.

Little has been written *specifically* on taxation history in Australia. Harris confirmed the dearth of material that specifically deals with Australian taxation history.⁷⁴ He suggested that he found the ‘best book’ to be Stephen Mills’ *Taxation in Australia* that was published in 1925.⁷⁵ This iconic text is surprisingly ‘modern’ in its language and perspectives. It provides a contemporaneous account of the taxing policies of the post Federation period and devotes a chapter about those who shoulder ‘the burden of taxation’. The lack of scholarship in this field means that this study will open up new perspectives in taxation law and it provides an expanded account of taxation law literature in this period.

Dress

*Strip us totally nude and you would see us as equal; reclothe us in your dress and you in ours, and we would, without a doubt, seem noble and you base; because only poverty or riches makes us unequal.*⁷⁶

Whilst there have been many recent studies concerning the history and cultural function of dress by dress historians such as Margaret Maynard and Lou Taylor, there have been no comprehensive studies that specifically address the effects of the taxation on dress. Lou Taylor has observed that up until recent years, dress and fashion were not considered “in the once largely male academic world of ‘real history’ to be subjects worthy of study.”⁷⁷ Taylor contends that “dress/textile history...was seen to be inward looking, amateur, non-professional and basically a non-academic field.”⁷⁸ Because clothes were customarily considered “to be a

⁷⁴ Peter Harris, ‘Metamorphosis of the Australian Income Tax 1866-1922’ (Research Study No 37, Australian Tax Research Foundation 2002) 7.

⁷⁵ Ibid.

⁷⁶ Niccolo Machiavelli, *Le istorie fiorentine – The Ciompi*, quoted in Carole Collier Frick’s *Dressing Renaissance Florence: Families, Fortunes, and Fine Clothes* (Johns Hopkins University Press, 2002) 1.

⁷⁷ Lou Taylor, *The Study of Dress History* (Manchester University Press, 2002) 64.

⁷⁸ Ibid 2.

frivolous and ephemeral characteristic of society”,⁷⁹ it was thought that to study them would “therefore be to trivialise history itself”⁸⁰ and that the subject was therefore not one for serious academic research. Taylor, however, suggests that this blinkered attitude to the history of dress is now changing.⁸¹

Negley Harte points to the lack of research concerning the economic motivation behind legislation controlling fashions and dress. Most often, dress is only referred to as an aside in historical and economic texts. Harte demands that social historians look at clothing, because in his opinion, “[t]he production, distribution and consumption of textiles cannot...be ignored by any serious economic and social historian...”⁸² Harte argues that clothing should be studied in a more scholarly manner because it is related to “wide matters of concern to the historian of social change and movements in the standard of living and patterns of expenditure and consumption.”⁸³ Harte’s insights about the state control of dress provide a broad sketch of the economic and social issues of dress legislation; including its aims, origins, enforcement and effects.

Maynard, in *Fashioned from Penury: Dress as Cultural Practice in Colonial Australia*, provides a solid historical and cultural basis of dress scholarship in Australia. Whilst she does not deal with taxation of dress in any depth, she does however highlight, in an Australian context, the relationship in colonial times between taxation of dress and sumptuary law. She examines the variety of clothing worn by colonists, and also investigates the meanings encoded in dress in respect of social status of the inhabitants of colonial Australia as well as examining how clothing was central to ways in which class and status were negotiated. She suggests that “[d]ifferences existed which can be partly attributed to the somewhat limited kinds of clothing available”⁸⁴ and that “[p]rotectionist duties and freight costs

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² N B Harte, ‘Reviews’ (1976) 7 *Textile History* 198.

⁸³ Ibid.

⁸⁴ Maynard, above n, 45, 161.

discouraged the purchase of high quality imported goods and acted...like a kind of sumptuary tax.”⁸⁵

Maynard also details the various ways in which the lower and/or poorer classes strove to emulate the higher classes and change their position in “the hierarchy of acceptability.”⁸⁶ To avoid onerous customs duties, fashionable and expensive clothing was copied by local manufacturers and home dressmakers and there was a significant trade in second hand clothing.⁸⁷ I have drawn on Maynard’s work on colonial dress to investigate the sumptuary effects of taxation of dress in the early decades following Federation.

Feminist historiography

Whilst feminist historians, including Marilyn Lake,⁸⁸ Patricia Grimshaw⁸⁹ and Susan Magery,⁹⁰ have made significant contributions in the last few decades to the historiography on gender relations and the link between gender and nation-building, there is little scholarship about the regulation of dress in the early decades following Federation.

However, Gail Reekie has undertaken a comprehensive account of sexualised consumerism in the early years following the First World War when women were experiencing a “new and increasingly visible freedom”⁹¹ in their personal, social and political lives. As part of this account she examines the prescriptive approach of the NSW Board of Trade (1918-1923) towards female dress.⁹² Her comprehensive study suggests that during the early years after World War I men sought to objectify

⁸⁵ Ibid.

⁸⁶ Ibid 162.

⁸⁷ Ibid.

⁸⁸ Marilyn Lake, ‘Mission Impossible: how men gave birth to the Australian nation’ (1992) 4 *Gender & History* 305.

⁸⁹ Philippa Levine, ‘Review of Patricia Grimshaw et al, *Creating a Nation*’ (1996) 21 *Social History* 372.

⁹⁰ Susan Magarey, *Passions of the First Wave Feminists* (University of New South Wales Press, 2001).

⁹¹ Reekie, above n 17.

⁹² Ibid.

women as sexually attractive objects of desire.⁹³ She contends that this characterisation helped to diffuse male anxieties about what appeared to be women's growing sexual and economic independence.⁹⁴ Whilst Reekie does not consider the sumptuary effect of the Board of Trade's approach to female dress, this work reveals a similar set of assumptions and practices to those found in the decisions of arbitration court judges in female living wage cases when they arbitrarily assessed what constituted *appropriate* attire for working women.⁹⁵

Mark Hearn's examination⁹⁶ of the narratives of gender and nation in the Arbitration Court decisions seeks to interrogate Higgins J's views on women's dress and his masculinist treatment of female witnesses in *Fruitpickers* and *Archer*.⁹⁷

1.6 Outlining the structure of this thesis

This thesis is divided into 10 chapters. Chapter 1 charts the direction of this thesis and frames its scope in order to demonstrate how legislation, executive directives, judicial opinion and moralising discourse were used in post-Federation Australia as sumptuary tools to modify the behaviour of some sections of the Australian population. Chapter 2 provides a brief account of the key facets of English sumptuary laws of the early modern period. An understanding of the patterns and objectives of these earlier laws is important, as later chapters will examine how these foundational features of sumptuary law re-emerged in Australia in the post-

⁹³ Ibid.

⁹⁴ Ibid 42-57.

⁹⁵ See below Chapter 5.

⁹⁶ Mark Hearn, "Securing the Man: Narratives of gender and nation in the verdicts of Henry Bournes Higgins" (2008) 37 *Australian Historical Studies* 3; "Making Liberal Citizens: Justice Higgins and his Witnesses", (2007) 93 *Labour History* 57; "Sifting the Evidence: Labour history and the transcripts of industrial arbitration proceedings" (2007) 93 *Labour History* 3.

⁹⁷ *The Rural Workers' Union and South Australian United Labourers' Union v The Employers, Parties to the Temporary Agreement referred to in the Order of the President, dated the 1st December, 1911* (1912) 6 CAR 70 ('*Fruitpickers*') and *The Federated Clothing Trades of the Commonwealth of Australia v Archer* (1919) 13 CAR 647 ('*Archer*').

Federation period. Chapter 3 reveals that some individuals, associations and institutions, sought to control the behaviour of certain sections of society by using sumptuary practices to exert confluent pressure on them and it provides an introduction to their significant role in later chapters.

Chapter 4 offers an account of the taxing policies in Australia from the first white settlement in 1788 up until the beginning of World War I. The chapter details the strong symbiotic relationship that developed between taxation and protectionism. It demonstrates that the Federal government's policy of imposing protectionist tariffs on imported clothing was decidedly 'a project' of sumptuary regulation.

Chapter 5 explores the contestation over female dress in female wage cases in the first two decades following Federation. It illustrates the linkages between the foundational tenets of early sumptuary law and the prescriptive and normative practices of these early arbitration courts.

Chapter 6 focuses on the establishment of the Luxuries Board and its role, albeit brief, in serving the government's moralised wartime measures of thrift and sober sacrifice. It argues that the Board was an interventionist project that was implemented to quell traditional sumptuary anxieties concerning waste, extravagance and mimesis.

Although most of the thesis focuses on the sumptuary regulation of women's dress, Chapter 7 explores two other manifestations of sumptuary regulation that occurred in the context of wartime conditions in Australia: proposals for Anti-Shouting legislation and the *Entertainments Tax Act 1916* (Cth). This digression into other aspects of Australian life aims to highlight the persuasiveness of those sumptuary threads that acted at the time as a hierarchical net to safeguard and regulate all aspects of social life.

During this time, authorities and the press were particularly anxious about the enormous increase of women's fashion apparel that was being imported into Australia. Chapter 8 reveals a contrast between the regulation of imported women's and men's clothing in the years following Federation. The chapter demonstrates that imported female fashion apparel, often characterised by authorities and the press as luxury goods, persistently sparked moral condemnation and motivated the regulatory reflex. On the other hand, the sumptuary regulation of imported men's clothing by

the imposition of prohibitive protectionist measures was prompted not by moral anxieties but rather by pure ‘unashamedly’ protectionist motives.

Chapter 9 examines two individual clothing industries that were faithfully protected by governments committed to protecting nascent industries at the expense of consumers. The chapter illustrates the noticeable discursive shift towards rational economic motives that underpinned the regulatory reflex within the discourses concerning these industries. What is seen here is an increased focus on economic regulation rather than on moral regulation and a critique of luxury. The chapter reveals that prohibitive tariffs on imported hosiery and corsetry during the war period and the early 1920s evolved into a form of sumptuary intervention that was mainly stimulated by a concern with the creation of internal markets rather than with a concern with moral standards. Chapter 10 draws together the conclusions of this thesis and reflects on current manifestations of the sumptuary impulse.

2 SUMPTUARY PATTERN MAKING: USING THE ENGLISH DESIGN

*We must always recollect that humanity has a habit of throwing back to its old practices. Since a couple of hundred years ago we have been tolerably free from sumptuary laws. But there is, in many quarters, a great disposition to take to these laws again, and we may, before many years have passed be overwhelmed with them...*¹ Edmund Barton

2.1 Purpose and structure of this chapter

In order to understand the pattern of 20th century regulatory interventions recalling the sumptuary impulse of the early modern period that is to be considered in this thesis, this chapter will set out an account of the key facets of English sumptuary laws that returned to prominence in post-Federation Australia. It will mark the contours and patterns of that impulse as it emerged in a decidedly modern, regulatory guise. This new sumptuary impulse was found in legislation and executive directives and it was advanced through the interaction between a set of key individuals who shaped both public discourse and formal legal interventions. To understand how interventions, ranging from the regulation of apparel to the prohibition of imported luxury items, bore the mark of the sumptuary impulse, it is necessary to understand what those impulses were, and their original shape and texture.

That these patterns resurfaced in Australia in the post-Federation period seems remarkable, but sumptuary impulses were, in this period, alive and well throughout the English-speaking world. In the late nineteenth and early twentieth centuries there was a world-wide revival of interest in the old sumptuary laws, particularly during the First World War years, when governments began to ‘cast back’ to sumptuary law as a potential means to compulsorily curtail luxury and

¹ Letters to the Editor, “The Reform of Society”, *Brisbane Courier*, 8 July 1914, 20. See also *Official Record of the Debates of the Australasian Federal Convention*, Melbourne, 8 February 1898, 1104.

extravagance.² English sumptuary laws of the early modern period became a popular topic of discussion in the community:

Like old inventories and wills, they have helped to make past history live again by furnishing interesting details concerning the social life and the differences obtaining between different ranks of society, in the centuries that lie behind us.³

The topic stimulated close examination by scholars in the second and third decades of the 20th century. Baldwin, Hooper and Miller all wrote iconic histories and commentaries on English sumptuary law.⁴ Hooper's paper entitled *The Tudor Sumptuary Laws* was, often without acknowledgement, disseminated internationally in the press in a piecemeal manner.⁵ Press editors, church officials and politicians frequently made reference to sumptuary law when discussing the efficacy of modern laws such as those designed to increase tariffs on imported clothing, the taxation of amusements, rules relating to drinking practices and female living wage cases.⁶ These were thoroughly modern regulatory responses that bore the memory and echo of a very different world: early modern England. In returning to older sumptuary laws, early 20th century Australia was itself repeating *earlier* repetitions of these laws.

Western sumptuary laws have existed since ancient Greece and Rome.⁷ The Roman State in particular, created a sumptuary template, regulating everything from food to clothing and other forms of conspicuous consumption.⁸ It was pre-occupied

² "Rations in Germany", *Border Watch*, 15 August 1917, 3; "Clothes and the Woman", *The Australasian*, 24 March 1917, 36.

³ "Dress Extravagance in the Olden Days", *Albury Banner and Wodonga Express*, 3 May 1918, 14.

⁴ Frances Baldwin, *Sumptuary Legislation and Personal Regulation in England* (Johns Hopkins Press, 1926); Wilfred Hooper, "The Tudor Sumptuary Laws" (1915) 30 *English History Review* 433; Sylvia A Miller, "Old English laws Regulating Dress", *The Journal of Home Economics*, 20 (1928) 89.

⁵ "The Fops of Past Centuries: Extravagances of Masculine Dress", *Freeman's Journal*, 13 July 1916, 35.

⁶ See below Chapters 5 and 7.

⁷ Lucille M Ponte, "Echoes of the Sumptuary Impulse: Considering the Treads of Social Identity, Economic Protectionism, and Public Morality in the Proposed Design Piracy Prohibition Act" (2009) 12 *Vanderbilt Journal of Entertainment and Technology Law* 52. Sumptuary laws had their roots in ancient Greek, Roman and Confucian societies and these earliest laws focused mainly on funeral rites.

⁸ Alan Hunt, *Governance of the Consuming Passion: A History of Sumptuary Law* (MacMillan Press, 1996) 19. For instance, early Roman laws often provided minute details concerning the restrictions on

with the preservation of ‘external symbols of class hierarchy’,⁹ and moral and familial features of Roman life.¹⁰ Authorities targeted the consumption practices of women,¹¹ who were forbidden from wearing jewellery, cosmetics, perfume, or dyed clothing.¹² These interventions, which sought to restrain extravagance and various manifestations of excess, particularly in relation to the consumption of luxury goods,¹³ next manifested themselves in Europe and Asia in the early modern period.

This chapter considers two periods relating to English sumptuary law. The first period from 1336-1604 marks the apotheosis of sumptuary law in England. During this period, the discursive features of sumptuary interventions in England were established and their remnants manifested in socio-cultural imagery that would eventually make its way, centuries later, into social and legal attitudes in Australia. Sumptuary regulation waned from 1604, although efforts were made to reintroduce it up until 1758. The second period reflects the shift from moralisation and hierarchical concerns to rational protectionism that was increasingly noticeable in the Elizabethan period.

The chapter begins by providing a brief account of the major English sumptuary period that ranged from 1336 until 1604. It then chronicles the patterns of sumptuary regulation during this period: the social impulses, the language and the themes that delineated a unique form of interventionist regulation. The chapter then considers the demise of sumptuary law. Finally, the chapter explores the worldwide revival of interest in sumptuary regulation in the early twentieth century, including within Australia in the post-Federation period.

food consumed at funerals and the mourning attire of female mourners, while later laws regulated “conspicuous display by women and the extravagant food consumption”.

⁹ Ibid 31.

¹⁰ Ibid 21.

¹¹ Catherine Kovesi Killerby, *Sumptuary Law in Italy 1200-1500* (Oxford Clarendon Press, 2002) 9.

¹² Ibid 9.

¹³ Leah Kirtio, “The ‘inordinate excess in apparel’: Sumptuary legislation in Tudor England’ (2011) 3 *Constellations* 18.

2.2 Sumptuary Patterns and Themes 1336-1604

*In reading over the numerous laws of this sort which were passed in England, one is struck by the fact that at least three different kinds of motives seem to have led to their enactment: (1) the desire to preserve class distinctions; ... 2) the desire to check practices which were regarded as deleterious in their effects, due to the feeling that luxury and extravagance were in themselves wicked and harmful to the morals of the people; (3) economic motives... Sheer conservatism and dislike of new fashions or customs might be mentioned as a fourth factor which led to the passage of the English sumptuary laws.*¹⁴

Although ancient regimes had used sumptuary laws to address the problem of conspicuous displays of wealth and luxury, sumptuary legislation was uncommon in early modern Europe prior to the thirteenth and fourteenth centuries.¹⁵ The earliest English sumptuary laws were enacted during the reign of Edward III (1327-1377) in an attempt to curb the rapidly increasing luxury and extravagance of the period.¹⁶ Baldwin suggests that these forms of laws were not unusual in the context of the period, for the habit of regulation was “deep-rooted in England”¹⁷ and the population was accustomed to the public regulation of “many matters pertaining to everyday life.”¹⁸ It was an epoch marked by ‘regulatory lawmaking’¹⁹ relating to wages, prices, clothing, religious observations and commercial relationships:²⁰ “[i]n general the desirability of sumptuary regulation was part of the taken-for-granted conception of the proper role of government.”²¹

¹⁴ Baldwin, above n 4, 10.

¹⁵ James Brundage, “Sumptuary laws and prostitution in late medieval Italy” (1987) 13 *Journal of Medieval History* 343.

¹⁶ Baldwin, above n 4, 21.

¹⁷ Ibid.

¹⁸ Ibid 12. Edward III came to the throne in 1327.

¹⁹ See generally Hooper, above n 4.

²⁰ Ponte, above n 7, 60.

²¹ Hunt, above n 8, 358.

2.2.1 The Ordering of Appearance and Social Hierarchy

*The Acts of Apparel gave tangible expression to an hierarchical ideal...it was assumed that there was a 'great chain of being', an hierarchical order, in which individuals like everything else had a determined place.*²²

Clothing has been traditionally a distinctive and pervasive social marker that could signal discernible information about the social class and economic standing of the person wearing it.²³ Class and status sits behind the key sumptuary interventions that took shape during Edward III's reign. During the early modern period, there was a clear demarcation and hierarchy in status. The lowest class of society included carters, ploughmen, ox-herds (sic), cow-herds (sic), shepherds, dairymen, grooms and those involved with husbandry, the equivalent of the modern day 'working class'.²⁴ This class was followed in hierarchical rank by esquires, gentlemen, merchants, citizens and burgesses below the rank of knight.²⁵ There were different categories of knights: those that possessed and income of less than 200 marks, those with income over 200 marks but less than 400 marks and knights with incomes from 400 to 1000 marks per year.²⁶ On the next social level were, at various times, earls, dukes, marquises, viscounts, barons and finally at the apex of the social scale was the royal family.²⁷

Even before the early modern period, English fashions had been heavily influenced by new French fashions emanating from the French Court.²⁸ However, most of the new French hairstyles, millinery, footwear and dress were available only

²² N B Harte, "State Control of Dress and Social Change in Pre-Industrial England", in D C Coleman and A H John (eds), *Trade, Government and Economy in Pre-Industrial England* (Weidenfeld & Nicolson, 1976) 139.

²³ Beverly Lemire, "Second-hand beaux and 'red-armed Belles': conflict and the creation of fashions in England, c 1660-1800" (2000) 15 *Continuity and Change* 391.

²⁴ Baldwin, above n 4, 48.

²⁵ Ibid 49.

²⁶ Hunt, above n 8, 297.

²⁷ Ibid 297.

²⁸ Baldwin, above n 4, 21.

to the higher ranks.²⁹ The English aristocracy continually looked to purchase the costly fashion clothing that was regularly imported from the continent.³⁰ At the same time that ‘aristocratic luxury’ was being introduced into England, there was also a parallel general growth in material prosperity in England that was typified by the growth of manufactures and the progress of goldsmithing and jewellery-making.³¹ Baldwin suggests that during the fourteenth century, this growth in prosperity and the resultant increase in luxury and extravagance was “largely, if not primarily, due to England’s success in foreign wars”.³²

This flood of costly articles into England, according to contemporary chroniclers and satirists, moved both women and men to become “haughty and vain in their attire”,³³ so much so that all levels of society endeavoured “to outstrip each other in the brilliance of their appearance.”³⁴ In particular, the lower classes, although transgressing fundamental social order and customs of medieval society, sought to emulate the nobility both in the manner of living and in their dress.³⁵ It was suggested that it was difficult to distinguish “the poor from the rich, the servant from the master, or a priest from another man.”³⁶

Those, whose station and rank was based on bloodline, insisted that such affectation was a sign of spiritual corruption and the corrosion in their society’s consumption-based system of social distinction.³⁷ It was believed that each man’s place was appointed to him as part of natural law and that he must be content to live in “that state of life unto which it had please God to call him at his birth.”³⁸ To allow the lower classes complete sartorial freedom would cause the elite to forego their exclusive symbol of status in society. By tradition, dress enabled them to display

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid 22.

³² Ibid.

³³ Thomas Walsingham, *Historia Anglicana* 168 quoted in Joseph Strutt, *A Complete View of the Dress and Habits of the People of England* (Henry G Bohn, 1842) vol 2, 134; Baldwin, above n 4, 23.

³⁴ Baldwin, above n 4, 23.

³⁵ Ibid.

³⁶ Ibid 69.

³⁷ Ibid.

³⁸ Ibid 23.

their wealth and social rank to the world.³⁹ To permit all manner and rank of people to dress above their station by assuming the appearance of the superior classes⁴⁰ would cause blurring and erosion of those class distinctions that sometimes could only be discerned when observing what an individual wore.

Moreover, the upper classes considered that fashion and ostentation, as actual and symbolic demonstrations of wealth and rank, were deigned by God and the State to be the exclusive right of the *noblesse oblige* and the royal class.⁴¹ As social custom dictated each man's place in life, such transgressions were considered by those in authority as unacceptable and requiring restraint. Unable to solve these pervasive violations of moral and social values, upper-status individuals sought to maintain the traditional social status quo by demanding the assistance from the monarch, the government and the Church.⁴² There was a move to rein in pernicious luxury and the extravagance of dress by the passage of sumptuary legislation:⁴³

It was heresy for him to attempt to rise above his class either in his manner of living or in his dress. It was therefore, inevitable that those in authority should consider it necessary to take some steps to curb the extravagance which prevailed in the reign of Edward III.⁴⁴

The 1336 statute was to be the first sumptuary response from English authorities and dealt only with food.⁴⁵ It cautioned people about the evil of imitation, which the act claimed had caused “many mischiefs” affecting the people of the Realm.⁴⁶ It warned that “lesser people”,⁴⁷ who attempted to imitate “the great ones”⁴⁸ in matters of costly meats consumption practices, could be expected to be greatly impoverished in both body and soul.⁴⁹

³⁹ Ibid.

⁴⁰ Hunt, above n 8, 295-324.

⁴¹ Ibid 23.

⁴² Ibid 23-24.

⁴³ Hunt, above n 8, 108-141.

⁴⁴ Baldwin, above n 4, 23-24.

⁴⁵ *Sumptuary Law 1336*, 10 Edw 3, st 3.

⁴⁶ Hunt, above n 8, 299.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

The first, shortest and least complicated of the nine major ‘Acts of Apparel’ – a sumptuary law dealing with dress and fashion - was enacted in 1337.⁵⁰ It was a comprehensive and detailed sumptuary statute, entitled *A Statute Concerning Diet and Apparel 1363*,⁵¹ which targeted extravagance in dress and condemned the evil of ‘luxury’.⁵² However, its objectives were plainly protectionist in that it prohibited all men and women of all ranks, with some exceptions, from wearing fur and imported cloth.⁵³ This act was the first sumptuary act that focused on the regulation of those in the ranks of the nobility and it sought to divide them into three broad categories: the Royal Family, Dukes and Earls.⁵⁴

The 1363 act aimed to correct “the outrageous and excessive apparel of divers people against their estate and degree”.⁵⁵ It sought to preserve eight clear class distinctions via the dress of various classes.⁵⁶ It not only directly attacked ‘excess of apparel’ but it strongly chastised those who dressed beyond their status.⁵⁷ Its preamble claimed, through the invocation of a common ‘dearth’ trope, that such extravagance had led to “the great destruction and impoverishment of all the land.”⁵⁸ It proclaimed that those belonging to the lowest class in society, including ploughmen, ox-herds (sic), cow-herds (sic), swine-herds (sic), shepherds and dairymen and those who possessed goods valued at less than 40s, could not wear anything but blanket cloth and russet costing no more than twelve pence per item.⁵⁹ The penalty for failure to conform to the ordinance was forfeiture to the King of all prohibited apparel.⁶⁰ The 1363 act earnestly complained of the extreme danger in the use of outrageous and excess apparel, and provided more detail linking class

⁵⁰ Harte, above n 22, 134.

⁵¹ 37 Edw 3, cc 8-14.

⁵² Ibid.

⁵³ Harte, above n 22, 134.

⁵⁴ Hunt above n 8, 297.

⁵⁵ *A Statute Concerning Diet and Apparel 1363*, 37 Edw 3, cc 8-14.

⁵⁶ Hunt, above n 8, 300.

⁵⁷ Baldwin, above n 4, 47.

⁵⁸ *A Statute Concerning Diet and Apparel 1363*, 37 Edw 3, cc 8-14.

⁵⁹ Ibid; Hunt, above n 8, 424. Hunt explains that ‘blanket’ and ‘russet’ were cloths woven from rough red-brown wool.

⁶⁰ *A Statute Concerning Diet and Apparel 1363*, 37 Edw 3, cc 8-14.

distinctions and the control of dress.⁶¹ However, the Act was repealed in 1364.⁶² It, along with many of the later sumptuary acts, had for various political reasons, relatively short lives.⁶³

The purpose of these early sumptuary laws was to ensure that clothing continued to be treated as an indicator of social class and occupation, and that social hierarchy would continue to be faithfully echoed in hierarchies of appearance. For instance, grooms and servants were not to wear “for their vesture or hosing”⁶⁴ items that cost more than two marks or garb themselves in anything made of gold or silver, or embroidered, enamelled or made of silk.⁶⁵ Esquires and gentlemen below the rank of knights, not possessing land or rents to the value of a hundred pounds a year, were ordered not to wear cloth costing more than four and a half marks.⁶⁶ However, those who possessed lands or rents to the value of two hundred marks per year were permitted to wear cloth worth five marks, as well as silk, cloth of silver. Similarly, their female relatives were allowed to use limited types of fur and apparel, except for headdresses trimmed with precious stones.⁶⁷ Knights who possessed an income of less than 200 marks a year were allowed to wear cloth worth not more than 6 marks, but could not wear cloth of gold, apparel furred with miniver,⁶⁸ ermine nor apparel embroidered with precious stones.⁶⁹ Lords with lands worth 100 marks could wear anything they pleased.⁷⁰

Luxury and extravagance of dress was prevalent amongst the nobles and rich during the reign of Richard II (1377-1399). At the same time, members of all but the poorer strata of society had become obsessed with fashion, novelty and ostentation in

⁶¹ Ibid cc 8-15.

⁶² *Control of Dress 1364*, 38 Edw 3, c 2.

⁶³ Reed Benhamau “The Restraint of Excessive Apparel: England 1337-1604” (1989) 15 *Dress* 27, 28.

⁶⁴ *A Statute Concerning Diet and Apparel 1363*, 37 Edw 3, cc 8-14; Baldwin, above n 4, 47.

⁶⁵ *A Statute Concerning Diet and Apparel 1363*, 37 Edw 3, cc 8-14; Baldwin, above n 4, 47.

⁶⁶ *A Statute Concerning Diet and Apparel 1363*, 37 Edw 3, cc 8-14.

⁶⁷ Ibid.

⁶⁸ Miniver is unspotted white fur of the stoat. This type of fur was used on the robes of lords.

⁶⁹ *A Statute Concerning Diet and Apparel 1363*, 37 Edw 3, cc 8-14.

⁷⁰ Ibid.

dress.⁷¹ The hierarchy of appearance was threatened when the lower classes put aside their old plain dress and began to adopt fashionable, albeit cheaper, versions⁷² of the same type of apparel, ornamentation and accoutrements that were usually only worn by the patrician elite.⁷³ Servants emulated their masters and wore “absurd, long toed shoes, called cracows and pokys”⁷⁴ and favoured enormous sleeves.⁷⁵ Even serving women of “low estate”⁷⁶ imitated upper class women by wearing fur around their collars and hems.⁷⁷

A century after Edward III’s first sumptuary act, Edward IV (1442-1483) reintroduced a similar elaborate scheme of dress control⁷⁸ in response to a petition from the House of Commons requesting the enforcement and renewal of legislation against ‘inordinate array’.⁷⁹ The preamble of the 1463 act highlighted concerns of public morality and the need for economic protectionism⁸⁰ and complained that excessive and extravagant dress was being worn without distinction. It declared that this extravagance was both displeasing to God and likely to impoverish the realm.⁸¹ By employing hierarchy of dress, the act aimed to allay the fears of those who considered that extravagant dress affronted God and that the waste of financial resources on dress was impoverishing England whilst “enriching other strange Realms and Countries”.⁸² Whilst it’s paramount objective was to force people to dress “according to their degrees,”⁸³ its hierarchic dress restrictions and detailed provisions remained, in the most part, similar to the 1363 act.⁸⁴ However, it did

⁷¹ Ibid 73.

⁷² Ibid 68.

⁷³ Ibid.

⁷⁴ Ibid 68.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid 68.

⁷⁸ Baldwin, above n 4, 79-82. Earlier appeals to the monarch in 1378, 1402 and 1406 for sumptuary intervention were unsuccessful.

⁷⁹ *Exportation, Importation, Apparel Act 1463*, 3 Edw 4, c 5.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

contain provisions that only the wealthy and those of noble birth were entitled to enjoy *new fashions*.⁸⁵ For instance, knights below the rank of lords were prohibited from wearing any gown, jacket or coat that was so short that it did not extend below the hips.⁸⁶ To ensure compliance with the regulation, tailors were forbidden to make any gown or jacket shorter than the proscribed length or to stuff any doublet contrary to the statute.⁸⁷

The act also sought to reinforce the practice of using of colour, particularly purple, to reflect the hierarchy of appearance.⁸⁸ It barred all English subjects, except the royal family to wear any cloth of gold or purple silk, “upon pain of having to pay a fine of £20 for every offence.”⁸⁹ Similarly, the act acknowledged a corresponding hierarchy in the value of fabric and the complexity of woven textures that contributed to the identification of the social status.⁹⁰ Expensive fabrics and weaves were to be reserved for the upper ranks.⁹¹ For instance, no one below the rank of a lord could wear plain cloth of gold.⁹² Those below the rank of esquire and gentlemen were forbidden to wear velvet in their doublets or any velvet, damask or satin in their gowns.⁹³ If anyone offended this provision, a fine of forty shillings was payable to the authorities.⁹⁴ However, Baldwin suggested that this act proved to be ineffective as it did little to check extravagance in dress.⁹⁵

Dress, as a visible marker of class distinction, would remain under statutory control continuously from the 1463 act until 1604.⁹⁶ During Henry VIII’s reign (1509-1547), for instance, four further sumptuary apparel statutes were enacted and they all sought, in various ways, to implement a hierarchical dress regime for the

⁸⁵ Ibid; Baldwin, above n 4, 105.

⁸⁶ *Exportation, Importation, Apparel Act 1463*, 3 Edw 4, c 5; Baldwin, above n 4, 105.

⁸⁷ *Exportation, Importation, Apparel Act 1463*, 3 Edw 4, c 5; Baldwin, above n 4, 105.

⁸⁸ Baldwin, above n 4, 115.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid 163-164; Harte, above n 22, 134.

whole population.⁹⁷ The first three statutes of Henry VIII's reign focused on the prohibition of particular ostentatious clothing fashions that customarily marked a man of rank and wealth.⁹⁸ In 1510, an *Act against Costly Apparel*⁹⁹ repealed all previous sumptuary laws and proceeded to prohibit "any garded or pleated shirt or pleated ruff",¹⁰⁰ worn by those under the rank of a knight.¹⁰¹ Its preamble moralised about the 'evil consequences' produced by the "great and costly array and apparel used within this Realm"¹⁰² which were at the time contrary to earlier sumptuary laws.¹⁰³

This was a lengthy and complex sumptuary act that aimed at supporting the domestic textile industry and was clearly modelled on the acts of apparel of 1463 and 1483.¹⁰⁴ It closely resembled them in the grading of ranks and classes as well as the various prohibitions that were attributable to each rank and class.¹⁰⁵ Just as with earlier acts, the 1510 act prohibited or restricted the colour, quality, quantity, price and style of dress materials on a graduated basis according to the rank and class of the wearer.¹⁰⁶ Hooper suggests that the Act also contained "three novel features".¹⁰⁷ It not only, 'in most cases', prescribed forfeiture of the "obnoxious apparel",¹⁰⁸ and fines, but it provided for the opportunity for an individual to sue for the recovery of the forfeited apparel and fines.¹⁰⁹ In addition, the act empowered the King to grant licences of exemption.¹¹⁰ It was also remarkable because, unlike the 1483 Act, it excluded all women from its operation.¹¹¹

⁹⁷ Hunt, above n 8, 309.

⁹⁸ *Act Agaynst Wearing of Costly Apparrell 1510*, 1 Hen 8, c 14; *Act of Apparrell 1514*, 6 Hen 8, c 1; *Thacte of Apparrell 1515*, 7 Hen 8, c 6.

⁹⁹ 1 Henry VIII, c 14 (1510).

¹⁰⁰ *Act Agaynst Wearing of Costly Apparrell 1510*, 1 Hen 8, c 14.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Hooper, above n 4.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ *Act of Apparel 1510*, 6 Hen 8, c 14.

The 1514 apparel act was, with slight modifications, very similar to the 1510 act.¹¹² It forbade the wearing of sable fur by all persons below the rank of an earl and specifically stated that servants were permitted to wear garments trimmed or lined with lamb's fur.¹¹³ Anyone below the rank of knight was not permitted to wear any chain "or other thing of gold about his neck or bracelets of the same."¹¹⁴ Presumably those who drafted the act were optimistic and expected that the hierarchic rules would completely and finally resolve the issues of excessive dress; it was not to be a temporary regulatory regime but rather was, in the words of the statute to "last for ever".¹¹⁵

Despite this optimism, the Act was repealed in 1515. It was replaced in that same year by another apparel act that again was very similar to the 1510 and 1514 acts except that the list of classes of persons permitted to wear certain fabrics were augmented and fines were lower than those previously imposed for breaches of sumptuary laws.¹¹⁶ The act also allowed an exemption to the fellows of the Inns of Court to wear satin, damask and camlet.¹¹⁷ The act of 1515 again made provision for the recovery of forfeited apparel and fines.¹¹⁸ Despite it having what Hunt describes as a "more realistic approach to enforcement",¹¹⁹ it was more restrictive in that "sable furs were reserved exclusively for the royal family, lynx and black genet furs for dukes, earls and barons."¹²⁰ The King was also permitted to issue licences authorizing the wearing of prohibited apparel.¹²¹ However, only a gentleman or above was permitted to wear imported fur of a variety not produced in England.¹²² Another noteworthy feature of this sumptuary legislation was that its bill had been

¹¹² Hooper, above n 4, 434.

¹¹³ Ibid.

¹¹⁴ *Act of Apparel 1510*, 6 Hen 8, c 1; Baldwin, above n 4, 149.

¹¹⁵ *Stat R* vol 3, 123, quoted in Baldwin, above n 4, 249.

¹¹⁶ *An Act of Apparel 1515*, 7 Hen 8, c 6.

¹¹⁷ Ibid.

¹¹⁸ Baldwin, above n 4, 150.

¹¹⁹ Hunt, above n 8, 311.

¹²⁰ *An Act of Apparel 1515*, 7 Hen 8 c 6.

¹²¹ Baldwin, above n 4, 151.

¹²² *An Act of Apparel 1515*, 7 Hen 8 c 6.

initiated and drafted by the King and his advisors rather than it emanating from the House of Commons.¹²³

The final apparel act of Henry VIII's reign was enacted in 1533 and was entitled *An Act for Reformatycon of Excesse in Apparayle*.¹²⁴ Its preamble reflected the sovereign's determination to ensure that the "good and politic order"¹²⁵ by demanding that all classes in their dress should 'keep their place'.¹²⁶ Furthermore, the act decreed a revised hierarchy of appearance and sought to protect those "inexpert and light persons"¹²⁷ who faced "utter impoverishment"¹²⁸ because of their inclination to "pride, the mother of all vices."¹²⁹ The act specifically denigrated the use of "great and costly array and apparel" that was alleged to have provoked "diverse of the King Subjects... to rob and do extortion and other unlawful deed to maintain thereby their costly array".¹³⁰

The 1533 act also abolished the restrictions on shirts and stomachers. Its sumptuary motives were clearly mixed with protectionist concerns. However, it made concessions to permit any Englishman to wear any foreign linen cloth and for "any person being of the degree of a gentleman"¹³¹ to wear a shirt embroidered in thread or silk, so long as the garment was "wrought"¹³² within the realm.¹³³ There were also some concessions provided to the nobility in relation to the wearing of "cloth of gold of tissue"¹³⁴ and the wearing of bonnets made of foreign cloth.¹³⁵ Whilst the Lord Chancellor, Lord Treasurer, and those of similar social distinction were permitted to wear velvet, satin and silk, they were, nonetheless, prohibited from

¹²³ Baldwin, above n 4, 151.

¹²⁴ *An Act for Reformation of Excess in Apparel 1533*, 24 Hen 8, c 13.

¹²⁵ *An Act for Reformation of Excess in Apparel 1533*, 24 Hen 8, c 13, quoted in Hunt, above n 8, 311.

¹²⁶ Hunt, above n 8, 311.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ *Act of Apparel 1510*, 6 Hen 8, c 1.

¹³¹ Baldwin, above n 4, 161.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid 157.

¹³⁵ Ibid 158.

wearing purple or black genet fur.¹³⁶ The clergy were not permitted to wear any kind of fur, except black and grey coney, grey biche, fox, lamb, otter or beaver.¹³⁷ The act contained a notable variation to earlier acts. The King's privilege of licensing the wearing of forbidden apparel, which has been provided for in the previous three statutes, was divested from him, except with regard to those who served the royal family.¹³⁸ However, Hoover suggests that the act remained a "dead letter" as it was neglected and generally condemned.¹³⁹

Although only four apparel statutes were enacted during Henry VIII's reign, dress was also regulated through the use of executive sumptuary regulations and royal proclamations.¹⁴⁰ The latter were also utilised to extend the scope of the statutes and to remind people of the existence of sumptuary regulation.¹⁴¹ At times, they targeted specific sections of society. For instance, in 1536, prescriptive regulations were issued prohibiting inhabitants of Galway in Ireland from shaving their moustaches and ordering them to grow their hair to cover their ears.¹⁴² Furthermore, Galway people were forbidden from wearing mantles in the streets, and, instead, were commanded to wear cloaks, gowns, doublets and hose "made in the English fashion".¹⁴³ Furthermore, the use of the Irish style of dress was also prohibited¹⁴⁴ and people were banned from wearing garments dyed with saffron or made with more than "five standard ells of cloth".¹⁴⁵ During the first half of the sixteenth century sumptuary regulation targeted other areas of social behaviour besides dress. For instance, in 1517 there was a proclamation seeking to control

¹³⁶ Ibid 160.

¹³⁷ Ibid 161.

¹³⁸ Ibid.

¹³⁹ Hoover, above n 4, 435-436.

¹⁴⁰ Baldwin, above n 4, 162.

¹⁴¹ Hunt, above n 8, 309.

¹⁴² Baldwin, above n 4, 162.

¹⁴³ Ibid 163.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid 162.

excessive fare at feast.¹⁴⁶ It decreed that the number of courses served at a feast should be regulated according to the rank of the highest person present at the feast.¹⁴⁷

In 1554, a further act of apparel was passed in the reign of Philip and Mary (1553-58). Hooper suggests that this act, together with the 1533 act, was to remain “the basis of sumptuary policy for the next half-century”.¹⁴⁸ The 1554 Act was much shorter and less detailed than any of the four passed during Henry VIII’s reign.¹⁴⁹ It primarily affected the lower poorer classes and was mainly concerned with amendments to the existing law.¹⁵⁰ Even though it abstained from laying down “an exhaustive code for all classes”,¹⁵¹ it also substantially increased the penalties for non-observance and forbade all natives of England and its dominions, below the rank of knight or those with an annual income of £20 pounds, from wearing silk upon their hats, bonnets, nightcaps, girdles, hose, shoes, scabbards or spur leathers.¹⁵² What is notable in this act is that Mary, like her predecessor Edward IV (1461-70, 1471-83), attempted to regulate the absurd styles of footwear that ‘fashionable’ men wore:¹⁵³ she sought, by proclamation, to limit the “prodigious breath of square toed shoes”.¹⁵⁴

Although only two short sumptuary acts (both aimed to foster the local cap industry) were passed during Elizabeth I’s reign (1558-1603) she issued twenty proclamations on matters of apparel over a period of forty years.¹⁵⁵ Baldwin suggests that the reason why this form of executive power was used to regulate extravagance

¹⁴⁶ Ibid 167.

¹⁴⁷ Ibid.

¹⁴⁸ Hooper, above n 4, 436.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² *An Acte for the Reformation of Excesse in Apparell 1554*, 1 & 2 Ph & Mar, c 2.

¹⁵³ Baldwin, above n 4.

¹⁵⁴ Ibid 189. The text of this proclamation appears to have been lost.

¹⁵⁵ Hunt, above n 8, 313. It was suggested that Elizabeth and the House of Commons battled over legislative power. Hooper and Hunt suggest that Elizabeth’s proclivity for proclamations was indicative of her “dislike of parliamentary interference and her preference for personal rule”. Youngs, on the other hand, suggests that Elizabeth’s proclamations were rather an “attempt to supplement the existing laws” during a period when fashion was so rapidly changing that statutes quickly became obsolete.

had much to do with the “absolutism of the Tudor sovereigns who dispensed with Parliament whenever it suited their purposes to do so.”¹⁵⁶

2.2.2 The Moralisation of Luxury and Extravagance

*Luxury came to be viewed through the metaphor of moral contagion, involving the idea that there is a sequential linkage between vices and sins which accumulatively cause social harms or bring down the wrath of God.*¹⁵⁷

During the early modern period, authorities sought to invoke moral regulation by through the moralisation of luxury goods. Hunt argues that luxury had come to be “conceived as both the cause and symptom of an evil that was both personal and social”.¹⁵⁸ Throughout this epoch, ‘luxury’, ‘extravagance’ and the follies of fashion continued to be persistent concerns with the King and with Parliament.¹⁵⁹ Most sumptuary Acts’ preambles and Royal proclamations described luxury as being linked to the sin of pride, which at the time was regarded as the “mother of all vices”.¹⁶⁰ Authorities considered that it was their moral and lawful duty to protect their people from ‘wasting’ their own resources and as well as the national wealth¹⁶¹ through the ‘dissipation of capital’.¹⁶² They also sought to ‘guard’ their subjects against improper behaviour and the worldly sins of carnal imitation, social competition and licentiousness.¹⁶³ There was a widespread apprehension that inappropriate or boastful displays of clothing would lead to spiritual corruption because such displays breached the religious ideals of modesty, thrift and virtuous

¹⁵⁶ Baldwin, above n 4, 165. See Chapter 6.

¹⁵⁷ Hunt, above n 8, 82.

¹⁵⁸ Ibid 79.

¹⁵⁹ Baldwin, above n 4, 21.

¹⁶⁰ *An Act for Reformation of Excess in Apparel 1533*, 24 Hen 8, c 13.

¹⁶¹ Baldwin, above n 4, 28. The Monarchy and the government wanted to ensure that people had sufficient funds to pay levies and taxes.

¹⁶² Hunt, above n 8, 300. Many of the preambles to these laws during these periods cite “dissipation of capital” and extravagance as validation for the enactment of such laws.

¹⁶³ Ibid.

behaviour.¹⁶⁴ In an attempt to counter such evils, the *Statutum de Cibariis Utendis* of 1336 was enacted, with its primary intention being to check idle extravagance and to promote thrift.¹⁶⁵

Baldwin argued that by the end of Edward III's reign, England had become "an intensely national state"¹⁶⁶ and was a realm where new fashions and clothing styles were being rapidly being promoted amongst the nobles and other persons of high degree.¹⁶⁷ Baldwin described the level of luxury in dress as sumptuous:

The tunics of the aristocracy were made of the most gorgeous materials: cloth of gold or silver, velvet, silk, satin, etc., the use of some of which were forbidden in certain instances by the sumptuary laws. Gold, embroidery, pearls and other jewels were used in ornamenting them.¹⁶⁸

During the Lancastrian period (1399-1485), little was done to curb the excess and extravagance in apparel. This was despite the numerous petitions that were presented to Henry IV, Henry V and Henry VI seeking ordinances demanding regulation of the extravagant apparel worn by various classes.¹⁶⁹ By the reign of Henry VI (1422-1461, 1470-1471), absurd, fantastic and extravagant styles were at their peak.¹⁷⁰ It was a time that witnessed "lavish display, surpassed in quaintness, color (sic) and variety only by the time of Henry VIII".¹⁷¹ Contemporary satirists and moralists attacked those who wore extraordinary fashions including stuffed sleeves, mandarin hats, streamers, shoes with enormously long toes and bizarre headdresses.¹⁷² Even Chaucer used strong religious overtones when he sermonized against contemporary dress in the *Parson's Tale*:

As to the first sin, that is in superfluity of clothing, which that makes it so dangerous, to the harm of the people; not only the cost of embroidering, the elaborate indenting or barring, ornamenting with waved lines, paling, winding or bending and semblables waste of cloth in

¹⁶⁴ Ibid 306.

¹⁶⁵ Baldwin, above n 4, 27.

¹⁶⁶ Ibid 35-36.

¹⁶⁷ Ibid 36.

¹⁶⁸ Ibid 37-38.

¹⁶⁹ Ibid 80-96.

¹⁷⁰ Ibid 88.

¹⁷¹ Ibid.

¹⁷² Ibid 90-91.

vanity, but there is also the furring in their gowns, so much punching with chisels to make holes, so much dragging of shears.¹⁷³

Religious leaders were particularly scathing of horned headdresses which they condemned as fashionable foibles.¹⁷⁴ On occasion, their wearers were even described as being ‘satanic’.¹⁷⁵

The ‘better classes’ favoured “fantastic hats”,¹⁷⁶ of felt and fur as well as cloth of gold, coloured hose (or ‘chausses’) and long-toed shoes that buttoned up the front or buckled over the insteps.¹⁷⁷ These shoes, made from “rich materials,”¹⁷⁸ had become increasingly ornate. Furthermore, the length of the toes eventually became so extenuated and extravagant that church officials considered that it was necessary to regulate them by law.¹⁷⁹ Despite the enactment of a number of what Hunt refers to as “quasi-statutory”¹⁸⁰ statutes and proclamations, it was not until 1463 that a detailed sumptuary dress code was decreed to check excess in dress.¹⁸¹ It was only when Edward IV came to the throne and through the duration of the Wars of the Roses (1455-87) that a more strenuous effort was made to curb extravagance and luxury.¹⁸² Throughout Edward IV’s reign three new sumptuary laws relating to apparel were enacted.

This 1463 act was significant because it was one of the ‘rare’ English sumptuary laws that prescribed the clothing to be worn by various classes rather than

¹⁷³ Chaucer, Geoffrey, *Complete Poetical Works of Geoffrey Chaucer* (John Tatlock and Percy MacKaye trans, Macmillan, 1947) [trans of: *The Complete Poetical Works of Geoffrey Chaucer* (first published 1478)] 304.

¹⁷⁴ Baldwin, above n 4, 92.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid 38.

¹⁷⁷ Ibid 38-39.

¹⁷⁸ Ibid 39.

¹⁷⁹ Ibid.

¹⁸⁰ Hunt, above n 8, 305. There was one law that prohibited a person from owning a greyhound or to own traps to catch deer unless they had land valued at more than forty shillings. Another prohibited the use of silver plating for any purpose other than for knights’ spurs and barons’ apparel.

¹⁸¹ Ibid.

¹⁸² Baldwin, above n 4, 100-101.

being prohibitive in its decree.¹⁸³ This act was reinforced in 1477.¹⁸⁴ A third sumptuary statute was passed in 1483 in response to a fresh petition from the members of the House of Commons who claimed to be anxious about “the excessive apparel of the people of [the] realm.”¹⁸⁵ They maintained that poverty and misery stemmed from the lack of compliance with previous sumptuary laws.¹⁸⁶ Obviously, those who drafted the 1483 act were also keen to uphold a certain standard of decency in male dress. The act prohibited a man from wearing “any Gown or mantle unless it be of such Length, that, he being upright, it shall cover his privy members and Buttocks”.¹⁸⁷ Baldwin contends that the “diatribes of ecclesiastics and contemporary satirists”¹⁸⁸ were especially directed against garments “of the dagged or slashed variety”¹⁸⁹ and those with patterned and scalloped hems.¹⁹⁰

Elizabethan proclamations include protestations about the disorder, confusion and subversion of all good order within society, particularly in cases when people were judged as dressing outside their rank or class.¹⁹¹ This was an immoderate period when dress, both male and female, was “variegated and extravagant”¹⁹² and changed with much rapidity.¹⁹³ For example, women wore towers of hair underpropped with forks and wires “like grim stern monsters, rather than chaste Christian matrons.”¹⁹⁴ Perukes, false and dyed hair were popular along with French hoods, hats, caps and kerchiefs of velvet, taffeta and wool.¹⁹⁵ Some women were criticised for being so ‘wanton and lewd’ as to appear in doublets and jerkins.¹⁹⁶

¹⁸³ *Rot Parl*, 3 Edw IV, vol 6, 184, quoted in Baldwin, above n 4, 110-11.

¹⁸⁴ *Cloths Act 1477*, 17 Edw 4, c 5.

¹⁸⁵ *Rot Parl*, 22 Edw 4, vol 6, 220, quoted in Baldwin, above 4, 114-15.

¹⁸⁶ Hunt, above n 8, 308.

¹⁸⁷ *Act Against the Colour Purple 1483*, 22 Edw 4, c 1.

¹⁸⁸ Baldwin, above n 4, 76.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Hunt, above n 8, 313.

¹⁹² Baldwin, above n 4, 192-199.

¹⁹³ *Ibid.*

¹⁹⁴ Phillip Stubbs, *Anatomie of the Abuses in England* (Richard Jones, 1583), quoted in Baldwin, above n 4, 199.

¹⁹⁵ Baldwin, above n 4, 199.

¹⁹⁶ *Ibid* 201.

These proclamations employed moralistic language and condemned new fashions and extravagance in dress.¹⁹⁷

Ruffs of all different styles, size and forms were popular with both men and women.¹⁹⁸ Later in Elizabeth's reign, ruffs would become even more disproportionate in size when it was discovered that starch could be used as a means to stiffen their folds, and the use of wire frameworks to afford additional support.¹⁹⁹ Fashionable men and women were prone to wearing all forms of exaggerated dress.²⁰⁰ For instance, the farthingale was particularly popular. It was a hoop-like arrangement, intended to be worn inside women's wide skirts and was accompanied by a long stiff and pointed stomacher.²⁰¹ Men, on the other hand, favoured exorbitantly expensive hats that had pointed crowns like steeples that often rose more than a quarter of a yard above their heads.²⁰² Some men preferred to wear shirts made from the finest embroidered material costing as much as £10.²⁰³

Although Elizabeth I was acknowledged as a fashion trendsetter, she was nevertheless determined that her sumptuary proclamations were to be strictly observed. To this end, she included provisions within them for a widespread system of surveillance and enforcement.²⁰⁴ For instance, gate watchmen were to be employed to keep a "diligent eye" out for offenders, who would then be hauled before magistrates for punishment.²⁰⁵ Successive Elizabethan proclamations focused on the curtailment of new sumptuary abuses as well as the appointment of distinct officials who were to be responsible for the enforcement of the Queen's detailed sumptuary regulations.²⁰⁶ For example, the 1562 proclamation denounced the "the monstrous and outrageous greatness of hosen... [that had] crept a late into the

¹⁹⁷ Hooper, above n 4, 445.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Baldwin, above n 4, 202.

²⁰¹ Ibid.

²⁰² Ibid 204.

²⁰³ Ibid 205.

²⁰⁴ Hooper, above n 4, 437-438.

²⁰⁵ Ibid 443.

²⁰⁶ Hunt, above n 8, 315.

Realm.”²⁰⁷ It foretold of users of extravagant hose who might become so impoverished that they would have to resort to “unlawful ways.”²⁰⁸ It was suggested that this form of criminality would then lead them to ruinous “destruction”.²⁰⁹ Hunt suggests that this attack on male hose exhibited a “classical sumptuary motif”²¹⁰ in that it criticised the quantity of material employed in the construction of item of apparel.²¹¹

Queen Elizabeth’s proposal to curtail excessive dress was also well supported by a proliferation of censorious material attacking the fashions of the period.²¹² For instance, in 1583 Philip Stubbs’s *Anatomie of Abuses* decried the “execrable sin of pride and excess in apparel”²¹³ and sought to reinforce the customary view that class distinctions should be preserved by clear difference in costume.²¹⁴ Stubbs used the dialogue between Philoponus and Spudeus to attack extravagance in dress on moral grounds as offensive to God and leading men to sin:

Spudeus: How is pride of apparel committed?

Philoponus: By wearing of apparel more gorgeous, sumptuous and precious than our state, calling or condition of life, required, whereby we are puffed up into pride, and forced to think of ourselves more than we ought... This sin of excess in apparel remains as an example of evil before our eyes and is a provocative to sin...²¹⁵

Critics regularly censured and lamented over Elizabethan consumption practices and the waste.²¹⁶ One commentator, described the Elizabethans to be the

²⁰⁷ Ibid 316.

²⁰⁸ Hooper, above n 4, 439.

²⁰⁹ Ibid.

²¹⁰ Hunt, above n 8, 316.

²¹¹ Ibid.

²¹² Hooper, above n 4, 443.

²¹³ Phillip Stubbs, *Anatomie of the Abuses in England* (Richard Jones, 1583), quoted in Baldwin, above n 4, 195.

²¹⁴ Baldwin, above n 4, 196.

²¹⁵ Phillip Stubbs, *Anatomie of the Abuses in England* (Richard Jones, 1583), quoted in Baldwin, above n 4, 195.

²¹⁶ Baldwin, above n 4, 207.

“laughing stock to all the world for their pride, and very caterpillars to themselves in wasting and consuming their goods and treasures upon vanities and trifles.”²¹⁷

2.2.3 Protecting Domestic Industries

*Sumptuary law emerged in a period in which there was already an established tradition of economic intervention: the regulation of the quality of protection and the associated basic terms of trade such as weights and measures already existed.*²¹⁸

Sumptuary laws frequently aimed to closely regulate the English economy by protecting local industries, particularly the wool, cap and stocking industries, against aggressive overseas competition.²¹⁹ Protectionism was mainly noticeable in Elizabethan legislation and proclamations which sought to encourage the growth of local industries by prohibiting the importation of luxury apparel from ‘alien’ countries such as France.²²⁰ This type of protectionist legislation foreshadowed similar protectionist measures in Australia in the first decades after Federation. Protectionism was endorsed by government of both eras in an attempt to alleviate anxiety about national security and to promote economic independence by relying on a xenophobic and parochial discourse.²²¹

Hunt argues that the 1336 act, a “brief alimentary [sumptuary] statute,”²²² was introduced as a result of rising trade, economic prosperity and increasing conflict with France.²²³ Hunt characterises its discourse as “typically alarmist”.²²⁴ Its preamble condemned the use of “outrageous and too many kinds”²²⁵ of costly food which it claimed were disrupting social order and creating mischief in the

²¹⁷ Ibid.

²¹⁸ Hunt, above n 8, 298.

²¹⁹ Ibid 318.

²²⁰ Ibid 319.

²²¹ See below Chapter 4.

²²² Hunt, above n 8, 298.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ *Outrajouses et trop des maneres des coustouses viendes 1336*, 10 Edw 3, st 3.

kingdom.²²⁶ It suggested that the ‘landed class’ were ‘much inconvenienced’ and could potentially be impoverished by such extravagance.²²⁷

The 1337 act, as the first English sumptuary law regulating dress, had two main objectives.²²⁸ First, as mentioned above, it sought to restrain extravagance in dress²²⁹ and secondly, it aimed to promote the consumption of English manufactures by forbidding the wearing of foreign cloth.²³⁰ Furs were particularly targeted as a form of sartorial extravagance because they were, according to Baldwin, the most important single article of luxury at the time.²³¹ The act sought to protect the English wool industry from imported furs, prohibited anyone under the rank of a knight or of a lady from wearing any fur on their clothing.²³² Baldwin contended that this type of economic protectionism or ‘national project’²³³ not only contributed to a strong growth of national spirit but also incidentally created a national costume.²³⁴

By the beginning of Henry VIII’s reign there was, throughout Europe, a renewed interest in sumptuary regulation as a method of economic protectionism:²³⁵

Sumptuary legislation was ... frequently inspired by commercial protectionist policies, as when in England, for example, the use of silk was forbidden in order to protect the domestic woollen industry.²³⁶

Even though Harte suggests that economic motives behind the Acts of Apparel were only secondary, he notes that the 1510 act had very obvious protectionist objects.²³⁷ For instance, it forbade any man under the ‘degree of a lord’

²²⁶ Ibid.

²²⁷ Baldwin, above n 4, 9; Hunt, above n 8, 299.

²²⁸ *Wool, Cloth Act 1337*, 11 Edw 3, c 3.

²²⁹ Ibid. The statute limited the wearing of furs to those whose disposable income surpassed 100 livres per year.

²³⁰ Ibid.

²³¹ Baldwin, above n 4, 33.

²³² *Wool, Cloth Act 1337*, 11 Edw 3, c 4.

²³³ Hunt, above n 8, 300. Hunt suggests that Baldwin’s assessment should be treated with caution. He argues that the protection offered to the wool industry “was not so much part of a ‘national project’, but was more in the way of a reward for large loans advanced to facilitate the prosecution of war.”

²³⁴ Baldwin, above n 4, 35.

²³⁵ Ibid 131.

²³⁶ Ibid.

²³⁷ *Act Agaynst Wearing of Costly Apparrell 1510*, 1 Hen 8, c 14; Harte, above n 2, 138.

to wear any woollen cloth made outside England, Wales, Ireland, or Calais.²³⁸

Hooper argues that the whole act was underpinned with protectionist ideology:

Indeed, the whole of it is indirectly conceived in the interests of native industry, for all the richer fabrics mentioned came from abroad, and the trading classes would hardly have submitted to the passing of these vexatious restrictions unless they had anticipated some substantial benefit in return for the limitation on their own style of apparel.²³⁹

In 1511, Henry VIII issued a proclamation that was understood to be a war measure.²⁴⁰ It ordered against excess in apparel and also had a protective object.²⁴¹ It forbade all Englishmen, except lords and knights to wear silk, and directed that doublets should only be made from camlet, a woven fabric probably made from wool.²⁴² In 1533, a further proclamation sought to secure “good peax”²⁴³ and was aimed at regulating, amongst other things, unlawful games and excess in apparel.²⁴⁴

In 1566, Elizabeth issued a fresh attack on the use of hosiery, which in part sought to protect local hose industry but it also acted as a traditional hierarchic edict.²⁴⁵ Her royal proclamation decreed that the lining of hose was to be made from English cloth and it restricted the use of velvet and satin to the sons of barons or above.²⁴⁶ In 1567, Parliament passed the first Elizabethan act on apparel.²⁴⁷ It was a purely protectionist measure concerning the supply of foreign wares on credit.²⁴⁸ Hunt argues that it was specifically directed against tailors and those in related trades.²⁴⁹ In 1571, the eponymous ‘Cap Act’ was passed in an attempt to revive the

²³⁸ *Act Agaynst Wearing of Costly Apparrell 1510*, 1 Hen 8, c 14. Calais was controlled by England from 1347 until 1557. It was important to England during this time as the main port for imports of English wool and cloth to the Continent. See Tony Jaques, *Dictionary of Battles and Sieges: A-E* (Greenwood Publishing Group, 2007) 184.

²³⁹ Hooper, above n 4, 433-434.

²⁴⁰ Baldwin, above n 4, 164.

²⁴¹ Ibid.

²⁴² Ibid 163.

²⁴³ Ibid 164.

²⁴⁴ Ibid.

²⁴⁵ Hunt, above n 8, 317.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

English cap-making industry and protect it for foreign competition.²⁵⁰ It was a prescriptive and an “unashamedly”²⁵¹ protectionist piece of legislation that required:

that every person above the age of six, residing in any of the cities, towns, villages or hamlets in England were to wear on Sundays and holidays a “a cap of wool knit, fulled and dressed in England made within this realm, and only dressed and finished by some of the trade of cappers, upon pain to forfeit for every day of not wearing 3 s. 4d.”²⁵²

It is notable that many Elizabethan apparel proclamations had mixed motives. They contained strong moralising tones that spoke of the evil of excessive dress as well as pointing to the need for protectionist measures to shelter local industries.²⁵³ Elizabeth’s apparel proclamations, in the latter part of her reign, showed an increasing trend to invoke protectionist policy against ‘unnecessary foreign wares’, particularly those made outside the Queen’s dominion.²⁵⁴ Hunt explains that proclamations during this period were “set against a background of sharpening internal conflict alongside rising fear of external invasion.”²⁵⁵ Hooper suggests that the rapid growth of trade and commerce during this period, and the prosperity associated with agriculture brought “an increase of domestic and personal comfort and luxury that made the attempt to keep dress within artificial barriers more and more hopeless”.²⁵⁶

²⁵⁰ Baldwin, above n 4, 212.

²⁵¹ Hunt, above n 8, 318.

²⁵² *Act for the Making of Cappes 1571*, 13 Eliz 1, c 19.

²⁵³ Hunt, above n 8, 313.

²⁵⁴ *Ibid* 318-319.

²⁵⁵ *Ibid* 319.

²⁵⁶ Hooper, above n 4, 445.

2.3 Entertainments and popular pastimes

*We see in [the] medieval regulation of games and pastimes the birth of one of the most persistent fields of moral regulation, one that is as alive and controversial today as it was in the late Middle Ages, namely the overlapping association with idleness, popular recreation, drinking and gambling.*²⁵⁷

Although the preservation of hierarchy of appearance appeared to be the main target of sumptuary regulation during the early modern period, it was not its only target. Sumptuary regulation also targeted amusement and popular social activities. In 1363, Edward III issued a royal order against those who eschewed archery on public holidays in favour of other sports such as football, quoits, club ball, handball, hurling of stones and cockfighting.²⁵⁸ The playing of such sports, particularly those that involved gambling, was considered by the church and others as promoting idleness, theft and debauchery amongst the lower classes, and the “sudden ruin, desolation and suicide amongst the upper classes.”²⁵⁹

Baldwin argues that the most important law dealing with unlawful games was enacted in 1541-42.²⁶⁰ She suggests that not only was the act concerned with the encouragement of archery, but it also sought to restrict how an individual used their leisure time and the manner in which they disposed of their income.²⁶¹ During this period, there had been a shift from an interest in ball games towards those that had provided the occasion for gambling.²⁶² The act aimed to veto games that impinged on a citizen’s duty to maintain his skill with the long bow. Furthermore, it directed people to avoid those activities that might distract them and cause them to waste money on gambling.²⁶³

²⁵⁷ Hunt, above n 8, 275.

²⁵⁸ Baldwin, above n 4, 57.

²⁵⁹ Ibid.

²⁶⁰ Ibid 172.

²⁶¹ Hunt, above n 8, 276.

²⁶² Ibid 275-276.

²⁶³ Baldwin, above n 4, 172.

Hunt suggests that the act may have been enacted as the result of commercial pressure from bow-makers for it specified that bows were not be made from yew but rather to be made of mostly costly materials such as elm, witch hazel or ash.²⁶⁴ The act also tried to reinvigorate the practice of archery. It extended the age of those required to keep and practice using a long bow to include every able-bodied person who were under sixty years of age (except the clergy).²⁶⁵ Hunt claims that this push for compulsory archery began to lose its impetus in the mid-sixteenth century.²⁶⁶ There was only one archery related proclamation in Elizabeth's reign (1572), and the final proclamation on unlawful games was decreed in 1608.²⁶⁷ Hunt suggests that attempts to compel people to practice archery and to prohibit popular games eventually "ran out of steam".²⁶⁸ The focus of regulatory activity changed: for instance, legislation relating to alcohol and gambling moved away from targeting the individual and began to focus on the regulation the licensing of drinking and gambling establishments.²⁶⁹

Many Elizabethan statutes and proclamations sought to restrict or eradicate many popular pastimes, particularly those involving 'unruly' games such as football and those that provided opportunities for gambling and the consumption of alcohol.²⁷⁰ Baldwin suggests that it was not just the Parliament and the monarch who were determined to curtail gambling.²⁷¹ The clergy were also very vocal in their condemnation of those who participated in "the playing at cards, dice, tables, or any other damned or unlawful games".²⁷² It appears that neither the civil authorities nor the clergy were successful in banning games they considered were so closely linked with the 'evils' of idleness, disorder and vagrancy.²⁷³

²⁶⁴ Hunt, above n 8, 281.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid 279.

²⁷¹ Baldwin, above n 4, 173.

²⁷² Ibid.

²⁷³ Ibid; Hunt, above n 8, 281.

2.4 The erosion of the sumptuary impulse: 1604-1758

*Henry VIII could blow hot and Elizabeth I could blow cold, but neither could weaken the force of social emulation... The process of social emulation was taken further in England than in any contemporary society. It was facilitated by growing wealth, increasing urbanisation, and especially by the growth of London and the increasingly dominant role that the metropolis came to play in English society.*²⁷⁴

Hooper argues that “[p]erhaps the strangest episode in the history of the acts of apparel”²⁷⁵ was their sudden and final disappearance in 1604 when all extant English sumptuary acts were repealed, “a century or more before such laws disappeared in other countries”.²⁷⁶ However, he denies that this sudden repeal sumptuary law had anything to do with the perception that they such laws were futile or that it was attributable to any hostility towards sumptuary regulation.²⁷⁷ Rather, he argues that their disappearance was attributable solely to the opposition “excited on constitutional grounds,”²⁷⁸ and in particular to the resentment of the House of Commons at the King’s claims to legislate by proclamation.²⁷⁹ Nevertheless, Hooper contends that the sumptuary “feeling”²⁸⁰ or impulse continued to survive and permeate social opinion for generations to come.²⁸¹

After 1604, little attempt was made by either the English Parliament or the monarchy to regulate the population’s dress, even though “the stream of sumptuary legislation continued to flow fast and strong”²⁸² on the continent.²⁸³ Between 1610 and 1628 a series of bills were put before the Commons that were attempts to

²⁷⁴ Harte, above n 22, 153-155.

²⁷⁵ Hooper, above n 4, 448.

²⁷⁶ Ibid.

²⁷⁷ Ibid 449.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Harte, above n 22, 151.

²⁸³ Ibid.

reinforce some form of state control of dress.²⁸⁴ However, they were mainly concerned with the balance of trade and the protection of local industries.²⁸⁵ In 1640, 1643, 1650 and 1656 three bills and one proclamation were introduced, without success, seeking to prohibit the wearing of gold and silver lace, fine linen and ‘other excess in apparel’.²⁸⁶ By the 1690s, the security of the woollen trade “was eroding in the face of a seemingly unquenchable demand for light floral novelties in dress.”²⁸⁷ Lemire argues that between 1719 and 1720 the campaign against imported calico reached a peak and consequently calls was made for a return to sumptuary laws.²⁸⁸ Between 1721 and 1758, further unsuccessful attempts were made to protect English industries by forbidding the importation of such items as French cambrics and lawns.²⁸⁹ However, these calls, Lemire says, “fell on deaf ears”.²⁹⁰

It seemed as if this would be the end of sumptuary law. It was to remain a relic and remnant of the early modern period that seemed to have no place in a democratic, liberal social and legal environment. Reed Berhamou suggests that the sumptuary goals became more difficult to attain as the “stability of the Middle Ages gave way to the volatility of the early Renaissance.”²⁹¹ Moreover, even when accompanied with threats of punishment, they were ‘doomed to failure’.²⁹² Records reveal very few prosecutions for breaching these laws.²⁹³ A range of reasons have been suggested for the demise of the sumptuary impulse. These include the rise of a new form of bourgeoisie, which brought conspicuous consumption within a wider reach and “rendered attempts at restraint even more difficult to secure”,²⁹⁴ and the effect of economic realism and national interest that undermined “the grip of

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Lemire, above n 23, 397.

²⁸⁸ Ibid.

²⁸⁹ Harte, above n 22, 153.

²⁹⁰ Lemire, above n 23, 403.

²⁹¹ Benhamau, above n 69, 34.

²⁹² Hunt, *Governance of the Consuming Passion: A History of Sumptuary Law* (MacMillan Press, 1996) 357.

²⁹³ Ibid 325-356; Baldwin, above n 4.

²⁹⁴ Hunt, above n 8, 357.

paternalism that lay at the core of the sumptuary ethic.”²⁹⁵ Ponte suggests that a lack of consistent enforcement and a failure substantial public support for these laws were to blame for their failure.²⁹⁶ Harte argues that sumptuary laws could not weaken “the social force of emulation”,²⁹⁷ and that they might have even had a counter-productive effect as the prohibition of an article “could give it a special appeal.”²⁹⁸

Hunt maintains that whilst early sumptuary laws were concerned with disciplinary power “acting on the detailed choices made by individuals about their appearance or consumption”,²⁹⁹ laws in the later phase, were less concerned about personal regulation than with economic strategies affecting the protection of public welfare.³⁰⁰ moralising tones abated to some extent and the sumptuary discourse shifted from a purely didactic impulse to be viewed in more explicitly ‘economic terms’.³⁰¹

What this means for the regulatory pattern that came after will be considered later in this thesis – as a set of economic imperatives that reflected the temper of the modern era. But despite this, the ‘moralising tone’ did not disappear. Hunt argues that the sumptuary impulse has never been entirely extinguished “despite the disappearance of overt projects directed towards dress.”³⁰² Furthermore, he suggests that sumptuary laws “have lived on in the ubiquitous quest for moral regulation”³⁰³ that has continued to find expression in the modern era.³⁰⁴

²⁹⁵ Ibid.

²⁹⁶ Ponte, above n 7, 60.

²⁹⁷ Harte, above n 22, 153.

²⁹⁸ Ibid 154.

²⁹⁹ Hunt, above n 8, 11.

³⁰⁰ Ibid.

³⁰¹ Ibid 79.

³⁰² Ibid 8.

³⁰³ Ibid 9.

³⁰⁴ Ibid.

2.5 Gone but not Forgotten: The Australian Sumptuary Experience

*And so we are warned that as a result of national extravagance in luxury the Government is now considering the revival of sumptuary laws to restrict out intake and limit our expenditure.*³⁰⁵

Although the apogee of sumptuary regulation had long passed, the sumptuary ethic, which was so strong in England during the early modern period, continued to survive in the collective memory of colonial and post-Federation Australians. This memory was particularly ‘alive’ in the first three decades after Federation and was constantly being refreshed by the press, politicians and church officials. Politicians often harked back to the protectionist objectives of the sumptuary laws enacted during the reign of Elizabeth.³⁰⁶ Congregations were ‘spoken to’ about the need for women to be more modest and to lengthen their skirts and heighten their bodices.³⁰⁷

Newspapers regularly featured didactic commentary and chatter that reminded and amused Australian readers about the history, the objectives, the language and curiousness of English sumptuary regulation.³⁰⁸ Some commentators characterised sumptuary laws as necessary regulations imposed by paternal governments who “were so considerate and so anxious for the welfare of their subjects.”³⁰⁹ Others reflected that such laws were dictatorial and acted as compulsory fiats that impinged upon “the personal liberty of the subject.”³¹⁰ Furthermore, they considered that it was unfathomable as to why ‘modern’ Australians should be forced to endure laws that had proved ineffective in the past.³¹¹

³⁰⁵ “Random Thoughts”, *Southern Times*, 25 January 1916, 4.

³⁰⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 1901, (Mr McColl) 15.

³⁰⁷ “Clothes and the Woman”, *The Australasian*, 24 March 1917, 36.

³⁰⁸ “The Fops of Past Centuries: Extravagances of Masculine Dress – “Monstrous and Outrageous Hosen”, *Freeman’s Journal*, 13 July 1916, 35.

³⁰⁹ “Literature: Curious Old Sumptuary Laws”, *Albury Banner and Wodonga Express*, 8 May 1903, 9.

³¹⁰ *Ibid.*

³¹¹ “Sumptuary Laws”, *National Advocate*, 13 April 1901, 2.

In the post-Federation period, much of the commentary concerning fashion and luxury took the form of moralising venomous diatribe and drew on early sumptuary edicts when inveighing against increased displays of luxury and extravagance.³¹² Women's apparel, gambling and drinking habits were especial targets.³¹³ Just as in the early modern period, women in the early twentieth century were also admonished for wearing "gigantic millinery"³¹⁴ and for using gold lace.³¹⁵ In the comparatively 'modern' sumptuary act of 1711, Queen Anne had absolutely forbidden the importation for this same type of opulent lace, the demand for which at the time was said to have become "exceedingly extravagant."³¹⁶ Women were also reminded that luxurious forms of boots, shoes, stockings, gloves and veils were reprehensible and inappropriate.³¹⁷ By the early decades following Federation, it was obvious that the sumptuary impulse had permeated social opinion and was to influence social commentators, legislators and the general public. Even the new arbitration system initiated by Higgins J in 1907, that was based on 'a fair and reasonable wage', was defined as a form of 'sumptuary legislation'.³¹⁸

The privations of First World War caused Australians to become even more focused on past sumptuary laws. One female commentator suggested during the war that Australian women were still being subjected to the imperatives of these laws and that they remained inherently imprinted within contemporary dress customs and practices:

The recent cable stating that British Government is likely to fix dress allowances is simply a revival of the Sumptuary Laws which were passed over a period of three hundred years, one piling on another or varying it, and it is through the '*mentality*' left against dressing above our position and against others who, while we are decorous, transgress.³¹⁹

³¹² "Taxation of Luxuries", *The Mercury*, 15 August 1918, 4.

³¹³ "The Vagaries of Fashion", *Leader*, 16 March 1918, 44.

³¹⁴ "The Coming of the Mammoth Hat", *Albury Banner and Wodonga Express*, 16 August 1907, 15.

³¹⁵ "Gold Lace", *Leader*, 12 October 1918, 42-43.

³¹⁶ *Ibid.*

³¹⁷ "Dress and Common Sense", *The Queenslander*, 9 March 1918, 4.

³¹⁸ "The New Protection", *The Scone Advocate*, 15 November 1907, 2.

³¹⁹ "For Woman's Eye", *Cowra Free Press*, 24 March 1917, 3 (emphasis added).

Another woman mused, “in the midst of war time restrictions and Government control of food and clothing supplies,”³²⁰ that it was fascinating to “look back into past times when lands and enactments governed many of the details of daily life”.³²¹ Others laconically insisted that the exigencies of war and “the extravagant tendencies of the times”³²² would require the Federal government to follow the lead of England, the United States, France and Germany by resurrecting sumptuary laws in the form of the imposition of a heavy tax on amusements and luxuries.³²³ In *Farey v Burvett*, Griffith CJ even declared that that sumptuary laws “have always been common war measures.”³²⁴

During wartime hostilities, dress again became one of the main targets for the revived sumptuary intervention: there were calls for uniformity of dress for men and women as well as a demand for the imposition of fixed prices for fabric, clothing and for tailoring.³²⁵ The plea to revive sumptuary regulation was heeded. As we see in Chapter 6, the Hughes government established the short-lived Luxuries Board to repress extravagance and forestall ‘national ruin’ by curtailing the importation of luxury goods. Furthermore, the *War Precautions Act 1914-18* (Cth), which the Hughes government used to implement wartime efficiency measures, was defined by the High Court as “in substance a sumptuary law.”³²⁶

In the 1920s, there was growing concern that Australian women were becoming too enamoured with wearing the latest fashions and luxury fabrics such as ‘georgette’. It was feared this behaviour not only challenged the traditional hierarchies of appearance, but it also risked personal and national impoverishment.³²⁷ It was suggested by one commentator that the community would benefit if women were “obliged to gown themselves according to their station in life only, and were

³²⁰ “Dress Extravagance in the Olden Days”, *Albury Banner and Wodonga Express*, 3 May 1918, 14.

³²¹ *Ibid.*

³²² *Ibid.*

³²³ *Ibid.*

³²⁴ *Farey v Burvett* (1916) 21 CLR 433, 441.

³²⁵ “Woman to Patter”, *The Australasian*, 23 September 1916, 38.

³²⁶ *Farey v Burvett* (1916) 21 CLR 433, 433.

³²⁷ “Georgette”, *The Sydney Morning Herald*, 25 October 1919, 9.

thereby inculcated with a desire to save some of their hardly-earned wages to enable them to look forward to a future of partial independence.”³²⁸

2.6 Conclusion

*The critique of luxury exhibited remarkable resilience and lasted well into modernity; it is arguable that the condemnation of luxury did not lose both its conventional and its moral force until the late modernity of the twentieth century.*³²⁹

This chapter accounted for the imperatives and themes that characterised the English sumptuary laws during the period from 1337 until 1604. Authorities sought to regulate social stability and order, and to maintain ‘the common weal’ by the imposition of hierarchic dress codes reflecting what Hooper calls the “pyramid view of society.”³³⁰ It was expected that sumptuary laws would chart a hierarchical order of appearance that would combat the excessive and wasteful consumption of the lower classes that was thought to threaten both private and public economies. Most English sumptuary laws of the early modern period were meticulous regulations. They normally detailed the colours and types of fabrics that various ranks and occupations could wear and regulated the type of clothing or textiles that could be imported into Great Britain.³³¹ Thus, colour, style and fabric of apparel all became part of a codification of appearance and they acted as social markers to distinguish social and economic status.³³² The dress rules and class distinctions were exactly described in the legislation. For instance, luxury goods such as silk, lace, precious gems, gold and silver fabric and exotic furs could only to be worn by royalty or highly ranked families.³³³

³²⁸ Ibid.

³²⁹ Hunt, above n 8, 92.

³³⁰ Hooper, above n 4, 449.

³³¹ Hunt, above n 8, 295-324.

³³² Ibid.

³³³ Ibid.

Whilst sumptuary laws were concerned with the regulation of expenditure on entertainment, food and ceremonies, their primary focus throughout this period was on with the regulation of dress. The sumptuary impulse was particularly evident in the moralisation of luxury and in economic regulation and in attempts to preserve hierarchy of appearance by the creation of specific dress codes. These same sumptuary imperatives were robustly discernible in countries such as Australia in the early twentieth century. There was also a palpable movement, particularly during the First World War, to resurrect these 'antique' laws to curtail luxury and extravagance, and to protect local industries from aggressive overseas competition. Later chapters will examine how these foundational tenets of sumptuary laws re-emerged in altered manifestations in Australia during the early post-Federation period. We will now move on to Chapter 3, which will examine some of the significant Australian personalities, ideologies and institutions that were responsible for the revival of and inextricably linked to the evolution of these fresh manifestations of sumptuary regulation.

3 SHAPING THE AUSTRALIAN SUMPTUARY EXPERIENCE: INDIVIDUALS AND INSTITUTIONS

The Parliament shall sit at Melbourne until it meets at the seat of Government

Australian Constitution s 125

3.1 Purpose and Structure of this chapter

The idea that a sumptuary impulse could return in a new guise during the first years of the 20th century in Australia seems remarkable. A set of laws imposed by absolute monarchs would seem to be out of step with the new modernity of the 20th century, especially in a nation that prided itself on its (near) universal suffrage of both women and men. In these circumstances, any sumptuary impulse would have to manifest itself in a very different fashion, in particular through formal fiscal measures – tariffs, taxes, and national wage determinations. But to account for these interventions only through formal legal means only goes one small part of the way to understand the role that the sumptuary impulse played in these formal legal interventions – some successful, others not.

To understand the sumptuary impulse means to draw on the threads already illustrated in Chapter Two – its moral component, implicit nationalism, formal protectionism, and the formal acts of war – and pull them across time and space to a set of influential individuals who continued to draw on warp and weft in an attempt to shape law in this new society – and to shape society directly. In the first formative decades of the post-Federation Australian polity, the sumptuary impulse originally shaped law in ways that belie expected conventions of formal law-making through the interventions and manoeuvres of a tightly knit group of individuals and associations that coalesced around the Melbourne elite of the first two decades after Federation.

To understand how this happened in the Australia in this era is to rethink the assumed geographic and physical setting of law and government with which later generations of Australians have become familiar. At Federation, the Parliament and

institutions of law and government were located in Melbourne. Canberra, later to be the nation's capital and seat of these institutions, was selected in 1908, and planning and construction began in 1913, before the seat of government moved there in 1927. Melbourne's influence, during the period with which this thesis is concerned, looms large, and the role of the individuals and organisations who actively participated in the formation of the newly formed polity were from Melbourne. But, as will become clear as this thesis unfolds, it is possible to locate a shift from a set of fairly informal means by which patrician individuals created the conditions through which law was formed or advocated, to the more formal conditions under which law was created by the end of the period under examination. This shift matched the move away from the local and informal location of Melbourne to the centralised and more bureaucratic city of Canberra, which was to serve as the formal national capital.¹

Because of their influence and their recurring appearance throughout this period, this chapter will be devoted to sketching the individuals and their connections and allies. They feature prominently in the following chapters, as fragments of a uniquely Australian account of the revival of sumptuary regulation during the early decades following Federation. As discrete fragments, they stand only to explain a portion of the story of a fledgling nation in a period characterised by sweeping social change and wartime disturbance. Stitched together with threads of gender, class, race and hegemony, these fragments intertwine to form a patchwork narrative showcasing the same patterns and themes that were evident in early modern sumptuary laws.

Whilst these accounts will be teased out in greater depth in each of the later chapters of this thesis, this chapter seeks to understand the role that influential individuals and institutions played in the return of the sumptuary impulse in the early 20th century in Australia. The chapter begins by providing a brief overview and account of the circumstances surrounding post-Federation Australia. It describes how Melbourne was the locus of social and political activity during this time. The chapter then considers the role and influence of the 'power couple' of the day, Herbert and

¹ Marett Leiboff, "The Main Thing is to Shut Them Out: The Deployment of Law and the arrival of Russians in Australia – 1913-1925: An histoire" (2012) 15 *Law Text Culture* 233.

Ivy Brookes, and the role they played in shaping the fledgling nation across the board, but in particular as advocates of protectionism which was the pre-eminent economic policy for the newly federated nation. While the Brookes' were influential in various social and political milieus throughout this period, Herbert Brookes also had a role in the institutional life of the nation.

The chapter moves on to consider the role of one of these bodies, the Tariff Board, of which Herbert Brookes was a member. The Board was the institutionalised voice of Protectionism in Australia and was created to implement and justify the government's 'settled economic policy'. His wife, Ivy, on the other hand, as a feminine agent of protectionism, worked tirelessly through the institutions she helped establish and run. The chapter also briefly accounts for the role that women's organisations played in advocating gender reform and promulgating moral regulation. That form of moral regulation found its way into a surprising forum – the formal wages mechanisms created in the first few years of Australia.

The chapter considers the role that Henry Bournes Higgins J, one of Australia's first High Court Justices, and his fellow Arbitration Court judges, played in regulating and 'normalising' Australian workers, including acceptable forms of spending permitted on dress, that were the subject of concern of patrician moral campaigners like Ivy Brookes. It also details how the affiliation between the unions, the arbitration courts and manufactures detrimentally affected consumers – those who wished to express themselves as they chose through their style of dress and choice of clothing.

Finally, the chapter reveals that the press, largely based in Melbourne, played a significant role in influencing government policy and in reinforcing sexual stereotypes and masculinist hegemony.

3.2 Federation

In 1901, the former British colonies on the Australian continent were federated as a new nation, Australia. Upon Federation, the imperial connection

remained strong and most of the population continued to be fiercely loyal to the British throne and to the Empire. Even native-born politicians such as Alfred Deakin were convinced that trust in the newly formed nation was compatible with it remaining a vital part of the British Empire and that Federation would provide Australians with a more effective voice in the Empire's activities. Prior to Federation, Australia was a set of fractious alliances designed to deliver trade between the former colonies. After Federation, there was distribution of powers between the Commonwealth and the newly formed six States.² The *Constitution* reflected responsible democratic parliamentary government based on the British model.³ It was envisaged that there would be a central government, with Parliament, Executive and High Court. Although British Parliamentary practice was adopted, early Federal Parliaments had to formulate their own procedure.⁴

Parliament was also challenged with other major foundational tasks, including the selection and creation of the site for the Federal capital, the establishment of both the Commonwealth Court of Conciliation and Arbitration Court and the High Court. Section 125 of the *Constitution* empowered the Commonwealth Parliament to determine the location of seat of government in New South Wales. This proved to be a difficult task. The choice of the site was the subject of many resolutions, visits, inspections and a Royal Commission. Although the Federal capital was chosen in 1908, it was not until 1927 that Parliament sat in Canberra, the new nation's Federal capital. In the meantime, Federal Parliament sat in Melbourne.

The Second Federal Parliament (1903-1906) passed the *Conciliation and Arbitration Act 1904* (Cth), which established a system of compulsory judicial arbitration of industrial disputes. It has been suggested this was to have profound effects on Australia's social and economic structures.⁵ It not only encouraged trade

² Geoffrey Sawer, *Australian Federal Politics and Law: 1901-1921* (Melbourne University Press, 2nd ed, 1972) 1.

³ Ibid 9.

⁴ Ibid.

⁵ Ibid 40.

union development on a national scale, but it also had consequences for wages and hours fixation.⁶ The Court's principal registry was located in Melbourne. Section 71 of the *Constitution* empowered the Commonwealth Parliament to create a High Court consisting of a Chief Justice and at least two other justices. The Court was to be "keystone of the federal arch"⁷ and was to decide the orbit and boundary of every Federal power and to protect the *Constitution*.⁸ There was much debate about whether it was an unnecessary luxury and whether that "under Australian conditions the task of constitutional interpretation could safely be left to the State Courts and the Judicial Committee of the Privy Council in London".⁹ The Court's primary registry was located in Melbourne.¹⁰ It was only when the High Court building was finished in 1980 that the Court's administration was transferred to Canberra.

Federation proved to be a momentous political experiment and required expertise, leadership and vision from those involved in its execution. There continued to be concerns about the practicalities of Federal governance, such as the establishment of a bureaucracy to serve and administer government, and the limits of executive power. Furthermore, there were some ongoing anxieties regarding concurrent laws such as income tax, which continued to operate in parallel with States laws. For instance, all States had previously adopted State income taxes and it was not until 1915 that the first Commonwealth Income Tax was adopted.¹¹ The parallel State and Commonwealth income tax laws remained in effect until 1942 when the Commonwealth achieved exclusive power through formal measures.¹²

The new Federal powers accorded to the Commonwealth upon Federation meant that elected officials became responsible for shaping a unique framework of

⁶ Ibid.

⁷ Ibid.

⁸ C M H Clark, *A History of Australia: 'The People Make Laws' – 1888-1915* (Melbourne University Press, 1981) vol 5, 230.

⁹ Sawyer, above n 2, 24. It is ironic that H B Higgins, who later became a Justice of the High Court, expressed this view with such vigour.

¹⁰ From 1973 until 1980, the Court's principal registry was located in Sydney.

¹¹ Kerrie Sadiq, et al, *Principles of Taxation Law 2015* (Thomson Reuters, 2015) 13.

¹² Ibid.

legislation and for initiating key features of Australian national policy.¹³ The first Commonwealth Parliaments were given the task of implementing a program of responsible government in the face of continuing resistance from the States and fractious disputes between protectionists and Free Traders. States such as New South Wales and Victoria continued to squabble about the brand of economic policy that should be adopted by a new federal government. Before Federation, Victoria had for several decades adopted an economic policy of protection while New South Wales remained steadfastly loyal to free trade. Finally, after many heated debates, protectionism became the ‘settled policy’ of all governments. It was argued that it offered the best “weapon of defence against that dangerous world outside which struggled for profit”.¹⁴

Parliament was charged with shaping the structure of the federal government and attending to making a profusion of laws relating to a host of new Federal powers. The Commonwealth had been given the power with respect of naval and military defence¹⁵ as well as external powers.¹⁶ It had power to control immigration, naturalisation and aliens,¹⁷ as well as the power to provide for the settlement by conciliation and arbitration of industrial disputes extending beyond one State.¹⁸ Besides enacting legislation covering these and other powers, Parliament had to deal with fiscal issues of appropriation, supply and taxation, with social service issues such as the implementation of a national system of old-age and invalid pensions,¹⁹ as well as with all aspects of trade and commerce between States and with foreign countries.²⁰ Government departments had to be established and administrative regimes needed to be implemented to assuage the social, economic and political

¹³ Sawyer, above n 2, 20.

¹⁴ W K Hancock, *Australia* (Earnest Benn Limited, 1930) 83.

¹⁵ *Australian Constitution* s 51(vi).

¹⁶ *Ibid* s 51(xxix).

¹⁷ *Ibid* s 51(xxvii), (xix). See Leiboff, above n 1, 233.

¹⁸ *Australian Constitution* s 51(xxxv).

¹⁹ *Ibid* s 51(xxiii).

²⁰ *Ibid* ss 51(i), 98.

aspirations and interests of the States and those prominent individuals and institutions that had played a part in the struggle for Federation.

In many cases, the ‘Federal experiment’ proved to be difficult for those inexperienced in national governance. The executive often lacked expertise in particular areas of administration and were forced to seek ‘expert’ assistance in their administration of government.²¹ It became common practice for the executive branch of government to delegate ad-hoc regulatory power to quasi-legal Boards such as the Commonwealth Board of Trade, the Luxuries Board, the Repatriation Board and the Tariff Board. As Australia was without a class “on whom birth conferred legal and political privileges”²² it became common for government to appoint prominent middle class lawyers, business men and scholars to constitute such Boards. This type of appointment hinted at cronyism. So small was the pool of Australian experts in matters of finance, business and law it was not unusual for eminent men such as A B Piddington, N C Lockyer and Herbert Brookes to be appointed, at various times, to these Boards, and in some instances to more than one Board. Some members, such as Brookes were appointed because of their expertise and their political standing, whilst it seems others, such as Piddington²³ and N C Lockyer²⁴ may have received their appointments, as amends for failed career opportunities. It would take many years before Australia would adopt a more formalised and unbiased approach to the administration of government.

²¹ See below Pt 3.4 and Chapter 6.

²² Clark, above n 8, 241.

²³ Sawyer, above n 2, 106. Piddington was offered High Court Judgeship. However, he received enormous hostility from his fellow barristers who passed resolutions objecting to his appointment on the grounds of his political associations and unfitting temperament. He resigned the position without sitting on the bench.

²⁴ Australian National University, *Australian Dictionary of Biography* <<http://adb.anu.edu.au/>>. Sir Nicholas Colston Lockyer was a public servant who had been instrumental in framing the first Federal tariff. He was appointed by Prime Minister Hughes in 1917 to head the ill-fated Luxuries Board. Despite the Board’s efforts to determine which luxuries should be denied to Australians during war time, the Board only had a life of a couple of months. After its ignoble demise, Hughes appointed Lockyer as Australia’s first controller of the Repatriation Board.

3.2.1 A new society

Leading up to Federation, there appeared a noticeable shift in attitudes towards imperial notions of class distinction and aristocratic privileges based on birth and rank.²⁵ Australia had become increasingly immune to British hierarchical imperatives. Australians had developed their own social hierarchy based upon material wealth and social position associated with commercial enterprise, primary industry and public service.²⁶ By Federation, Australia's unique form of democracy was continuing to be further shaped amidst a general climate of racial, moral and economic insecurity. The first Commonwealth Parliament had passed the *Commonwealth Franchise Act 1902* (Cth) which had granted universal adult suffrage.²⁷ Whilst Australian governments were anxious about the necessity to increase population, public discourse idealised the 'true' Australian as male, productive, moral and white.

There was a general move to create a unified society that was to be dominated by 'white' Australians. This 'ideal' was to be achieved by prohibiting 'coloured' migration and by discouraging interracial marriage.²⁸ Deakin suggested that a united Australia was one that was characterised by a people possessing the same general cast of character, tone of thought and the same constitutional training and traditions.²⁹ Australian primary producers were nervous about the continuing viability of overseas markets for Australia's two chief exports of wool and wheat, even though Australia's trade position in the early twentieth century had been greatly

²⁵ Clark, above n 8.

²⁶ Ibid.

²⁷ This meant that most men and women over 21 were allowed to vote at federal elections. In the United Kingdom, universal suffrage for all men (in national elections) was granted in 1918. Women were granted the vote for first time in the same year but about 25% of women (those under 30) were excluded on grounds of age until 1928, when women were granted the vote on the same terms as men.

²⁸ Hancock, above n 14, 79.

²⁹ Ibid.

bolstered with increased sales.³⁰ Australia's economic prosperity depended largely on what prices she could receive for these staples in uncertain world's markets.³¹

Federation proved to be a boon for feminists who had been actively seeking franchise for some time. The *Australian Constitution* extended women's freedom to participate more fully in the government of this new nation. South Australian and Western Australian women had already had the vote and the right to stand for parliament and this proved to be a powerful inducement to members of Federal Parliament to accept female franchise for the whole of the Commonwealth and they thus ensured that women were accorded the same rights under the *Commonwealth Franchise Act 1902* (Cth).³²

3.2.2 Melbourne

The centralisation within Melbourne of these significant federal foundational institutions contributed to making it the locus of Australian political power in the post-Federation period. Discriminatory tariffs led to Melbourne having the highest concentration of manufacturing amongst the capital cities.³³ In 1901, Melbourne had a population of 501 580 compared to 496 990 in Sydney.³⁴ Melbourne was already home to many leading politicians and members of Australia's wealthy elite. After Federation, it also became the temporary abode of a large number of politicians and bureaucrats who were involved significantly with constructing Australia's domestic and international identity. From the latter part of the nineteenth century, the city had become renowned as a centre of wealth, culture, fashion, education and Liberal politics. Wealth from the goldfields had made it a hub of finance and industry. R E N Twopeny had observed that Melbourne in the 1880s boasted more culture and sport

³⁰ J B Brigdon, "The Australian Tariff and the Standard of Living" (1925) 1 *Economic Record* 29, 41.

³¹ Ibid.

³² The other States soon followed suit: New South Wales gave women over 21 the vote in 1902, Tasmania in 1903, Queensland in 1905, and Victoria in 1908.

³³ John Wilkinson, 'Sydney and Melbourne: An Economic Overview' (Briefing Paper No 7, Parliamentary Library Research Service, Parliament of New South Wales, 2010) i.

³⁴ Ibid 8.

than Sydney.³⁵ Manning Clark claimed that its intellectual life had developed “during the golden age of the bourgeoisie” in Australia (1861-1883).³⁶

Melbourne had also become the hotbed of protectionism and home to fervent protectionists including Alfred Deakin (1856-1919) and David Syme (1860-1908), the newspaper magnate and ‘father of protectionism’. Its philanthropic and liberal culture spawned numerous middle class women’s associations; their members busied themselves with social issues such as the cost of living and poverty. These quasi-political organisations included the Australian Women’s National League and the Housewives Association. Their members mixed in the same social circles and were linked “through a network of philanthropic causes.”³⁷ Many had husbands or close male relatives who were firmly entrenched in politics, farming and business.³⁸

It was not unexpected that a large section of Australia’s governing class would be located in Melbourne and that national policy and Federal legislation would be influenced by its privileged elite. Herbert and Ivy Brookes typified the type of middle class, affluent, white, Protestant and Anglo-centric Melbournians who played a crucial role in shaping Australia’s domestic and foreign policies. Manning Clark located the couple in the heart of ‘Yarraside’ - a term he used for the home of ruling class in Melbourne.³⁹ Even though their contributions were often directly interrelated with their own vested interests, their personal motives were frequently mixed with altruistic ones. The Brookes’ for instance considered that, as members of Australia’s wealthy and prominent elite, it was incumbent upon them to wield their paternal and evangelical influence to help shape the political, social and moral order of the fledgling nation. Members of this tightknit privileged network were linked privately and publically in multifarious ways: socially, politically and through religion, education and ‘good works’.

³⁵ Richard Twopeny, *Town Life in Australia* (Penguin Colonial Facsimiles, 1983).

³⁶ Clark, above n 8, 233-276.

³⁷ Margaret Fitzherbert, *Liberal Women: Federation to 1949* (Federation Press, 2004) 43.

³⁸ Ibid.

³⁹ Clark, above n 8, 233- 276.

Men and women of social distinction and position, such as the Brookes, Alfred Deakin, David Syme and Higgins J were frequently involved together in a plethora of civic and ‘patriotic’ causes. As part of the ‘establishment’, they were especially concerned with economic initiatives, civic virtue and social compliance in the face of rapid social and political changes, particularly in the shadow and, then in the reality, of world conflict. The old hierarchical social regime, that had previously been securely stitched into place by traditional ‘rules’ of appearance, consumerism and privilege, was becoming frayed. During the war, these ‘rules’ became even more blurred. The governing class saw it as a perilous time when moral values and traditions were being constantly challenged by the exigencies of war, political division and industrial strife. It was perceived to be a period of national emergency that warranted interventionist measures, such as the *War Precautions Act 1914* (Cth), to bring people under political, legal and moral control.

3.3 Ivy and Herbert Brookes - their political and social mission was to rid society of ‘evils’

*The common thread throughout [his biography] is Brookes’ belief in the Empire, his sense of duty to God and his conviction of the necessity for an informed, pious elite to lead the way.*⁴⁰

The first decades after Federation saw the rise of a distinctive breed of social leaders and political patricians who sought to fashion a new Australian identity. This new identity would be garnered from a fresh spirit of independence and self-sufficiency that accompanied Federation and Australia’s significant participation in the Great War. Some public figures such as Herbert Brookes (1867-1963) and David Syme became the forerunners of new political parties, the leaders of industry and had

⁴⁰ Peter Cochrane, “‘Australian Citizens’: Herbert and Ivy Brookes” (Newsletter, National Library of Australia, March 1999) 21.

created powerful social and political networks. They were often closely associated with business, political and landed dynasties. They exerted enormous power during the period when Australia was emerging from a fledgling nation to a leader in world trade. They counselled Ministers and manipulated Prime Ministers; they directed public policy and were closely involved with promoting their idealised notion of Australia's future identity.⁴¹ Ivy and Herbert Brookes were two such powerful public figures.

The Ivy and Herbert narrative provides a rare insight into a powerful familial alliance that exerted enormous influence in shaping Australian social fabric and economic policy in the first part of the 20th century. Married in Melbourne in 1905,⁴² the Brookes' not only attempted to shape economic policy but they were also energetically involved in regulating the private lives of ordinary Australians. Herbert used his enormous wealth to secure a network "tied into powerful social and economic circuits in the British Empire."⁴³ He held executive roles in the newly formed Liberal Party and served as the President of the Chamber of Manufactures.⁴⁴ Brookes was a clever power-broker and a confidant of Prime Ministers. He had much in common with Prime Minister William Hughes (1862-1952) - he was a militant Protestant and Anglophile and a fervent 'conscriptionist'.⁴⁵ Herbert's influence over Hughes was so great that Manning Clark labelled Herbert "the king-maker of 1916-17."⁴⁶

Brookes had a glowing career in business and served in a number of wartime committees and in government-appointed positions after 1918. He was one of the first appointees to the Tariff Board and later, from 1929 until 1930, he served as the

⁴¹ Rohan Rivett, *Australian Citizen: Herbert Brookes 1867-1963* (Melbourne University Press, 1965) 78-92.

⁴² Ibid 36.

⁴³ Cochrane, above n 40, 19.

⁴⁴ Fitzherbert, above n 37, 127.

⁴⁵ Raymond Evans, *The Red Flag Riots: A Study of Intolerance* (University of Queensland Press, 1988) 45.

⁴⁶ Clark, above n 8, 279-280.

first Commissioner-General for Australia in the United States.⁴⁷ In 1922, he was appointed to the Tariff Board that was established in 1921 to implement the government's 'settled policy of Protection'.⁴⁸ As a hard-line Protectionist, he played a central role as an agent of Federal institutional power in creating and administering tariffs to protect Australian manufacturers and he paid scant heed to the needs and choices of the working classes. Brookes was a hard-nosed right wing conservative. He had directly influenced Hughes in the banning of the Sinn Fein flag and the red flag during 1918.⁴⁹ In the same year, he was actively involved in the formation and leadership of the right wing Protective League that sought to quell 'disloyal protest' in Queensland.⁵⁰ The League was established by "the watchdogs of loyalty"⁵¹ to counter the impact of 'insidious, subversive propaganda' in Australia.⁵² It was the face of vigilante activism and its xenophobic policies sought to "crush the growing element of disloyalists (sic), traitors and scum of Australia."⁵³

Ivy Brookes (1883-1970) was the eldest daughter of Alfred Deakin and her political lineage gave her formidable social and political cachet. She had been exposed from an early age to her father's powerful reformist rhetoric and was well versed in his views on topics such as the White Australia policy, eugenics and nationalism.⁵⁴ Ivy was a confident public speaker, a successful fund raiser, an energetic lobbyist and a committed women's advocate.⁵⁵ She was actively engaged on the executive in a plethora of women's political and social organisations including the Women's Liberal League, the Housewives Association and the Imperial Defence

⁴⁷ Fitzherbert, above 37, 127.

⁴⁸ This term is quoted in an address given by Professor Stephen Mills, "The Federal Tariff: Our Fiscal Policy", *The Daily News*, 26 August 1916, 6.

⁴⁹ Evans, above n 45.

⁵⁰ Ibid.

⁵¹ Ibid 46.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ *Nepean Times*, 27 August 1936. At the planting of a tree in memory of her father in Prime Ministers' corridor at Falconbridge NSW on 17 August 1936, Ivy reminisced about her father. She stated that: "[e]ven in our walks he would discuss matters of world-wide interest...To the home he used to bring leading citizens, mainly politicians and literary men, and round the dinner table we were privileged to hear the most interesting conversation sparkling with wit and repartee."

⁵⁵ Fitzherbert, above n 37, 129-133.

League.⁵⁶ Ivy mostly remained outside the mainstream of official politics and institutional power. She did venture into the public sphere when campaigning to women on behalf of her father during elections, when she promoted her husband's political projects, and later when she became an iconic female voice of protectionism.⁵⁷ She attended manufacturing conferences and political rallies with Herbert. She was a dedicated and energetic member of prominent women's civic organizations such as the Housewives' Association and the National Council of Women.⁵⁸ It was within these roles that she played a crucial, influential and highly visible and yet informal role in the creation of social policy. Her extra-parliamentary political activism centred on moral regulation and social reforms pertaining to women, children and the domestic sphere.⁵⁹ However, whilst she presented to some a respectable, articulate and maternal image; Manning Clark depicts her as a narrow-minded 'wowser' who possessed lofty religious and hierarchical ideals and promoted austerity and simplicity in dress:

She took comfort from Christ's rider, that with God all things were possible. She believed God had a plan, and that the British were the instruments of Divine Providence. Australia mirrored God's plan. There was no need for any change in society: the industrious, the talented and the frugal could rise to the top in Australia... She thought some modern women went too far with their jewels, their powder and their painted pomp.⁶⁰

Whilst Ivy became an influential voice for female consumers⁶¹ she nevertheless remained a passionate supporter and iconic advocate⁶² for those protectionist 'buy-Australian' policies so keenly espoused by her husband and father, and which proved so problematical for these female consumers and their families.⁶³

⁵⁶ Ibid.

⁵⁷ Ibid 129.

⁵⁸ Ibid 132.

⁵⁹ Ibid 131-132.

⁶⁰ Clark, above n 8, 280.

⁶¹ Fitzherbert, above n 37, 129; Cochrane, above n 40, 20.

⁶² Fitzherbert, above n 37, 132.

⁶³ "Sydney Shops and Shoppers", *The Age*, 26 August 1916, 17.

Although Ivy worked from a more marginalised and domestic locus than her husband, she nevertheless became, during the decades following Federation, an important influential participant in so many activities and associations that sought to influence and intervene in the private lives of consumers.

In 1918, she was appointed as President of the Empire Trade Defence Council and as a member of the Women's Executive of Australian Industries Protection League.⁶⁴ Towards the end of the war she became the official female voice of protectionism and led a campaign of propaganda in support of protection for local industries.⁶⁵ This campaign pressured female consumers to publicly demonstrate their patriotism by giving their preference to Australian goods and by boycotting "enemy goods".⁶⁶ Ivy skilfully applied her immeasurable political skills and her popularity with the press to harness 'patriotic' Australians to participate in interventionist economic and social projects that sought to create a 'loyal' and closely regulated population. Ivy cleverly linked protectionism with nationalism. Her rhetoric often demonised Germans, Japanese and other aliens, and she frequently sought to ostracize Australians who were so unpatriotic as to purchase goods from them.⁶⁷

The Brookes' made a formidable political couple and presented "an extraordinary unity".⁶⁸ They were both staunch supporters of the Empire and believed in a life dedicated to God, 'plain' living' and 'high thinking'.⁶⁹ They fervently believed that they had a paternal and pastoral duty "to be stewards to their community, their culture and to the less fortunate."⁷⁰ They saw themselves, and were

⁶⁴ Fitzherbert, above n 37, 129.

⁶⁵ "Empire Trade Defence Urged", *Weekly Times*, 16 March 1918, 9.

⁶⁶ "Our Public Women: Mrs Herbert Brookes" *The Australasian*, 12 May 1928, 19.

⁶⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 17 December 1918, 59 (Mr Albert Palmer). Ivy's sentiments were well supported by the media and many Parliamentarians in this regard. On 17 December 1918, Albert Palmer MP read a letter addressed to the Editor of the *Age*: it read "I hope that we shall blazon the "Australia" throughout the length and breadth of our continent, so that every man will be proud to wear clothing of Australian manufacture, - and we shall look with kindly pity upon those who are so unpatriotic as to refuse to buy Australian goods."

⁶⁸ Rivett, above n 41, 49.

⁶⁹ Cochrane, above n 40, 19.

⁷⁰ *Ibid* 20.

seen, as deeply committed social crusaders who sought through their ‘evangelical efforts’ to promote the common good and to save Australians from social ‘evils’:

The missionary spirit is strong in all the Deakins. The Prime Minister himself a man of creed and enthusiasm: Mrs Deakin, is a social worker, whose benevolent work is greater than many people know; and Mr Herbert Brookes, their son-in-lawis similarly inspired by altruistic emotion.⁷¹

Herbert and Ivy used their individual and joint talents and opportunities to influence and regulate private consumption and to shape a society that nurtured ‘home grown industry’. Both zealously promoted economic protectionism as a form of regulatory sumptuary intervention that targeted the governance of consumption via the application of tariff imposts on the importation of consumables such as clothing.⁷²

3.4 The Tariff Board

*Protection...is now received as the settled fiscal policy accepted by all political parties.*⁷³

Shortly after Federation, Australia firmly adopted a protectionist stance towards its manufacturing sector.⁷⁴ By 1904, it was proposed that a ‘non-political’ advisory body be appointed to assist Parliament and the government in making the Tariff.⁷⁵ In August 1913, an Inter-State Commission had been appointed to

⁷¹ *Table Talk*, 7 November 1907, 7-8.

⁷² Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (MacMillan Press, 1996) 361.

⁷³ Professor Stephen Mills, “The Federal Tariff: Our Fiscal Policy”, *The Daily News*, 26 August 1916, 6.

⁷⁴ Kym Anderson and Ross Garnaut, *Australian Protectionism: Extent, Causes and Effects* (Allen & Unwin, 1987) 6.

⁷⁵ Geoffrey Hall, *The Australian Tariff Board: 1922-1956* (LLM Thesis, University of Melbourne, 1958) 4-5.

investigate the tariff, amongst other things.⁷⁶ However, as the Commission's recommendations were based on pre-1914 'normal' circumstances, they proved to be "quite irrelevant"⁷⁷ in coping with a greatly altered post-war situation.⁷⁸ Even though the Commission followed a "general protectionist line",⁷⁹ its findings proved later to have little influence on the 1921 Greene tariff debates that were concerned with the danger of isolation, defence and the inability of Australian manufacturers to receive industrial supplies should there be another war.⁸⁰

After the First World War, the 'cry' for an independent Tariff Board became more incessant.⁸¹ In Australia, a "more developed sense of nationhood"⁸² had evolved during the war along with increased feelings of isolation and vulnerability. This produced a heightened demand for tariff revision to protect nascent industries, particularly those born in the war years, from persistent post-war overseas competition.⁸³ It was argued that the tariff should not be left to "amateur"⁸⁴ members of Parliament with no qualifications in the framing of tariffs and that tariffs should no longer be the partisan "tools of parties".⁸⁵ Instead, it was argued that tariff adjustments should be "suggested"⁸⁶ by disinterested experts who would have proper regard for the interests of all concerned.⁸⁷ It was also argued that a permanent board

⁷⁶ A J Reitsma, *Trade Protection in Australia* (University of Queensland Press, 1960) 21.

⁷⁷ Ibid.

⁷⁸ Ibid 21. By the beginning of 1915, imports had dropped sharply and wartime shortages and Australia's military needs "provided the environment for industrial expansion". See Leon Glezer, *Tariff Politics: Australian Policy-making 1960-1980* (Melbourne University Press, 1982) 8.

⁷⁹ Glezer, above n 78.

⁸⁰ Ibid. The Commission presented its final report in 1917. By this time, tariff protection was, according to Glezer, not the most salient of issues in Australian policy-making. In addition, the High Court had ruled in 1915 that the Commission's judicial powers, amongst others, were unconstitutional. This effectively meant that it could only act as an advisory body to Parliament. In 1920, the Commissioners' seven-year term expired and the Commission was allowed to lapse.

⁸¹ R C Mills, "The Tariff Board of Australia" (1927) 32 *Economic Record* 52, 53.

⁸² Glezer, above n 78.

⁸³ Ibid 7.

⁸⁴ Letters to the Editor, "The Tariff", *Brisbane Courier*, 27 December 1919, 8.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Letters to the Editor, "The Tariff", above n 84, 8. See above Chapter 3 Pt 3.2.

would be an advantage when different goods became available, especially when new industries were commenced.⁸⁸

Whilst Hughes sought a mandate vis referendum in 1919 for increased legislative power to provide for remedies to protect the consumer against those manufacturers who might use the tariff to exact unduly high prices,⁸⁹ his request was refused by the public.⁹⁰ By 1921, Prime Minister Hughes' Nationalist Party had resolved to experiment⁹¹ with the establishment of the Tariff Board as an independent statutory authority that would hold, at the request of government, public inquiries into tariff issues and that was "to act as a buffer between it and the various interested groups."⁹²

The *Tariff Board Act 1921*⁹³ had a stormy passage through Parliament as it was opposed from both the right and the left.⁹⁴ Nevertheless, general support for protection continued and all tariff debates in Parliament continued during the 1920s to reflect the predominantly protectionist attitude of all parties.⁹⁵ The Government promised that it would institute a Board to act as a check on the validity of claims for increased protection.⁹⁶ In addition, the Board was to serve as a precaution against monopoly practices, the exploitation of consumers and the 'sweating' of workers by

⁸⁸ "The New Tariff", *Gippsland Times*, 29 March 1920, 1. Shann suggested that in a protectionist country such as Australia that the protectionist is "torn with anxiety that they will take advantage of the consumer". To this end, he claimed the protectionist is addicted to 'boards': "[s]ubconsciously aware that he has run the risk of high prices and slack service, he calls on a board of experts to guard against it. But his board, sooner or later, advises him that the task is too complex. He gets rid of it, or reconstructs it, and the farce begins again." See Edward Shann, *An Economic History of Australia* (Cambridge University Press, 2nd ed, 1948) 713.

⁸⁹ R C Mills, above n 81, 59.

⁹⁰ Ibid 53.

⁹¹ The proposal to establish a Tariff Board was neither a new suggestion by government nor was it an innovative one. The Tariff Commission appointed by Prime Minister Reid in 1904 had performed work similar to the Tariff Board that was appointed in 1922. The issue of establishing a Tariff Board, comprised of protectionists who were "the right stamp of men", was further discussed in Federal Parliament in 1910.

⁹² G A Rattigan, *Industry Assistance: the inside story* (Melbourne University Press, 1986) 2-3.

⁹³ The Bill was accepted on 15 December, 1921 and the commencement of the Act was fixed by Proclamation as March 15, 1922.

⁹⁴ Sawer, above n 2, 202.

⁹⁵ Ibid 235.

⁹⁶ Ibid 202.

industries that were provided with protection.⁹⁷ The Government hoped that this new authority would make the tariff both “scientific” and “elastic”.⁹⁸ RC Mills suggested in 1927 that the government, by empowering the Tariff Board to administer its policy of protection, was “definitely and deliberately [handing] over to the executive considerable power and discretion in tariff matters.”⁹⁹ Many complaints were made inside and outside of Parliament to the effect that the Board was effectively usurping the functions of Parliament and had become an independent tariff-making authority.¹⁰⁰

The Hughes’ government promised that the new Tariff Board was to be staffed by a group of “disinterested experts”.¹⁰¹ The Board’s early appointees were businessmen, like Herbert Brookes, and government employees.¹⁰² All were key stakeholders in the promotion of Australian protectionist policy.¹⁰³ They were neither disinterested and, in the main, had little expertise in Tariff revision. The Board, this “creature of Parliament,”¹⁰⁴ was seen and saw itself from its inception as “the institutionalised voice of protectionism”¹⁰⁵ and the Board exercised its powers to deliberately protect Australian manufacturers.¹⁰⁶ In its early days, the Board believed it was “bound to recommend protective duties whenever possible.”¹⁰⁷ It has always looked upon its functions as being to carry out, not to question, the settled policy of protectionism.¹⁰⁸

⁹⁷ Ibid.

⁹⁸ Science was demanded because some industries were complaining that they were hampered by the protection of others. Elasticity was greatly preferred because Australia was feeling the strain of external competition, particularly from countries with depreciated currencies.

⁹⁹ R C Mills, above n 81, 76.

¹⁰⁰ Ibid.

¹⁰¹ Letters to the Editor, “The Tariff”, above n 84.

¹⁰² R C Mills, above n 81, 67.

¹⁰³ Ibid.

¹⁰⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 3 March 1926, 52 (Mr Mann).

¹⁰⁵ F Castles, *Australian Public Policy and Economic Vulnerability* (Allen & Unwin, 1988) 94.

¹⁰⁶ R C Mills, above n 81, 74.

¹⁰⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 3 March 1926, 52 (Mr Mann).

¹⁰⁸ R C Mills, above n 81, 79.

Hall declared in 1923, that the remarks of the Board “leave little doubt as to the uncritical outlook on the question of protection.”¹⁰⁹ In a letter written in 1926, Herbert Brookes, described the paternal and elitist approach of the Board members as a form of religious dogma that was intertwined with protectionist ideals:

Although we are a fact-finding and non-partisan body, our facts are sought with the object of improving the protectionist system our Country has adopted and not with the idea of improving it out of existence. We are non-partisan because we have been selected by a Government of a country, 95% of whose representatives are protectionists. We are four protectionists-God helping us, and you will add, God helping our Country.¹¹⁰

During the Board’s early years, its members when overseeing tariff revisions, strictly adhered to the canons of the ‘settled policy of protectionism and endorsed massive tariff hikes on imported clothing and ‘luxuries’.¹¹¹ Others saw the Board as being at the “very centre of Australia’s Protectionist system”.¹¹²

This was a period that saw the Board’s systematic extension of the umbrella of protection resulting in a rapid rise and widening of tariff.¹¹³ However, little was heard during this period about the protection of the consumer.¹¹⁴ Working class consumers were especially disadvantaged by the very large increases in tariff rates on apparel in 1925-26.¹¹⁵ By 1928, there were 259 items with duties greater than 40 per cent.¹¹⁶ Senator Kingsmill suggested that the high tariffs on imported clothing might be described as “inverted sumptuary laws.”¹¹⁷ He pointed out that whilst under the ‘old sumptuary laws’ people of a certain status were not allowed to wear expensive garments, the high duties imposed in 1926 prohibited “the wearing of

¹⁰⁹ Hall, above n 75, 76.

¹¹⁰ Rattigan, above n 92, 3.

¹¹¹ R C Mills, above n 81, 74.

¹¹² W K Hancock, above n 14, 91.

¹¹³ R C Mills, above n 81, 77.

¹¹⁴ Ibid.

¹¹⁵ Max Corden, ‘The Tariff’, in Alex Hunter (ed), *The Economics of Australian Industry* (Melbourne University Press, 1963) 186.

¹¹⁶ Ibid.

¹¹⁷ Commonwealth, *Parliamentary Debates*, Senate, 3 June 1926, 19 (Senator Kingsmill).

inexpensive garments.”¹¹⁸ No protection was accorded to consumers against artificially raised domestic prices on essential goods, and instead, they suffered declining access to growers and producers.¹¹⁹ Most importantly, they were denied the option of purchasing cheaper imported goods.¹²⁰

Despite exhibiting zealous loyalty protectionist ideals, the Tariff Board sustained heavy criticism from all quarters. Whilst one critic referred to it, as “that egregious excrescence on our constitutional and political system,”¹²¹ others argued that it failed dismally to provide sufficient protection for Australian industries.¹²² Some, “inside and outside Parliament”,¹²³ argued that the Board had usurped the functions of Parliament and had become an independent tariff-making authority.¹²⁴ One of the most persistent complaints levelled against it during the early years after its establishment was that its decision-making processes lacked transparency and impartiality.¹²⁵ In particular, the Board was rebuked for its practice of holding its hearings in private.¹²⁶

Its recommended Tariff Schedule was considered unfair, and the manner in which the Board formulated the Tariff was thought to be “seriously open to question”.¹²⁷ One journalist, incensed about the Board members’ blatant bias towards manufacturers, insisted that once the members of Parliament and their voters were apprised of the level of the Board’s partiality, it would be inconceivable that the public could expected to be “taxed so heavily for the benefit of a small section of the community”.¹²⁸ Similarly, Mr Mann MP questioned whether the Board, in taxing the

¹¹⁸ Ibid.

¹¹⁹ Judith Smart, “The Politics of the Small Purse: The Mobilization of Housewives in Interwar Australia” (2010) 77 *International Labor and Working-Class History* 53.

¹²⁰ Ibid.

¹²¹ “Protection and the Producer”, *Sunday Times*, 13 September 1925, 4.

¹²² Commonwealth, *Parliamentary Debates*, House of Representatives, 5 March 1926, 41 (Mr Watkins).

¹²³ R C Mills, above n 81, 76.

¹²⁴ Ibid.

¹²⁵ “New Tariff Schedule: A Staggering Blow”, *The Argus*, 15 September 1925, 8.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid; R C Mills, above n 81, 66-67.

public in order that “private industries be bolstered up”¹²⁹ had “functioned in a right and proper manner.”¹³⁰

The complaints against the Board intensified after its hearings were opened to the public. Many were especially shocked by the “cupidity of applicants,”¹³¹ whose admissions, relating to their inability to meet ordinary completion, in fact, amounted to confessions of inefficiency.¹³² Others were concerned that whilst the government nurtured Australian industries “under hot-house conditions,”¹³³ the working class was being called upon to carry the economic burden of an increased cost of living¹³⁴ and were “helpless against Melbourne and Sydney protectionist vampires.”¹³⁵ Furthermore, it became manifestly obvious that the Board was not comprised of a group of “disinterested experts”¹³⁶ who were expected to determine Australia’s tariffs “on a scientific basis”¹³⁷ in place of the “usual empiricism.”¹³⁸ The Board was expected to only have a temporary life. However, the Board’s term was extended for an extra year in 1923 and the *Tariff Board Act 1924* (Cth) had the effect of making the Board a permanent body.

3.5 Women’s Associations

*The housewife... represents the small purse, and artificially inflated prices for daily rations that are not luxuries waken her indignation into active protest.*¹³⁹

During early twentieth century, the Australian women’s movement actively challenged patriarchal and masculinist ideologies and institutions.¹⁴⁰ Their feminine

¹²⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 3 March 1926, 52 (Mr Mann).

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

¹³³ “Results of the Tariff”, *The Mercury*, 14 September 1925, 4.

¹³⁴ “New Tariff Schedule: Soft Goods Dearer”, *News*, 9 September 1925, 13.

¹³⁵ “Protection and the Producer”, *Sunday Times*, 13 September 1925, 4.

¹³⁶ “The New Tariff”, *Gippsland Times*, 29 March 1920, 1.

¹³⁷ “Permanent Tariff Board”, *Clarence and Richmond Examiner*, 2 February 1911, 5.

¹³⁸ R C Mills, above n 81, 59.

¹³⁹ Smart, above n 119, 50.

brand of political activism, although centred on genteel and tasteful ‘at home’ functions and edifying forums, nevertheless prompted the politicization and mobilisation of previously dependent and home-bound women.¹⁴¹ The movement saw the proliferation of progressive women’s organisations, such as the Housewives Association and National Council of Women. Whilst the membership of these organisations grew rapidly to become a “vital force,”¹⁴² they were mainly comprised of middle class and politically conservative women¹⁴³ who were not deeply concerned with mainstream politics but were rather involved with gendered interventionist philanthropic activities “in an increasingly urban society.”¹⁴⁴ “[t]he Woman Movement was a broad and multifaceted expression of local and specific concerns with non-Aboriginal women’s legal, industrial and sexual disadvantages.”¹⁴⁵

The National Council of Women addressed such gendered issues as women’s work in the industrial world,¹⁴⁶ women’s work in charity and philanthropy, women’s work in rural industries and educated motherhood.¹⁴⁷ During the war years, the topics extended to ‘patriotic’ causes such as war savings and thrift campaigns.¹⁴⁸ Male experts such as Herbert Brookes, the then President of the Chamber of Commerce, were often invited to enlighten ‘uninformed’ female members on mainstream political issues and debates.¹⁴⁹ Members of women’s organisations were

¹⁴⁰ Susan Magarey, “History, Cultural Studies, and Another Look at First-Wave Feminism in Australia” (1996) 106 *Australian Historical Studies* 100.

¹⁴¹ “Queen Bee, National Council of Women”, *The Australasian*, 15 November 1913, 42.

¹⁴² Ibid. At the eleventh annual congress of the NCWV there were three hundred members as well as representatives from fifty affiliated societies.

¹⁴³ Anne Summers, *Damned Whores and God’s Police: The Colonization of Women in Australia* (Penguin, 1975) 373.

¹⁴⁴ Magarey, above n 140, 101.

¹⁴⁵ Ibid.

¹⁴⁶ “National Council of Women of Victoria: Report for 1914”, *Hawthorn, Kew, Camberwell Citizen*, 18 December 1914, 5. Miss Cuthbertson, who later played such an important role in providing assistance to the Arbitration Court as a female expert witness presented a paper on this topic to the Annual General Meeting of the National Council of Women of Victoria in 1914. See below Chapter 5.

¹⁴⁷ Ibid.

¹⁴⁸ *Western Mail*, 27 July 1917, 35.

¹⁴⁹ “National Council of Women of Victoria: Report for 1914”, above n 146, 5.

also publically engaged in discussions about the “causes of the ills and evils that confronted the poor.”¹⁵⁰ They promulgated a shared or collective belief in the value of positive social intervention¹⁵¹ to eradicate those ‘social evils’ that ‘threatened’ the lives of ‘decent’ and respectable citizens.¹⁵²

The Housewives Association, led by Ivy Brookes, was established in mid-1915 in Victoria in response to “wartime freezes, the failure of price-control measures, and widespread unemployment and distress.”¹⁵³ The Association fervently supported the government’s protectionist policies as being in the national economic interest.¹⁵⁴ Nevertheless, the Housewives Association, along with other organisations such as the National Council of Women,¹⁵⁵ sought to alleviate the problems faced by female consumers with the rise in the cost of living by encouraging co-operative buying and the marketing of produce directly from the producer to the consumer.¹⁵⁶ However, this consumer project proved unsuccessful. Smart argues that its main activity was then “reduced to preaching patriotism and thrift between 1917 and 1919.”¹⁵⁷

In July 1917, the National Council of Women demanded that women sacrifice more when supporting the war effort.¹⁵⁸ It proposed a campaign to “to foster among womenfolk such a strong patriotic spirit that any women buying luxuries whose manufacture deprived the country of money that should be released

¹⁵⁰ Ibid.

¹⁵¹ Hunt, above n 72, 63. Hunt suggests that these female philanthropists considered that if an ‘evil’ was located than “something could and should be done” to eradicate this evil.

¹⁵² Ibid.

¹⁵³ Smart, above n 119, 50. Ivy Brookes was the Association’s first president. The Association was inspired by the English Women’s Co-Operative Guild, which was founded in 1883.

¹⁵⁴ Ibid 57.

¹⁵⁵ “National Council of Women”, *The Argus*, 23 June 1915, 12.

¹⁵⁶ Ibid. On 24 June 1915, Ivy Brookes explained to the monthly meeting of the National Council of Women (Vic) that the purpose of the co-operative association was to bring about direct interchange between producers and consumers-“to effect that which the Government produce post (sic) arrangements have failed to do.” The plan was to also involve a co-operative credit scheme, “so that women of enterprise and ability may be assisted to commence operations in various branches of industry and production.”

¹⁵⁷ Smart, above n 119, 51.

¹⁵⁸ *Western Mail*, above n 148.

for national purposes, must be regarded as lacking in patriotism”.¹⁵⁹ Whilst ‘luxury’ excited moral condemnation and stimulated the regulatory impulse, ‘thrift’ was extolled as an idealized and commendable feminine virtue. Denying oneself luxuries was considered to be a trivial female sacrifice compared to the part Australian men had played at the front; for they have played their part “nobly, generously, and marvellously unselfishly.”¹⁶⁰ The Council argued that “[s]urely it is only ‘up to us’ women to play our part equally as well, and by doing without luxuries is one way in which we can help.”¹⁶¹

Women of influence often used their powerful positions in these organisations and acted as agents of the dominant male hegemony. For instance, Ivy Brookes cleverly sought to convince other women to forego imported luxuries by appealing to them via their traditional roles as mothers and wives.¹⁶² It was suggested that women were ideally suited to make personal sacrifices on behalf of the nation because they had a superior and natural capacity for selflessness and personal restraint. On one occasion, Ivy persuasively suggested to women that this capacity for self-sacrifice was what defined their extrinsic female characteristic: “[w]omen in general are more ready to make sacrifices, since they are so often called upon to make them in their every-day life.”¹⁶³ On another occasion, she insisted that women had a duty to their country to make a palpable sacrifice to shore-up Australia’s economy.¹⁶⁴ In a further speech, Ivy posits: “[w]hat woman is there who is loyal to her country, who would not give up buying luxuries to help Australia? So this is one way in which we women can help.”¹⁶⁵

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² “Woman and her Home: The Power of the Housewives’ Purse”, *The Age*, 12 April 1916, 12.

¹⁶³ Ivy Brookes, ‘What Can Women Do to Reduce Inflation?’ (Location and Date of Delivery of Speech Unknown, *Brookes Papers* National Library of Australia, Canberra, 1924, MS1924/19) 1-2. See also “‘Question of Protection – Support Australian Industries’: A Paper by Mrs H Brookes”, *Ballarat Star*, 29 April 1915.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

3.6 The Commonwealth and State Arbitration Courts

I am safe in saying that this interesting Australian experiment is so far a success, and that there is not the slightest indication of any movement to revert to the old anarchic state.

Henry Bournes Higgins¹⁶⁶

The constitutional framers of the new *Constitution* were determined that the new nation should “reach out into a new province and replace barbarous [industrial relations] practices”¹⁶⁷ with orderly practices through the machinery of conciliation and arbitration: a uniquely “Australasian social experiment”.¹⁶⁸ This innovative form of state intervention in industrial relations was led by Henry Bournes Higgins J (1851-1929),¹⁶⁹ who has been described as “the founder and principal architect of the system of conciliation and arbitration.”¹⁷⁰ Yet, Higgins J had no experience in industrial matters when he was first appointed to the Conciliation and Arbitration Court.¹⁷¹

Higgins J had been born in Ireland on 30 June 1851. His father was a Methodist minister and the family emigrated to Australia in 1870. He was educated at Wesley College Ireland and Melbourne University where he graduated in law. He had a lengthy career at the Melbourne Bar and in politics before his appointment to the High Court. Higgins J had been one of the ten chosen from Victoria to meet in Adelaide for the convention for framing the Federation Bill. Whilst he studying law,

¹⁶⁶ Henry Bournes Higgins, *A New Province for Law & Order* (Dawsons of Pall Mall, 1968) 76.

¹⁶⁷ Brian Brooks, ‘From Higgins to Hancock: The Boundaries of a New Province for Law and Order’ (1985) 27 *Journal of Industrial Relations* 472, 474.

¹⁶⁸ Nettie Palmer, “Henry Bournes Higgins” (1929) 1 *Australian Quarterly* 30, 35. It was suggested by Nettie Palmer (who was Higgins’ niece) that the Commonwealth Court of Conciliation and Arbitration Court arose “from a simple enough proposal in the Federal Convention of 1898-9 that the all-Australian parliament should have power to legislate for disputes extending beyond the borders of any one State.

¹⁶⁹ John Rickard, *H B Higgins: The Rebel as Judge* (Allen & Unwin, 1984).

¹⁷⁰ T J Kearney, “The Life and Times of Henry Bournes Higgins – Politician and Judge (1851-1929)” (1989) 11 *Australian Catholic Historical Society Journal* 33. In January 1898, Higgins J gained agreement to the insertion of s 51 (XXXV) in to “the almost completed draft Constitution”. See Brooks, above n 167.

¹⁷¹ Charles Fahey and John Lack, “A kind of Elysium where nobody had anything difficult to do, H V McKay and the Agricultural Implement Makers, 1901-26” (2001) 80 *Labour History* 104.

he tutored students including the sons of David Syme (the Victorian Newspaper magnate who heavily influenced the promotion of Protectionism).¹⁷² Alfred Deakin was one of Higgins' closest friends.¹⁷³

Higgins served as the federal member for North Melbourne, a working-class seat. In 1904, he served as Attorney-General in the first and short-lived Watson Labor government, but he was not a member of the Australian Labor Party. In 1906, he was appointed as a Puisne Justice of the High Court of Australia, and in September 1907, he was appointed as second President of the Court of Conciliation and Arbitration, whilst simultaneously maintaining his position on the High Court.¹⁷⁴ During the decades following Federation, government had sought to more formally regulate and 'normalise' the population through new forms of institutional power. The creation of the Federal arbitration court system was one of the most notable examples of the government's regulatory impulse. The arbitration courts' 'living wage' hearings not only diffused industrial conflict but were real attempts to control, "in the whirling confusion of the times,"¹⁷⁵ what Hunt calls the "visible manifestations of rising social groups either challenging or undermining the incumbents of advantaged social positions."¹⁷⁶

The *Harvester* case¹⁷⁷ was Higgins J's first case and he had to decide whether the manufacturer Hugh McKay was paying a 'fair and reasonable' wage to his employees as required by the 'New Protection' legislation. In this case, after Higgins had calculated a family budget for a household of 'about five persons', he settled on seven shillings a day as the minimum wage for an unskilled labourer.

¹⁷² Rickard, above n 169.

¹⁷³ See Kearney, above n 170.

¹⁷⁴ Rickard, above n 169.

¹⁷⁵ Henry Bournes Higgins, "A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration" (Pt 3) (1920) 34 *Harvard Law Review* 105.

¹⁷⁶ Hunt, above n 72, 143. By 1920, Higgins was concerned about "[v]ague and ill-considered proposals for the immediate introduction of a new social order [that] have been spread abroad, and in remote Australia as well as elsewhere." See Higgins, "A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration" above n 176.

¹⁷⁷ *Ex Parte H V McKay* (1907) 2 CAR 1 ('*Harvester*').

Higgins J believed his task¹⁷⁸ was to set prescribed nationwide standards¹⁷⁹ for the working classes whilst at the same time providing for the “normal needs of the average [male] employee, regarded as a human being living in a civilised community.”¹⁸⁰ Marriage was always to be the cornerstone of this ‘living wage’ paradigm.¹⁸¹ Higgins argued that it was not his duty to fix a high wage “but a fair and reasonable wage: not a wage that is merely enough to keep body and soul together, but something between these two extremes.”¹⁸² This ‘living wage’, as the basis of his “pioneering nation-building work”,¹⁸³ was to cover the basic requirements of shelter, food, clothing and some measure of ‘frugal comfort’ for a man, his wife and three notional children.¹⁸⁴ This ‘normality test’ was to become Higgins J’s “primary test”¹⁸⁵ in ascertaining the minimum wage in the case of *male* ‘unskilled labourers’.¹⁸⁶ This form of normalisation became binding as a code that

¹⁷⁸ Henry Bournes Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” (Pt 1) (1915) 29 *Harvard Law Review* 13, 14.

¹⁷⁹ Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” above n 176. Higgins suggests that “[d]uring these last trying years Australia has found advantage of having set standards as to employment in industry, of having a tribunal ready and willing to apply those standards.”

¹⁸⁰ *Harvester* (1907) 2 CAR 1, 3. Marilyn Lake suggests that Higgins was concerned about the influence on non-White labour in the Australian workforce. He passionately supported both the *Immigration Restriction Act 1901* (Cth) and the *Pacific Islands Labourers Act 1901* (Cth). In 1901, he declared that Australia did not ‘want men beside us who are not as exacting in their demands on civilisation as ourselves.’ This type of comment is reflected in his commitment in the *Harvester case* for a wage that would support a ‘civilised being’ ‘living in a civilised community.’ See Marilyn Lake, “White man’s country: The trans-national history of a national project” (2008) 122 *Australian Historical Studies* 361.

¹⁸¹ Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” above n 176. Higgins says: “[t]he basic wage is to be fixed on family lines, on the assumption that the male adult worker has to support himself, wife, and three dependent children. This is accordance with the assumption of the Court in 1907; and it in accordance with the United States Bureau of Labour and Statistics, December 1919. Mr Seebohm Rowntree, in England, in his thoughtful study of the subject, “The Human Needs of Labour,” has worked on the same lines.”

¹⁸² *Harvester* (1907) 2 CAR 1, 16.

¹⁸³ Mark Hearn, “Securing the Man: Narratives of gender and nation in the verdicts of Henry Bournes Higgins” (2008) 37 *Australian Historical Studies* 3, 4.

¹⁸⁴ Ibid 9. Hearn and others suggest that Higgins borrowed the term “frugal comfort” from the papal encyclical *Rerum Novarum* that recommended that workers’ remuneration should provide them with “reasonable and frugal comfort.”

¹⁸⁵ Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” above n 178, 14.

¹⁸⁶ Ibid 14-15.

was subsequently adopted and validated as “just and proper”¹⁸⁷ by other arbitration judges and Boards of Trade.¹⁸⁸

The *Harvester* minimum wage was considerably higher than that allowed by most State tribunals. Trade unions sought to bring their disputes within the jurisdiction of the Commonwealth Court whilst employer organisations vilified the court and its president. Yet, Higgins J’s decision in this case won “him world-wide renown as an innovator in the field of social justice”¹⁸⁹ and he was to become an important influence on the state arbitration judges, including Justice William Jethro Brown, who closely followed Higgins J’s lead.¹⁹⁰ The Court of Conciliation and Arbitration offered Higgins J a unique opportunity to make his visionary stamp by using a pioneering form of dispute resolution that involved a civilised¹⁹¹ and scientific¹⁹² approach towards dispute resolution. On a broader level, he intended to use the Court to play a role in the building of the new nation¹⁹³ and “to uphold managerial prerogative while acknowledging a selective range of rights for a predominately white male workforce.”¹⁹⁴ He provided working-class men and women with an unprecedented opportunity to express their “demands for justice”¹⁹⁵ and to give to the public an account of their personal trials and tribulations as members of the workforce.¹⁹⁶ Nevertheless, Higgins’s ‘normalising’ objectives were motivated to a large extent by his paternalistic desire for national industrial

¹⁸⁷ Higgins, above n 166, 97. Higgins says that the system of arbitration that he devised is “now, apparently, universally accepted as just and proper.”

¹⁸⁸ Ibid 137.

¹⁸⁹ Kearney, above n 170. His niece, Nettie Palmer, cited an article in *The New Republic* that Higgins was “one of the greatest judges in the English-speaking world”. See Palmer, above n 169, 33.

¹⁹⁰ Higgins, above n 178, 35. Higgins J declared that the principles adopted in *Harvester* for ascertaining a fair and reasonable minimum wage “have survived and are substantially accepted, I believe universally, in the industrial life of Australia.”

¹⁹¹ Ibid 14.

¹⁹² *Federated Clothing Trades of the Commonwealth of Australia v Archer* (1919) 13 CAR 647 (‘*Archer*’). Higgins in the *Archer* transcript (124) suggested the need for ‘scientific investigation’ to ascertain costs. See “Clothing Trade”, *The Argus*, 6 May 1919, 7.

¹⁹³ Mark Hearn, “Sifting the Evidence: Labour History and the Transcripts of Industrial Arbitration Proceedings” (2007) 93 *Labour History* 3.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid 4.

¹⁹⁶ Ibid.

uniformity and to set prescribed nationwide standards¹⁹⁷ on consumables including his vision of ‘civilized’ social conformity.¹⁹⁸

3.7 The Unions

*The protection of manufacturers and of labour marches in one indissoluble unity, and in this matter, at least, the two lions of employer and employed lie down at the same feast, with the same “lamb”, consuming the consumer.*¹⁹⁹

In 1914, about one Australian in every nine was a trade unionist, whilst in 1927 it was approximately one Australian in seven.²⁰⁰ Conditions were immensely favourable for the growth of trade unionism during the first decades after Federation. This was mostly because its members were made up to a large extent from “the great mass of [British] immigrants”²⁰¹ who were of a class that had been accustomed to ‘craft organisations’ or guilds.²⁰² Whilst unionism underpinned the creation of the Labour Party, it was, according Hancock, also to a considerable degree, a product of industrial arbitration.²⁰³ Not only did the state protect unionism, the judicial regulation of industry practically compelled the creation of trade union organisations, as the “only organised bodies [that could] approach the courts.”²⁰⁴

K J Hancock suggests that the expansion of federal coverage into areas of employment appeared to have been instigated by the unions, particularly during the

¹⁹⁷ Higgins, above n 175. Higgins J suggests that “[d]uring these last trying years Australia has found advantage of having set standards as to employment in industry, of having a tribunal ready and willing to apply those standards.”

¹⁹⁸ Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” above n 178, 3-14. Higgins J argued that: “[t]he awards must be consistent one with the other, or else comparisons breed unnecessary restlessness, discontent, industrial trouble.”

¹⁹⁹ Brigden, above n 30, 29.

²⁰⁰ W K Hancock, above n 14, 198.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid 217.

²⁰⁴ Ibid.

period between 1912 until the 1920s.²⁰⁵ He suggests that Higgins J was “probably the strongest exponent of the notion of pursuing industrial peace by enforcing a code of wages and salaries that was founded upon clear principles of industrial policy.”²⁰⁶ In the early years after Federation, the trade union-backed Labour Party, which had at first held the balance between Free Traders and Protectionists, began playing what W K Hancock calls the profitable bargaining game of “support in return for concessions.”²⁰⁷ The party started to drift towards the Protectionist side which pandered to their fears about “the competitive strength of frugal Orientals”²⁰⁸ that might result in lower wages and conditions for Australian workers.²⁰⁹ The Labour Party reached a highpoint of political power in 1915, when it held Federal control and governed five of the six states.²¹⁰ Despite this affiliation between unionists and protectionists, there was a period of acute industrial unrest during the latter part of World War I.²¹¹ However, notwithstanding some divisions, trade unionists generally continued to support the existence of arbitration.²¹²

On the other hand, the relationship between government and the arbitration system had become, at times, highly volatile.²¹³ A crisis occurred in the 1918-21 period when “open conflict emerged”²¹⁴ between Higgins J and Hughes about Higgins J’s apparent sympathy with union claims for a 44-hour week.²¹⁵ Hughes was frustrated by the failure of Higgins J and Powers J “to secure quick settlements of damaging strikes”²¹⁶ and proposed to replace Higgins J’s arbitration system with a

²⁰⁵ K J Hancock, “The First Half-Century of Australian Wage Policy” (Pt 1) (1979) 21 *Journal of Industrial Relations* 5.

²⁰⁶ Ibid 16.

²⁰⁷ W K Hancock, above n 14, 83.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid 205.

²¹¹ K J Hancock, above n 205, 17.

²¹² Laura Bennett, *Making Labour Law in Australia: Industrial Relations, Politics and Law* (Lawbook Company, 1994) 23.

²¹³ K J Hancock, above n 205, 13.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid 17.

number of specialised tribunals.²¹⁷ Higgins J immediately resigned, claiming that such a proposal was a reckless concession that would only multiply future industrial troubles.²¹⁸

During 1921-22, when the Tariff Board was being established, there was brief economic recession, when unemployment rose to 11.2 per cent.²¹⁹ Even though there was no union represented on the Tariff Board, union representatives, without concern for the consumer, nevertheless continued to seek the rewards of protection to allay what were seen as worsening standards of living for their workers:

Their strategy was to support the manufacturer's claims for higher tariffs before the Tariff Board, and after the increase had been granted, to apply to the Arbitration Court for higher wages.²²⁰

In its 1926 Annual Report, Tariff Board members expressed their alarm about the actions of the unions in applying to the Arbitration Court for increases in wages whenever the tariff was increased.²²¹ It seems that unionists supported protectionism because they considered that it helped protect wages in sheltered industries and that it could even guarantee them high wages.²²² Whilst the Board conceded that it was natural for workers to want to share in the benefits of protection, the Board suggested that the unions' claims were in fact defeating the effect of any increase in duties.²²³ It suggested that this passing back and forth between the Federal Arbitration Court and the Tariff Board for increments in wages and duties would have the effect of continuously raising the cost of living and bringing about 'industrial paralysis'.²²⁴

²¹⁷ Ibid. The *Industrial Peace Act 1920* (Cth) was enacted and gave Hughes' government the powers to set up special tribunals to deal with industrial disputes or a single industrial dispute. See Laura Bennett, above n 212, 23.

²¹⁸ K J Hancock, above n 205, 17.

²¹⁹ Ibid.

²²⁰ Glezer, above n 78, 10.

²²¹ R C Mills, above n 81, 80.

²²² W K Hancock, above n 14, 190-191.

²²³ R C Mills, above n 81, 80.

²²⁴ Ibid.

3.8 The Press

*The public of Australia are more dependent on the daily press for information than the public of any other country in the world...*²²⁵ Henry Bournes Higgins

Even before Federation, newspapers such as the *Bulletin*, *The Age*, *The Sydney Morning Herald* and *The Argus* were popular and influential mouthpieces of Australian “literary, economic, and political nationalism”.²²⁶ There was fierce competition between newspaper proprietors. During the peak year of 1923, Australia had 26 metropolitan dailies and 21 separate newspaper proprietors.²²⁷ Syndication and mass-circulating newspapers were common, and this resulted in political, social and cultural issues being widely disseminated, in various guises, across the nation.²²⁸ The press had real control over public opinion. It could educate and entertain readers. It could to sway public opinion by sensationalising, criticising, endorsing or moralising any contemporary social issue or governmental policy. The press could reassure readers in times of crisis or it could publish alarmist propaganda. The influence of the press on the masses was so great that it prompted one editor to declare: “Its influence is destined to supersede that of the pulpit and Parliament as a means of advancing the moral and material welfare of humanity, and spreading the blessings of civilisation...”²²⁹

Newspaper proprietors, including James Fairfax (1863-1928) and David Syme, exercised enormous influence over government policy before and after Federation. Syme, in particular, used his proprietorial and editorial influence at the

²²⁵ Higgins, above n 166, 142.

²²⁶ W K Hancock, above n 14, 66.

²²⁷ K S Inglis, *The Daily Papers*, cited in William Peter Coleman (ed), *Australia Civilization: A Symposium* (F W Cheshire, 1962) 147.

²²⁸ Ibid.

²²⁹ “The Education of An Australian Journalist”, *Brisbane Courier*, 28 September 1882, 2.

Age in Melbourne to voice his form of male-dominated liberalism²³⁰ that was serious, progressive and moral.²³¹ He was a persuasive communicator and an astute political commentator who clearly influenced government policy, particularly when he zealously championed tariff protection and land reform. He was considered to be not only the ‘father of protection’ but also the “the maker and unmaker of Governments.”²³² Syme made clever use of new technologies of communication, such as the rotary press, to significantly increase his readership and his circle of influence. His biographer claimed that for almost fifty years, Syme was the most powerful person in Australia.²³³

He and his son Geoffrey (1873-1942) both proved to be valuable allies to influential men such as Higgins J,²³⁴ Herbert Brookes,²³⁵ and Alfred Deakin, who was said to have an “almost filial intimacy”²³⁶ with the newspaper magnate. Deakin, who had been converted to the cause of Protection,²³⁷ declared in Syme’s biography, that Syme’s newspaper “was a power because [Syme] was a power”.²³⁸ Morrison suggests, however, that whilst Syme took a prominent part in the politics leading up to Federation, it was more often politicians such as Deakin who sought to influence Syme in order to have certain views advocated in the *Age*.²³⁹

The male-dominated Australian press used gendered discourse to reinforce sexual stereotypes and social customs. News coverage was primarily written for men, by men and scant attention was given to women’s issues except when they related to

²³⁰ Rickard, above n 169, 73. It has been claimed that the imprimatur of David Syme and his newspaper, the *Age*, was always essential for a liberal government.

²³¹ Graeme Davison, “David Syme: Man of the Age” (Speech delivered at the Launch of Elizabeth Morrison’s Book David Syme: Man of the Age, State Library of Victoria, 12 August 2014).

²³² W K Hancock, above n 14, 224.

²³³ Ambrose Pratt, *David Syme: The Father of Protection in Australia* (Chapman & Hall, 1908) xxv.

²³⁴ Rickard, above n 170, 56, 83-84. However, Higgins J’s biographer states that Higgins was reticent as to how much of an introduction this gave him to Syme, who was to prove helpful in his early political career.

²³⁵ Rivett, above n 41, 205. Geoffrey was heavily involved with the Brookes in the establishment of the Liberal Party.

²³⁶ Rickard, above n 169, 87.

²³⁷ Ibid 63.

²³⁸ Pratt, above n 233, vi.

²³⁹ Elizabeth Morrison, ‘David Syme’s Role in the Rise of *The Age*’ (2013) 84 *Victorian Historical Journal* 16, 29.

dress, appearance and moralisation. At a time when women were seeking a more public role in society by entering the workforce and pursuing roles in government, the press insisted on describing and defining them in gendered and often trivial or idealised terms: by their dress, their physical appearance or in caricature. This type of misogynist media coverage was particularly vitriolic when issues were raised concerning women's rights or social projects including suffrage, the temperance movement, and female wages and working conditions.²⁴⁰ Women activists were mocked, abused and insulted.²⁴¹ They were often portrayed by the press, in words, and often in cartoons, as unfeminine, frigid and hysterical.²⁴²

We see in later chapters that femininity and women's fashions became a public site of conflict and contestation.²⁴³ The press was complicit with religious officials and Parliament in the condemnation of female consumers who favoured imported fashion clothing and eschewed Australian manufactured lines.²⁴⁴ These women were not only accused of being unpatriotic but they were considered to be responsible for all manner of social and economic ills.²⁴⁵ It is ironic that, at the same time women were being denigrated for their consumption practices, these newspapers carried a plethora of special sexualised messages and fashion advertisements that were especially aimed at enticing a feminine public.²⁴⁶

3.9 Conclusion

This chapter has provided a brief contextual background for the chapters that follow. It provides some understanding of the personalities, institutions and

²⁴⁰ "Women's Rights", *Evening News*, 9 February 1914, 6.

²⁴¹ "Women's Rights and Wrongs", *The Register*, 9 September 1916, 8.

²⁴² "Women's Lefts", *Mullumbimby Star*, 19 January 1911, 6.

²⁴³ See below Chapters 5, 6 and 8.

²⁴⁴ See below Chapters 6 and 8.

²⁴⁵ See below Chapter 8.

²⁴⁶ See below Chapters 6 and 8.

ideologies that contributed to the revival of sumptuary regulation in Australia during the early decades following Federation and that feature so prominently in the following chapters. The chapter illustrates the extent that patricians such as the Brookes' and institutions such as the Tariff Board played in shaping social and economic policy Australia as a fledgling nation.

Chapter 4 will examine the birth and expansion of Protectionism in Australia up until 1914. Protectionism was firmly embraced by early post-Federation governments and touted by many as the panacea to protect nascent local industries from aggressive overseas competition. It was a sumptuary policy that was closely intertwined with notions of patriotism, nationalism and moral regulation.

4 TAXATION IN AUSTRALIA UP UNTIL 1914: THE WARP AND WEFT OF PROTECTIONISM

4.1 Purpose and Structure of the chapter

*The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but the power to keep alive.*¹

This chapter offers an account of the taxing policies in Australia from 1788 up until the beginning of World War I, when the exigencies of the First World War forced the Australian government to reassess its tax policies. During the period from 1788 until 1914, Australia transitioned from being a collection of provincial colonies with their own economic objectives and taxing policies to a Federation with centrally-directed taxing authority. Whilst this political transition was taking place there was also a transition occurring in government policy concerning the function of taxation in Australia.

Government no longer used taxation just for revenue-raising but began to use it more as an intrusive tool to modify the private behaviour of Australians to reflect its own economic policy of protectionism. As a result, a strong symbiotic relationship developed between taxation and protectionism and, by the end of the first decade after Federation, Australia had become almost uniformly Protectionist. This chapter argues that at the same time taxation was taking on this decidedly protectionist character, the federal government's policy of imposing high tariffs on apparel began to markedly resemble what Hunt calls "a project"² of sumptuary regulation. The federal government's policy of imposing high tariffs on imported

¹ *Nichols v Ames*, 173 US 509, 8 (Peckham J) (1899), quoted in *R v Barger* (1908) 6 CLR 41, 81 (Isaacs J).

² Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (MacMillan Press, 1996) 8.

apparel had assumed a marked ‘sumptuary *effect*’. This meant that the Australian government controlled what type and quality of clothing certain classes of people could wear.

The purpose of this chapter is to lay the framework for one of the central issues of my thesis; that taxation of clothing in Australia in the first three decades after Federation can be regarded as a form of sumptuary regulation. This chapter provides a textural³ surface on which I can lay out the warp and weft of my narrative. As I begin to lay out the threads of Australia’s early taxes, and then overlap them with the newly spun strands of protectionism it’s not long before they all start to intertwine and form a (con)textual fabric reflecting the social, economic and political concerns that faced Australia as a transitioning nation. My fabric, at this stage in the weaving process, begins to look like a fragment of a previously archived sumptuary text(ile). In the following chapters, I will continue to lay other new and different threads across the surface of this foundational fabric; including threads of nationalism, of war precautions legislation and increasing government intervention. By then, the fabric will have become an even more tightly woven replica of sumptuary regulation. It will not be until chapters 9 and 10 that we notice this fabric weaken and begin to lose its sumptuary character.

Following on from the introduction in Part 1, the second part of the chapter looks at the main source of taxation in the early Australian colonies. It also argues that at the time of the first white settlement there were some commonalities between these early colonial taxes and sumptuary regulation. Part 3 begins by providing some background to the taxation regime that came to be introduced at Federation. This part also suggests that the form of protectionism that developed in the first three decades

³ The words “text” and “textile” both derive from the Latin *texere*, to weave. Oxford English Dictionary, *Text* <<http://www.oed.com>>.

after Federation had its roots in the colonial taxing policies implemented in the first three decades of white colonial settlement in Australia.

Part 4 describes the move from an Imperial-administered colonial taxing regime to one where the colonial governor was in a position to impose local customs duties. It shows that it was not until each colony had its own representative government that it was in the position to implement its own taxation policy. Part 5 briefly explores how the original revenue-raising role of taxation in the colonies morphed into a combined fiscal and protective device that was then used by colonial governments to promote their social and economic objectives. Further, this part will also show that protectionist duties provoked a spirit of provincialism in the colonies which eventually became one of the main motivating factors behind the move towards Federation, which, it was hoped, would solve inter-colonial trade disputes.⁴

Part 6 deals with the shift of taxing powers from the colonies to the Federal Government. It details the emergence of a centrally-directed taxing regime that sought to provide funds to the States and to provide for the costs of the Federal Government. This part also illustrates that although most of the revenue collected during the first two decades after Federation came from customs and excise, these same duties had also quickly become highly protectionist in character. Part 7 examines the second Deakin government's attempt to attract labour supporters to its protectionist ideology by linking protection with the provision of 'fair and reasonable wages' for workers.

Part 8 attempts to proffer some explanations why, by the end of the first decade after Federation, Australian politicians began to take on a more uniform approach to protectionism. This part also provides a brief sketch of the political discourse that was not only preoccupied with the potential effects of protection, but which also had adopted a more pro-protectionist advocacy and fervour. Part 9 briefly describes how government continued to increase tariffs on clothing after the failure of the 'New Protection' to link protection with 'fair and reasonable wages'. It also

⁴ A J Reitsma, *Trade Protection in Australia* (University of Queensland Press, 1960) 11.

provides an overview of the functions of the Inter-State Commission which the Federal government established as part of its continued experimentation with trade protection.

4.2 Early Colonial taxes-a faint sumptuary pattern

*This was the state of things in England at the time of the first settlement in Australia.*⁵

This part of the chapter looks at the main source of taxation in the early Australian colonies. It also argues that even at the time of the first white settlement there were some commonalities between these early colonial taxes and sumptuary regulation. This part also suggests that the form of protectionism that developed in the first three decades after Federation had its roots in the colonial taxing policies implemented in the first three decades of white colonial settlement in Australia.

Australia's earliest⁶ colonial taxes on spirits, wine and beers⁷ were 'indirect' consumption taxes in the form of customs⁸ and excise duties. The fact that taxation took this form in the Australian colonies was not an unusual phenomenon. By the time of white colonization in Australia, most countries and colonies had taxation that tended to be indirect.⁹ In 1925, when Mills published his iconic *Taxation in*

⁵ Stephen Mills, *Taxation in Australia* (MacMillan Press, 1925) 11.

⁶ Ibid 24. Mills states that in 1791 Governor Phillip suggested the imposition of a duty on spirits; which the King afterwards imposed.

⁷ Ibid 22.

⁸ Ibid 4-6. Although customs (*portoria*) existed at the time of ancient kings of Rome, it was during the reign of Augustus and his successors when the trade in riches and exotic merchandise from Syracuse, Carthage, Macedonia and Asia increased enormously, that customs and excise duties were then imposed on every kind of imported and exported goods. These same types of taxes were maintained in the British Isles after the Romans departed. It was commonplace for the English sovereign to impose import duties on luxuries including textiles such as lace, silk and scarlet and other dyed cloth, as well as export duties on items such as wool and leather.

⁹ Woellner et al, *Australian Taxation Law* (CCH, 24th ed, 2014) 1-40. Woellner et al suggest that, by 1755, such taxes provided 82% of total English revenue: at 5. It is also suggested that the reason why there was the lack of any real broad-based system of taxation was the lack of the administrative infrastructure and expertise necessary for the efficient control of this type of tax system: at 6.

Australia, these types of indirect taxes”¹⁰ were continuing to provide the largest single item of revenue for the Commonwealth of Australia.¹¹ Mills argues that the introduction of this type of “impost”¹² during the early stages in the history of maritime countries such as Australia is “*a priori* probable”¹³ because it was commonly the first form of taxation levied by a young community. Historically, this type of taxation also reflected the need for royal or State protection in light of the real risks from piracy¹⁴ that importers and merchants faced with the transit of precious and rare merchandise, such as wine, wax and cloth.¹⁵

There is an interesting parallel between these types of colonial taxes and the English sumptuary laws.¹⁶ Both types of legislation depended to a large extent on the economic control and security of maritime spaces and territorial borders. This meant that it was often necessary, when protecting local industry, to regulate the ingress and egress of foreign domestic goods.¹⁷ In the Australian context, the perilous journey involved in the importation of necessities and luxuries from the Motherland to Australia during the colonial period caused persistent anxieties for both government officials and merchants. However, when the goods finally arrived at the few established deep-water ports, the exaction of tax was efficacious and did not require sophisticated infrastructure for assessment and collection.¹⁸ There are a number of other commonalities between these early Australian colonial customs duties and

¹⁰ Mills, above n 5, 3. Mills suggests these types of taxes had their roots in Roman and Medieval English taxing policy.

¹¹ Mills, above n 5, 3.

¹² Ibid 5.

¹³ Ibid.

¹⁴ Ibid 5. Mills suggests that in some instances customs taxation was introduced in England during the interval between the departure of the Romans and the Norman Conquest. An important consideration were the risks of transit incidents in those earlier ages when the rule of law on ocean highways was either entirely unknown or was generally disregarded. Mills suggests that the tax was a toll paid to the King for the “necessary protection of merchants and their merchandise ‘*ineundo morando et redeundo*’ on land and sea”. In other words, it was a premium paid to the King at ports for insurance and royal protection on imported and exported cargo, particularly in predatory times when pirates frequently attacked merchant vessels.

¹⁵ Ibid 5.

¹⁶ Ibid 8. Customs duties were at various times called “Aliens Duty”.

¹⁷ Ibid 8.

¹⁸ Mills, above n 5, generally.

sumptuary laws. Both were consumption-based and both involved restrictions on the expenditure on dress, food and other items of consumption. They were also both based on a plethora of *ad hoc* and often inconsistent legislation and regulations.

At the time of the first white settlement in Australia, not only was the management and collection of Customs revenue subjected to “incredible abuses”¹⁹ but “[t]he Statute Book was crammed with innumerable Acts relating to the Customs, overlapping, chaotic, unintelligible.”²⁰ Mills suggests that it was this jungle of legislation, concerning the imposition and collection of Customs duties, which became the basis of the tax system applicable at the time of the first white settlement in Australia.²¹

For many decades, the colonies’ taxing policies were motivated by the need to raise revenue to supplement those often meagre funds that were provided by England to establish and maintain both a penal colony and a free settlement in a land that was not only isolated by vast distance from ‘the homeland’ but which also lacked any of those comforts and industries found at the time in England.²² During this period the British government provided food and clothing for most of the convicts, their guards, some civilians and Aborigines.²³ Some taxes, in the form of customs (tariffs) and excise duties, were also raised by the colony’s administrators to ostensibly supplement the official stipend which was aimed at mere subsistence husbandry.²⁴ It was expected that this stipend would continue to be provided by the British Government until such a time that each colony, with its cheap prison labour, could ‘keep itself’.²⁵ In fact, until 1824, public expenses for the Colony of New South Wales consisted chiefly of expenditure connected with the support and

¹⁹ Ibid 10.

²⁰ Ibid 10. According to Mills there were 1300 laws of Customs passed between the first and fifty-third years of the reign of George III.

²¹ Ibid 10.

²² Margaret Maynard, *Fashioned from Penury: Dress as Cultural Practice in Colonial Australia* (Cambridge University Press, 1994) 28.

²³ Ibid 27.

²⁴ William Hancock, *Australia* (Ernest Benn, 1930) 11.

²⁵ Ibid.

management of British convicts²⁶ and were borne almost entirely by the “Imperial Government.”²⁷

This form of financial assistance helped to shore up both Britain’s need to establish and maintain colonies in which it could relocate surplus convicts²⁸ or ‘human riffraff’. It also allowed her to continue to carve out colonial outposts where resources, both human and natural, could be regulated and turned to an advantage in building up the expanding Imperial Empire.²⁹ Britain not only ‘owned’ the new colonies and all their natural resources, but the Imperial government deemed itself to be in the best position to minutely regulate and guide the activities of all British colonial subjects. At the same time, it maintained public order and established a clearly defined hierarchical social order. During the transportation period, for instance, the British government regulated what clothing that most inhabitants could wear.³⁰ Early convicts were in most part identifiable by a uniform that was made distinctive by a coloured stripe.³¹

This form of paternalism,³² where the Imperial Government was the universal provider, also created a widespread dependency that discouraged local enterprise and eventually fostered strong reliance on cheap ready-made imported clothing and accessories, particularly those of British origin.³³ The flood of ready-made clothing into the colonies not only became a boon to British manufacturing, but also provided colonial governments with an opportunity to alleviate economic insecurity by raising substantial revenue on this imported clothing.³⁴ These social and economic bonds and associations with Britain and the indefatigable crossing and re-crossing of the oceans from one hemisphere to another in the transportation of convicts, government

²⁶ Mills, above n 5, 26.

²⁷ Ibid.

²⁸ Ibid 20.

²⁹ Maynard, above n 22, 10.

³⁰ Ibid.

³¹ Ibid 14.

³² Ibid 27; Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 1901, 15 (James McColl).

³³ Mills, above n 5, 26-27.

³⁴ Maynard, above n 22, 27.

officials, free settlers and merchandise continued to ensure that there was a constant flow of goods that would attract customs and excise duties; particularly imported clothing and exported materials such as wool.³⁵ After the 1790s, there was also a vigorous private trade in fabric, leather, sewing accessories and low-cost readymade clothing for men and women³⁶ with British colonies, such as India.³⁷ Not only did these goods supplement the supply of British-made clothing but it also meant more money for the colonies' coffers.

However, the collection practices and value of these taxes were nothing more than an *ad hoc* exercise during a period when the Colonies' administrators had to deal with many exigencies: an uncertain economy, a disinterested British government, unrest and dissatisfaction of prisoners and settlers, the irregularity of shipments and the lack of local industries and businesses.³⁸ Harris suggests that the Colonies "did not have a great need for revenue during the first half of the 19th Century".³⁹ Whilst most of the costs of transportations and the establishment and running of the penal settlements were borne during this period by the Imperial Governments, through the raising of funds from the London markets and the sale of public land to free settlers, local tax collection in the colonies was still significant. Not only did the added revenue help fill some of the gaps not covered by these fiscal procedures but it could be argued that this type of taxation became the foundation stone upon which the colonial tax regime and later the early Federal tax systems were built.

³⁵ Reitsma, above n 4. For example, there was, according to Governor King, who initiated the tariff system in New South Wales, a 5% duty on "all wares and merchandise brought from any port to the east-west of the Cape".

³⁶ Maynard, above n 22, 27.

³⁷ Ibid.

³⁸ Ibid 27-32.

³⁹ Peter Harris, 'Metamorphosis of the Australian Income Tax: 1866 to 1922' (Research Study No 37, Australian Tax Research Foundation, 2002) 201.

4.3 1819-1859- the formalisation of tax policy in the Australian Colonies

*In 1819 the affairs of New South Wales received more than the usual amount of attention and publicity in England.*⁴⁰

This part of the chapter describes the move from an Imperial-administered colonial taxing regime to one where the colonial governor was in a position to impose local customs duties. However, it was not until each colony had its own representative government that it was in the position to implement its own taxation policy.

In 1819, the British Parliament legalised⁴¹ the collection of duties in the colony of New South Wales. The New South Wales Governor was thus authorised to impose customs duties of 10 shillings per gallon upon British spirits or British West Indian rum shipped from Britain; of 15 shillings upon foreign spirits; of 4 shillings per pound on tobacco and 15 per centum *ad valorem* duties upon non-British manufactures and upon the importation of all goods, wares and merchandise not being the growth, produce, or manufacture of the United Kingdom.⁴²

The first steps in establishing representative government were made with the passing of a British Act⁴³ in 1823. This Act provided a very simple form of legislative governance for the colony. It was not until 1842 that provision was made for elected members to participate in the legislative council. The *Australian Constitutions Act (No 1) 1842* (Imp) established a blended Legislative Council that consisted of thirty-six members, of whom two-thirds were to be elected and one third to be appointed by the Crown. Responsible parliamentary government was finally achieved in New South Wales, Victoria, Tasmania and South Australia in 1856. In

⁴⁰ Mills, above n 5, 29.

⁴¹ *Duties in New South Wales Act 1819*, 59 Geo 3, c 114.

⁴² Mills, above n 5, 29.

⁴³ *New South Wales Act 1823*, 4 Geo 4, c 96. Mills suggests that the enactment of this Act marked the end of the 'purely military government' that had subsisted since the establishment of the Colony.

New South Wales, the existing Legislative Council was replaced by a bicameral legislature that consisted of a Legislative Council and a Legislative Assembly.

Under the 1923 Act, the Governor exercised legislative powers on the advice of a small legislative council constituted of five to seven members appointed by the Crown.⁴⁴ Whilst the legislators envisaged a colonial constitution and court system for New South Wales and Van Diemen's Land, they did not consider expanding the colonial taxing powers.⁴⁵ The colonial council could only levy taxes or duties "as it may be necessary to levy for local purposes."⁴⁶ Notwithstanding, these limited colonial taxes and duties, which were mostly on imports of alcohol and luxuries,⁴⁷ became very profitable and the revenue raised by import duties increased from £28 763 in 1824 to £195 080 in 1840.⁴⁸

By 1850, the European population in the colonies was less than half a million⁴⁹ and most of the tradeable goods were connected with primary production, whilst most manufactured articles, including clothing, were imported mainly from Britain.⁵⁰ By 1858-1859 the population in the colonies had increased to one million⁵¹ and there was a very noticeable growth in the market for imported clothing and other domestic goods and luxuries.⁵² This growth in imported items reflected a period of rising trade and the increase in economic prosperity of the colonies and the spending capacity of their populations. In New South Wales, for instance, the total amount of imported British-made clothing more than quadrupled between 1848 and 1853⁵³ and much of the colony's prosperity was generated by the rapid growth in exports of

⁴⁴ R D Lumb, *The Constitutions of the Australian States* (University of Queensland Press, 1972) 11-20. See Mills, above n 5 46.

⁴⁵ Mills, above n 5, 29.

⁴⁶ Ibid 31. The Councils were constituted of between five and seven members who held office by appointment. They could not over-ride the Governor in matters of legislation.

⁴⁷ Kym Anderson and Ross Garnaut, *Australian Protectionism: Extent, Causes and Effects* (Allen & Unwin, 1987) 40-41.

⁴⁸ Ibid 41.

⁴⁹ Ibid 40.

⁵⁰ Ibid 40-41.

⁵¹ *Australian Bureau of Statistics Yearbook* [2001] 2.

⁵² Maynard, above n 22, 122.

⁵³ Ibid. According to the Australian Bureau of Statistics the population increased to two million in 1877.

primary-produced tradeable goods.⁵⁴ There was also an enormous spike in the demand for imported clothing during the gold-rush period when “a rising population of prosperous consumers”⁵⁵ spent their newly found wealth on all sorts of imported luxurious and superior ready-made fashion apparel, even though these goods attracted high customs duties.⁵⁶ This rapid growth in exports and the dramatic increase in disposable income in this period also soon resulted in a rapid expansion of banking and commerce.⁵⁷

Colonial tariff policies continued to be controlled by ‘the Mother Country’ until self-government was granted to five of the six Australian colonies between 1855 and 1859.⁵⁸ From then on, and in a relatively short period, these colonies, albeit in different degrees, began to achieve some economic and political independence. In 1850 the *Australian Colonies Government Act, 1850 (Imp)*⁵⁹ was passed and provided for the formation of government in New South Wales, Van Diemen’s Land, South Australia, and to Victoria as a colony separate from New South Wales. The Act also provided for future application to Western Australia.⁶⁰ New South Wales and Victoria subsequently achieved responsible government in 1855; Tasmania in 1856; and Queensland, which separated from New South Wales, in 1859. It was not until 1890 that Western Australia achieved responsible government.⁶¹

⁵⁴ Anderson and Garnaut, above n 47, 40. The value of gold exports surpassed wool exports as Australia’s major export during the 1850s and 1860s: see *Australian Bureau of Statistics Yearbook* [2009-10].

⁵⁵ Maynard, above n 22, 122.

⁵⁶ Ibid.

⁵⁷ *Australian Bureau of Statistics Yearbook* [2009-10] 1.

⁵⁸ Anderson and Garnaut, above n 47, 40.

⁵⁹ *Australian Colonies Government Act 1850 (Imp)* 13 & 14 Vic, c 59.

⁶⁰ Reitsma, above n 4, 5.

⁶¹ Ibid. For each separate colony the English Parliament passed a ‘constitution’ act which gave each colony some measure of independence and self-government. However, the Colonial Office in London retained control over foreign affairs, defence and international shipping. The *Colonial Laws Validity Act 1865 (Imp)* ss 2 – 3 defined the relationship between the ‘colonial’ and ‘imperial’ legislation and gave the colonies the right to amend their own constitutions and the opportunity for them to enact legislation without necessarily applying English domestic law, provided that no English statute directly applied to the colony in question.

There was a high degree of economic and political tension and competition⁶² between these newly formed colonies and their governments and Allin suggests that the history of the tariff relations between them can be read as “a sorry record of inter-colonial jealousy and strife.”⁶³ One of the burning political issues in the colonies before Federation was centred on the fact that each of the colonies raised their revenue by not only imposing taxes on overseas imports but also on inter-colonial traded goods;⁶⁴ it was their most “elastic and most important source of revenue.”⁶⁵ The colonies, with their pre-federation rivalries had “scattered Customs houses along their land frontiers.”⁶⁶ However, the great difficulty in the fifteen years prior to Federation was “in working out exactly what would be the fair way(sic) and sustainable way”⁶⁷ to return revenue to the States once a future federal government acquired the sole power to impose customs and excise duties.

Despite the passing of the *Australian Colonies Government Act 1850* (Imp), the colonies were slow in taking on national status. Not only were they “small, isolated communities in the pioneer stage of social and political organization”⁶⁸ but each colony was oblivious to what was going on in “the contiguous but far distant communities.”⁶⁹ Each colony was only focused on the development of its own resources and to the furtherance of their own immediate political and economic interests.⁷⁰ Their efforts were without the support of the British Parliament which only took a spasmodic interest in the affairs of these distant colonies. Besides, the

⁶² Cephas Allin, *A History of the Tariff Relations of the Australian Colonies* (University of Minnesota Bulletin, 1918) 1.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 1901, 5673 (Sir George Turner, Treasurer).

⁶⁶ Hancock, above n 24, 76.

⁶⁷ ABC Radio National, ‘Plucking the goose: a history of taxation in Australia’, *ABC Rear Vision* 17 June 2007, 2 (Julie Smith and Neil Warren).

⁶⁸ Allin, above n 62, 1.

⁶⁹ Ibid.

⁷⁰ Mills, above n 5, 20-199.

colonial office was “too ill-informed to be able to supervise the policy of administration of the struggling settlements.”⁷¹

As the colonies became more economically self-reliant and idiosyncratic in their economic ideologies they also began to develop even more divergent social, political and economic policies and rivalries. For instance, the two major colonies, Victoria and New South Wales, had, for various reasons,⁷² adopted radically different commercial and revenue policies. New South Wales had a steadfast adherence to Free Trade which was largely supported by the sale of public land,⁷³ whilst Victoria exhibited a “doctrinal fervour”⁷⁴ for the theory of Protection.⁷⁵ Whereas New South Wales’s consistent adherence to Free Trade was largely motivated by Sir Henry Parkes, who was “for a long period was the most striking figure”⁷⁶ in Australia’s political life, Victoria’s obsessive stance on Protection, which resulted in very high tariffs, was fuelled by “the continuous and passionate advocacy”⁷⁷ of David Syme.⁷⁸ As the proprietor⁷⁹ of the Melbourne morning journal (*The Age*) he exercised

⁷¹ Allin, above n 62, 5.

⁷² Alford suggests that the reasons why Victoria turned shapely towards Protection after 1860 were that there was sharp decline in the output of gold which fell by one-half between 1856 and 1866; unemployment grew to a disturbing extent and the outlook for the Colony became grave. At the time David Syme (*The Age*) entered into a powerful advocacy of the adoption of a protective policy to enable industries to provide employment. See Fred Alford, *The Greater Illusion: A Critical Review of Australia’s Fiscal Policy* (Marchant, 1934) 23.

⁷³ Harris, above n 39, 166.

⁷⁴ Mills, above n 5, 201.

⁷⁵ Fred Perry, ‘The Australian Tariff Experiment’ (1888) 3 *Quarterly Journal of Economics* 87. Perry states that the number employed in the woollen industry in Victoria (1886-1888) was considerably larger than in New South Wales. However, Victoria had not at that stage made the manufacture of woollens profitable. The Victorian industry was protected by duties ranging from 7.5% to 30%, whilst New South Wales woollen industry had no protection at this time. The manufacture of boots and shoes was also protected in Victoria: at 92-4.

⁷⁶ Mills, above n 5. Mills argues that the “phenomenon of Free Trade in one Colony among six, five of which had adopted Protection as their fiscal policy...is not readily explained.” He asserts that one cause of this phenomenon was that “the spirit of Free trade was incarnate in the person of Sir Henry Parkes”: at 202.

⁷⁷ Ibid.

⁷⁸ David Plowman, ‘Industrial Relations and the Legacy of New Protection’ (1992) 34 *Journal of Industrial Relations* 48. Plowman suggests that Syme was Deakin’s mentor and saw the state as an instrument of social change: at 50.

⁷⁹ Mills says that Syme was “a man of strongly marked personality”. See Mills, above n 5.

powerful influence over local politics.⁸⁰ All these factors prompted, as between the colonies, the creation of contrary self-referential interests and conflicting fiscal legislation.⁸¹ Each colony framed its taxing legislation with an aim to foster its own particular economic and social needs and with little regard to the interests of the other colonies.⁸² This meant that each colony adopted “the easiest and readiest means of taxation without regard to economic principles.”⁸³ Consequently, this individualistic type of economic and financial policy throughout the colonies laid the groundwork for economic discrimination in the form of a variety of inter-colonial differential and preferential tariffs. Allin summed up the relationship between the colonies when he stated : “[i]solation begat provincialism, provincialism begat protection, and protection begat colonial envy, bitterness, and strife.”⁸⁴

4.4 1860-1900-taxation and protectionism⁸⁵

*It is true that a considerable number of Customs duties aim openly at revenue, but there is also an unmeasured and a very large return to the Treasury from duties which are intentionally, though clumsily, Protectionist.*⁸⁶

This part of the chapter will briefly explore how the original revenue-raising role of taxation in the colonies morphed into a combined fiscal and protective device that was then used by colonial governments to promote their social and economic objectives. Further, it will also show that protectionist duties provoked a spirit of

⁸⁰ It is interesting that Syme, in his argument for a high enough tariff to enable Victorian manufacturers to pay workers a ‘fair, living wage’, foreshadowed the introduction of ‘New Protection’ and Justice Higgins’ basic wage determinations which are both discussed later in this chapter. See Mills, above n 5, 202; Alford, above n 72, 24.

⁸¹ Allin, above n 62, 5.

⁸² Ibid..

⁸³ Ibid.

⁸⁴ Ibid 171.

⁸⁵ This heading is a play on Hunt’s statement. He says that since 14th century “sumptuary regulation had existed in a close symbiotic relationship with protectionism”. See Hunt, above n 2, 324.

⁸⁶ Hancock, above n 24, 90.

provincialism in the colonies that eventually became one of the main motivating factors behind the move towards Federation, which, it was hoped, would solve inter-colonial trade disputes.⁸⁷

Before the 1860s, colonial duties were “nearly always mainly for purposes of revenue”.⁸⁸ Whilst protective motives were not always absent, Reitsma argues that it would go too far to say that the infant colonies had established any commercial policy at all at that stage, particularly in relation to a preference for free trade or a structured tariff regime.⁸⁹ By the latter part of the 1800’s this position had obviously changed substantially, for in 1883, Richard Twopeny,⁹⁰ whilst visiting the various colonies, makes the observation that “[p]rotectionist duties and heavy freights form an effectual sumptuary tax” resulting in “first-class articles” being “heavily handicapped” and “a premium put upon the importation of shoddy⁹¹”.⁹²

Just as sumptuary regulation from its earliest inception in the fourteenth century had existed in a “close symbiotic relationship with protectionism”,⁹³ in Twopeny’s remark we see the same development of a close symbiotic relationship in Australia between taxation tariffs and protectionism. And just as the discourse of ‘sumptuarism’⁹⁴ later became integrated within, and then submerged within the discourse of protectionism we can see the same integration and submersion of tariff discourse within the discourse of protectionism. It is also at this time that we begin to see within these protective policies the threads of the sumptuary impulse which were

⁸⁷ Reitsma, above n 4, 11.

⁸⁸ Ibid 1.

⁸⁹ Ibid. Reitsma argues that until the middle of the eighteen-sixties the various tariffs in the colonies were all free-trade tariffs. The local merchants favoured a simple revenue tariff because of its administrative advantages. Protection was not an issue for these merchants because they relied on imported goods rather than locally produced goods: at 5-6.

⁹⁰ R Twopeny, *Town Life in Australia* (Penguin Colonial Facsimiles, 1983) 110. Twopeny was the son of a South Australian archdeacon and was the editor of his own journal: the *Pastoral Review*. It seems that Twopeny wrote a number of letters for publication in English periodicals. This is an unauthorised collection of these letters.

⁹¹ Poor quality items; often where wool is adulterated with cheap cotton materials.

⁹² Twopeny, above n 90, 110.

⁹³ Hunt, above n 2, 324.

⁹⁴ Ibid 325. This is Hunt’s term.

woven into the protective economic blanket which the Federal Government wrapped around clothing manufacturing industries in the 1920s.

From the 1880s, Australian manufacturers and primary producers faced heavy competition from the massive increase in all forms of imported goods from Britain and Europe.⁹⁵ The first ostensible protectionist tariff introduced⁹⁶ in the colonies was presented to the Victorian Assembly in 1865 with the objective⁹⁷ of protecting new industries and overcoming the problem of expensive, but poorly made imported goods⁹⁸ being ‘dumped’⁹⁹ on the Victorian market.¹⁰⁰ Reitsma suggests that the relentless force behind protectionism, particularly in Victoria, was the “newspaper dictator” and ardent Protectionist, David Syme.¹⁰¹ Even though protection had a popular following in Victoria, colonies such as New South Wales continued to embrace free trade which “fitted in with pastoral and financial opinion”¹⁰² in the colony. These diverging policies contributed significantly to “the

⁹⁵ Maynard, above n 22, 122. This competition continued well into the 1930s.

⁹⁶ Dorothy Clarke, ‘The colonial office and the constitutional crises in Victoria, 1865-68’ (2008) 5 *Historical Studies: Australia and New Zealand* 160. The Tariff Bill was attached to the annual Appropriation Bill. This mixed Bill was rejected by the Legislative Council (by ‘laying it aside’) on the basis that the Bill for raising revenue should not be “tacked” onto the Bill for the appropriation of this revenue. This issue caused an enormous amount of controversy about the legality and constitutionality of this practice of tacking: at 160-71.

⁹⁷ Perry, above n 75. Perry argues that “[t]he protective system is intended specially to diminish importation, and is also expected to prevent money from going out of the country.” These objectives are inherently sumptuary in nature: at 86.

⁹⁸ Edward Shann, *An Economic History of Australia* (Cambridge University Press, 1948) 266. Shann states that such goods included apparel, textiles, boots, saddler and earthenware.

⁹⁹ Geoffrey Sawyer, *Australian Federal Politics and Law 1901-1921* (Melbourne University Press, 1956) 42. Often the ‘dumped’ goods were poorly made clothing lines (sometimes called shoddy) which were being produced in other countries, particularly Britain and Japan, at a cost that was far less than Australian manufacturers could achieve.

¹⁰⁰ Reitsma, above n 4. At the general election held in the colony of Victoria in November 1864, the McCulloch ministry was returned to power. On his campaign platform he had pledged a policy of protection to native industry: Reitsma, above n 4, 9.

¹⁰¹ Ibid. Reitsma even goes so far as to call him the “father of protectionism”: at 10. He continued to exercise his political power through his newspaper, ‘The Age’ for the remainder of the century and until his death in 1908.

¹⁰² Ibid 9. Much of the impetus for the protective tariff in the colony of Victoria came from Syme, who argued that the ‘naked competition’ of free trade meant that manufacturer were prevented from making a beginning “of opening up new sources of industry” in Victoria. See Shann, above n 98, 265.

inter-colonial custom troubles that characterized the period”¹⁰³ and the often difficult debates plaguing the introduction of Federation.

By the end of the nineteenth century each of the six colonies had distinct tax systems which were almost entirely reliant on customs and excise duties.¹⁰⁴ Not only did Customs duties or tariffs underpin the newly emerging colonial economies, but they also acted as barriers against overseas imported goods as well as effective as trade barriers between the colonies.¹⁰⁵ Reinhardt and Steel¹⁰⁶ suggests that one of the “significant results of Federation in 1901” was the removal of all duties on goods traded between Australia states.¹⁰⁷ Federation was to be used as an effective apparatus of economic intervention to relieve the colonial governments’ intense rivalry and provincialism whilst at the same time providing a new paradigm of power relationships between the colonies.

Although, as previously mentioned, each colony initially framed their tariffs primarily for revenue purposes, gradually protective characteristics became more pronounced.¹⁰⁸ Despite enormous protests from their ‘sister colonies’ about the “growing evil of inter-colonial duties”¹⁰⁹ and the passing of hostile, retaliating or ‘tit-for-tat’ legislation, each colony went on its merry way in exacting, often complicated, inter-colonial duties as a ‘necessary’ measure for the protection of their local industries. For instance, even though South Australia was mainly dependant on primary industry and strongly in favour of inter-colonial free trade, the colony still remained protective of its clothing and woollen industries.¹¹⁰ The result was this “strange melange of tariff anomalies” that completely ignored the “general welfare of

¹⁰³ Reitsma, above n 4, 10.

¹⁰⁴ Perry states that “[e]ach colony is entirely satisfied with its own fiscal system”: Perry, above n 75, 87.

¹⁰⁵ Sam Reinhardt and Linda Steele, ‘A brief history of Australia’s tax system’ (Paper presented at the 22nd APEC Finance Ministers’ Technical Working Group, Khanh Hoa, Vietnam, 15 June 2006) 2.

¹⁰⁶ Ibid 2.

¹⁰⁷ *Australian Constitution* s 92. This section refers to free trade between states.

¹⁰⁸ Allin, above n 62, 10.

¹⁰⁹ Ibid 11.

¹¹⁰ Reitsma, above n 4, 10.

the Australian group and the empire.”¹¹¹ It would be many decades and much political lobbying and vitriolic debates before Federation finally settled the question of inter-colonial tariffs.

It has also been argued¹¹² that the very isolation of the colonies engendered the spirit of provincialism. Not only were the colonies cut off from the outside world by “both time and space”, they had no external relations and no more than a passive interest in what was happening in Europe for they “lived in a little world of their own, a world with a distinct set of interests and problems from those of Europe or America.”¹¹³ Even their relationships with other colonies were strained and far from intimate;¹¹⁴ the Australian land mass was huge there was great distance between settlements, with little interconnecting transport systems. The tariff, more than any other issue had “aroused the latent spirit of provincialism in all the colonies... [i]t was ‘the lion in the path’ of all federal measures.”¹¹⁵ It was the major cause that contributed to the failure of imperial and colonial governments in their attempts to improve the political and economic relations of the colonies.

Finally, on 8 October 1901 the first Federal tariff was introduced¹¹⁶ by the first Federal Parliament¹¹⁷ and effectively ended inter-colonial tariff wars.¹¹⁸ It was a compromise between the revenue tariff of NSW and the protectionist tariffs of Victoria¹¹⁹ and was mildly protectionist by comparison with the level of protection existing twenty years later.¹²⁰

¹¹¹ Allin, above n 62, 13.

¹¹² Ibid 167.

¹¹³ Ibid 167.

¹¹⁴ Mills, above n 5, 201.

¹¹⁵ Allin, above n 62, 170.

¹¹⁶ It became known as the *Customs Tariff Act 1902* (Cth).

¹¹⁷ There were three parties in the new Parliament: the Free Trade Party, which drew much of its strength from New South Wales, the Protection Party and the Labor Party (which had no settled policy on protection). See Anderson and Garnaut, above n 47, 43.

¹¹⁸ Prema-chandra Athukorala and Satish Chand, ‘Tariff-Growth Nexus in the Australian Economy, 1870-2002: Is there a Paradox?’ (Working Paper No 2007/08, Division of Economics, Research School of Pacific and Asian Studies, Australian National University, July 2007).

¹¹⁹ J Pincus, ‘Evolution and Political Economy of Australian Trade Policies’ in Richard Pomfret (ed), *Australia’s Trade Policies* (Oxford University Press, 1995) 53. Pincus said they were ‘weakly’ protective duties ranging from 5-25%: at 60.

¹²⁰ Alford, above n 72, 29.

4.5 Federation –taxation, tariffs and morals

*But the day of small things was passing away. A new Spirit of Australian nationalism was beginning to find lodgement in the hearts of the younger generation. New imperial problems come upon the scene. The political and economic life of the colonies gradually loses its purely local significance and begins to take on a true national character.*¹²¹

This part of the chapter deals with the shift of taxing powers from the colonies to the Federal Government and the emergence of a centrally directed taxing regime that sought to provide funds to the States as well as to provide for the costs of the Federal Government. It illustrates that although most of the revenue collected during the first two decades after Federation came from customs and excise, these same duties had also quickly become highly protectionist in character.

The provincialism mentioned above meant that there was no unity of taxing policy between the various colonies until Federation when the Federal Parliament occupied the dominant position in Australian politics. Taxation policy had always been at the centre of the pre-Federation debates¹²² because the colonies were concerned that Federation would mean that they would lose their major tax base when they were no longer able to impose tariffs on imported goods. The *Constitution* was designed to give the Federal Government the sole authority to impose customs and excise duties. However, the colonies were placated to some extent by drafters of the *Constitution* allowing the States to maintain their taxing powers in relation to other taxes such as income tax.¹²³

To understand how the tariff grew so rapidly both outwards and upwards, one must first look at the sources of the Commonwealth's taxing power. This taxing

¹²¹ Allin, above n 62, 171.

¹²² Julie Smith, *Taxing Popularity: The Story of Taxation in Australia* (Federalism Research Centre, 1993) 40.

¹²³ Ibid. Smith says that the states viewed "the infant federal government as their child. And like most parents they expected to exercise reasonable control over their offspring": at 40-1.

power is contained mainly in s51 (ii) of the *Constitution*;¹²⁴ it gives the Federal Government a general and unlimited power to raise taxes for the peace, order and good Government of the Commonwealth. Section 55¹²⁵ provides that laws imposing taxation shall deal only with the imposition of taxation. Section 90 not only removed certain taxing powers from the colonies but it provided the Federal government with the exclusive power to set and impose Customs and Excise duties.¹²⁶ This provision was to have a significant impact on the taxing powers of the colonies; at the time of Federation, approximately 75% of colonial revenues came from Customs and Excise duties.¹²⁷ This provision was to have a significant impact on the taxing powers of the colonies; at the time of Federation, approximately 75% of colonial revenues came from Customs and Excise duties.¹²⁸ After Federation tariffs would only apply in the case of imports to Australia, and inter-State trade was thus free of tariffs, pursuant to s 92 of the *Constitution*.

¹²⁴ See *Australian Constitution* s 51(ii). ‘The [Commonwealth] Parliament shall...have power to make laws with respect to:

(ii) taxation; but not so as to discriminate between States or parts of States’.

¹²⁵ Woellner, et al, above n 9. Section 55 limits laws imposing taxation to dealing only with the imposition of taxation and only one subject of taxation. Laws imposing duties of customs and excise must deal only with duties of customs or excise respectively: at 45.

¹²⁶ *Australian Constitution* s 90 states:

1.1.1 Exclusive power over customs, excise, and bounties

On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

¹²⁷ Smith, *Taxing Popularity*, above n 123, 60. Most of this revenue came from customs duty. The remaining revenue generally came from Crown land sales, income tax, death duties, sale of gold and land tax.

¹²⁸ *Ibid*. Most of this revenue came from customs duty. The remaining revenue generally came from Crown land sales, income tax, death duties, sale of gold and land tax.

At first, the scheme of Commonwealth finance was almost wholly based on the revenues to be derived from Customs and Excise duties.¹²⁹ To give support for this objective, s 88 of the *Constitution* required that “uniform duties shall be imposed within two years after the establishment of the Commonwealth.” The Minister for Trade and Customs, Mr Kingston proposed that stimulants and narcotics would raise the most revenue (£1 959 306) and they attracted the highest rate of duty (145.21%). It was expected that apparel and textiles would raise £1 441 863 with an average rate of 17.73% duty.¹³⁰ Jewellery and fancy goods were expected to raise £120 580 at an average rate of 21.03% duty.¹³¹

Section 86 of the *Constitution* gave the Commonwealth, as central government for the emerging nation state, the power to take control of the collection and administration of these duties.¹³² For at least ten years after Federation the Commonwealth had to return to the States “three-fourths of the net revenue from Customs and Excise, one-fourth¹³³ only being available for Commonwealth expenditure” (The Braddon Clause).¹³⁴ Not only was “the paramount object of Federation”¹³⁵ inter-State free trade with a uniform Tariff in the importation of overseas goods but the preparation of a ‘uniform’ Tariff became the “most urgent task of the new Commonwealth Government.”¹³⁶

The use of customs and excise duties, as the Commonwealth’s main source of revenue, proved to be a very lucrative means¹³⁷ of raising revenue and these taxes

¹²⁹ Mills, above n 5, 200.

¹³⁰ Ibid. The rate of duty on apparel and attire ranged from 25% on wool and silk apparel down to 15% on cotton and linen goods: at 220.

¹³¹ Ibid. These estimates are set out in a table issued by Charles Kingston, Minister for Trade and Customs. The table can be seen in Mills’ book: at 209.

¹³² Ibid. Mills contends that the State tariffs remained temporarily in operation until the Commonwealth Government had established a uniform tariff. No evidence was found to support this contention, except what is said in s 88 about uniform duties imposed within 2 years: at 200.

¹³³ *Australian Constitution* s 87. This practice was reversed after the expiration of cl 87 (Braddon Clause) on 31 December 1910.

¹³⁴ This was known as ‘the Braddon Clause’, named after its author, Sir Edward Braddon, Premier of Tasmania 1894 to 1899 in the inaugural Commonwealth Parliament 1901 until 1904.

¹³⁵ Mills, above n 5, 201.

¹³⁶ Ibid 201.

¹³⁷ Ibid. In 1901-1902 the Commonwealth’s total revenue £18 million was derived from Customs and Excise Duties: at 201.

fitted in neatly with the growing nationalism¹³⁸ which spread throughout the colonies and later the Commonwealth.¹³⁹ These taxes were easy to exact. They could also be readily utilised to protect the interests of those local manufacturers, industrialists and farmers who were worried that their wealth and reputation could be endangered by the proliferation of cheap imported goods. They were also concerned the ‘dumping’¹⁴⁰ of ‘end of season’¹⁴¹ clothing by an “outside world which struggled for profit and cared nothing for Australia’s adventurous quest for justice.”¹⁴²

Protection had gained popularity as an economic policy because it promised to be a policy of plenty.¹⁴³ The very word appealed to ordinary Australians because they believed “in their hearts that both their enjoyments and their existence need[ed] to be protected against extraordinary dangers.”¹⁴⁴ During the 1890s there had emerged a number of ‘extraordinary’ factors that had adversely affected the lives of most Australians and were subsequently instrumental in creating a general economic climate which favoured protectionist tariff policies. Labour turmoil, falling prices for agricultural and pastoral commodities such as wheat and wool, the failure of a number of banks and a decline in consumer spending all contributed to a widespread economic depression.¹⁴⁵ At the same time, the new labour movement began to seek a high wage economy. This would particularly affect those thousands of agricultural workers severely affected by ‘the worst and widest drought the white man had seen’.¹⁴⁶ These workers had been moving to the cities in large numbers in search of employment, in newly emerging manufacturing industries.¹⁴⁷ In the early years after Federation, trade unionists, who had at first held the balance between Free Traders and Protectionists, began playing what Hancock calls “the profitable game of

¹³⁸ Allin, above n 62, 171.

¹³⁹ Hancock, above 24, 89.

¹⁴⁰ Ibid 83; House of Representatives Ways and Means Committee, Parliament of Australia, *Customs Tariff* (1910) 1.

¹⁴¹ This term was sometimes referred to as the “fag end of season”. Ibid.

¹⁴² Hancock, above n 24, 83.

¹⁴³ Ibid 89.

¹⁴⁴ Ibid.

¹⁴⁵ Shann, above n 98, 328-348.

¹⁴⁶ Ibid 386.

¹⁴⁷ Ibid 328-348.

‘support in return for concessions.’”¹⁴⁸ The unionists finally started to drift towards the Protectionist side which pandered to their fears that “the competitive strength of frugal Orientals”¹⁴⁹ might result in lower wages and conditions for Australian workers.

So, whilst it seemed inevitable that the 1902 Australian Tariff would be of the Protectionist type¹⁵⁰ questions remained about how much money was needed to support local industry and how it was proposed to raise it. The Treasurer, Sir George Turner,¹⁵¹ argued in the first Commonwealth Budget speech, that “neither the Free trader nor the Protectionist can have his own way entirely. *The Tariff is a compromise Tariff.*”¹⁵² The objects of the first Federal Tariff were manifold. Policy makers such as Turner argued that the Tariff should be framed to raise revenue to fund Commonwealth obligations to the States so they could maintain their solvency, as well as to cover Federal expenditure. They also argued that the Tariff was meant to keep faith with the States by providing “for moderate protection, particularly avoiding unnecessary destruction of existing industries whose magnitude and suitability rendered them worthy of fiscal protection.”¹⁵³ So whilst this first object of this early Federal tariff was revenue-raising, it is very clear that protection, at least for existing industry, was also of high importance in the government’s plan for the new nation.¹⁵⁴

However, this ‘compromise tariff’ failed to please all stakeholders, mainly because it was not a compromise between those who supported Free Trade and those on the Protectionist side. Rather, it was only a compromise between what Mills calls “the high” and “moderate”¹⁵⁵ Protectionists. In addition, there was no ‘Compromise

¹⁴⁸ Hancock, above n 24, 83.

¹⁴⁹ Ibid.

¹⁵⁰ Mills, above n 5, 201.

¹⁵¹ He was a member of the Protectionist Party.

¹⁵² Commonwealth, *Parliamentary Debates*, House of Representatives, 8 October 1901, 5698 (emphasis added); Editorial, *Advertiser*, 9 October 1901.

¹⁵³ Commonwealth, *Parliamentary Debates*, House of Representatives, 8 October 1901, 5698.

¹⁵⁴ Ibid 5699.

¹⁵⁵ Mills, above n 5, 210.

Cabinet’, because there were no ‘free traders’ in the Ministry.¹⁵⁶ The Commonwealth taxation policy, from the beginning of Federation, had “been unmistakably Protectionist, and every subsequent dealing with the Tariff ... affirmed that policy, with a deeper emphasis each time.”¹⁵⁷ Certain members of Parliament believed that the tariff was neither a compromise nor a moderate Tariff because “the aggregate of taxation on the working man” on items of apparel such as hats, woollens and boots, was “enormous”.¹⁵⁸

4.6 A sumptuary tariff

In the first year after Federation, the Commonwealth raised £8.9 million from customs and excise out of a total of £11.3 million and in accordance with s87 of the *Constitution* £7.6 million was paid out to the States.¹⁵⁹ Under this 1902 tariff, duties were imposed on luxury items, such as furs, and necessities, such as blankets. However, it soon became apparent¹⁶⁰ that there were many anomalies and inequalities “that bristled in the old Tariff”;¹⁶¹ for example, for some time there was a lower rate of duty on furs¹⁶² than on blankets.¹⁶³

There were politicians who considered that protection meant the protection of the privileged class, as it did not advance the wages “of the great industrial classes of the community one farthing.”¹⁶⁴ They considered protectionism socially distasteful. They likened it to the harsh interventionist sumptuary laws of the early modern

¹⁵⁶ Ibid.

¹⁵⁷ Ibid 221.

¹⁵⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 1 October 1901, 16 (Samuel Winter Cooke).

¹⁵⁹ Stuart Macintyre, *The Oxford History of Australia: 1901-1942 – The Succeeding Age* (Oxford University Press, 1986) vol 4, 81.

¹⁶⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1901, 82 (Charles Kingston, Minister for Trade and Customs).

¹⁶¹ Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 8161 (Senator Clemons).

¹⁶² Ibid Only £39-40 in duties were collected for furs valued at £4-5000.

¹⁶³ Ibid Blankets, as manufactured items, attracted a protective duty of 25%.

¹⁶⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 7 March 1902, 6 (Alfred Conroy).

period that authorised “men in parts of London to cut the ruffle from women’s dresses when they exceeded a certain length and that also regulated the style of boots to be worn.” Some parliamentarians, particularly the Free Traders, considered tariff taxation to be an overt method of regulating the affairs of the lower classes by “depriving the poor man or woman of practically everything, except proved necessities.”¹⁶⁵ They questioned whether clothing and accessories were still necessities of life for the poorer classes.¹⁶⁶ High protective duties had even made socks¹⁶⁷ and hat pins¹⁶⁸ luxury items.

On the other hand, there were some Protectionists who took a vastly different view as to the economic effect of these old laws.¹⁶⁹ They strenuously argued in favour of the value of the English protective sumptuary laws, which had compelled the wearing of English goods and prohibited the exportation of raw materials. They contended such laws were at the heart of England’s success in world trade and commerce under Queen Elizabeth I.¹⁷⁰ They argued that the imposition of a protective tariff along with rigorous navigation laws, which prevented free trade in shipping and compelled English colonies to trade in English ships, had made England “the great workshop of the world.”¹⁷¹ Protectionists, such as McColl MP, argued that just as England was “built up under protection”, Australia’s manufacturing industries could prosper in the same way under “moderate, reasonable, and discriminating protection.”¹⁷² Yet, they continued to object to any

¹⁶⁵ Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 8161 (Senator Clemons).

¹⁶⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 29 October 1907, 92 (Harry Liddell); Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908, 100 (Senator Millen).

¹⁶⁷ Commonwealth, *Parliamentary Debates*, Senate, 19 February, 1907, 27 (Senator Findley).

¹⁶⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 28 February 1902. William Wilks pointed out that “[h]onorable members’ seem to run away with the idea that because jewellery is an ornament it is necessarily a luxury; but I am of the opinion that the daughters of the people have as much right to be adorned as their luckier sisters who can afford to buy high-class jewellery”: at 32.

¹⁶⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 1901, 15 (James McColl).

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

high protective duties which were “unreasonable and unwise”¹⁷³ because they would tend to discredit protection and could diminish the revenues of the States.¹⁷⁴

Still, there continued to be some resistance¹⁷⁵ against protection, generally by those¹⁷⁶ on the Liberal or Labor¹⁷⁷ sides who advocated a free trade policy. There was also an ongoing contentious dialogue between various stakeholders about the issue of granting preferential tariffs to Great Britain.¹⁷⁸ Preferential treatment had been afforded to English trade by various Australian colonies prior to 1850 in accordance with the principles of imperial monopoly whereby colonial trade was directed and monopolised by England.¹⁷⁹ However, the *Australian Colonies Government Act 1850 (Imp)* abolished all preferences, even to Britain.¹⁸⁰

It would not be until August 1906 that Sir William Lyne, then Minister for Trade and Customs, proposed a Tariff resolution in the House of Representatives¹⁸¹ concerning approximately thirty British products,¹⁸² with a view to giving Great Britain or “the Mother Country”¹⁸³ favourable or preferential treatment as against similar products from other parts of the world.¹⁸⁴ The proposal was to leave the tariff untouched for these British goods and to increase the duties against all other countries by 10%. Such favourable treatment was conditional upon the goods being produced or manufactured solely in the United Kingdom and they should be

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Mills, above n 5, 210.

¹⁷⁶ Ibid. Sir George Reid, for example, who was the Leader of the Federal Opposition at the time, was Prime Minister in August 1904 until July 1905. Mills notes that he was only able to hold office for this short time due to his coalition with a leading Protectionist, Allan McLean, who was “equal in all things” with the Prime Minister: at 210.

¹⁷⁷ This word was spelled “Labour” before 1912. For the sake of consistency, and to avoid confusion, I have used the spelling “Labor” throughout this chapter.

¹⁷⁸ Mills, above n 5, 211.

¹⁷⁹ Reitsma, above n 4, 3, 44.

¹⁸⁰ *Australian Colonies Government Act 1850 (Imp)* 13 & 14 Vic, c 59.

¹⁸¹ *Brisbane Courier*, 31 August 1906.

¹⁸² The items included ammunition, guns, bicycles, boots and shoes (sizes 30 and 40). A full list of the proposed duties for British and foreign goods can be seen in *The Advertiser*, 31 August 1906, 7. For boots and shoes the proposed duty for British goods was to remain at the current duty of 25% and for other foreign goods the proposed duty was to increase to 35%: at 7.

¹⁸³ Britain was sometimes also referred to as “the old country” or “Home”.

¹⁸⁴ Mills, above n 5, 212.

imported direct in British ships.¹⁸⁵ As a result of hostile criticism from the Free Traders and the problems relating to the demand for amendment to the tariff Bill by those who wanted the Bill to contain even stricter racially-based conditions¹⁸⁶ to be placed on these favourably-treated British goods, the British Preference was postponed.

4.7 New Protection, 1905-1908—protectionism and wages

*The old protection contented itself with making good wages possible. The new protection seeks to make them actual.*¹⁸⁷

This part of the chapter examines the second Deakin government's attempt to attract labour to its protectionist ideology by linking protection with the provision of 'fair and reasonable wages' for workers. Whilst this project failed, it still had, as we will see in Chapter 5, some lasting effects for workers, particularly as regards to the definition of what constitutes a 'worker's normal needs'.¹⁸⁸

Between 1905 and 1908¹⁸⁹ 'The New Protection' permeated Commonwealth legislation.¹⁹⁰ Plowman argues that:

[i]n essence, it was major plank of that Parliament's social engineering platform. In common with other newly formed countries, the Commonwealth of Australia sought to determine the type of society it wished to be and to implement policies towards that end. The society envisioned was that of an affluent, white society.¹⁹¹

¹⁸⁵ Ibid.

¹⁸⁶ Ibid. Mills suggests that that most of these sought that the British ships bringing in the imported goods should be manned exclusively by white British seaman", or the goods "must be manufactured by white labour": at 214.

¹⁸⁷ Deakin's government's policy declaration contained was contained in a parliamentary paper. See Commonwealth, *New Protection: Memorandum*, Parl Paper No 11 (1906) 1887.

¹⁸⁸ See below Chapter 5.

¹⁸⁹ During this period, the Second Deakin Ministry was in office.

¹⁹⁰ Plowman, above n 78. Plowman suggests that New Protection dominated much of the legislative work of the newly formed Commonwealth Parliament until 1912: at 48.

¹⁹¹ Ibid

Acts of Parliament,¹⁹² such as the *Customs Tariff Act 1906* (Cth) and the *Excise Tariff Act 1906* (Cth)¹⁹³ encouraged and protected certain industries “contingent upon fair and reasonable wages being paid.”¹⁹⁴ Deakin, an ardent protectionist, actively promoted¹⁹⁵ ‘New Protection’ by linking tariff protection to workingmen’s wages¹⁹⁶ via providing assistance to the manufacturer to “that degree of exemption from unfair outside competition which will enable him to pay fair and reasonable wages without impairing the maintenance and extension of his industry, or its capacity to supply the local market.”¹⁹⁷ The concept of ‘New Protection’ thus envisaged was that protection would walk ‘hand-in-hand’ with employers in protected industries. To avail themselves of the enormous benefits of protection policies, these employers had to provide superior conditions of employment, including higher wages to their employees.¹⁹⁸

What were ‘fair and reasonable wages’ was to be decided by a Board of Trade¹⁹⁹ and once done, the Board would then be in position to determine, with some degree of precision, the question whether the measure of protection given to a particular industry was sufficient to pay those wages.²⁰⁰ The government declared its intention to also protect the consumer against the charging of unduly high prices.²⁰¹ At the same time that this new centralised form of tariff and wage board were being proposed, Justice Higgins,²⁰² also began considering in the Arbitration Court, what

¹⁹² These acts related to bounties, customs excise and manufacture.

¹⁹³ However, this legislation was challenged as being unconstitutional. The High Court declared the *Excise Tariff Act 1906* (Cth) to be invalid. Henry Bournes Higgins was President in this decision. See *R v Barger* (1908) 6 CLR 41. See also *Ex parte H V McKay* (1907) 2 CAR 1 (‘Harvester’).

¹⁹⁴ Reitsma, above n 4, 18.

¹⁹⁵ Plowman, above n 78. Plowman says that this doctrine was articulated by Deakin in the Victorian Parliament as early as 1895. He also suggests that Syme used his newspaper, *The Age*, to popularise the term and notion of ‘New Protection’: at 48.

¹⁹⁶ Reitsma, above n 4, 16.

¹⁹⁷ Commonwealth, *New Protection: Memorandum*, Parl Paper No 11 (1906) 1887-1889.

¹⁹⁸ Anderson and Garnaut, above n 47, 46.

¹⁹⁹ It appears that no such board existed at this time.

²⁰⁰ Reitsma, above n 4, 17.

²⁰¹ Ibid.

²⁰² Ibid 18. It seems that it was as a direct result of the ‘New Protection’ policy.

was “fair and reasonable remuneration”²⁰³ for “the normal needs of the average employee, as a human being living in a civilised community.”²⁰⁴ In developing his principle of a basic ‘living wage’, which was to be based on frugal and reasonable comfort, he took into account the average worker’s needs²⁰⁵ for basic commodities such as food, shelter and clothing.²⁰⁶

Reitsma suggests that this ‘New Protection’ was an attractive wage policy because it “caused the complete conversion of Labor to trade protection.”²⁰⁷ The Labour Party’s newly found belief in the popular policy of protection, coincided with the basis of its co-operation with the Deakinites in passing the 1907-1908 tariffs²⁰⁸ that projected increases in duty far in excess of the 1902 tariff. The increases were the result of recommendations of a Parliamentary Tariff Commission which took nearly two years to complete its reports.²⁰⁹ This new tariff, known as the Lyne Tariff,²¹⁰ proposed that over 440 articles attract duties which very nearly double those fixed in 1902.²¹¹ For instance, the rate on wool and silk ‘apparel and attire’ was set at 45% compared to 25% in the 1902 tariff.²¹² The new Tariff schedules also contained much higher duties on woollen piece goods.²¹³ The 1907 Tariff was to be

²⁰³ *Harvester* (1907) 2 CAR 1, 3. It has been suggested that this activity was a direct result of the ‘New Protection’ policy.

²⁰⁴ *Ibid* 3.

²⁰⁵ *Plowman*, above n 78, 52. *Plowman* says that Higgins’ own criterion was ‘what was necessary to satisfy’ ‘the normal needs of the average employee regarded as a human being living in a civilised community.’ His established a rate of seven shillings per working day or forty-two shillings per week for unskilled male workers.

²⁰⁶ *Reitsma*, above n 4, 18. See also *Harvester* (1907) 2 CAR 1.

²⁰⁷ *Ibid* 17-18. This conversion helps to explain Labor’s strong stance on protection during the Tariff Board’s Apparel Hearings in 1925, which is discussed in more detail in Chapter 6.

²⁰⁸ This tariff called the Lyne-tariff included over 440 articles with rates nearly double those fixed in 1902.

²⁰⁹ *Mills*, above n 5, 220. *Mills* says that the Commission was composed of equal numbers of Protectionists and Free Traders and in fact there were 2 reports as there irreconcilable differences of opinion between them on the mode of dealing with Tariff items. The Government treated the Protectionist section of the report at the report of the Commission, but inflicting duties went beyond the rates recommended by the Commission in respect of many items.

²¹⁰ The Tariff was named after Sir John William Lyne, Minister for Trade and Customs. Duties were imposed on nearly 1000 items.

²¹¹ *Reitsma*, above n 4, 18.

²¹² *Mills*, above n 5, 220.

²¹³ *Ibid* 220. At 35% compared to 15% under the 1902 tariff.

“the first really protectionist tariff”²¹⁴ that sought to protect certain industries from “unfair outside competition.”²¹⁵ It was also the first Federal tariff that provided for preferential treatment for the United Kingdom.²¹⁶ However, its glory was short lived: the *Excise Tariff Act* 1906 was challenged as being unconstitutional and the High Court declared it to invalid in 1908.²¹⁷ The High Court comprising of Griffith CJ, Barton, O’Connor, Isaacs and Higgins JJ held that the *Excise Tariff Act 1906* (Cth), which attempted to indirectly regulate the working conditions of workers, was not a valid exercise of the legislative powers of the Commonwealth Parliament. The majority (Isaacs and Higgins JJ dissenting) held that the Act was not in substance an exercise of the power of taxation conferred upon the Commonwealth Parliament by the *Constitution*; that the Act was invalid as being in contravention of s 55 (taxation laws only to deal with taxation), and that even if the term ‘taxation’, uncontrolled by any context, were capable of including the indirect regulation of the internal affairs of a State by means of taxation, its meaning in the *Constitution* is limited by the implied prohibition against direct interference with matters reserved exclusively to the States.

However, there was a positive legacy for workers that arose from this failed New Protection paradigm.²¹⁸ As we will see in Chapter 5, Justice Higgins²¹⁹ continued In the Arbitration Court to develop and consolidate his rules relating to arbitration and wage determination. So whilst the new Protection failed to successfully link protection with the workingman’s wage, Higgins’ principles and methods for determining what was a ‘fair and reasonable remuneration’, with margins for skill,²²⁰ became the bedrock for future legislation²²¹ and arbitration

²¹⁴ Reitsma, above n 4, 18.

²¹⁵ Ibid 16.

²¹⁶ Ibid.

²¹⁷ *R v Barger* (1908) 6 CLR 41: at 77-81.

²¹⁸ Reitsma, above n 4, 18.

²¹⁹ See *Harvester* (1907) 2 CAR 1.

²²⁰ This meant that an extra amount was added to the wage if the tradesman was skilled.

²²¹ MacIntyre, above n 159, 104. Within a few years three States had legislated for the judicial determination of a basic wage; See also Plowman, above n 78. Plowman suggests that the

practices linking the minimum wage with the cost of living. This meant that protection, albeit without any statutory nexus, became a basis for Australian living standards.²²²

4.8 Uniform Protectionism-sumptuary threads

*Consumers have always been a weak countervailing force against protection because of the free rider problem of collective action.*²²³

By the end of the first decade after Federation Australian politicians began to take a more uniform approach to protectionism.²²⁴ There are four main reasons why, after Federation, Australia became uniformly Protectionist.²²⁵ First, the strong legacy of protection in Victoria, and less populated states such as South Australia and Tasmania, had created numerous vested interests who sought to maintain the protection which they had enjoyed up until Federation.²²⁶ These interest groups, comprising of pastoralists and industrialists²²⁷ as well as various Chambers of Commerce²²⁸ wanted to avoid the type of free trade policies that New South Wales espoused and to ensure this they vamped up their demand for a continuation of this protection.²²⁹ The voices of those who argued that the Tariff was only an artifice to

complementary operations of tariff and wage tribunals resulted in the *de facto* operation of a New Protection wages policy: at 52.

²²² MacIntyre, above n 159, 104.

²²³ Anderson and Garnaut, above n 47, 117.

²²⁴ Reitsma, above n 4, 13-14.

²²⁵ Anderson and Garnaut, above n 47, 47.

²²⁶ Ibid 45.

²²⁷ Ibid 47.

²²⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 11 October, 1901. There was a concern that the protective Tariff would bring into existence, or keep in existence, throughout Australia a number of vested interests as well as the “very evil which has grown up in Washington—a profession of lobbyists, men whose time is spent in interviewing Members of Parliament, and influencing them when a Tariff is proposed to be touched”: at 16 (Samuel Winter Cooke).

²²⁹ Anderson and Garnaut, above n 47, 45.

“protect and coddle the local producer”²³⁰ by placing the burden “on the shoulders of the consumer,”²³¹ were drowned amongst the fervent rhetoric emanating from protectionists.²³² The latter sincerely promised that a protective policy would provide a system that could regulate social conditions and was absolutely necessary to build up industries and “benefit equally every class of the community.”²³³ The widespread political and media²³⁴ support for protection, the diminution in support for the Free Trade Party and the successful lobbying of various interest groups all ensured that protection became more than a policy: it became “a faith and dogma.”²³⁵

Secondly, the Braddon Clause²³⁶ meant that three quarters of federal revenue, raised by the imposition of customs and excise duties, would have to be returned to the States. To this extent the imposition of high import duties made it easy to introduce incidental protective effects into the current tariff regime.²³⁷ The third consideration,²³⁸ which also helps explain why protection became a widespread dogma, is that the exercise of ‘nation-building’ required economic and political compromise between the States.²³⁹ The compromise, which was eventually nipped out between the States lay between the high level of protection provided in Victoria and the free trade policies followed in New South Wales.²⁴⁰ When New Protection legislation was passed in 1906, the Free Trade Party had lost most of its appeal and was defeated decisively in the elections that year.²⁴¹

²³⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 Jun 1906, 57 (Bruce Smith).

²³¹ *Ibid.*

²³² Hancock, above n 24, 89. Hancock argues that behind this national fervour “there is the pressure of particular interests. These interests have to some extent created the fervour and to some extent exploited it.”

²³³ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 27 (James Mathews).

²³⁴ C M H Clark, *A History of Australia*, “*The People Make Laws*” – 1888-1915 (Melbourne University Press, 1981) vol 5, 281.

²³⁵ Hancock, above n 24, 89.

²³⁶ See above n 133.

²³⁷ Anderson and Garnaut, above n 47, 45-46.

²³⁸ *Ibid.* 46.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.* 47.

Anderson and Garnaut argue that it was the fourth consideration that was decisive in the victory for protectionism.²⁴² Those who led the protectionist movement in Victoria turned out to be very skilful in ‘wooing’ the support of the Labor Party with the promise of a share in the material benefits and “happiness”.²⁴³ This alliance proved to be an ingenious tool to align Labor with protection.²⁴⁴ Until 1906, when New Protection was given legislative force,²⁴⁵ Labor Party members in New South Wales and other states such as Queensland and Western Australia²⁴⁶ repeatedly claimed that protection was only favourable to manufacturers in increasing their profits and that the burden of protection fell disproportionately on workers whose expenditure was in the main concentrated on mass consumption goods.²⁴⁷

Labor also believed the only way workers could have improved working conditions and higher wages, which were needed by these workers and their families to face a significantly higher cost of living, was for the Federal Government to implement budgetary measures to effect a means of financial redistribution.²⁴⁸ The promise of higher wages and better working conditions for workers in protected industries dispelled the concerns of the Labor members, and the Labor Party then effectively resolved its own divided position to become more united behind protection.²⁴⁹ These government promises not only highlighted the rise in the relative importance of manufacturing in Australia since the 1890s but also reflected a direct correlation with rise of the Labor Party and its aim for a high wage economy.

During this early post-Federation period of socio-economic development, when protectionists were “wooing” the working classes, protectionist rhetoric also

²⁴² Ibid.

²⁴³ C M H Clark, above n 234, 285.

²⁴⁴ Anderson and Garnaut, above n 47, 46.

²⁴⁵ Part of the ‘New Protection’ was subsequently ruled by the High court to be invalid. See *R v Barger, Commonwealth v McKay* (1908) 6 CLR 18.

²⁴⁶ Anderson and Gaunaut, above n 47. Anderson and Garnaut suggest that Victoria, South Australia and Tasmania were pro-Protectionist and had created “many vested interests which wanted continued protection after federation”: at 45.

²⁴⁷ Ibid 46.

²⁴⁸ Ibid.

²⁴⁹ Ibid 47.

began to take on an even more noticeable semiotic engagement with the language of sumptuary regulation. Politicians such as Millen²⁵⁰ and Lynch²⁵¹ directly spoke of a natural relationship between the Australian protective tariff and sumptuary regulation. For instance, during a debate in 1908 on the protective duties imposed on floorcoverings, Senator Lynch suggested that this form of duty was ‘a sort of sumptuary tax.’²⁵² There were also numerous articles²⁵³ in the press, either highlighting the similarities between the rise of protection and sumptuary regulation²⁵⁴ or facetiously alluding to sumptuary law as a potential means to control extravagance and appearance.²⁵⁵ Even advertisements²⁵⁶ used sumptuary discourse glibly, and sometimes even perversely, to promote imported luxurious women’s apparel.²⁵⁷

During this period of intense tariff debate we begin to see more tension about the dichotomous relationship between the rich and poor and their respective consumption practices.²⁵⁸ Tariff schedules specifically targeted many items of ‘lower end’ female apparel and accessories with high rates of duty, whilst ‘high end’ goods, such as velvets, silks, furs and gloves, which were usually purchased by wealthier women, attracted lower duties.²⁵⁹ The language of tariff and ‘luxury’ were frequently

²⁵⁰ Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908, 8262 (Senator Millen).

²⁵¹ Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908. During a debate on the protective duties imposed on floorcoverings, Senator Lynch made the comment: “[t]his is a sort of sumptuary tax”: at 100.

²⁵² Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908, 100 (Senator Lynch).

²⁵³ *The Register*, 9 August 1904, 4; *Western Mail*, 27 April 1907, 40-41.

²⁵⁴ Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908, 100 (Senator Lynch).

²⁵⁵ “J S Mill on Dress”, *Barrier Mail*, 4 February 1908, 1.

²⁵⁶ *Sydney Morning Herald*, 22 March 1907 (furs); *Sydney Morning Herald*, 22 August 1907 (veils); *Sydney Morning Herald*, 18 August 1907 (silks); *Sydney Morning Herald*, 29 February 1908 (damask).

²⁵⁷ Furs probably rank next to jewels in the affections of the gentler sex, and the pages of history indicate that “it was ever thus.” Anne of Brittany, when married to Charles VIII of France appeared in a robe ornamented with 160 sable skins. In those days sumptuary laws prevented the “masses” from gratifying their taste for furs, to say nothing of the prohibitive cost. But to such perfection has the dyeing and preparation of furs been brought that for rich or poor, tile few or the millions, there are cosy AND BECOMING; FURS AT MODÉRATE PRICES. FARMER’S FAR-FAMED FÛRS. See Advertisement, *Sydney Morning Herald*, 22 March 1907 (emphasis in original).

²⁵⁸ Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 27 (Senator Clemons).

²⁵⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 28 August 1907, 25 (William Hughes).

coupled in Parliamentary debates²⁶⁰ and in the press.²⁶¹ Often, the polemic was whether high tariffs, even in a prosperous period,²⁶² should impinge on the rights of the poorer classes to be able to enjoy the same luxuries as the rich, especially if these luxuries were now regarded by the poor as their ‘new necessities’.²⁶³ Senator Clemons, in arguing against protection, stated that he “should like to bring some of the luxuries of rich... within easy grasp of the poorer classes of the community.”²⁶⁴ Further, it was claimed that under a policy of indirect taxation most of the revenue was provided by the poor;²⁶⁵ for “it is the poor who have to pay the Customs duty.”²⁶⁶ Others sought to placate these concerns by arguing that protection, although not “a panacea for all the ills of humanity,”²⁶⁷ was absolutely necessary because it was linked to desirable labour conditions and had flow-through benefits for the consumer.²⁶⁸

During this period there was also much moralising rhetoric²⁶⁹ about the ‘evil’ of imported fashion apparel and women’s extravagance of dress,²⁷⁰ fickleness in women’s fashion²⁷¹ and women’s desire and demand for “ever-changing fashion”

²⁶⁰ Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 27 (Senator Clemons).

²⁶¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907, 29 (Sir George Reid).

²⁶² Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 27 (James Mathews).

²⁶³ Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908, 100 (Senator Millen); House of Representatives, 29 October 1907, 92 (Mr Liddell).

²⁶⁴ Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 27 (Senator Clemons).

²⁶⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 9 July 1907, 28 (Josiah Thomas).

²⁶⁶ Ibid.

²⁶⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 27 (James Mathews).

²⁶⁸ Ibid.

²⁶⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907. Mr Wilks suggested that a “thumping big duty” should be imposed on imported ostrich feathers. He says “[i]t is interesting to observe that whilst a duty of 40 per cent has been imposed upon apparel and attire—an item of great concern to the masses of the community—the honourable member for Fawkner considers that ostrich feathers used for the personal adornment of those who could afford to pay a high duty should come in free, because there is a feather-dressing industry in his constituency”: at 75 (William Wilks).

²⁷⁰ “In Fashions Realm: What to wear; Hints for Women”, *Western Mail*, 27 April 1907, 40-41.

²⁷¹ “The Coming of the Mammoth Hat”, *Albury Banner and Wodonga Express*, 16 August 1907.

fabrics.²⁷² Some even argued that “the old [sumptuary] laws” needed to be revived to address these issues.²⁷³ The implementation of the ‘old laws’ was not necessary as the protective tariff was having the same effect as sumptuary regulation; but only for the poorer classes. Poorer women had to depend upon cheap imported apparel, including corsetry, because they could not pay for the locally-made item.²⁷⁴ Yet, cheap apparel was denied to them²⁷⁵ and they had few, if any, alternatives.²⁷⁶ A working girl employed in a factory at a wage of 10s a week could not afford the luxury of a locally made pair of corsets, at prices that ranged from four guineas to thirteen guineas, with an additional charge of 6d for suspenders.²⁷⁷ This was especially because of the strain of her work, which was so great that the life of the corsets was no more than three months. There was no relief for “the great masses of people”²⁷⁸ who had a “natural craving for cheap articles.”²⁷⁹ During this period of high protectionism not only was there a widespread obsession with luxury and extravagance in women’s dress, but we also see other sumptuary signifiers making an appearance. There was also an increased hostility to the importation of alien products²⁸⁰ and a preoccupation with the placing of a metaphorical “ring fence around Australia”²⁸¹ which we shall see in Chapter 6 becomes later more pronounced, especially during the war years.

²⁷² Commonwealth, *Parliamentary Debates*, House of Representatives, 12 November 1907, 59 (Richard Edward).

²⁷³ “In Fashions Realm: What to wear; Hints for Women”, *Western Mail*, 27 April 1907, 40-41.

²⁷⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907, 50 (William Maloney).

²⁷⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 24 March 1908, 150 (Josiah Thomas).

²⁷⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907. Sir George Reid suggested that with high tariffs on cheap articles of clothing, the poor could only choose between “shoddy and nothing at all”: at 29.

²⁷⁷ Ibid 50 (Josiah Maloney).

²⁷⁸ Ibid 29 (Sir George Reid).

²⁷⁹ Ibid.

²⁸⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 27 (James Mathews).

²⁸¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 June 1906, 57 (Bruce Smith).

4.9 The establishment of the Inter-State Commission-the new scientific approach towards Protectionism

*There shall be an Inter-State Commission with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance of this constitution relating to trade and commerce and of all laws made thereunder.*²⁸²

This part of the chapter will briefly describe how government continued to increase tariffs on clothing after the failure of the ‘New Protection’ to link protection with “fair and reasonable wages’. It will also provide an overview of the functions of the Inter-State Commission which the Federal government established as part of its continued experimentation with trade protection.

The Tariff was further amended in 1910, 1911 and 1914. Most of the 124 amendments in 1911 were to remove anomalies, to assist in interpretation and to remove difficulties of classification.²⁸³ However, there would be no further general revision of the Tariff until 1920-21; although the schedules of rates, particularly in relation to preferences,²⁸⁴ were varied regularly before then. The 1911 and 1914 tariff increases specifically targeted clothing.²⁸⁵ The duty on felt hats (per dozen) in 1911, for instance, was increased to 16s (12s as British preferential rate) and in 1914, duties on these hats were further increased to 20s per dozen (15s preferential rate).²⁸⁶

²⁸² *Australian Constitution* s 101.

²⁸³ Commonwealth, *Parliamentary Debates*, House of Representatives, 19 November 1911, 3489 (F G Tudor, Minister for Trade and Customs)

²⁸⁴ Mills, above n 5. During 1908-11 period there were, for instance, 237 tariff items which had preference of 5% whilst in 1914 there were 303 such items: at 225.

²⁸⁵ Reitsma, above n 4, 19.

²⁸⁶ Mills, above n 5, 226.

The 1914 the tariff increases reflected the recommendations made by the Inter-State Commission that was established pursuant to s101 of the *Constitution*.²⁸⁷

It seems that the authors of Federation feared that the exercise of its powers over trade and commerce would be so overwhelming and difficult that parliament would “need an organ of adaptation to unforeseen changes, a board whose rulings might be more flexible than the decisions and precedents of the law-courts.”²⁸⁸ By August 1913, the Inter-State Commission was appointed with functions which were similar to those later attached to the Tariff Board pursuant to the *Tariff Board Act 1921* (Cth). The only difference was that the Commission’s recommendations were based on pre-war ‘normal’ circumstances, and as we will see in Chapters 9 and 10, these considerations became largely irrelevant in the greatly changed post-war situation.²⁸⁹

The Cook government set up this Commission and authorised it to formally investigate claims for increased tariff protection.²⁹⁰ Not only did the Commission have the power to investigate any industries in urgent need of tariff assistance but it also had the power, which it did not ever exercise, to scrutinize the “lessening, where consistent with the general policy of the Tariff Acts, of the cost of the ordinary necessities of life, without injury to the workers engaged in any useful industry.”²⁹¹ Shann suggests ²⁹² that the instigation of this Commission resulted from the natural anxiety of a government, having committed itself to protection, that industry would then take advantage of the consumer and that the lack of competition would result in inefficiencies.²⁹³

²⁸⁷ Shann, above n 98, 409.

²⁸⁸ Ibid.

²⁸⁹ Reitsma, above n 4, 19.

²⁹⁰ Sawyer, above n 99, 128. Three Commissioners were appointed: Alfred Piddington KC (legal member), George Swinburne and Norman Lockyer.

²⁹¹ Reitsma, above n 4, 19.

²⁹² Shann, above n 98, 409.

²⁹³ Reitsma, above n 4, 27. Reitsma argues that this Commission exerted little influence on tariff making.

The Commission's "scientific" investigations proved that this anxiety was not without foundation.²⁹⁴ The Commission found that the 1908-1911 Tariff prompted, amongst manufacturers, a widespread neglect of accurate costing, and a lack of attention to what their rivals in other countries were doing.²⁹⁵ The Commission suggested that there was a waste of power, a waste of by-products, and a lack of applied science which could enhance the cost of manufacturing.²⁹⁶ It considered that the failure to use efficient modern standards in manufacturing meant that higher duties were sought by inefficient industries and these duties were then being passed onto the consumer.²⁹⁷ The Commission recommended that the greatest assistance be given to those industries which used the greatest amount of skilled labour.²⁹⁸ In Chapter 9 and 10 we see similar concerns being expressed by the Tariff Board in the mid-1920s.

In formulating their recommendations to government, the Commissioners took a practical and reasoned approach about the need for increased protection.²⁹⁹ Not only did they venture to remind Parliament that every burden of trade is paid for by someone, but they also predicted that it may be an economic advantage to withdraw Tariff encouragement from certain subordinate³⁰⁰ industries because such encouragement might become more of a hindrance than an aid to the whole scheme of industrial development.³⁰¹ Despite the fact that the Commission's term was short-lived it only continued into existence until 1920 when the Commissioners' terms expired, the Commission lapsed and no other Commissioners were appointed. There was much legal and political controversy about the Commissioners' terms of appointment and their role. It appears that the Commissioners worked extremely hard

²⁹⁴ Shann, above n 98, 413.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Shand, above n 98, 43.

²⁹⁸ Reitsma, above n 4, 20.

²⁹⁹ Shann, above n 98, 414.

³⁰⁰ Ibid. Shann suggests that manufacturing industries were subordinate, "in the sense that their prices must consort with such costs in the primary industries as enable the latter to make headway against their rivals": at 415.

³⁰¹ Ibid 414.

and took their role seriously³⁰² in determining the efficacy of increased protection for local industries. At the same time, they appeared to be fully cognisant of the possible repercussions of this new, more formalised method of “scientific protection.”³⁰³

4.10 Conclusion

This chapter argued that echoes of sumptuary regulation were evident in Australian taxes from the earliest colonial taxes through to the restrictive and onerous protective tariffs of the first two decades after Federation. The chapter began by showing that the early Australian colonial taxing regime had much in common with the sumptuary paradigm. Not only were they both consumption-based but they were, to a large extent, also both dependent on regulating the ingress and egress of foreign luxuries. Both legislative regimes were also based on a plethora of *ad hoc* and often inconsistent legislation.

The chapter also provides an overview of the move towards a more formalised colonial taxation policy, which was then followed by a shift of taxing powers from the colonies to the Federal Government. In the course of the transition to this centrally-directed taxing regime, there was an increased growth in the ‘strong symbiotic relationship’ between taxation and protectionism. This chapter also shows how Australia’s tariff policies after Federation became more uniformly protectionist. Not only did numerous vested interests seek to maintain the strong legacy of protection, existing in Victoria and other less populated states, but those who led the protectionist movement in Victoria proved skilful in ‘wooing’ the support of the Labor Party for their protectionist policies, by the promise of increased wages and better working conditions for workers. In addition, massive surges in imported cheap apparel triggered an increased protectionist response from the Australian government.

³⁰² Reitsma, above n 4. In 1916, a total of 663 applications were dealt with, resulting in 73 tariff reports and 70 appendices. Evidence was taken both in public and in private: at 19.

³⁰³ Ibid 20.

Whilst the government's rationale for this response was the need to protect local manufacturers and the nation's economy, this chapter illustrates how this protectionist response also placed an unfair burden on poorer consumers. Correspondingly throughout this period, protectionist and taxation discourse also began to take on an increased semiotic engagement with the language and objectives of sumptuary regulation. As a result, sumptuary threads began to be woven even more tightly into the fabric of taxation and protectionism.

Chapter 5 briefly digresses from the topic of protectionism and its sumptuary effect on imported clothing. Instead, it follows another thread that was briefly alluded to in Chapter 4, namely the relationship between arbitration and wage determination. Chapter 5 will suggest that the imposition of prohibitive tariff on imported clothing was not the only form of sumptuary regulation that surfaced during the early decades following Federation. The Chapter will examine the sumptuary effect of the female 'living' wage determinations made by Australian Arbitration Courts and Tribunals immediately before and after World War I.

5 THE SUMPTUARY IMPULSE IN ‘LIVING WAGE’ CASES

*We are developing a system of continual supervision of everything.*¹

5.1 Purpose and Structure of this chapter

This chapter explores the emergence of a different kind of sumptuary impulse in the contestation over female dress in female labour cases during the first two decades after Australian Federation in 1901. It argues that male hegemony was reinforced through discrimination against working women. Moreover, the work of Justice Henry Bournes Higgins, and his fellow Arbitration Court and Board of Trade judges, reveals the establishment of *prescriptive* sumptuary standards for these women based on dress.² The chapter will focus on two female ‘living wage’ cases, the *Fruitpickers* in 1912³ and *Archer* in 1919,⁴ as well as other wage cases and inquires that took place during this period. The chapter reveals that judicial officers,⁵ imposed normative ideas about ‘appropriateness’ in female dress. As *men* of authority and power, they positioned themselves to determine issues such as whether £1/7/10 represented a reasonable amount for a female factory worker to spend on a hat⁶ and whether “women wage earners” should make their own dresses.⁷

¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 19 December 1916, 118 (Mr Glynn).

² “The Fruit Drying Industry and the Wages Question: Discrimination on the Basis of Sex” *Renmark Pioneer*, 19 July 1912, 14.

³ *The Rural Workers’ Union and South Australian United Labourers’ Union v The Employers, Parties to the Temporary Agreement referred to in the Order of the President, dated the 1st December, 1911* (1912) 6 CAR 70 (‘*Fruitpickers*’).

⁴ *The Federated Clothing Trades of the Commonwealth of Australia v Archer* (1919) 13 CAR 647 (‘*Archer*’).

⁵ This term includes Judges of the Federal and State Arbitration Courts as well as those sitting on State Boards of Trade.

⁶ “Those Dress Bills: Mr Parsons Talk Economy, What Should Women’s Hats Cost?” *Recorder*, 2 August 1919, 1.

⁷ “Women and Wages”, *The Register*, 1 September 1919, 6.

During this period, the local and national media disseminated on a daily basis the more ‘interesting’ parts of the evidence heard in these living wage inquiries about the private lives of female workers. This material gave the public an unprecedented insight into the personal lives of those working-class women who were making their “demands for justice”⁸ in the new Arbitration Court and Boards of Trade. In particular, the press gave graphic and intimate accounts of female workers’ trials and tribulations as members of a national workforce where women continued to be treated as second class citizens.⁹

5.2 Living Wage Inquiries: the ‘normal needs’ of the worker

Higgins decided to seek a suitable measure of ‘the normal needs of the average employee, regarded as a human being living in a civilised community.’¹⁰

Although the Arbitration Court had been established in 1905,¹¹ it was not until 1912 that “the problem of female labour”¹² was first considered by the Court; this was despite the fact that women made up over 20 per cent of the Australian workforce in that year.¹³ Higgins J, who had used the pioneering *Harvester* judgement¹⁴ to give practical expression to New Protection, now found himself with

⁸ Mark Hearn, “Sifting the Evidence: Labour History and the Transcripts of Industrial Arbitration Proceeding” (2007) 93 *Labour History* 4.

⁹ Ibid.

¹⁰ Mark Hearn, “Securing the Man: Narratives of gender and nation in the verdicts of Henry Bournes Higgins” (2008) 37 *Australian Historical Studies* 3.

¹¹ Pursuant to the *Conciliation and Arbitration Act 1904* (Cth). The first President of the Court of Conciliation, Mr Justice Richard O’Connor, was appointed February 10, 1905 and upon his resignation in September, 1907, Higgins was appointed his successor. See above Chapter 3.

¹² *Fruitpickers* (1912) 6 CAR 70.

¹³ Hearn, “Securing the man: Narratives of gender and nation in the verdicts of Henry Bournes Higgins”, above n 10, 4. At the time Higgins had in fact handed down over forty judgements since 1907.

¹⁴ *Ex Parte H V McKay* (1907) 2 CAR 1; See above Chapter 3.

the task of grappling with the complex and problematic issues of a 'living wage' and equal pay for women.¹⁵

Higgins J considered that a 'proper' family life was one based on "sobriety, health, efficiency, the proper rearing of children, morality [and] humanity"¹⁶ and that ideal could only be achieved if the male was the breadwinner and the female remained in the domestic sphere as wife and mother. Brown P agreed with Higgins J: "I look upon the maintenance of home life as of supreme importance to the community."¹⁷ Moreover, Brown P argued that a man's duty to maintain his home was a "part of traditional organisation of society"¹⁸ that Industrial Courts should recognise as a general ground for "differentiation in wages between men and women workers."¹⁹

Despite the claim that "the minimum wage could be found only in patriarchy", the evidence of household budgets suggested that Higgins and his colleagues should make an award in male living wage cases based on women's experience:²⁰

One of the two women stated that her husband had a cheap tailor-made suit, but he would have to wear it until it fell off his back, while as for her man's working trousers, well, she had patched and patched until she didn't know which were patches and which were trousers.²¹

¹⁵ See above Chapter 3.

¹⁶ Henry Bournes Higgins, "A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration" (Pt 1) (1915) 29 *Harvard Law Review* 13, 39.

¹⁷ W Jethro Brown, "Judicial Regulation of Rates of Wages for Women" (1919) 28 *Yale Law Journal* 236, 240.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Hearn, "Securing the Man: Narratives of gender and nation in the verdicts of Henry Bournes Higgins", above n 10, 8.

²¹ "Random Ramblings", *People*, 15 November 1913, 1.

5.3 “The principle of the living wage has been applied to women, but with a difference”²²

*It is in Higgins’ resistance to the provision of equal pay for women workers that the contradictions and tensions of his notion of liberal citizenship in a civilised community were most sharply manifested.*²³

Higgins, although a “cautious progressive”,²⁴ struggled in his “great experiment”²⁵ to offer Australian female workers the same consideration as male workers. He was reluctant to accept that women should be afforded the same opportunities for economic independence as men. Furthermore, Higgins J was disinclined to apply his masculinist test of ‘normality’ to them, and made only a tentative effort to seriously serve the needs of those female workers who appeared before him seeking equal pay.²⁶

He was evidently ill at ease when asked by the unions to apply the same ‘justice’ for women that he had applied for men when fixing their basic wage.²⁷ Higgins J preferred to ignore any argument about the pressure of the conditions of modern life that Vida Goldstein²⁸ claimed were “so fierce that women had to go into

²² Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” (Pt 1), above n 16, 20.

²³ Mark Hearn, “Making Liberal Citizens: Justice Higgins and His Witnesses” (2007) 93 *Labour History* 57, 57-8.

²⁴ John Rickard, *H B Higgins: The Rebel as Judge* (Allen & Unwin, 1984) 68.

²⁵ Henry Bournes Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” (Pt 3) (1920) 34 *Harvard Law Review* 105. Yet, Higgins saw himself as committed to “seeing both sides” in an industrial dispute. See Nettie Palmer, “Henry Bournes Higgins” (1929) 1 *Australian Quarterly* 30, 35.

²⁶ In *Fruitpickers* (1912) 6 CAR 70, Higgins established the principle that where women were engaged in typically female employment, the female minimum wage should be adequate for the support of a single woman, and less than the male minimum. Margaret Thornton suggests that the idea of women as competitors in the job market was “eliminated in the *Fruit-pickers case* (sic) when a barrier was erected between men’s work and women’s work”. When women were engaged in women’s work, they would be paid a woman’s wage. However, if they competed with men, they were to be paid the male rate “to prevent men being squeezed out of jobs”. See Margaret Thornton, “(Un)equal Pay for Work of Equal Value” (1981) 23 *Journal of Industrial Relations* 469.

²⁷ *Archer* (1919) 13 CAR 647.

²⁸ Janice N Brownfoot, ‘Goldstein, Vida (1869-1949)’ *Australian Dictionary of Biography* (Melbourne University Press, vol 9, 1983) <adb.anu.edu.au/>. Vida Goldstein (1869-1949) was a

the world.”²⁹ For Higgins J, working-class women were supposed to live at home and, at best could only be expected to “incidentally ma[k]e a small contribution to the family income”.³⁰ As women were not usually “legally responsible”³¹ for the maintenance of a family, their domestic and ‘biological’ work in the home, which had no ‘legal’ recognition in society, appeared to have no financial value. Without external employment, women would continue to remain economic dependants who were “utterly dependent on men’s generosity,”³² especially when they wished to purchase the clothing they needed and/or desired.

In *Archer*, Mr Carter, counsel for the unions, asked that Higgins J give women “fair play...and let them earn their living”.³³ Moreover, Carter tried to convince Higgins, that “in these days”³⁴ there was no reason why a stumbling block or hurdle should be put in front of women and that they should not be “shut out from an industry any more than a man.”³⁵ Higgins J retorted: “I will not shut them out. I will let the employers shut them out if they think fit as a matter of judgement.”³⁶ It seems that whilst Higgins J claimed that the Arbitration Court was for ‘the benefit for employees’, he would not risk eroding his keystone code of gender demarcation by extending the same rights to female employees in their battle for economic independence. This was particularly the case for those young girls who, because of their age, had to live on 15/- a week and who “eked it out by doing something for

renowned Australian suffragist and early feminist. Her publications in the first decade of Federation were influential in the political and law-making processes of the day. See especially Vida Goldstein, ‘Socialism of Today – An Australian view’ (1907) 62 *Nineteenth Century and After* 406.

²⁹ “Kooyong Election: Miss Goldstein at Box Hill”, *Reporter*, 23 May 1913, 10.

³⁰ Edna Ryan & Anne Conlon, *Gentle Invaders: Australian Women at Work* (Penguin Books Australia, 1975) 95-96.

³¹ Henry Bournes Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” (Pt 1), above n 16, 20.

³² Marilyn Lake, “The Inviolable Woman: Feminist Conceptions of Citizenship in Australia, 1900-1945” (1996) 8 *Gender & History* 200.

³³ Transcript of Proceedings, *Federated Clothing Trades of the Commonwealth of Australia v Archer*, (Court of Conciliation and Arbitration, Higgins J, 1918, B1958/166/1918, National Archives of Australia, Canberra) (‘Archer Transcript’) 309 (Mr Carter).

³⁴ *Ibid* 310 (Mr Carter).

³⁵ *Ibid*.

³⁶ *Archer* (1919) 13 CAR 647.

their landladies in the way of housework or sewing.”³⁷ He would leave the economic fate of these employees to the munificence or otherwise of their employers.

5.4 Matrimony and Motherhood: the real life-work of the average woman

*It was an unpopular thing to state nowadays, but it was nevertheless broadly true that women’s true apprenticeship for her future career was to be found not in the workshop or the sales room but in some form of training or apprenticeship directly related to wifehood and motherhood.*³⁸

Higgins J and other industrial judges, in their female labour determinations, strictly adhered to the traditional notion for the organisation of society where women “should be engaged in domestic duties”³⁹ and where men were to be the sole ‘breadwinner’ for his wife and children. These judges saw part of their task as industrial relations judges to “combat”⁴⁰ those social “evils”⁴¹ that challenged this convention. For them, the supreme factor in the formulation of principles by the Industrial Court was “*the good of the community*”.⁴²

Higgins J adhered to the then popular middle class belief, that the substantially higher rates of female workers engaged in factory work was the root of the “increasingly important”⁴³ problem of ‘domestic aid’ in Australia.⁴⁴ Traditionalists argued that working-class women, if they had to work, should be engaged in

³⁷ *Fruitpickers* (1912) 6 CAR 70.

³⁸ “No Equal Pay for Equal Work, Decided by President Jethro Brown: Ridiculously Low Minimum Fixed for Male and Female”, *Daily Herald*, 7 September 1918, 3. This quote is from an extract of the judgment made by President Brown in the *Printing Trades Case* (1918) SAIR 31, 42-43.

³⁹ Brown, “Judicial Regulation of Rates of Wages for Women”, above n 17, 243.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid* 243 (emphasis added).

⁴³ “No Equal Pay for Equal Work, Decided by President Jethro Brown: Ridiculously Low Minimum Fixed for Male and Female”, above n 38.

⁴⁴ *Ibid.*

domestic service rather than factory work.⁴⁵ Brown P agreed and further contended that domestic help was of vital importance in “maintaining the rate of increase of the population”.⁴⁶ Higgins J saw no reason at all why an employer should be told to pay a female employee “more because she happens to have parents and brothers and sisters dependent upon her”⁴⁷ or to pay her less because she “merely wants some money for dress”.⁴⁸ It was conceded that a single woman who could not afford to “dress nicely” would be seriously handicapped in regard to marriage.⁴⁹ But this concession was countered by Higgins J and other industrial judges by Seerbohm Rowntree’s claim⁵⁰ that a single woman who dressed expensively and above her position was also considered to be handicapped in regard to marriage.⁵¹ Rowntree also claimed that one who “dresses expensively and above her position is also handicapped in the matter of marriage”.⁵² He insisted that working women should therefore not be paid too much. Rowntree was a “[l]iberal-minded social investigator”⁵³ and was a contemporary and correspondent of Higgins J. Higgins J and his successor Powers J both often quoted Rowntree in their ‘living wage’ judgments.

The traditional hegemonic view was that marriage and motherhood were “the real life-work”⁵⁴ for the average women.⁵⁵ Furthermore, it was considered that society would be in a perilous position if female wage earners, with “easy means and

⁴⁵ “Untitled”, *The Argus* 6 May 1919, 6.

⁴⁶ “No Equal Pay for Equal Work, Decided by President Jethro Brown: Ridiculously Low Minimum Fixed for Male and Female”, above n 38.

⁴⁷ *Fruitpickers* (1912) 6 CAR 70, 71.

⁴⁸ *Ibid.*

⁴⁹ “A Judge on Clothes”, *The Daily News*, 28 December 1918, 4. A reference to Rowntree’s ideology about women and clothes is found in this article.

⁵⁰ Ryan and Conlon, above n 30.

⁵¹ “A Judge on Clothes”, above n 49.

⁵² Ryan and Conlon, above n 30, 95-96.

⁵³ *Ibid.*

⁵⁴ “Women and Wages”, *The Register*, 1 September 1919, 6

⁵⁵ *Ibid.*; W Jethro Brown, “The Judicial Regulation of Industrial Conditions” (1918) 27 *Yale Law Journal* 432.

limited working hours,”⁵⁶ found employment in the public sector “too attractive to relinquish for matrimony.”⁵⁷ Brown P noted:

The unchallengeable principle [is] that the living wage must have regard to what is necessary for the maintenance of a married man with wife and children to support. The adoption of any other principle would have placed a premium on celibacy and infecundity (sic).⁵⁸

It was reported that Heydon J was even more explicit in his account of the traditional dichotomous gender relationship of marriage which he used to justify his decision to fix the female living wage at 30/- in 1918:

The industrial position of women is different from that of men, and is subject to a greater variety of influences and conditions, bringing about more difficult conditions. The boy, from his birth, is known to be destined to be the breadwinner... He knows that he must keep himself and his wife and children. There is never any doubt about this at all; that is his lot in life... It is different with women. When a girl is old enough to work, she learnt in all probability she will marry. Her work will be only an episode in her life.⁵⁹

5.5 Keeping women in their place at home rather than them “having to go out and seek employment in man’s realm”,⁶⁰

*The tendency of lower wages for women in jobs for which men and women were in competition, was to make the woman the wage earner, and to leave the man to look after the house.*⁶¹

Higgins J made it quite clear in his judgement in the *Fruitpickers*⁶² that the ‘public good’⁶³ would be better served if women stayed at home ‘protected’⁶⁴ from

⁵⁶ “Women and Wages”, above n 54, 6.

⁵⁷ Ibid.

⁵⁸ W Jethro Brown, “The Judicial Regulation of Industrial Conditions”, above n 55.

⁵⁹ “Women and Work: How they Differ from Men”, *The Bathurst Times*, 18 December 1918, 4.

⁶⁰ “Wages and Sex, Mr Justice Higgins’ Award...What Unionists think of it”, *Daily Herald*, 1 July 1912, 3.

⁶¹ “Clothing Trade: an Important Award”, *Daily Herald*, 15 October 1919, 3.

⁶² *Fruitpickers* (1912) 6 CAR 70.

having to compete with men in the public workplace. However, he argued that “[f]ortunately for society... the greater number of bread winners are still men. The women are not all dragged from the homes to work while the men loaf at home.”⁶⁵

Ruth Ford suggests that employment in the factories gave lower class women more personal freedom; they could even buy their own clothes and dress as fashionably as they wished.⁶⁶ Ford argues that not only could women earn more than in domestic service⁶⁷ but that they were also able to enjoy a work culture of companionship that was not otherwise available to them. These positive advantages to women made no difference to Higgins J:

this exercise of choice was not viewed very sympathetically by Justice Higgins, who came from a class which was concerned about the ‘servant problem’ and feared working-class idleness.⁶⁸

Even though Higgins J acknowledged that the cost of living had risen everywhere during and after the ‘Great War’,⁶⁹ he made no effort to accommodate female employees or recognise that women, for various reasons, were seeking personal and economic freedom in what he called “troubulous [sic] and critical times.”⁷⁰ He contended that it was not for the industrial court to “assume the responsibility of sanctioning social revolutions.”⁷¹

⁶³ Marilyn Lake, “‘This great America’: H B Higgins and Transnational Progressivism” (2013) 44 *Australian Historical Studies* 173. This phrase had become Higgins’ mantra.

⁶⁴ Hearn, “Securing the Man: Narratives of gender and nation in the verdicts of Henry Bournes Higgins”, above n 10, 3. Hearn says that “[w]omen were held in ‘the private realm of protection’ as mothers and domestic workers’ and their contribution to national productivity was hidden.”

⁶⁵ *Fruitpickers* (1912) 6 CAR 70, 72.

⁶⁶ Ruth Ford, “‘I Am Not Satisfied’” (2004) 2 *History Australia* 1.

⁶⁷ Cf “The Political Situation: Women’s Wages and Appearance”, *The Advertiser*, 9 May 1919, 6. The commentator reported: “Domestic service is almost forsaken, yet the wages are high (higher than in factories, when board and lodging are considered), and an efficient maid can always command a good home.”

⁶⁸ Ford, above n 66.

⁶⁹ Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” (Pt 3) above n 25.

⁷⁰ *Ibid.*

⁷¹ Brown, “Judicial Regulation of Rates of Wages for Women”, above n 17, 243. Brown P says it was the High Court’s role to do this.

The formal regulation of the female minimum wage, at almost half of the male wage, was considered an effective tactic to discourage these women from exercising their choice to work in the public sphere even when working conditions were difficult.⁷² For instance, one newspaper reporting upon *Archer* contended: “[t]he award of 35/ a week is not unduly high, and it is well perhaps that this occupation should not be made over-attractive.”⁷³ It was argued that a “false or inflated standard of wages,”⁷⁴ which considered only the desires of the male employee, might imperil the nation’s whole economic and industrial structure. What would have been even more disastrous was that if “an indiscreet or faulty judgement”⁷⁵ upon the living wage was made for women, for this would have triggered “the most dangerous and injurious effect upon the social and domestic life of the community.”⁷⁶

Higgins’ J anxiety about women in the workforce was closely aligned with his apprehension about the decline in the family as a social institution, which he linked with the disregard of what Brown P called “the spirit of authority.”⁷⁷ He considered women’s ‘desire’ to participate in the public area as undermining “the known and taken-for-granted gender order.”⁷⁸ Brown P similarly argued that it was undesirable that women should be encouraged “to indulge in a standard of expenditure so high that marriage may appear to them an intolerable sacrifice.”⁷⁹

Modern legislation, by ... sanctioning divorce has made marriage less sacred; and by protecting womankind has created a rival to marriage in the shape of a career for women.⁸⁰

⁷² “The Political Situation: Women’s Wages and Appearance”, above n 67. The same reporter concedes that “[t]he life of these girls is apparently not easy” and finds it surprising “that they do not seek occupations in which real comfort and absence of anxiety would be their portion.”

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ “Women and Wages”, above n 54.

⁷⁶ Ibid.

⁷⁷ “Politics in School; Powerful Plea for Instruction”, *Daily Herald*, 1 July 1913, 6.

⁷⁸ Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (MacMillan Press, 1996)

218.

⁷⁹ Brown, “Judicial Regulation of Rates of Wages for Women”, above n 17, 243.

⁸⁰ “Politics in School; Powerful Plea for Instruction”, above n 77.

Higgins J and other industrial judges, including Brown P and Heydon J, considered that this decline in the “traditional organisation of society”⁸¹ to be the main reason that the social order was in danger in a “transitional period”⁸² when “old faiths have lost much of their authority and power.”⁸³ Brown P declared that the spread of knowledge and the growth of “plutocracy”⁸⁴ were undermining the foundations of “class supremacy”:⁸⁵

Although we are far from social equality, although we still have classes, the power of class to train men to reverence is lacking. Envy, not reverence, is the plant that thrives in the soil of a plutocratic society.⁸⁶

Both Higgins J and Brown P were fearful that an increase of women in the workforce was not only having an impact on family life but it was, in fact, threatening the hallowed institution of matrimony. In turn this seriously affected the provision of domestic help that in turn impeded the population growth of the new nation.⁸⁷ President Brown argued that women in the workforce were a direct cause of “the growing sterility of the population.”⁸⁸ It was contended by Brown P of the South Australian Arbitration Court that if female factory worker’s wages were increased substantially then all domestic help would seek commensurate wages.⁸⁹ He opined that, domestic help would then be a luxury only available to the rich.⁹⁰ Other commentators suggested that the shortage of domestic help was also partially responsible for the introduction “of two new and undesirable phases into Australian domestic life”:⁹¹

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Brown, “Judicial Regulation of Rates of Wages for Women” above n 17, 244.

⁸⁹ “Women and Wages”, above n 54.

⁹⁰ Ibid.

⁹¹ Ibid.

an increased demand for flats and apartments, with a corresponding lack of the valuable influence of real home life, and a marked decline in the birth rate.⁹²

Brown P considered that this decrease in the birth-rate would continue if there the traditional division of labour in a society such as Australia was not maintained. Moreover, he argued that it was in women's own interests and the interests of the community that they should foster and improve their domestic talents and virtues.⁹³ They should be inculcated with the principles of "wise buying which are the essence of good housekeeping and the foundation of family comfort and security."⁹⁴

5.6 Justice Higgins: The Cost of Dress is What Makes Women's Needs Different from those of men

*It was significant that any little indulgence of vanity in dress was at the sacrifice of other things.*⁹⁵

Judicial discourse in early female living wage cases became a powerful sumptuary regulatory apparatus that acted not only to regulate dress but also to regulate gender relations. The part of the chapter will in the main focus on Justice Higgins and his comments relating to female workers' dress in *Fruitpickers* and *Archer*.

Higgins P, in his role as President of the Commonwealth Court of Conciliation and Arbitration, took a very active and often intrusive role, in shaping the male-dominated Court's processes, as well as in categorising and choosing the type of evidence presented to the court. Higgins J had privately conceded to Deakin that in the *Harvester* judgement he had engaged in 'legislative work', usually

⁹² Ibid. Brown P suggested that the decrease in birth-rate would not only continue but become more marked "unless there exist that division of labour involved in a system of domestic help-a possibility which Australian, close as she is to the teeming millions of tropic countries, dare not contemplate."

⁹³ Ibid.

⁹⁴ Ibid..

⁹⁵ "Clothing Trade: Basic Rates Increased", *The Argus*, 6 May 1919, 7.

considered beyond the bounds of the judiciary, but quickly justified his foray into ‘legislative’ territory by adding that he had done so only after “carefully considered every possible aspect of the problem.”⁹⁶

Higgins J not only ‘suggested’⁹⁷ the form and extent of the evidence he wished to hear⁹⁸ but he also played a significant role in the direct examination of witnesses, especially in the ‘female labour’ cases.⁹⁹

At my suggestion, many household budgets were stated in evidence, principally by housekeeping women of the labouring class, and ... [I] select[ed] such of the budgets as were suitable for working out an average...¹⁰⁰

Higgins J favoured a “forensic interrogative approach,”¹⁰¹ where sworn¹⁰² witnesses, particularly female witnesses,¹⁰³ were constantly challenged about the veracity and significance of their evidence concerning the reasonableness of their clothing ‘needs’.¹⁰⁴ Whilst Higgins J used the same criteria for assessment to determine the minimum wage for both female and male packers in *Fruitpickers* and *Archer*, namely the cost of “their own food, shelter, and clothing,”¹⁰⁵ he placed a skewed emphasis on gendered expenses for female workers. Whereas men were questioned mainly about food, board and lodging, women were primarily *grilled*

⁹⁶ Hearn, “Securing the Man: Narratives of gender and nation in the verdicts of Henry Bournes Higgins” above n 10, 3. See also Letter from Henry Bournes Higgins to Alfred Deakin, 22 November 1907 (*Deakin Papers*, National Archives of Australia, Canberra, MS1540/15/3443). Deakin was one of Higgins’ closest friends. See T J Kearney, “The Life and Times of Henry Bournes Higgins—Politician and Judge (1851-1929)” (1989) 11 *Australian Catholic Historical Society Journal* 33.

⁹⁷ Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” (Pt 1), above n 16, 15. Higgins says “[a]t my suggestion, many hold budgets were stated in evidence, principally by housekeeping women of the labouring class...”

⁹⁸ Ibid.

⁹⁹ “Clothing Trade Wages”, above n 95. One critic said that “[i]t was very improper to leave it to the Court to say what evidence should be called.”

¹⁰⁰ Higgins, “A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration” (Pt 1), above n 16, 15.

¹⁰¹ Mark Hearn, “Sifting the Evidence: Labour History and the Transcripts of Industrial Arbitration Proceeding”, above n 8, 5.

¹⁰² *Conciliation and Arbitration Act 1904* (Cth) s 39.

¹⁰³ *Fruitpickers* (1912) 6 CAR 70; *Archer* Transcript.

¹⁰⁴ *Fruitpickers* (1912) 6 CAR 70.

¹⁰⁵ Ibid 72.

about the cost of their clothing.¹⁰⁶ The interrogation in these cases about the clothing needs for the male wage earner was not nearly as intensive as for female workers.¹⁰⁷ Furthermore, the press coverage of the men's claims in this case was almost cursory compared to the flood of coverage about female workers' claims and their 'dress needs'.¹⁰⁸

Higgins J made it quite clear in the *Fruitpickers* and *Archer* judgments that the factor that he considered distinguished the living costs of working women from working men was the latter's expenditure on dress:¹⁰⁹ "[t]here is considerable difference between males and females-say, from the age of fifteen onwards-in the expense of dress."¹¹⁰ In both cases Higgins J had no compunction in actively criticising female workers' expenditure on dress.¹¹¹ On the contrary, his moral critique in regards to this expenditure enabled him to eventually justify his decision to discriminate against female workers by denying them the right of equal pay.¹¹² For instance, in *Archer* he rejected the female workers' claim of £2 and set women's wages at 35s by making a discount for their clothing.¹¹³ He saw fit in this case to encourage "women wage-earners"¹¹⁴ to make their own dresses and suggested that "this extra work on their part in the time of their leisure should ensue to their own benefit."¹¹⁵ He munificently assured these women that saving "effected thereby [would] not be taken into effect in assessing the living wage."¹¹⁶ Deputy President, Powers J,¹¹⁷ on the other hand was not so confident about rejecting female workers'

¹⁰⁶ "Arbitration at Renmark...Woman Workers Give Evidence", *Daily Herald*, 19 June 1912, 8.

¹⁰⁷ *Fruitpickers* (1912) 6 CAR 70.

¹⁰⁸ An extensive search of Trove newspaper records by the author produced no articles about men's clothing in this case.

¹⁰⁹ *Fruitpickers* (1912) 6 CAR 70, 73.

¹¹⁰ *Ibid.*

¹¹¹ "A Judge on Clothes", above n 49.

¹¹² "Clothing Trade, Basic Rates Increased, Males 65/, Females 35/", *The Argus*, May 6 1919, 7.

¹¹³ *Ibid.*

¹¹⁴ "Women and Wages", above n 54.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ Colin Forster, 'Powers, Sir Charles (1853–1939)' *Australian Dictionary of Biography* (Melbourne University Press, vol 11, 1988) <adb.anu.au/>. Like Higgins, Sir Charles Powers also served as Puisne Justice of the High Court of Australia during his time on the Arbitration Court. Powers was appointed to the High Court in 1913 and retired in 1929.

claims. He stated that he “found it to be a very unpleasant duty to criticise women’s claims and expenditure”¹¹⁸ and believed that it would be “much more pleasant to be able to grant the claims in full”.¹¹⁹

Higgins J was not interested in what such women considered to be their ‘normal’ dress needs, nor was he inclined to apply the masculinist ‘normal needs’ test in assessing women’s dress needs. For him, the test for women was one of ‘reasonable necessity’. What was ‘reasonable’ was to be determined by the Court and not by the workers. For instance, in the *Archer* judgment, he contended that employers should not have to “pay for all that a girl may fancy.”¹²⁰ Further, he argued that if “the girls”¹²¹ wanted their finery at the sacrifice of other things more necessary, such as charitable donations and lodge and church dues, then that was their business, but he was not about to make an allowance for clothing that was more than what was necessary for human requirements.¹²² It is notable that throughout the judgments and court transcripts in *Fruitpicker* and *Archer*, Higgins J consistently referred to the female workers as “girls” even though some were older women and some were married.

In both cases, clothing became not only an indicator of social status, but also an unassailable mechanism by which Higgins J could criticise the mimetic ambitions of young female factory workers. He asserted that these workers were willing to spend a large proportion of their wages in their attempt to dress fashionably.¹²³ He considered this preoccupation with dress and fashion as a form of social dissipation and exhibitionism that was socially harmful because it blurred the ‘natural’ structure and boundaries of gender and class.¹²⁴ His focus on the type and cost of working-women’s dress in the ‘female labour’ cases reflected his anxiety that ‘modern’

¹¹⁸ “A Judge on Clothes”, above n 49.

¹¹⁹ Ibid.

¹²⁰ “Clothing Trade, Basic Rates Increased, Males 65/, Females 35/”, above n 112.

¹²¹ Archer Transcript.

¹²² “Clothing Trade, Basic Rates Increased, Males 65/, Females 35/”, above n 112.

¹²³ Archer Transcript 90.

¹²⁴ Hunt, above n 78, 218.

working-women were publicly challenging the traditional hegemonic belief in the ascendancy of men over women.¹²⁵

It might be argued that Higgins's J focus on feminine dress in the female labour cases was in fact a cloak under which he hid his real anxieties about the social mobility of the female working class and their social aspirations. In the female wage cases, he sought to construct what Hearn calls a "plausible rationale"¹²⁶ to discriminate against women workers who sought equal pay. Higgins J treated dress as a signifier or symbol of female personal freedom. When he contested the 'reasonableness' of the amount working women were spending on their apparel and the 'appropriateness' of their dress, he was in fact contesting their right to enjoy new personal freedoms.¹²⁷

5.7 Judicial Interrogation

*Why this poking of judicial noses into the household affairs of the working class?*¹²⁸

During the female wage cases, the 'girls' were put "through a humiliating examination as to how much they paid for their clothing."¹²⁹ These cases provided male judicial officers with the opportunity to expound their middle class views and criticisms as to how a young female working 'girl'¹³⁰ should spend her weekly wages, and to prescribe what they considered to be the 'appropriate' clothing that she should or 'needed' to buy. Moreover, female workers' bodies became targets of

¹²⁵ Higgins, "A New Province for Law and Order: Industrial Peace through Minimum Wage and Arbitration" (Pt 1), above n 16. See also Brown, "Judicial Regulation of Rates of Wages for Women" above n 17, 236-254.

¹²⁶ Hearn, "Sifting the Evidence: Labour History and the Transcripts of Industrial Arbitration Proceeding", above n 8, 7-8.

¹²⁷ Ford, above n 66.

¹²⁸ "Judge Heydon's Inquiry: An Invasion of the Privacy of the Workers' Homes", *The Worker*, 16 October 1913, 5, 8.

¹²⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 19 December 1918, 9254 (Mr Considine).

¹³⁰ *Archer* (1919) 13 CAR 647.

judicial power and the courtroom became a site of interrogation. Not only were these women subjectified but were exposed to the “normalizing gaze”¹³¹ of both the Court and the media in order to correct their consumer practices and to admonish them for transcending class boundaries. In early female labour cases, Higgins J and the other industrial judges became the authoritative ‘evaluators’ of ‘appearential’¹³² ‘appropriateness’ and arbiters of taste and style. In such cases, evidence concerning women’s clothing was ‘ferretted’¹³³ out through a form of “inquisitorial probing”¹³⁴ of female worker’s personal lives.¹³⁵ These judges then exercised their ‘institutional’ power to quantify and classify women’s apparel and to ‘judge’ the ‘reasonableness’ into female workers’ clothing ‘choices’. At the same time, they were able to ‘discipline’ these women by berating and ridiculing¹³⁶ them in open court for their alleged extravagance and lack of thrifty habits: “[i]f the girls will have their finery at the sacrifice of other things more necessary... it is not fair to force employers to pay for all that a girl may fancy.”¹³⁷

The ‘superior’ role of these ‘judicial interrogators’ in the Arbitration Court’s ‘ceremony of power’ was hallowed and undisputed. Initially, their alleged expertise on working women’s apparel was rarely contested. By 1918, however, there was a discernible demand that women should be appointed to assess the dress requirements of female workers.¹³⁸ Court transcripts and press reports concerning the female living wages cases illustrate that these ‘inquires’ or “life evidence”¹³⁹ of working

¹³¹ Michel Foucault, *Discipline and Punish* (Alan Sheridan trans, Penguin Books, 1977) [trans of: *Surveiller et Punir: Naissance de la Prison* (first published 1975)] 184.

¹³² This is Hunt’s term. See Hunt, above n 78.

¹³³ “Judge Heydon’s Inquiry: An Invasion of the Privacy of the Worker’s homes”, *The Worker*, 16 October 1913, 5, 8.

¹³⁴ Ibid. The reporter suggested that workers objected to being cross-examined as to the quantity of bread and beef they eat, the billies of tea they imbibe, the price they pay for their socks”.

¹³⁵ Ibid.

¹³⁶ “Telephony and Fashion: An Open Letter to Mr Justice Powers, Arbitration Court Judge Melbourne”, *The International Socialist*, 28 December 1918, 1.

¹³⁷ *Archer* (1919) 13 CAR 647, 695.

¹³⁸ “Telephony and Fashion”, above n 136.

¹³⁹ “Women’s Wages”, *The Richmond River Express and Casino Kyogle Advertiser*, 19 November 1918.

‘girls’ were supposed ostensibly to be about ‘fact finding’ or gathering evidence about the cost of living:

The facts were not glibly volunteered but given piecemeal, as counsel sought, each in his turn, to draw from the facts of her life evidence in the enhancement or depreciation of a Woman’s Living Wage.¹⁴⁰

However, the judicial process also provided an opportunity for the judiciary and defendants’ counsel to cross-examine the female witnesses with a view of testing the accuracy of their figures,¹⁴¹ as well as to berate them for their ‘alleged’ extravagance and malign them for the ‘inappropriateness’ of their attire. For instance, Mr Scovell, counsel for the employers in *Archer*, confronted one witness, Miss Wootten, as to whether she considered herself to be “extravagant”¹⁴² by spending £6 on hats in a single year.¹⁴³ In the same case, Scovell had also rebuked Wootten for spending a “considerable”¹⁴⁴ amount on her dress (£34.11.6) and the fact that she spent nothing on newspapers, journals or church fees for “furnishing the mind”.¹⁴⁵ Although Higgins J later adopted Scovell’s comments, he made no reference to the direct evidence of the seven female witnesses in his judgment.¹⁴⁶ Following their gruelling interrogation of the callow female workers, Scovell and Higgins then attempted to controvert and disparage the girls’ evidence by the use of testimony from court-approved female ‘experts’ such as Margaret Cuthbertson¹⁴⁷ and Brenda Sutherland.¹⁴⁸ Miss Cuthbertson, for instance, was asked by Mr Scovell to comment on the girls’ testimony’ and their perceived’ extravagance:

Would four hats yearly, costing a guinea each also be extravagant?

¹⁴⁰ Ibid.

¹⁴¹ “The Living Wage for Women. An Important Judgement: Thirty Shillings per week fixed”, *The Advertiser*, 27 August 1919, 13.

¹⁴² *Archer* Transcript 121.

¹⁴³ Ibid.

¹⁴⁴ Ibid 263.

¹⁴⁵ Ibid.

¹⁴⁶ *Archer* (1919) 13 CAR 647, 691-695.

¹⁴⁷ Ibid 691. Margaret Cuthbertson was an inspector of factories and shops.

¹⁴⁸ “Clothing Trade: Basic Rates Increased”, above n 95. Brenda Sutherland was superintendent of the Domestic Arts Hostel Melbourne.

What do you think of twelve blouses in the year costing £8?¹⁴⁹

After hearing all the evidence, Higgins J, as an active ‘official’ interrogator, then sought to weed out what he considered to be ‘the waste’ from ‘the necessary’.¹⁵⁰ Once this was done, he would then proceed to place his own arbitrary value on “the necessary things of life rather than the desirable.”¹⁵¹ It was argued by Mr Considine MP that it was obvious during this interrogative and ‘averaging’ process, that Higgins J, with his middle class values, was approaching the evidence from the ‘other side’ and with “no knowledge of the subject.”¹⁵² Considine argued that Higgins treated these female witnesses, as “small people,”¹⁵³ and as “machines of toil”.¹⁵⁴

The working classes of Australia have reached the stage that they are no longer going to allow the other side to treat them like machines, to put them in the witness-box, and estimate how much coal and oil they will consume, to average up how much it will take to keep a family in good working order, just as in the case of a draught horse.¹⁵⁵

Despite his blatant ignorance about what was ‘essential’ clothing for female workers’ dress, the female living wage cases nevertheless provided Higgins J with a discursive apparatus to expound his own views on working-class women and also to prescribe a ‘reasonable’ standard of dress for them.¹⁵⁶ For instance, in the *Archer* transcript, there are an inordinate number of probing questions directed to female witnesses about the precise “items of dress which an average young lady *would*

¹⁴⁹ *Archer* (1919) 13 CAR 647, 691.

¹⁵⁰ *Archer* Transcript;

¹⁵¹ “The Living Wage for Women. An Important Judgement: Thirty Shillings per week fixed”, above n 141.

¹⁵² Commonwealth, *Parliamentary Debates*, House of Representatives, 23 July 1919, 148 (Mr Considine).

¹⁵³ Commonwealth, *Parliamentary Debates*, Senate, 20 December 1918, 67 (Senator Grant).

¹⁵⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 23 July 1919, 148 (Mr Considine). Once critic argued that the “Capitalism” looked upon these women workers as “Chattels”. See “The Living Wage”, *Worker*, 26 December 1918, 10.

¹⁵⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 23 July 1919, 148 (Mr Considine).

¹⁵⁶ *Archer* Transcript.

require”¹⁵⁷ as well the cost of this clothing. Specifically, “the girls”¹⁵⁸ were *grilled* about the number of blouses *needed* for a year,¹⁵⁹ the number of pairs of boots a girl might own,¹⁶⁰ what was a “*reasonable* amount for a girl to spend on dress and adornment in a year”¹⁶¹ and whether they considered 21 shillings for a blouse was “fairly high price”.¹⁶²

The test set by Higgins J for female workers in *Archer* was one of ‘reasonable necessity’ rather than the *Harvester male* ‘normal needs’ test used in the male living wage cases. This ‘reasonableness’ test then acted as an exclusionary hierarchic norm¹⁶³ which Higgins J and other industrial judges used to curtail the consumption practices of the female working class.¹⁶⁴ They set out to ‘judicially’ determine what they believed to be a ‘reasonable’ maximum amount that all ‘factory girls’ should spend on their dress without concern for their individual needs or desires. One critic parodied this type of ‘judicial’ determination of women’s dress:

Justice Heydon and the rest ...got some girl to choose clothes for herself for a year so that they would have something to go on. Fancy giving any girl the chance of saying what clothes she would buy in a year-giving her free selection, mind you, and trusting to her to remember the limits of her income. You might as well expect a man to make a rational choice of his annual supply of drinks.¹⁶⁵

In *Archer*, after hearing evidence from “the [seven] girls”, Higgins J calculated that their average expenditure on dress and adornment was £25 13/4 a year.¹⁶⁶ He decided that £25 was not an excessive estimate for dress even though Miss Sutherland,¹⁶⁷ one of the expert witnesses suggested that the price of women’s clothing had increased substantially over the preceding six years. Sutherland’s

¹⁵⁷ Ibid 88 (Mr Carter) (emphasis added).

¹⁵⁸ Ibid. Higgins continually referred to the female factory workers as “girls” in *Archer*.

¹⁵⁹ Ibid 89.

¹⁶⁰ Ibid 90.

¹⁶¹ Ibid 260 (Higgins J).

¹⁶² Ibid 89 (Mr Carter questions Nellie Stoor).

¹⁶³ Hunt, above n 78, 146.

¹⁶⁴ *Archer* Transcript 114-117.

¹⁶⁵ Chiffonnier (sic), “Mere Trifles”, *Daily Advertiser*, 22 November 1918, 3.

¹⁶⁶ *Archer* Transcript 260 (Higgins J).

¹⁶⁷ “Clothing Trade: Basic Rates Increased”, above n 95, 7.

evidence pointed to the fact that the ‘girls’ were in reality ‘economical’ and spending a lot less on clothing than one would expect was necessary. Sutherland estimated that similar clothing to that which she had herself purchased six years before would cost £32/8/- at the time of the hearing:¹⁶⁸

Miss Sutherland throws light on the problem of clothing. Six years ago, her expenditure on clothing, when economy was a necessity, was £23 or £24 per annum; and she estimates that the cost of similar clothing at the present time would be 30 to 40 per cent. more. That is to say, adding 35 per cent. to £24, the cost is £32 8s.¹⁶⁹

Higgins J proceeded to ignore Miss Sutherland’s evidence by suggesting, fallaciously, that her situation was not “precisely parallel”¹⁷⁰ as the factory girl who “makes many of her own clothes and has to go out more than this resident teacher”.¹⁷¹ Although the ‘girls’ were claiming £2 per week (£104 per annum), he fixed their new basic wage at 35/- a week, or £91 per annum. Higgins did not think it would be just to compel employers to pay 15/ for clothes alone, “as was urged”¹⁷² by Mr Carter for the Union.¹⁷³ Counsel for the employers was also persistent in his scorn for the spending practices of the female workers. Mr Scovell high-handedly suggested to one female witness “[that] in regard to women’s dresses and adornments, boots, hats and all that sort of thing...every girl is a law unto herself in these matters?”¹⁷⁴ Scovell then officiously recommended to the Court that women could be more ‘economical’ if they sewed their own clothes. He remarked: “[i]t seems instinctive that women should sew for themselves”.¹⁷⁵

Mrs Kate Dwyer, President of the Women’s Workers’ Union, protested against the Board of Trade’s decision in 1918 to award women only 30/ per week.¹⁷⁶

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ *Archer* (1919) 13 CAR 647, 695.

¹⁷⁴ *Archer* Transcript 114-172.

¹⁷⁵ Ibid 261.

¹⁷⁶ “Thirty Shillings Per Week: ‘Living Wage’ for Women Workers”, *The Australian Worker*, 26 December 1918, 7.

She contended that this amount was based “on the two blouses and 5/11 skirt evidence”,¹⁷⁷ and argued that the award only just put women on the bread line. Dwyer posed the question of how could a “business girl dress on 5/- a week?”¹⁷⁸ She then argued that being well dressed was essential to gain employment:

It doesn't matter what position a girl is in, an employer is always looking for the best-dressed one, and with the best experience. To allow such a girl to live *honestly* she can't live under 35/- a week; to enable her to buy proper clothes without the aid of the lay-by system which is a curse.¹⁷⁹

There were others who contested that whilst the judiciary might scoff at “so-called feminine vanity”¹⁸⁰ that one must not forget the power of personal appearance because the world has no place for its “shabby citizens”.¹⁸¹ One critic argued that it was not vanity that prompted every woman to spend “perhaps more than she should”¹⁸² on clothes:

It is the knowledge, learnt in a hard school, that in many instances, she will be judged on her face value. For this reason we find women sacrificing their food for the sake of saving money for clothes.¹⁸³

Whilst Higgins J may have argued that his probing and imperious questions in ‘female labour’ cases were underpinned with legal notions of fairness and societal and economic responsibility, his questions were nevertheless also heavily overlayed with what Hunt calls ‘common-sense conceptions of a natural order of gender

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.(emphasis added).

¹⁸⁰ “Women’s Column: Women Wage-Earners”, *Sydney Morning Herald*, 21 December 1918, 9.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ “Women’s Column: Women Wage-Earners”, above n 180, 9. This same critic suggested that in considering the relative value of women’s services (s)he was reminded about a passage in Boswell’s “Life of Johnson” when the question was asked “What is the reason that women servants, though obliged to be at the expense of purchasing their own clothes, have a much lower wages than men servants, to who a great proportion of that article is furnished, and when in fact, any female house servants work much harder than the males?”

relations'.¹⁸⁴ The female witnesses were not in a position to challenge the prejudiced manner of the interrogation, to which they were subjected, nor the subsequent misogynous vilification and scrutiny from the press. For instance, in *Fruitpickers*, Olive Gray was asked if she was "perfectly satisfied"¹⁸⁵ with 4s 6d per hour, a rate considerably less than the hourly rate for male workers. When she hesitated in her response, Higgins J asked: "Is that a hard question to answer?"¹⁸⁶ Although the employer's counsel explained to him that the chairman of the Defendant Company's Board of Directors was present in the courtroom, intimating that this might make the girl reluctant to respond, Higgins J pressed Olive:

Why is it a hard question, (tell me frankly) whether you are perfectly satisfied with 4/6 or not. You have just promised to tell the truth, the whole truth and nothing but the truth.¹⁸⁷

When Miss Gray explained that she was not satisfied with the hourly rate because "it did not seem enough,"¹⁸⁸ particularly as she had others to support, he retorted:

I cannot fix wages for those who have others dependant on them and those who have not. By your father's death you have to help your mother. At the same time is that your only reason?¹⁸⁹

Often, Higgins' J inquiries were patronising. For example, in his haughty and "scientific"¹⁹⁰ examination of Nellie Stoor, a coat machinist, he even went so far as to ask her the unrealistic question of whether she kept a log of her expenditures.¹⁹¹ His question not only reflected his own class's anxieties¹⁹² about the contemporary state of gender relations, social hierarchy, sexual equality and Christian values but

¹⁸⁴ Hunt, above n 78, 214.

¹⁸⁵ Transcript of Proceedings, *Rural Worker Union and others v Australian Dried Fruits Association* (B1958/2, National Archives of Australia, Court of Conciliation and Arbitration, Higgins J, 1911) (*Fruitpickers* Transcript).

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ Archer Transcript 124.

¹⁹¹ Archer Transcript 75 (Higgins J).

¹⁹² Ryan and Conlon, above n 30, 95-96.

also pointed to his hegemonic belief that working-class women such as Miss Stool needed to be ‘judiciously regulated’ because they were naturally prone to waste and extravagance.¹⁹³ This extrapolation is supported by the comments of one MP who contended that Higgins J was one of the members of an elite judicial fraternity who were regularly criticised because they were “always preaching thrift to the working-class community”.¹⁹⁴

5.8 Judicial Probing

*The articles produced and described by the witness were handed round, and examined by the advocates, and the female witnesses; the corsets apparently attracting keenest interest. The knickers were put on the heap unnoticed.*¹⁹⁵

The questions directed at “the girls”¹⁹⁶ were frequently overtly personal and invasive. Numerous, detailed, and often ‘delicate’, questions were asked by Counsel and Judges about their dresses, undergarments, hats, ribbons, boots and associated repairs.¹⁹⁷ Mr. Considine, who, at the time was actively supporting industrial action, was prompted to assert that the Arbitration Court, as a vehicle of the upper classes, aimed to “fool the workers”¹⁹⁸ and “insult their womenfolk by asking them the most intimate details with regard to their clothing, before [Higgins J] will give them a decent living wage.”¹⁹⁹ Higgins J evidently understood, by his reference in *Archer* to a decision by Brown P in a South Australian female wage case, that arbitration

¹⁹³ Archer Transcript 90.

¹⁹⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 12 July 1919, 148 (Mr Considine).

¹⁹⁵ “What is Extravagance? A Washed Blouse”, *The Bathurst Times*, 19 November 1918, 4.

¹⁹⁶ Archer Transcript.

¹⁹⁷ Ibid.

¹⁹⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 23 July 1919, 148 (Mr Considine).

¹⁹⁹ Ibid.

judges were venturing into sensitive ground when questioning female workers about their dress. He quoted Brown P:

I refrain from giving precise details as to the way in which the amount (i.e. the bedrock living wage for women) is arrived at. There are obvious reasons for reticence on the part of a 'mere man' dealing with a problem so intricate and so delicate.²⁰⁰

Other arbitration judges, such as Heydon J, were not as reticent as Brown P when delving into questions about the cost, quantity and quality of female workers' clothing. It seems that by 1918, it had become common practice in female living wage cases for samples of various items of clothing, 'usually' or typically worn by female witnesses, to be tendered as exhibits.²⁰¹ Sometimes this clothing was supplied by the girls themselves, but more often the Court or Board would direct that clothing samples be selected by a female shop assistant employed at a large retail shop.²⁰² Counsel and judges then had the opportunity to inspect and handle this clothing during the examination of the female witnesses. In the 1918 Board of Trade inquiry, many items of women's intimate apparel were inspected, handled and liberally discussed.²⁰³ This 'judicial' process of handling of this apparel became infamous. In one living wage inquiry, the press sensationalised the manner in which the Board's President, Heydon J, and advocates, 'pawed' over these personal items of female clothing.²⁰⁴

Before the commencement of the inquiry in this instance, the Board of Trade had requested a large Sydney drapery store to arrange for one of their female employees "to choose from their stock wearing apparel suitable for a working girl."²⁰⁵ It was expected that the Board would hear testimony from the "head"²⁰⁶ of the store about these 'selected' clothes, with a plan to compare them against the

²⁰⁰ *Archer* (1919) 13 CAR 647, 694-695 (Brown P).

²⁰¹ "Women Workers' Wages", *Sydney Morning Herald*, 19 November 1918, 7.

²⁰² *Ibid.* Examples of retail establishments were Farmer's and David Jones. See "Women Workers: What they Should Wear", *Evening News*, 24 November 1919, 5.

²⁰³ "Women Workers' Wages", above n 201.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

clothing purchased by the female workers.²⁰⁷ Mr Cantor, Counsel for the workers, objected to this official giving evidence about the clothes and insisted that the girl who selected the apparel should be called.²⁰⁸ He was told by Counsel for the employers that the girl was ‘sensitive’.²⁰⁹ Mr Cantor retorted: “[m]y witnesses are also sensitive, but they have to give evidence all the same.”²¹⁰

Many women (and men) considered this ‘pawing’ practice to be both humiliating and embarrassing for the female witnesses and for women in general.²¹¹ The poet and journalist Mary Gilmore expressed her disgust about this practice in her newspaper column:

Can anyone imagine anything more absurd, more out of place than a lot of men pawing over women’s underwear, and holding it up to unclean public gaze per medium of supposed humorous remarks...It is an offence to all women that such a thing should be allowed; it is worse!- it is an obstacle to true and to the best evidence in such cases, because what woman would willingly face such an ordeal as that involved?²¹²

Gilmore pointed out that the living wage fora were conducive to both “shameful publicity”²¹³ and to the “mishandling of a girl’s right to her privacies”.²¹⁴ She insisted that, although she had travelled the world and mixed with “all sorts of conditions of men and women”,²¹⁵ she would be unable to face “the unpleasant publicity and the remarks of the men engaged in these inquisitions into the working girl’s private apparel”.²¹⁶ Furthermore, she argued that these types of ‘judicial investigations’ were an insult to women because they were conducted by men.²¹⁷ She suggested that it was unnatural and indecent for men to paw round “the boxes and

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ “Pair of Stockings: Embarrassing Situation”, *The Bathurst Times*, 12 November 1918, 1.

²¹² “An Offence to Women”, *The Australian Worker*, 28 November 1918, 9.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

baskets where working girl's wear is kept,"²¹⁸ particularly as such men would not "paw around the cupboard where his wife's or his daughter's underwear is kept."²¹⁹ She concluded that this sort of investigation was no place for a "man's clumsy fingers,"²²⁰ but it should be left to a committee of women.²²¹

Gilmore was not alone in her condemnation of the 'judicial' treatment of female witnesses and their choice of clothing. One journalist mocked this invasive inquiry:

After weeks of inquiry, after pawing intimate articles of women's dress, after questioning girl witnesses with indelicacy typical of the master, after portentously declaring that corsets at 2s. 11d. are quite good enough for working girls- after all this and more, the New South Wales Board of Trade, through its President (Judge Heydon) has decided what is the living wage for women in Sydney.²²²

The same journalist suggested that, although the Board of Trade "did not utter [any] word on the subject", the "munificent"²²³ decision to award women only 30/- per week, including 1/6 for clothing, led to the inference that if female workers wanted more than the lowest level of existence that they would have to resort to prostitution:

If they desire any of the ordinary sweets of life, such as good food, good clothes, pleasant residence, reading, amusement, etc., they can help themselves out by going on the streets.²²⁴

One 'official' female witness was so chagrined with the manner in which the female workers were derided by the Court and the press because of their 'alleged' extravagance that she bravely challenged the court to examine the quality of the type of stockings that these workers were forced to purchase because of their low wage:

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² "The Living Wage", *Worker*, 26 December 1918, 10.

²²³ "The Wages of Women Worker", *Labor News*, 21 December 1918, 4.

²²⁴ "The Living Wage", above n 222.

‘Just look at these stockings’ she said handing a pair of these articles to Mr Cantor, who examined them with a critical eye, and passed them to Mr Ferguson. The latter handled them tenderly. Mr Stuart Thom merely looked at them.

The stockings were then returned to witness, who turned to the reporters, and invited them to pass judgement. The reporters looked surprised and blushed.

Seeing the embarrassed state of the Press, the witness went up with her story. She said the stockings cost her 1/11 a pair.

‘I put them on Saturday’ she added, ‘and my toes went right through them.’²²⁵

5.9 What is a camisole?²²⁶

*We have a number of societies for spreading knowledge among the heathens, but not one which has for its aim the mitigation of the ignorance in which some poor benighted Judges move and have their being.*²²⁷

The issue of ‘reasonable necessity’ that Higgins J had earmarked as the test for assessing the appropriateness of female workers’ apparel became even more problematic when judges were discovered to be uninformed about the type of clothing women customarily wore. This was the situation in a 1918 cost of living inquiry before Heydon J in the New South Wales Board of Trade. A female witness made reference to a camisole, whereupon His Honour asked innocently “[w]hat is a camisole?” These remarks triggered considerable public comment concerning how male judges were capriciously determining what female factory workers should

²²⁵ *Archer* (1919) 13 CAR 647, 694.

²²⁶ This was Justice Heydon’s question in a New South Wales Board of Trade case as reported in “Peerybingle Papers”, *Weekly Times*, 23 November 1918, 34.

²²⁷ *Ibid.*

wear.²²⁸ One reporter sardonically questioned how could such men judge a woman's dress needs when some did not even know what a camisole was?²²⁹

The innocence of some learned Judges is amazing. A witness giving evidence regarding the cost of living before the N.S.W. Board of Trade, presided over by Mr Justice Heydon, made reference to a camisole, whereupon his Honor asked innocently: What is a camisole?²³⁰

Another reporter highlighted the problem with male judges determining the style and quantity of clothing that women should purchase:

[t]he psychological niceties of the case are not judicable by the masculine mind, fed on mere facts. The joy and the love of fallals lies deep in the feminine soul. Yes, the list of necessities must allow 'a little bit of ribbon, and a little scrap of lace.'²³¹

It was suggested that, quite apart from their personal standing in society, it was apparent to anyone following the evidence via the press that members of the Board of Trade struggled to deal with the issue of women workers:

As workers they are presumably not entitled to the good things enjoyed by those who live in happier circumstances...The Board was hopelessly at sea, especially when dealing with the question of clothing and other articles necessary to give women workers a decent appearance.²³²

²²⁸ "Can a Man Judge a Woman's needs? Evidence about Clothing Suggests Needs for Woman Magistrate", *Sunday Times*, 17 November 1918, 13.

²²⁹ Ibid. See also "What is a camisole?" *The Richmond River Express and Casino Kyogle Advertiser*, 8 September 1922. In this case, the magistrate, King's Counsel and police sergeant all confessed their ignorance as to what a camisole was.

²³⁰ *Weekly Times*, 23 November 1918, 34. Heydon J showed his ignorance further when he asked whether the camisole was for warmth. He was told it was "partly for warmth, but it has to cover the corset". See "Views and News", *Punch*, 21 November 1918, 6.

²³¹ *The Sydney Stock and Station Journal*, 29 November 1918, 2. Falal (fallal) means gay ornaments, frippery, gewgaws, a showy article of dress, trinket, a bit of finery. See also "Can a Man Judge a Woman's Needs? Evidence about Clothing Suggests Needs for Women magistrate", above n 228. Here the reporter said: the man who sits upon the case of what a woman should spend upon her apparel often does not know one garment from another. He asks what is a camisole, little dreaming how enormously important this "this little bit of ribbon, little bit of lace, and a little bit of silk" is to the average woman. Many women feel that a certain daintiness of apparel in underwear really adds to their self-respect, and makes them able to face the little frets of everyday much more contently."

²³² "That Living Wage", *The Australian Worker*, 26 December 1918, 9.

5.10 Independent Evidence

*A lady doctor...said it is necessary for a girl to have frocks away from the clothes in which she goes to work...*²³³

By 1918, the presentation of evidence about female workers' clothing 'needs' became more equitable and balanced. No longer were just the Court and/or the defendant employers calling 'expert' female witnesses about the 'appropriateness' or otherwise of the female workers' apparel. Employee unions began to call expert female witnesses, including the 'unnamed' witness mentioned above, to counter the expert testimony of the employers' witnesses. This witness was an official of the Federated Clothing Trades Union and was particularly forceful in supporting the workers' claims, notwithstanding the ridicule meted out by the press about her alleged brashness when presenting her evidence.²³⁴ She argued that "a girl absolutely dependent upon her own earnings"²³⁵ required for her wardrobe a minimum of a coat and skirt (£5), a frock (£3), two skirts (£4/4/6), six blouses (£3/15/3), four hats (£3/11/6), boots and shoes (£3/11/6).²³⁶ The witness "emphatically"²³⁷ argued that a girl "wants a little comfort"²³⁸ and that her clothing should be durable and that she should not have to waste her money on the "cheap kind"²³⁹ of clothing that the Board expected her to wear. Otherwise, she suggested: "[y]ou might as well throw your money into the streets."²⁴⁰ This same witness also "vehemently asserted"²⁴¹ that the

²³³ "Pretty Frocks: Essential for Working Girls", *Evening News*, 26 November 1919, 5.

²³⁴ "A Pair of Stockings: Embarrassing Situation", *The North Western Courier*, 18 November 1918, 4. Whilst this reporter gave a reasonably impartial coverage to this incident, other member of the press used the incident as a means to denigrate the pushiness of the 'official'. She was described as 'waving' the stockings about and brashly urging everyone to put their hands into them: "The Board again obliged." See "Views and News", above n 230.

²³⁵ "Women's Wages", *The Sydney Morning Herald*, 12 November 1918, 10.

²³⁶ Ibid.

²³⁷ "A Pair of Stockings: Embarrassing Situation", above n 234.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ "Why Use Lace?" *Daily Herald*, 13 November 1918, 4.

quality of the clothes that working girls were forced to buy was “shocking.”²⁴² After Mr Ferguson, counsel for the employers, examined the samples of underclothes brought in by the draper, he expressed surprise at the absence of lace and then suggested that it was unnecessary. The expert witness “emphatically”²⁴³ exclaimed: “A girl might as well be dead without some trimming.”²⁴⁴

In 1919, a similar scenario played out in a Board of Trade Inquiry when Mrs Blanch Singleton²⁴⁵ confronted Edmunds J and told him that she wanted to demonstrate the effect on women’s clothing after a “season’s working”.²⁴⁶ The judge declared that the members of the Board were “all married men”,²⁴⁷ suggesting that they knew all about such things. Blanch retorted: “I don’t care whether they are or not. They have to be shown”.²⁴⁸ She then asked him: “[d]on’t you want to hear me?”²⁴⁹ His Honour replied: “[o]f course we will hear you right through, but you know you show these things to men and they forget them immediately.”²⁵⁰ She quickly responded: “But I will put them to you in such a way that you will not forget them. You men have got to understand what we women want.”²⁵¹ Blanch then proceeded to show the Board a garment that “to the male eyes of the court looked like something that might have been intended to clothe a good-sized doll”.²⁵² She then proceeded to explain that the adult garment was a singlet that now only fitted a girl of ten and that it had shrunk to that size “after a season of washing”.²⁵³

It is notable that the evidence sought by the Courts or Boards of Trade in many female wages inquiries related only to clothing required for a woman’s

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ “Problem of Clothes: Proposed Committee of Matrons”, *Evening News*, 12 September 1919, 1. Blanch was a member of the women’s executive of the Labor Party but stated that she was not before the Board in that capacity.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid.

employment and this evidence rarely made mention of the women's life away outside of her work:

Was this good enough or that good enough for work? Not whether this or that was good enough for play. Nobody apparently was expected to pay anything for amusement. For 365 nights every year the 30/- minimum wage worker is expected... to sew those serviceable garments or she may, except for the effect on her boots, take the recreation of walking abroad... she might sole and heel her own boots... spin her own wool, knit her own stockings and make her own corset.²⁵⁴

In 1919, during a living wage case in New South Wales with Edmunds J presiding, an unnamed "lady doctor"²⁵⁵ was called by the claimants to give evidence about how clothes were not merely a medium for covering the body but were necessary for a girl's health and happiness.²⁵⁶ The doctor suggested that shabbiness could affect a female worker's health.²⁵⁷ After being questioned as to whether a working girl should have an evening dress ("not necessarily a low neck one but one to wear when going to a party or a dance")²⁵⁸ she confirmed that she considered that it was necessary for a girl to have frocks "apart from the clothes in which she does to work."²⁵⁹ The 'doctor' suggested that a girls' nervous system was very delicate and sensitive and that it meant a great deal to a girl "to go out for recreation and amusement."²⁶⁰ Furthermore, she argued that if a girl felt "shabby"²⁶¹ she was mentally depressed and this would affect her health.²⁶²

²⁵⁴ "The 30/ Girl and How She Lives", *Sunday Times*, 22 December 1918, 5.

²⁵⁵ "Girls and Frocks: Shabbiness Makes Them Depressed", *Daily Herald*, 27 November 1919, 5. It seems that the doctor requested that her name should not be printed. See "Pretty Frocks: Essential for Working Girls", *Evening News*, 26 November 1919, 5.

²⁵⁶ "Dress and Health: Clothes and Recreation for the Working Girl", *The Farmer and Settler*, 9 January 1920, 8.

²⁵⁷ "Girls and Frocks: Shabbiness Makes Them Depressed", above n 255.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² *Ibid.*

5.11 Female Input

*Could this matter be referred to a committee of Matrons?*²⁶³

By 1918, some Boards of Trade had come to acknowledge the efficacy of the appointment of a committee of women to assist them in their determinations concerning the clothing requirements of working women. Whilst committee members were not always unanimous in their opinions regarding this issue, the creation of such a gendered committee was nevertheless a positive step towards providing women with a voice in an otherwise male-dominated judicial forum. For instance, in the New South Wales 1919 wage inquiry, Edmunds J suggested that if the Board had to go into the cost of clothing “it might be advisable”²⁶⁴ to have a committee of housewives “of experience”²⁶⁵ to investigate that issue. Subsequently, a committee representing employers and employees was constituted to assist Edmund J and the Board in determining what articles of clothing were “deemed necessary”²⁶⁶ for working women.²⁶⁷ The committee’s task was to “advise on a number of subjects on which men, as a rule, were very poorly informed”²⁶⁸ and to come to a common agreement as to the standard and cost of this clothing.²⁶⁹ In regards to clothing, the committee was to meet and carefully consider “the requirements of a woman in regard to clothing, boots, and toilet requisites for one year”.²⁷⁰

²⁶³ “Problem of Clothes: Proposed Committee of Matrons”, above n 245.

²⁶⁴ “Broken Hill Arbitration”, *The Register*, 29 October 1919, 7.

²⁶⁵ *Ibid.*

²⁶⁶ “Women Workers: What they Should Wear”, *Evening News*, 24 November 1919, 5.

²⁶⁷ *Ibid.*

²⁶⁸ “Female Workers: Living Wage Inquiry: Suggested Women Assessors”, *Sydney Morning Herald*, 24 October 1919, 6.

²⁶⁹ “Women Workers: Cost of Living”, *Evening News*, 17 November 1919, 1. If the women could not agree on this issue then each side would call witnesses.

²⁷⁰ “Women Workers: What they Should Wear”, above n 266.

The employees' representatives²⁷¹ provided a list of clothing that would require a "generous allowance" for dress.²⁷² However, the allowance was specific to girls living in lodgings and doing their own laundry and mending.²⁷³ There was no allowance for "veilings or jewellery or articles of personal adornment".²⁷⁴ The list only included clothing items "considered absolutely essential".²⁷⁵ The employers' representatives,²⁷⁶ on the other hand, only agreed to the list "on the assumption that the prices for the articles would be on the basis of the cheapest procurable."²⁷⁷ Whilst the committee members agreed on a number of articles of clothing that could be deemed necessary and on the cost (normal not sale cost), there were a number of other articles that "one side claimed to be essential"²⁷⁸ and the other held to be "luxuries".²⁷⁹ After Edmunds J examined the committee's report he acknowledged that the committee of women "had rendered very valuable assistance"²⁸⁰ to the Board. He even admitted that it was "unfortunate in a matter of this kind"²⁸¹ that the Board did not include some "representative women."²⁸² However, he confirmed that this form of representation was not within the power of the Board when he said: "[w]e are not in control of the situation."²⁸³ The Report's schedule showed that it was 'essential' that a woman should be able to procure certain articles as "necessaries"²⁸⁴ every 12 months.²⁸⁵

²⁷¹ Ibid. Imelda Cashman and Catherine Dwyer.

²⁷² "Women's Wages: Estimates of Cost of Living", *Sydney Morning Herald*, 26 November 1919, 11.

²⁷³ Ibid.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Mona Daley and Annie Moody. See "Women Workers: What they Should Wear", above n 266.

²⁷⁷ "Women's Wages: Estimates of Cost of Living", above n 272.

²⁷⁸ "Women Workers: What they Should Wear", above n 266.

²⁷⁹ Ibid.

²⁸⁰ "Women's Clothing: Evidence as to Cost", *Sydney Morning Herald*, 25 November, 1919, 6.

²⁸¹ "Female Workers: Living Wage Inquiry: Suggested Women Assessors", *Sydney Morning Herald*, 24 October 1919, 6.

²⁸² Ibid. The President of the National Council of Women suggested at the first inter-State conference that the Government was "seriously considering that question". It was also resolved by the Council that "women should be represented on all public and philanthropic committees". See "The Council of Women: Inter-State Conference", *Chronicle*, 11 October 1919, 37.

²⁸³ "Female Workers: Living Wage Inquiry: Suggested Women Assessors", above n 268.

²⁸⁴ Ibid.

5.12 The Press's foray into working women's wardrobes

*The [press] turned the courtroom into a daily spectacle by presenting a constant parade of young women witnesses and selecting abstracts from the court dialogue for the amusement and titillation of an assumed male audience.*²⁸⁶

In *Archer* and *Fruitpickers*, Higgins J's comments about women's dress effectively defined the standards of apparel that he sought to prescribe for female factory workers. The press was always keen to repeat Higgins J's comments and to portray the personal details of the lives of these young women as "interesting sidelights",²⁸⁷ which could be then held up for ridicule and derision. Not only did the arbitration process place these women's personal consumption habits under a microscope to be examined and adjudged as fickle and wasteful, but the press unveiled their extravagant habits to the public as a moral polemic that needed to be further scrutinized and maligned.²⁸⁸

For instance, an article entitled "*Problem of Dress*" made much of the fact that one girl, whose wages were 29/6 per week, spent £32 per year for dress.²⁸⁹ Her annual income was £70 and her total expenditure was £86. The nation was told that she had purchased 12 blouses at an average price of 5/- each, 14 pairs of hose, four pairs of boots at £1/1/ each, five pairs of gloves and six hats. To make matters worse, it was also reported that the girl, in response to a question from Higgins J, had 'shamelessly' admitted that "she could not afford newspapers, lodge fees, or church

²⁸⁵ The list included winter costumes (to last two seasons), one summer frock, one winter skirt, one dark summer skirt, one white summer skirt, a sports coat for two seasons, a showerproof overcoat for two seasons, five blouses for both summer and winter, an everyday hat, two pairs of shoes, one pair of boots, one pair of galoshes, one pair of slippers or sandshoes with repairs, four pairs of summer and two pairs of winter hose, underclothing (corsets, camisoles, knickers, bloomers, singlets, underskirt, nightgowns) and incidental items (including an umbrella, aprons, handkerchiefs, gloves, a bathing costume, kimono, handbag, hair and clothes brushes, a comb, toilet soap and face powder).

²⁸⁶ Gail Reekie, "Decently Dressed? Sexualised consumerism and the working woman's wardrobe 1918-1923" (1991) 61 *Labour History* 42, 50.

²⁸⁷ "The Political Situation: Women's Wages and Appearance", *The Advertiser*, 9 May 1919, 6.

²⁸⁸ "Problem of Dress: Factory Employee's Experience", *The Argus*, 12 April 1919, 22.

²⁸⁹ *Ibid.*

contributions, and she was not able to allow anything for amusements.”²⁹⁰ This woman was thus depicted as being more interested in fashion to the neglect of her social and religious duties.

In a related, but later article, the message was clothed in more the specific moralised language of sumptuary regulation: “[i]t was significant that any little indulgence of vanity in dress was at the sacrifice of... amusements, lodge, toilet requisites, and church.”²⁹¹ Despite the fact that there existed empirical evidence to establish that neither the increased cost of clothing, nor other living expenses, were in step with wages,²⁹² this witness, in the eyes of the Court and the community, had clearly failed her social and moral obligations to balance the needs of “adorning the body and furnishing the mind.”²⁹³

Not only was this girl’s consumer choices underscored by the Court and the press as a public example of ‘real’ female waste and fashionable excess, but she was also targeted because of her alleged failure to adhere to those moral and civil standards and duties that Higgins J and his class prescribed as ‘normative’ for the working class. Moreover, the girl was to be regarded with suspicion for she was unable to explain “how the remaining debit of £8 over income was provided for.”²⁹⁴ All in all, she was portrayed in the press as an untrustworthy spendthrift who wasted an inordinate amount of her wages on clothes rather than using her money on self-improvement and her religious responsibilities.²⁹⁵

This form of moralising discourse that regularly emanated from the press proved to be a powerful tool for members of anxious upper classes who regularly proclaimed that the traditional social order was in danger and in need of regulation. At the same time, there were few who challenged the sexist diatribe and moral

²⁹⁰ Ibid.

²⁹¹ “Clothing Trade: Basic Rates Increased. Males 65/, Females 35/-”, above n 112.

²⁹² Ibid. Miss Brenda Sutherland, superintendent of the Domestic Arts Hostel gave evidence in 1913 that her own expenditure on clothing was £23 to £24 a year and that similar clothing would cost 30% to 40 % (or £32) in 1919.

²⁹³ Archer Transcript 263 (Mr Scovell).

²⁹⁴ “Problem of Dress: Factory Employee’s Experience”, above n 288.

²⁹⁵ “Clothing Trade: Basic Rates Increased. Males 65/, Females 35/-”, above n 112.

indignation, which the press disseminated about working class women and their circumstances.²⁹⁶

Often the wage case evidence was shamefully restructured to capture the attention of voyeuristic readers.²⁹⁷ Denigrating titles were used to catch public attention. For instance, in the “telephony”²⁹⁸ case, the press carried an article, entitled “Nothing to Wear: Tragic Tales of Telephone Tarts”,²⁹⁹ which introduced readers to these particular female claimants’ quest for a pay rise. The body of article continued in the same vulgar vein and contained a large amount of scurrilous ridicule in the form of offensive ditties and suggestive cartoons of women in their underwear.³⁰⁰

Not only did the press use the girls’ personal and intimate testimonies to deride the ‘girls’ for their profligacy but also, at times, used it as a “little bit of fluff”³⁰¹ to entertain their readership:

When Counsel expressed the opinion that it was not essential for a jam factory girl to have kid gloves at 6/6 a pair, he did the rash thing. He was met with a real old lecture which wound up with an indignant protest of ‘Because a girl works in a jam factory is there any reason why she should be less human than any other girls?’ Counsel subsided: and all concerned in cross examination made a note that care should be taken in framing questions.³⁰²

This type of media coverage, which subjected female witnesses to unwarranted voyeuristic public scrutiny and mockery, occasionally generated some concern and admonishment about this public invasion into the girls’ private lives:

Can anyone imagine anything more absurd, more out of place than a lot of men pawing over women’s underwear, and holding it up to unclean public gaze per medium of supposed humorous remarks...It is an offence to all women that such a thing should be allowed; it is

²⁹⁶ “Telephony and Fashion: An Open Letter to Mr Justice Powers, Arbitration Court”, above n 136.

²⁹⁷ “The Rival Sexes: Men Ousted from Tailoring”, *The Register* 17 September 1919, 8.

²⁹⁸ “‘Nothing to Wear’ Tragic Tales of Telephone Tarts”, *Truth*, 28 December 1918, 5.

²⁹⁹ *Ibid.*

³⁰⁰ *Ibis.*

³⁰¹ “Views and News”, above n 230.

³⁰² *Ibid.*

worse! - it is an obstacle to true and to the best evidence in such cases, because what woman would willingly face such an ordeal as that involved?³⁰³

Demands made by the dominant classes and institutions for economy and thrift amongst the working class women generally reflected a wide-ranging and persistent anxiety about luxury and extravagance that early sumptuary law had commonly associated with personal and national ruin.³⁰⁴ During the war, this same concern with ruin was a polemic that was regularly discussed in the press³⁰⁵ and within organisations such as the National Council of Women, particularly when lead by such exponents of austerity as Ivy Brookes.³⁰⁶ Single working women, 'indulging' in the freedom of buying luxuries and fashion clothing were especially targeted by the press and those in authority, for being economically irresponsible and profligate.³⁰⁷

Moreover, there was a widely held fear that if such women were paid higher wages they would become accustomed to an 'unrestrained' lifestyle and consumer habits that were at odds with the expected privations and frugality usually associated with a family surviving on a basic 'family' wage.³⁰⁸ In the press, many considered that it would be untenable for single female workers to be in a better economic position than the average married woman who had to 'make do' on her husband's income:

From every standpoint it is obvious that the 'normal and reasonable needs' of the woman wage-earner must be as strictly assessed as those of the men, and considered always in just relation to the basic family wage. To do otherwise would not only be economically unsound and socially unjust, but would react deleteriously upon the women themselves by unfitting them for their future, and accustoming them to a standard which it would be impossible for them to maintain.³⁰⁹

³⁰³ "An Offence to Women", above n 212.

³⁰⁴ Hunt, above n 78, 78.

³⁰⁵ "Women and Wages", above n 54.

³⁰⁶ "Housewives Unite: Association Formed", *Weekly Times*, 26 June 1915, 14. See Chapter 3.

³⁰⁷ "Women and Wages", above n 54.

³⁰⁸ Ibid.

³⁰⁹ "Women and Wages", above n 54.

Furthermore, it was argued that if women's wages were fixed as high as those of the opposite sex "they would be too much for women's needs."³¹⁰ In some instances the press provided a censorious forum for thrift campaigners who demanded that women's wages should be curtailed so as to instil thrift and economy "into the woman,"³¹¹ at the earliest stage, for she would ultimately be in charge of the domestic economy:³¹²

Thrift and economy cannot be too early instilled into the woman who will ultimately control the family purse-strings; and no worse training for wifehood and motherhood could be imaged than a wages system which makes no demands for such virtues from the single women.³¹³

One "significant and by no means pleasing"³¹⁴ anxiety 'highlighted' by the press was that female witnesses had in some 'living wage' cases admitted that they had done no sewing since school.³¹⁵ These 'confessions' presumably suggested that this class of female worker were indolent during their 'brief' leisure hours. Such indolent behaviour was to be condemned; it had an injurious effect on the natural order of things as these young women were "unfitting"³¹⁶ themselves for their future and becoming accustomed to a standard of luxury or freedom which would be impossible for them to maintain once they were married:³¹⁷

It may be presumed that women on the basic line will marry men on the same economic level, and to allow them a wage which permits luxuries and extravagances impossible to the industrial wife and mother would unfit them for what, after all, is the real-life work of the average women.³¹⁸

³¹⁰ Those Dress Bills, Mr Parsons Talks Economy: What Should Women's Hats Cost", *Recorder*, 2 August 1919, 1. This was one of the arguments made by Mr Angus Parsons, K.C. who appeared before Judge Brown in a wage case in South Australia in August 1919.

³¹¹ "Women and Wages", *The Register*, above n 54.

³¹² Ibid.

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Ibid.

In the past, the social ‘sins’ of laziness and intemperance had been associated with the sumptuary impulse,³¹⁹ and were considered serious impediments to gendered requirements of female respectability and familial responsibility.³²⁰ Society needed to put a check on such social sins:

In their own interests, and in the interests of the community, their economic position as wage earners should foster and develop their domestic talents and virtues, and inculcate in them the principles of wise buying which are the essence of good housekeeping and the foundation of family comfort and security.³²¹

Some members of the press insisted that it was incumbent on industrial judges such as Higgins J and Brown P to ensure that female factory workers were only paid sufficient wages to meet their ‘normal and reasonable needs’.³²² This would be a sum that would allow a “decent livelihood”³²³ with a margin for emergencies but which would not encourage idleness or waste.³²⁴

5.13 Style and Taste: the exclusive domain of upper class women

*It is for women who could afford it, to show the way of simplicity and good taste.*³²⁵

The female ‘living wage’ awards effectively ensured that working women would continue to remain passive and marginalised by the industrial relations process that bonded male capital and male labour in what Reekie refers to as “a validation of

³¹⁹ Hunt, above n 78, 100-101.

³²⁰ “Women and Wages”, above n 54.

³²¹ Ibid.

³²² Ibid.

³²³ Ibid.

³²⁴ Ibid.

³²⁵ “Clothing Trade, Basic Rates Increased, Males 65/, Females 35/”, above n 112. The article reported Higgins J’s comments in *Archer*.

men's experiences".³²⁶ These women were not just discriminated against on the basis of gender; they also suffered discrimination because of their class.

Although Higgins J suggested, when prescribing the basic wage for female clothing workers, that he could not forget "the important social function of girls' dress as a bulwark for self-respect,"³²⁷ he would not countenance an award that would allow them to purchase anything but the most basic apparel. The living wage awards made by the Arbitration Court and The Boards of Trade effectively denied these women the right to choose the type of clothing they wanted to wear. Yet, this approach demonstrated a gendered double-standard, with Higgins' contending in the "*Badge Case*" that there is a "common law right for every *man* to dress as *he* pleases."³²⁸

Furthermore, at the time Higgins J and his fellow judges were denying working women the right of equal pay and consumer freedom, they were also disparaging their choice of dress by comparing their fashion style and taste with that of middleclass women. Similarly, Mr Parson KC, in a wage case before President Brown, compared the extravagance of working class girls who would spend between £1/7/10 and £2/5/- on hats with the admirable economy of "one of the most beautiful women in Adelaide"³²⁹ who only paid 8/- for her hat.³³⁰

These types of comments reflected the then current hegemonic view that only women of means and class were innately endowed with good taste and style as well as a thrifty disposition.³³¹ These 'women of means' would no doubt take the advice of Brown P and have forgone fashionable boots and worn "plain strong boots [from which] they would get much better wear for their money."³³² Obviously, the female

³²⁶ Gail Reekie, "Humanising Industry: Paternalism, Welfarism and Labour Control in Sydney's Big Stores, 1890-1930" (1987) 53 *Labour History* 286.

³²⁷ "Clothing Trade, Basic Rates Increased, Males 65/, Females 35/", above n 112.

³²⁸ *Australian Tramways Employees' Association v The Brisbane Tramways Co Ltd* (1912) 6 CAR 35 (emphasis added).

³²⁹ "Women's Basic Wage: What Should it be?" *The Register*, 2 August 1919, 6.

³³⁰ *Ibid.*

³³¹ "Those Dress Bills, Mr Parsons Talks Economy: What Should Women's Hats Cost", above n 310.

³³² "Prices Commission. High Cost of Living: Enquiry into its Causes", *Chronicle*, 13 September 1919, 44.

factory worker could not be trusted to develop the characteristics of simple good taste without guidance from the upper classes.

5.14 Conclusion

It has been the purpose of this chapter to explore the manner in which Justice Higgins J and other industrial court judges, during the first two decades after Federation, used the female ‘living wage’ cases as an opportunity to prescribe what they considered to be ‘appropriate’ standards of dress for working-class women. Notwithstanding their middle class stance on gender relations, Higgins and other industrial judges were forced, in this period of social and economic flux, to reluctantly deal with ‘the complex question of woman labour’.

This chapter also illustrates how Higgins and other industrial judges in these female labour cases encouraged their judicial forums to become sites of inquisitorial interrogation and normative regulation. In particular, they focused on the ‘contentious’ gendered issue of female dress in their castigation of those ‘gentle invaders’³³³ who dared contravene traditional norms by seeking work in the public sector and having the audacity to ask for equal pay. These judges embraced dress as a means to justify their gendered intervention in the female wage cases and to award female workers lower wages than men who did the same work. Moreover, they alleged that women, particularly young women, wasted an inordinate amount on fashionable clothing. It was argued by the judiciary and the press that it would be better for society if these women were to curtail their extravagance in dress and instead, equip themselves for marriage by adopting thrifty practices.

Rather than applying the masculinist *Harvester* ‘normal needs’ test in assessing the wage that a female worker should be awarded in various industries, the Arbitration Court and Boards of Trade instead focused on the ‘reasonable necessity’ of these women’s expenditure on clothing. In doing so, these male judges, many of

³³³ Ryan & Conlon, above n 30.

whom were ignorant about the dress ‘needs’ of women, then became the self-appointed ‘experts’ and institutional ‘arbiters’ of working-class women’s dress. It was not until 1919 that women began to have the opportunity to contribute to the ‘judicial discussion’ about the appropriateness or otherwise of women’s dress.

It was through these female ‘living wage’ cases that Higgins and his fellow judges began to perpetuate the institutionalised vision of what Hunt calls a “‘ideal’ hierarchical and instinctively male order.”³³⁴ Higgins’s nation-building mission was to create “a new province for law and order.”³³⁵ However, it proved to be a masculinist paradigm that exposed “gendered conceptions of work and citizenship, based in a recreation of patriarchy in national wage structures.”³³⁶ Working-class women in particular were expected to remain marginalised and closed off from the public sphere, notwithstanding their individual or personal aspirations or needs.³³⁷ Women, who did work for whatever reason, were viewed with suspicion and often vilified in the courts and in the press for their alleged profligacy and adverse impact of the nation’s social order.³³⁸

This chapter has also demonstrated the manner in which the press not only put these girls’ choice of clothing and their personal consumer habits on show to the public as interesting “sidelights,”³³⁹ but also how it frequently and widely chastised these working women for their alleged profligacy and fickleness.³⁴⁰ Female workers’ wage claims also provided a fresh opportunity for the press to disseminate moralising attacks on women’s dress. Often, female working class witnesses were admonished for their profligacy and fickleness, and it was often alleged that these ‘vices’ were

³³⁴ Hunt, above n 78, 226.

³³⁵ Henry Bournes Higgins, *A New Province for Law and Order* (Dawsons of Pall Mall, 1968). This is the title he gave to his own interpretation of his project of industrial relations reform.

³³⁶ Mark Hearn, “Securing the Man: Narratives of gender and nation in the verdicts of Henry Bournes Higgins”, above n 10, 1.

³³⁷ See generally, Higgins, above n 335.

³³⁸ Ibid.

³³⁹ “Untitled”, above n 45.

³⁴⁰ “Telephony and Fashion, ‘Only Serviceable dresses’. Female Officers’ Claims”, above n 136; “Industrial: Clothing Trade Conditions, Woman Inspector’s Testimony”, *The Argus* 16 April 1919, 10.

having an adverse effect on national prosperity and on public interests.³⁴¹ This form of moralising commentary often sought to denigrate those female working women who dared to disrupt the natural order of gender and class relations by seeking equal pay for equal work.³⁴² Furthermore, this gendered criticism of working women's dress and appearance proved to be a powerful tool for the anxious upper classes anxious who proclaimed that traditional social order was in danger and in need of regulation.³⁴³

Chapter 6 will demonstrate the level to which luxury excited moral condemnation and stimulated the sumptuary reflex during the War. The chapter focuses on the establishment in 1917 of the Federal Luxuries Board and explores its sumptuary role in serving the Hughes government's moralised pattern of prescribed thrift and patriotic sacrifice.

³⁴¹ "Ladies in the Federal Service: High Cost of Dressing" *Terang Express* 20 December 1918, 3.

³⁴² "Telephony and Fashion: 'Only Serviceable Dresses', Female Officers' Claims", above n 136; "Telephone Girls and Their Clothes", *The Australasian* 21 December 1918, 24; "Clothing Trade Wages: Dress £25 a Year", *Sydney Morning Herald* 1 May 1919, 7.

³⁴³ Higgins, above n 335, 142.

6 THE PROHIBITION OF LUXURY – THE PLAN TO STITCH-UP AUSTRALIANS WITH A JINGOISTIC YARN

*The War has Wrought Great Changes.*¹

6.1 Purpose and structure of this chapter

In Chapter 4, it was argued that by the end of the first decade after Federation the Federal government's policy of imposing high tariffs on imported apparel had assumed a marked 'sumptuary' effect. Once the war commenced, this newly fabricated form of protectionism began to be laced with heavy supplementary threads of nationalism, patriotism, war precautions legislation and other forms of governmental intervention. The government, and in particular Hughes, became progressively obsessed with winning the war 'at any cost' and looked to the people to assist the war effort by providing not only men to fight at the front but also funds to pay for the war.²

Both this Chapter and Chapter 7 suggest that the early years of the war were paradoxically prosperous ones for many Australians.³ Increased employment opportunities for the lower classes, for both men and women, meant that some had surplus funds to spend on those imported 'luxuries', particularly fashionable apparel and amusements, which had hitherto been denied or unavailable to them.⁴ There was also a general belief⁵ that there were many people living just as extravagantly as they had during peacetime and that these people were disinclined "to practise that

¹ "Notes and Notions", *Singleton Argus*, 12 May 1917, 7.

² "Curtailling Extravagance", *Fitzroy City Press*, 1 September 1917, 1.

³ "The Importation of Luxuries", *The Mercury*, 8 June 1917, 4.

⁴ "Fortunes Spent on Luxuries", *The Register*, 27 February 1917, 4.

⁵ "The Importation of Luxuries", above n 3, 4.

measure of economy which is declared to be necessary to the successful conduct of the War.”⁶

This chapter describes how this sort of conspicuous consumption riled the government and those actively involved in thrift campaigns.⁷ It was suggested, both in the press and in Parliament, that there were thousands who could preserve the nation’s wealth by saving money “now spent on mere luxuries, excessive amusements, and comforts which could partially, at least, be quite easily done without.”⁸ All Australians were expected to be ‘patriotic’ by saving surplus funds for future exigencies or by investing in war bonds.⁹ They were also informed by the ruling class that it was their obligation to be morally strong in a time of sobering conflict by resisting the temptation of luxuries, and in doing so they would help to avoid economic ‘mischief’ for the nation.¹⁰

Appeals to patriotism went unheeded¹¹ and Prime Minister Hughes, in his quest to regulate the consumption of imported ‘luxuries’, sought to emulate Britain’s sumptuary regulations which aimed to encourage local industries¹² and free up additional shipping space for troops and necessities.¹³ The Chapter argues that the keystone of Hughes’ sumptuary project was the establishment of the short-lived ‘Luxuries Board’. Its role was to decide what ‘luxuries’ were to be prohibited for the Australian consumer for the remainder of the war.¹⁴ The Board’s creation was clearly a sumptuary project aimed at quelling traditional anxieties concerning waste, extravagance and mimesis.

⁶ Ibid.

⁷ “A W N League, Sale Branch”, *Gippsland Mercury*, 21 September 1917, 3.

⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 9 May 1916, 100 (Mr Higgs, Treasurer).

⁹ “Avoid Luxuries”, *Border Watch*, 10 February 1917, 5.

¹⁰ “The Importation of Luxuries”, above n 3; “The Unmilitary Mind: Cult of Pacifism”, *Weekly Times*, 3 February 1917, 34.

¹¹ *Geelong Advertiser*, 16 March 1917, 2.

¹² Ibid. The author argued in this untitled piece that “a decree forbidding the unloading of cargoes of luxuries and stuff we can and should weave and spin and hammer and forge for ourselves has become necessary here as in England.”

¹³ “Restricting Luxuries”, *Sydney Morning Herald*, 21 April 1917, 14.

¹⁴ Ibid.

This project not only had many of the markers of sumptuary regulation but, unlike the protectionist project discussed in chapter 4, it had a stated and unequivocal sumptuary *objective* – the regulation of what imported goods could be consumed- as well as a sumptuary *effect*. It was a true ‘sumptuary project’ in the traditional sense.¹⁵ This chapter will focus on the establishment of the Luxuries Board and its role in serving the government’s moralised pattern of prescribed thrift and sober sacrifice. This chapter will also show how this pattern, although ostensibly drafted with the intention of doing ‘everything’ to win the war for the Empire, was spotted with slippages of class and gender and streaked by intrusions of idiosyncratic executive power.

6.2 Twisting sumptuary threads around the notion of Luxury

If those who ‘have more than they want for the ordinary needs of life squander their surplus on forms of expenditure unproductive and wasteful...they do a double injury to the nation. They reduce protanto the wealth available for spending on productive efforts, and they demoralize that part of the population whose lives are spent purely in ministering to the useless pleasures of the rich.’¹⁶

Whilst the figure of Luxury has always “excited moral condemnation and stimulated the regulatory reflex”,¹⁷ its denunciation has always been magnified even more during periods of conflict.¹⁸ This was certainly the case in Australia during World War I.¹⁹ The notion that any Australian was “squandering” economic resources on the “indecent”²⁰ importation of luxuries during the war was abhorred²¹

¹⁵ Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (Macmillan Press, 1996) 3. See above Chapter 3.

¹⁶ *Bound Table*, December 1916, quoted in Commonwealth, *House of Representatives*, 14 March 1917, 106, (Mr Fenton).

¹⁷ Hunt, above n 15, 77; See above Chapter 3.

¹⁸ *Ibid* 78.

¹⁹ “War Notes”, *Albury Banner and Wodonga Express*, 16 March 1917, 29.

²⁰ “Importation of Luxuries”, above n 3, 4.

and reviled by both ‘patriotic’ individuals and organisations such as the National Council of Women.²² Anyone committing this social ‘sin’ was labelled, by “every right-minded person”,²³ as disloyal and reprehensible.²⁴ Contemporary moralising discourse depicting luxury as a ‘sin’ was further skewed towards the economic wrong of ‘extravagance’ which was considered as a waste of personal and national resources that could be more usefully and gainfully employed. Luxury was associated with economic ruin and wastefulness, particularly for the working classes. It was a time when people were expected to be frugal and live simply and without extravagance.²⁵ The money ‘wasted’ on non-essentials such as furs, motor cars and alcohol was adjudged by many as weakening the nation.²⁶ It was staunchly advocated that the money expended on such non-essentials should be devoted to ‘prosecuting’ the war.²⁷

Much of this moralising discourse emanated from the ‘pro-war’ press, an anxious Parliament and those who were ‘the truly patriotic’.²⁸ It was mostly aimed at the ‘lower order’ wage earners, particularly women, who were reprimanded for being “loath to deny themselves luxuries to which during prosperous periods they had have grown accustomed, and [having] come to regard [them] as being almost necessary to their existence.”²⁹ This form of social censure carried with it the same strong traces of patrician disapproval that had been previously evident in the hierarchical paradigm

²¹ “War Notes”, above n 19. The author decries the lack of thrifty practices in Australia and the manner in which Australians “run riot...in unparalleled and reckless individual and national extravagance.”

²² Nance, “The National Council of Women”, *Leader*, 7 July 1917, 47-48.

²³ M A Blee, Letters to the Editor, “National Economy”, *Examiner*, 10 August 1917, 7.

²⁴ “The Importation of Luxuries”, above n 3.

²⁵ “The Simple Life Must Be Lived”, *The Advertiser*, 28 April 1917, 12.

²⁶ “The Importation of Luxuries”, above n 3; “The Appeal to Economise”, *Shepparton Advertiser*, 1 March 1917, 3. The author argued that “[b]y excess in frivolity and gaiety we are only paving the way to a condition of things that will press very heavily upon us in the future.”

²⁷ “Australia’s Part in The War”, *Sydney Morning Herald*, 24 February 1917, 12.

²⁸ Patriotism was often spoken in personified, gendered and class terms. See “Ladies Letter”, *Punch*, 16 August 1917, 32: “Patriotism turned out in force and its best evening duds to see Jo Smith blow the bugle for “Reveille” last Wednesday night...The Lady Mayoress sat enthroned over the Union Jack.”

²⁹ “The Importation of Luxuries”, above n 3.

of traditional sumptuary regulation of the early modern period.³⁰ The hegemonic view was that the best the lower classes should expect, with careful economy, to make ends meet and maybe save a small amount for contingencies.³¹ Not only was it considered ‘appropriate’ for the *nouveau riches*³² to be circumspect in their consumption practices³³ but it was presumed that they should not be allowed to rise above their status in life by being allowed to engage in “vulgar waste”.³⁴ The conspicuous consumerism of the rising classes was regarded by some as uncouth and distasteful: “[t]he worst sections of the wealthy lower orders are squandering on the barbaric fineries which appeal to their crude taste.”³⁵

In their attempt to protect their privileged position, the dominant elite employed this salacious and derogatory form of ridicule to admonish the ‘lower orders’ for their social insubordination³⁶ and their tenacious pursuit of material goods. It would seem that such corrective discourses acted to soil and unpick those newly constructed subjectivities arising from social and political reforms, and to reinstate a consumption-based system of social distinction.

³⁰ Hunt, above n 15, 49.

³¹ “Curtailling extravagance”, above n 2.

³² This term refers to those who have recently acquired wealth and thus tainted by vulgarity. Manning Clark called them “the bourgeois” and called the upper classes “Yarrasides”. See C M H Clark, *A History of Australia: ‘The Old Dead Tree and the Young Tree Green’, 1916-1935* (Melbourne University Press, 1987) vol 6, 510.

³³ “Luxuries”, *Sydney Morning Herald*, 16 May 1917, 20. The author says that in Australia and England “a considerable section of the people [have] never been so well off, and is spending accordingly.” He suggests that it was essential to conserve shipping space but “it is also essential that the people should be forced to economise so as to enable us to finance the heavy war expenditure which is now upon us.”

³⁴ “The Importation of Luxuries”, above n 3.

³⁵ Ibid.

³⁶ During 1916, there was more industrial unrest and strikes in Australia than before the war. As a result, there was “bad feeling between employers and employees” which protectionists saw as “handicapping Australia”. See “Buy Australian Goods: We must restrict imports or be Bankrupt”, *Geelong Advertiser*, 8 March 1917, 4. It could be suggested that the Luxuries Board was another method to rein in (maybe even use it as a form of ‘payback’) the strident and growing independence of the lower classes who were directly affecting the balance of trade when purchasing their imported ‘luxuries’.

6.3 Fashionable acquisition trumps self-denial

*It is most likely that it is in the hope of restraining the wild extravagance of these young people that a thought is being given to sumptuary regulation.*³⁷

Soon after Australia entered the war, the nation was beset by demands to assist the British war effort.³⁸ In addition, widespread appeals were made to “the people of the Empire”³⁹ to voluntarily exercise the spirit of self-denial⁴⁰ and all possible frugality.⁴¹ Not only was the Australian government seeking ‘patriotic’ men for the fighting line⁴² but it proclaimed that everyone else should be personally responsible to engage in thrifty and economical practices to support Australia’s contribution to the war effort and to alleviate the pressures on a “sorely-burdened Britain”.⁴³

Whilst thrift campaigns were reasonably successful in encouraging economies in dress, food and pleasure⁴⁴ this level of success did not satisfy an anxious government and those alarmists who were ‘sanctimoniously’ obsessed with thrift⁴⁵ and imagined future shortages. It was evident⁴⁶ that many ignored these “exhortations to patriotism”⁴⁷ and the frequent calls from the press and parliamentarians that Australians restrain from using their surplus funds on “useless luxuries.”⁴⁸ For instance, in the nine months up to the end of 31st March 1917, there

³⁷ “Notes and Notions”, above n 1.

³⁸ “Australia’s Part in the War”, above n 27.

³⁹ “The Importation of Luxuries”, above n 3.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² “Australia’s Part in the War”, above n 27.

⁴³ Ibid.

⁴⁴ Nance, above n 22.

⁴⁵ Ibid.

⁴⁶ “The Importation of Luxuries”, above n 3. The author contends that these appeals were “indifferently responded to.” He/she argues that “the failure of the people to comply with the repeated requests made in favour of economy is a sign that the gravity of the situation is not yet realised, and proves the correctness of the old aphorism that the tightness of the shoe is not flit until it begins to pinch.”

⁴⁷ “Australia’s Part in the War”, above n 27.

⁴⁸ “Curtailling Extravagance”, above n 2.

had been a steady growth in imported ‘luxuries’.⁴⁹ The value of ‘apparel and textiles’ had increased in 1917 to £2 694 72⁵⁰ as compared to £2 136 279⁵¹ in 1916. Similarly, the value of ‘jewellery and fancy goods’ had increased from £249 323⁵² to £265 174.⁵³ It was believed by many that some form of restrictive action had become absolutely necessary even though there was no compelling evidence that the money ‘wasted’ on imported luxuries would instead be spent on war bonds⁵⁴ or retained as savings.

6.4 Ruling Australia from Downing Street: a sumptuary pattern drafted for the Empire

*Mr Lloyd-George officially asked the Commonwealth to cease the importation of luxuries and to make locally for its own use most of the manufactured articles which it had been in the habit of importing from Great Britain.*⁵⁵

Because the early war years proved to be relatively prosperous for some,⁵⁶ Australian cities “were roaring with trade, big profits and amusements of every

⁴⁹ “Fortunes Spent on Luxuries”, above n 4.

⁵⁰ “Importation of Luxuries: a growing scandal”, *The North Western Advocate and Emu Bay Times*, 24 May 1917, 3. This is approximately \$239, 8000, 000 (as at 2013). Between 1910 and 1966, the Australian currency was the pound. During the period under examination, the Australian pound was linked to British sterling. The most current conversion is from 2013 and amounts are approximate. At this point of the chapter, the author has used the real price tool available at Lawrence Officer and Samuel Williamson, *Five Ways to Compute the Relative Value of Australian Amounts, 1828 to the Present*, Measuring Worth <measuringworth.com>.

⁵¹ This approximately \$194 600 000 (as at 2013).

⁵² This approximately \$22 720 000 (as at 2013).

⁵³ This is approximately \$23 560 000 (as at 2013). “Importation of Luxuries: a growing scandal”, above n 50.

⁵⁴ During the war years the press made numerous exhortations to the public to buy war bonds rather luxuries: “[l]uxuries and war bonds can be purchased for 5/- (approximately \$22.22 as at 2013) a week. A luxury will not help Australia to win the war, but 5/- a week put into the War Loan will do so.” See “Avoid Luxuries”, *Border Watch*, 10 February 1917, 5.

⁵⁵ “Curtailling Extravagance”, above n 2.

⁵⁶ Randolph Bedford referred to this as “spurious prosperity”. See “Wealth of Australia: Unnecessary Importations, Adverse Balance of Trade”, *Sunday Times*, 6 May 1917, 9. There were those who suggested that some workers demanded frequent “higher rates of pay” to support their extravagant life style. It was argued that higher rates of pay allowed workers more depositable income which they could

description.”⁵⁷ There was plenty of food and many enjoyed the kinds of luxuries that were being denied to people elsewhere. For example, in France and in Great Britain, people were living under food control⁵⁸ and enduring other economic deprivations.⁵⁹ Of course, these people were living in a very different social and political environment to the one that existed in Australia. The poorest classes and women in the United Kingdom were still without suffrage and wages remained extremely low for some workers.⁶⁰

The Australian press, the self-appointed ‘guardian’ of morals and national duty, regularly castigated workers and clerks for spending their money freely “upon the most absurd excesses and extravagances of one kind and another, from motor cars and wearing apparel to imitation jewellery”.⁶¹ However, the lower classes seemed reluctant to deny themselves those luxuries to which they had grown accustomed and had come to regard as almost necessary to their existence.⁶² ‘Patriotic’ Australians condemned this behaviour as morally and economically ‘improper’,⁶³ especially when so many lives were being lost in conflict and when earnest campaigns were being waged to ‘conscript’ funds to pay for the war. It was not only the Australian press that castigated those ‘wasting’ the nation’s liquid

spend on those luxuries that they had previously been denied. See “The Importation of Luxuries”, above n 3. One critic referred to the high wages as “stolen money”. See “The Importation of Luxuries,” *Daily Observer*, 30 May 1917, 4.

⁵⁷ “Australia and the War”, *Wangaratta Chronicle*, 25 July 1917, 2. The author suggests that the great mass of the population, especially in the cities in which they resided, regarded the war as “a far off event that [did] not touch their lives.”

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ “Lowering Wages: What Conscription can do”, *Daily Herald*, 24 October 1916, 8.

⁶¹ “Melbourne Letter: The Rule of Law”, *Upper Murray & Mitta Herald*, 13 September 1917, 3.

⁶² “The Importation of Luxuries”, above n 3. It mattered not that the prices of these luxuries had been affected by steep increases in tariffs during the early years of the war. Very few articles imported into Australia did not show at least a 20 per cent increase over their purchase value for the year 1915 as compared with the year 1916-17. See “Importation of Luxuries”, *Albury Banner and Wodonga Express*, 24 August 1917, 33.

⁶³ “Economy and Luxuries”, *The Register*, 28 February 1917, 6. The author suggests that the self-imposed “severe sacrifices” of the British caused “heart-searchings among patriotic Australians” who recognised the unevenness with which the burden of war is being distributed among the peoples of the Empire”. Compared with Britain, Australians had been practically untouched and it was argued that they could no longer decline to alter their mode of life in order to bring it more into conformity with the conditions prevailing in the old country.

capital on luxuries. There were those in Federal Parliament, such as Dr Carty Salmon MP, who claimed that the money spent on ‘unnecessary’ luxuries was adversely affecting Australia’s financial stability. Moreover, they attacked those who had the ‘audacity’ during a time of war to insist upon “having a number of articles for their daily use which are regarded elsewhere as luxuries, and as entirely unnecessary for either the comfort or convenience of mankind.”⁶⁴

6.4.1 Prime Minister Hughes condemns wartime extravagance

Prime Minister Hughes also considered such ‘wanton’ behaviour⁶⁵ at odds with his ‘win the war at any cost’ ideology.⁶⁶ In an attempt to counter this ‘wasteful’ behaviour he began to make more use of the *War Precautions Act* 1914 (Cth) and Regulations⁶⁷ as a form of sumptuary law.⁶⁸ Likewise, he increased customs duties on most imported goods to ensure that his government could raise sufficient funds to do whatever was necessary to aid the Empire to win the war.⁶⁹ It is not surprising that he was enthusiastically supported by the press and by those ‘avowed patriots’ such as Herbert Brookes, who claimed that “indulgence”⁷⁰ and “folly”⁷¹ was causing serious economic mischief to the nation.⁷² Some suggested that Protectionists (such as Herbert Brookes) had spurred Hughes into his rush to set up the Luxuries Board.⁷³

⁶⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 March 1917, 98 (Dr Carty Salmon).

⁶⁵ “Melbourne Letter: the Rule of Law”, above n 61.

⁶⁶ There was criticism of the wasteful habits of all levels of Government: “[t]he other day I saw strong, healthy men, about half-a-dozen of them, transplanting a palm in Hyde Park [Sydney]. This is the sort of thing that makes the ordinary private citizen tired. On the one hand is a Government lending itself to this sort of thing, and on the other is the appointment of a Luxury Board, on which the members will have high salaries, no doubt. Isn’t it time we got to business?” See “Win-the War, “Write to the Mirror about it: Is it Charity?” *The Mirror*, 7 July 1917, 5.

⁶⁷ Bedford, above n 56.

⁶⁸ Ibid.

⁶⁹ Clark, above n 32, 54.

⁷⁰ “Curtailling Extravagance”, above n 2.

⁷¹ Ibid.

⁷² The ruling classes in the United Kingdom had same concerns and as a result strict sumptuary measures were imposed.

⁷³ Vindex, Letter to the Editor, “Luxuries Board”, *The Argus*, 29 June 1917, 9.

There seems that this view could be true, especially when it is remembered that Brookes was the ‘leader’ of the Protectionist cult and had, in 1916, already campaigned for the prohibition of imported luxuries:

One cannot help remembering that the ball was set rolling by a deputation to M. Hughes of a small and interested body of protectionists, who want everybody’s business and profits for themselves.⁷⁴

The need for sumptuary regulation was never far from the minds of those who supported the scheme to curb imported luxuries. For example, Randolph Bedford, a well-known journalist and politician, publicly urged Hughes to “find a sumptuary law in the War Precautions Act. The craze for foreign luxury requires as many war precautions as anything.”⁷⁵ The strict curtailment of wasted ‘luxuries’ was no longer to be left to the individual but became a national and imperial imperative⁷⁶ that was primarily driven by the British Prime Minister.⁷⁷

6.4.2 Lloyd-George demands the implementation of sumptuary regulation

To avert the possibility of further⁷⁸ ‘danger’ from the importation of ‘foreign ‘luxuries’, the English Prime Minister Mr Lloyd-George officially *asked* the Commonwealth to cease the importation of luxuries and to ensure that it locally manufacture most of these same goods for its own use.⁷⁹ He asked all British

⁷⁴ Ibid.

⁷⁵ Bedford, above n 56.

⁷⁶ “Melbourne Letter: The Rule of Law”, above n 61.

⁷⁷ “Curtailling Extravagance”, above n 2. The British Prime Minister and Chancellor of the Exchequer had admonished their countrymen and countrywomen “for the mischief they were unwittingly doing by squandering fruitlessly rather than saving their new accession of riches”. When the warning went unheeded there was legislative interference “to check the danger by inhibiting the practice.” Local manufacturer and makers had to convert their machinery and plant for the production of war necessities.

⁷⁸ The indulgence and folly was not peculiar to Australia; “[t]hey were repeated in an enhanced degree in the old land and the sister dominions.” See *Albury Banner and Wodonga Express*, 28 September 1917, 26.

⁷⁹ “Luxuries Board”, *Examiner*, 8 June 1917, 7.

Dominions to do this.⁸⁰ Even though Lloyd George made this an official request, more than likely the strategy was worked out together with Hughes who was a sycophantic Anglophile and ardent imperialist. Manning Clark suggests that Hughes was an “England to the last man and the last shilling supporter. He was a King and Empire man.”⁸¹ In 1916, Hughes visited London and went on a lecturing tour all over the country (except Ireland—he was very anti-Catholic) to promote his particular ‘battle cry’ to the locals.⁸² He told them that the war was doing great things for the Empire and that victory must be achieved no matter the cost in men and money.⁸³ He was well received and fawned over.⁸⁴ Arthur Balfour called Hughes ‘the apostle of a great cause’ and Lloyd George “joined in the praise and thanksgiving”.⁸⁵ No doubt, ebullient from this praise, he was willing to accede to any English interference in Australia’s freedom to make its own policies and legislation.⁸⁶

Lloyd-George also *directed* that a Luxuries Board be created to determine what articles should be restricted, and to consider “articles [that] should during wartimes pass out of consumption and use, save by express sanction and authority.”⁸⁷ Canada was another country besides Australia that set up a Luxuries Board.⁸⁸ However, it encountered problems implementing Lloyd George’s directives. Trade treaties with France and Italy meant that there were fixed customs duties on articles such as table luxuries, wines, embroideries, velvets, ribbons and manufactured silks.⁸⁹

⁸⁰ “Canada and Luxuries”, *Daily Herald*, 28 February 1917, 5.

⁸¹ Clark, above n 32, 13-14.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ “Melbourne Letter: The Rule of Law”, above n 61.

⁸⁸ See “Canada and Luxuries”, above n 80. New Zealand was also involved in the prohibition of various luxuries in 1917.

⁸⁹ *Ibid.*

Lloyd George had already implemented sumptuary regulations⁹⁰ in Britain. These regulations sought to render economy compulsory,⁹¹ to encourage local industry and to free up additional shipping space for troops and essentials.⁹² It was not only apparel that was targeted. On November 22 1917, the Food Controller prohibited the sale and use of cream, for luxury purposes) between December 8 and April 30.⁹³ In March 1917, there were restrictions imposed on meals in British restaurants. Luncheons were limited to 2 course and dinner to three.⁹⁴ It was also anticipated at this time that the Food Controller might impose a “meatless day”⁹⁵ every week and “war time bread” made with maize, oats and barley rather than “bleached flour.”⁹⁶

During this period, similar sumptuary restrictions were imposed by the French and American governments. In Paris, women who dressed “extravagantly [had] to pay dearly for their selfish folly.”⁹⁷ The Luxury Taxation Board added 10% on dresses that cost more than £8. Expensive boots and gloves were regarded as luxuries and attracted tax.⁹⁸ As one female correspondent wrote,

everything that is desirable is to be taxed. This means that women must learn to do with less and take care of what they have. They must change the fashion of their clothes less often, and be content to look nice in the same clothes for more than one season.⁹⁹

There was also a sumptuary ordinance that prohibited the wearing of evening clothes to theatres that received a State grant. Opera goers were not to be admitted

⁹⁰ “Sumptuary Law”, *Newcastle Morning Herald & Miners Advocate*, 10 January 1917, 6. The author suggests that there was nothing new with the restrictions that had reduced people to a fixed dress allowance and imposed food restraints. He suggested that exigencies of the day had driven the Government back to some of the conditions of feudalism.

⁹¹ “England’s War Lent”, *Kalgoorlie Miner*, 3 March 1917, 4.

⁹² The British had some unique problems with enemy submarines that had sunk many cargo ships. The British authorities prohibited the importation of fruit into the United Kingdom in order that additional shipping space “might be available for the needs of life.” See: “The Importation of Luxuries”, above n 3.

⁹³ See “No Luxuries: London”, *The Register*, 23 November 1917, 5.

⁹⁴ See “Food Restrictions”, *Newcastle Morning Herald & Miners’ Advocate*, 3 March 1917, 11.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ See “For Ladies: Fashion Notes, The Uncounted Cost”, *The Daily News*, 10 August 1918, 6.

⁹⁸ Ibid.

⁹⁹ Ibid.

into theatres “unless dressed in ordinary city clothes...Any other attire would be rigorously refused admittance.”¹⁰⁰ In addition, in order to save power, all theatres, concerts, circuses, music halls, and cinemas were to be closed one night per week.¹⁰¹

The prescriptive form of sumptuary legislation that was enacted in Great Britain during this period was not overtly directed at reinforcing and legitimising the pre-war hierarchical social order. However, it still had the same hierarchical *effect*. Female war workers who had become “dress-mad” on their vastly enhanced earnings¹⁰² were, for instance, restrained from further extravagance and in dressing as they pleased.¹⁰³ Before such restrictions were imposed, these women had enjoyed new opportunities to purchase fashionable headgear, clothing and footwear, and were used to paying the sorts of prices for their “bijouterie”¹⁰⁴ “which had never entered into wildest dreams in pre-war days”.¹⁰⁵ Even upper class Englishwomen, who were, at one time, the leaders of “haut ton” (sic),¹⁰⁶ were forced by Lloyd George’s sumptuary regulations to discard their “fripperies of fashions for plain matter-of-fact-attire.”¹⁰⁷ The sumptuary regulations proved to be an effective tool to control important aspects of personal behaviour and represented a tangible expression of a hierarchical ideal.

The Imperial Government had the same attitude to controlling the affairs of Commonwealth nations as they had toward leading Australian military campaigns. The era of British supremacy over the colonies had not yet ended and would continue throughout the war. Lloyd George maintained that what was good for the Motherland should also be obligatory for the dominions,¹⁰⁸ and he set about spreading the

¹⁰⁰ “Greater Economies: Official Action in Paris”, *Border Watch*, 10 March 1917, 4.

¹⁰¹ *Ibid.*

¹⁰² Many of these women worked in the ammunition and other war-related industries.

¹⁰³ “Official Labor’s Opportunity: Parliamentary Trifling”, *Portland Guardian*, 7 March 1917, 3. The author alludes to Lloyd George’s directives: “Men are not to eat or drink as they please, women are not to dress as they please. The luxuries of the rich are to be cut down with stern hand.”

¹⁰⁴ Trinkets. See “Notes and Notions”, above n 1.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ “Topics: Doing Without Luxuries”, *Freeman’s Journal*, 1 March 1917, 25.

‘gospel’ of enforced thrift¹⁰⁹ throughout the Empire. It was suggested by one commentator that there was no doubt that Lloyd George was trying to rule Australia and that some Australians seemed to have more allegiance to England than to Australia. He sarcastically suggests that Hughes came back from his ‘pilgrimage’ to England “with a whole pocketful of instructions”¹¹⁰ and that he had become “a sort of diplomatic representative of the British Government. Otherwise why all the mystery, his secrecy, his refusal to take Parliament into his confidence?”¹¹¹

Lloyd George was primarily concerned with future shortages and economic hardship and ruin.¹¹² In his ‘gospel’ of austerity, there was also an underlying condemnation of luxury with its strong association with moral weakness.¹¹³ He maintained that those who failed to resist the temptation of luxury goods in the ‘sober’ days of war and would not exercise “a little rigorous economy”¹¹⁴ were to be condemned as selfish¹¹⁵ and unpatriotic.¹¹⁶

6.4.3 Hughes ignores British interference in Australia’s domestic affairs

Hughes, the ardent imperialist, with many other self-serving protectionists,¹¹⁷ championed this imperial dogma and “clamoured insistently”¹¹⁸ for the prompt

¹⁰⁹ “The Importation of Luxuries”, above n 3.

¹¹⁰ “Topics: Doing Without Luxuries”, above n 108.

¹¹¹ Ibid.

¹¹² One “patriotic” critic suggested that there was a need for the taxation of luxuries or an enactment of sumptuary laws to warn the people that their continuance in their present extravagant courses “spells ruin”. Whilst he accepted that greater licence may be allowed in times of peace, he demanded that “the strictest supervision and discipline should be imposed and cheerfully borne in war-time.” See “The Unmilitary Mind: Cult of Pacifism”, *Weekly Times*, 3 February 1917, 34.

¹¹³ There were calls to “high thinking and plain living” as opposed to extravagance and luxury. See “Preaching V. Practice: Rich Retain their Luxuries while Preaching Economy to the Poor”, *Truth*, 5 September 1916, 4.

¹¹⁴ “The Importation of Luxuries”, above n 3.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ “Curtailling Extravagance”, above n 2. The author calls them “prohibitive tariff doctrinaires... [who wanted to] seize so excellent a chance to further their sectional aims and policy.”

appointment of a Luxuries Board. Yet, there was little¹¹⁹ or no objection to Lloyd George's direct intrusion into Australia's trade and domestic policies.¹²⁰ In this time of crisis, Hughes, with his "feet of British clay,"¹²¹ threw off the autonomous cloak of independence and nationalism, reverted to colonial dependency, and sought direction and succour in the arms of the 'Motherland'. Hughes adopted this position despite the creation of the Nationalist Party in 1917 that was made up from his pro-conscription followers and sympathetic conservatives. Clearly, the party's nationalist platform did not necessarily mean it was to have an independent voice-it seems that deference to Britain was the true nationalist agenda for Hughes and his supporters.

At the time, the Australian and British press bombarded their public with articles, often cautionary in nature, harking back to the salutary effects of sumptuary restraint on luxuries.¹²² This meant that many Australians began to anticipate that their own Government would force upon them similar forms of sumptuary legislation; they too might each week have to suffer "meatless" and "sugarless days".¹²³ The government appeared to be determined to intervene in the private lives of its people to ensure that Australia could "most effectively"¹²⁴ play her part in helping to win the war: personal sacrifice in the service of the nation was expected from all.¹²⁵

¹¹⁸ Ibid.

¹¹⁹ Some who argued that Hughes and other "ardent" patriots, who believed that England could be helped to win the war by introducing a "semi-system of starvation into the Commonwealth," were misdirected. They condemned Hughes for his attempt to "curtail the self-governing powers of Australia and make it something like a Crown Colony." See "Topics: Doing without Luxuries", above n 108.

¹²⁰ "The Importation of Luxuries", above n 3. The author suggests that "the urgency of the situation [was] not likely to provoke much dissent".

¹²¹ Neville Meaney, "Britishness and Australian Identity; The Problem of Nationalism in Australian History and Historiography" (2001) 32 *Australian Historical Studies* 80.

¹²² "Random Readings: To Restrain Luxurious Living", *The Wyalong Advocate and Mining, Agricultural and Pastoral Gazette*, 18 April 1917. See also "Sumptuary Law", above n 90. See also "Topics of the Day, Notes, The Tragedy of Dress", *The Catholic Press*, 28 June 1917, 9.

¹²³ "Australia's Part in the War", above n 27.

¹²⁴ Ibid.

¹²⁵ "The Importation of Luxuries", above n 3.

Just as the moralisation of luxury was at the core of discourses surrounding sumptuary law,¹²⁶ Lloyd George made the moralisation of luxury a marker in the discourses of war and patriotism. In fact, what Lloyd George was proposing for Australia and “the sister dominions”¹²⁷ was a sumptuary project that was to have all the semiotic and ideological markers of traditional sumptuary law:

It is a sumptuary measure calculated to make the people more economical than might otherwise be, simply because they will no longer be able to gratify their desires along accustomed lines.¹²⁸

6.4.4 Hughes embraces Lloyd-George’s directive

Hughes embraced this highly interventionist project and declared to the Australian public his intention to implement Lloyd George’s command to establish a Luxuries Board.¹²⁹ In fact, it became an important part of his “win the war” platform leading up to the Federal elections in May 1917.¹³⁰ In this speech delivered at Bendigo, Victoria on March 27 1917 Hughes made it clear that he had embraced Lloyd-George’s edict:

The Government intends to follow the example of Great Britain in regard to the regulation of the importation of luxuries during war time. Such a policy seems to be dictated both by common prudence and circumstances in which we now find ourselves. It is obvious on the face of it that to send money out of this country and out of the Empire at a time when every atom of wealth is essential is a suicidal policy... [i]t is obvious that in so complex a matter we must proceed with great care. To prohibit the importation of luxuries, and so give employment to 10 people, and at the same time throw 250 out of work, would be folly. The question is most difficult, but, having regard to all its difficulties and complexities, the Government will endeavour to achieve the end I have mentioned.”

¹²⁶ Hunt, above n 15, 77.

¹²⁷ “Curtailling Extravagance”, above n 2.

¹²⁸ “Restrictions on Luxuries”, *Sydney Morning Herald*, 19 March 1917, 6.

¹²⁹ “Curtailling Extravagance”, above n 2.

¹³⁰ See William Hughes, ‘Win the War’ (Speech delivered at the Nationalist Party Election Campaign Launch, Bendigo, 27 March 1917).

In the interim period, and before Hughes could establish the Luxuries Board, Lloyd George, once more intruded into Australian foreign trade policy. He exerted imperial control and instructed his Controller of Shipping¹³¹ to effectively pre-empt the function of the Luxuries Board by taking “perfect control”¹³² of all goods being shipped to Australia from the United Kingdom¹³³ whilst at the same time keeping a “tight grip” on the issue on the issue of permits; they were practically unobtainable for any but goods of prime necessity.¹³⁴ Again Hughes made no objection to this act of paternal meddling or intervention from the ‘mother country’.

6.4.5 Herbert Brookes supports the establishment of the Luxuries Board

Protectionists, such as Herbert Brookes, welcomed the establishment of the Board as an additional boon¹³⁵ to Australian industries.¹³⁶ Local manufacturers were already receiving a large measure of protection “through high freights and war risks that was never dreamt of a few years ago. Many of them are already benefiting enormously through the war.”¹³⁷ One journalist labelled the protectionists as

¹³¹ Sir Joseph Maclay was a member of Lloyd George’s Ministry, and during this period was “exercising a free hand in regard to all shipping. Not a package of goods can be shipped to Australia except by his permission.” See “Restricting Luxuries”, *Albury Banner and Wodonga Express*, 27 April 1917, 32.

¹³² “The Importation of Luxuries”, *The West Australian*, 21 April 1917, 7; “Restricting Luxuries”, above n 131. On commentator noted that “no Proclamations have been issued, neither have any regulations been made, but quietly and unobtrusively shipments of luxuries from the United Kingdom have been brought under such perfect control that for some time past it has been increasingly difficult, and from now on it will be even more so, for home shippers to obtain space for luxuries on vessels bound for Australia.”

¹³³ “Importation of Luxuries”, above n 132.

¹³⁴ Ibid. These early “precautions” were not expected to “militate” (sic) against the wider sphere of prohibition which was being contemplated.

¹³⁵ Local manufacturers were already receiving a measure of protection “through high freights and war risks that was never dreamt of a few years ago. Many of them are already benefiting enormously through the war.” See “Restrictions on Luxuries”, above n 128; See “Curtailling Extravagance”, above n 2.

¹³⁶ “Curtailling Extravagance”, above n 2. In March 1917, the Australian Protectionist Association passed a resolution “that public sentiment be stimulated in order to secure preference for Australian-made goods.” See “Buy Australian Goods: We must Restrict Imports or be Bankrupt”, above n 36.

¹³⁷ “Restrictions on Luxuries”, above n 128.

“prohibitive tariff doctrinaires”¹³⁸ who saw the establishment of the Luxuries Board as an “excellent...chance to further their sectional aims and policy.”¹³⁹ However, the ‘patriotic press’ was, in the main, extremely supportive of the edict that Australians must buy only Australian-made goods. One journalist even called for a decree “forbidding the unloading of cargoes of luxuries and stuff we can and should weave and spin and hammer and forge for ourselves.”¹⁴⁰ There were, of course, those who took a more cynical view of the protectionists’ support for the Luxuries Board:

One cannot help remembering that the ball was set rolling by a deputation to Mr Hughes of a small and interested body of protectionists, who want everybody’s business and profits for themselves.¹⁴¹

At meetings and in the press, protectionists were constantly advocating the need for the Australian Government to protect Australian industries at any cost.¹⁴² Much of their discourse was marked with xenophobic warnings. They insisted that the continued importation of foreign products, particularly those produced by nations who were not part of the Empire, could prove dangerous to Australia’s industries and to her way of life.¹⁴³ They insisted that Australia should carefully maintain her ‘social purity’ and national identity by protecting her borders from contagion by an influx of unwanted ‘aliens’.¹⁴⁴ Moreover, she also needed to protect her ‘economic purity’ from the dumping of cheap imported goods. One protectionist cautioned that if “somebody is not vigilant in the near future, Australia is going to be made a dumping ground, a spoilt tip for the products of foreign countries not so good as this to whom we have no obligation.”¹⁴⁵ Even though protectionist rates on most imported goods were already high, manufacturers continued to call for the urgent

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ *Geelong Advertiser*, 16 March 1917, 2.

¹⁴¹ See Vindex, above n 73.

¹⁴² “Items of Interest”, *The Argus*, 18 July 1917, 10.

¹⁴³ “Advance Australia Fair! A Few Things She Doesn’t Need”, *Blue Mountain Echo*, 1 June 1917, 7.

¹⁴⁴ *War Census Act 1917* (Cth); *Trading with the Enemy Act 1914* (Cth); *War Precautions Act 1914* (Cth).

¹⁴⁵ “Advance Australia Fair! A Few Things She Doesn’t Need”, above n 143.

imposition of even higher rates that were allied with “the strictest penal laws against dumping.”¹⁴⁶ There were some who even wanted tariff rates to be modelled on ancient sumptuary laws:

and made so stiff that those who bought diamonds and furs would pay enough in duties for the upkeep of an efficient fleet of submarines; while those on silks, laces and millinery would maintain a complete aerial service.¹⁴⁷

6.4.6 Hughes forms an alliance with Brookes

The Prime Minister relied on Brookes’ counsel and was in an ideal position to promote the latter’s protectionist interests. Rohan Rivett, Brookes’ biographer and brother-in-law confirms this close symbiotic relationship between the Prime Minister and the wealthy industrialist. He contends that by 1917-1918, Brookes was providing funds and giving platform assistance to the coalition that Hughes formed after leading his followers out of the Labor Party. Rivett also suggests that “Brookes was one of several outside Cabinet to whom Hughes turned on occasion.”¹⁴⁸

No doubt Brookes advised¹⁴⁹ Hughes that prohibition of imported luxuries would help win the war, preserve Australian national life and maintain empire solidarity.¹⁵⁰ In 1916, Brookes had apparently suggested a similar method of prohibition of luxuries to the Minister of Customs.¹⁵¹ Hughes was at the time deeply impressed with Brookes, who was then the National President of the Chamber of Manufactures. Hughes especially wanted Brookes to accept an appointment to the Luxuries Board and in early 1917, had asked him to place his services “at the

¹⁴⁶ Ibid.

¹⁴⁷ Ibid. The author argued that “modern necessities” such as skyscrapers, luxurious hotels, faster trains and quicker telephones were not really essential to peace and comfort. Rather, he suggested that isolation should be Australia’s strongest coast defence with universal training the safest domestic defence.

¹⁴⁸ Rohan Rivett, *Australian Citizen: Herbert Brookes 1867-1963*, (Melbourne University Press, 1965) 85.

¹⁴⁹ Ibid.

¹⁵⁰ Clark, above n 32, 43. Clark says that Hughes and Brookes had formed a political alliance after the latter had invited the former to a weekend at his holiday home at Macedon.

¹⁵¹ “Importation of Silk: Demand for Restriction opposed, Manufacturers’ Representation”, *The Argus*, 2 March 1917, 6.

disposal of the Government.”¹⁵² This relationship worked well for Hughes who was at the time looking for every opportunity to advance his popularity and political power¹⁵³ leading up to the 1917 May Federal elections. He gained a great deal of positive media coverage¹⁵⁴ about this proposal to limit the importation of luxuries¹⁵⁵ and his assurance that he would do everything to encourage local industries.¹⁵⁶ Other stakeholders were not so certain about the efficacy of the Board. Whilst some predicted that there may be adverse effects upon revenue,¹⁵⁷ the main concern for industry and the ordinary person centred on the question of what goods were to be defined as luxuries.¹⁵⁸ This was to be a polemical question that the Board was to struggle with throughout its short life.¹⁵⁹

6.5 The establishment of the Luxuries Board: an ensemble of the Prime Minister’s making

*It is provided that three persons who are to comprise the board shall be appointed by, and hold office during the pleasure of the Prime Minister.*¹⁶⁰

The Board, which was selected by the Prime Minister,¹⁶¹ first met on 7 June 1917.¹⁶² Although the regulations¹⁶³ under which the Board¹⁶⁴ was appointed clearly

¹⁵² “Importation of Luxuries: Board to be Appointed”, *The Argus*, 28 April 1917, 18. For some unknown reason, Brookes did not take a seat on the Board.

¹⁵³ Hughes knew he had strong ally in the Protectionist Association. He stressed that “[t]he most scientific Protection is that which keeps rivals entirely out of our home markets: therefore I will raise the hedge skywards.” See *Geelong Advertiser*, above n 140.

¹⁵⁴ Randolph Bedford, above n 67.

¹⁵⁵ “Importation of Luxuries: Board to be Appointed”, above n 152. The media was continually awash with speculative announcements about the functions of the board and potential appointees.

¹⁵⁶ “Restriction on Luxuries”, above n 137.

¹⁵⁷ *Ibid.*

¹⁵⁸ “What are Luxuries?” *The Register*, 5 March 1917, 6.

¹⁵⁹ The Board’s activities seemed to fizzle out by August 1917. It seems that at this time the Board’s recommendations were not adopted by the Prime Minister. This reflects the situation with the Tariff Board in the latter part of the 1920s when the government began to ignore its recommendations.

¹⁶⁰ “Barring Luxuries: Federal Government’s Move”, *Sunday Times*, 20 May 1917, 1.

set out what it was expected to do,¹⁶⁵ its activities were, from the beginning, always clothed in secrecy.¹⁶⁶ The Board comprised of two nominees of the Associated Chambers of Commerce (Mark Sheldon of Dalton Bros., Sydney and J McIntosh of Ball and Welch Melbourne), two nominees of the Associated Chambers of Manufactures (W J Gibson, Vice-President of Victorian Chamber of Manufactures and Mr Hitchman of New South Wales), together with “a Member (sic) of the Inter-State Commission as chairman” (NN Lockyer).¹⁶⁷ These men were considered to be “some of the ablest businessmen in the Commonwealth”.¹⁶⁸

Not only were the Board’s meetings held in private but no indication was given to the public or Parliament¹⁶⁹ as to the subjects discussed within these meetings.¹⁷⁰ Whereas some welcomed the possibility that the Board would have scope “for useful action”¹⁷¹ to impose a judicious curtailment¹⁷² of luxuries, there was still much speculation and anxiety about the functions and scope of the Board.¹⁷³ The Chamber of Manufactures, of which Brookes was the President, warned Board members to “be alive”¹⁷⁴ to their interests, their trade and the people generally.¹⁷⁵

¹⁶¹ On 5 May 1917 William (‘Billy’) Hughes was re-elected Prime Minister when his ‘win the war’ party (a coalition of the Commonwealth Liberal Party and the National Labour Party) defeated the Australian Labour Party (led by Frank Tudor). The Board Members held office during the pleasure of the Prime Minister.

¹⁶² “Luxuries Board: Investigation in Camera”, *Daily Herald*, 8 June 1917, 6.

¹⁶³ *War Precautions (Luxuries Restriction) Regulation 1917* (Cth).

¹⁶⁴ See Nicholas Lockyer, ‘Luxuries Board Report’ (Report, Luxuries Board, 20 July 1917, *Luxuries Board Papers*, CP 290/1, National Archives of Australia, Canberra). Mr Lockyer had previously been Collector of Customs and First Commission of Taxation in New South Wales and then Collector of Customs for the Commonwealth; See “Customs and Taxation”, *Evening News*, 30 January 1901, 7; See “What is a Luxury?” *The Register*, 12 July 1917, 4.

¹⁶⁵ “Luxuries Board: Investigation in Camera”, above n 162.

¹⁶⁶ *Ibid.*

¹⁶⁷ See Lockyer, above n 164, 2.

¹⁶⁸ See “What is a Luxury?” above n 164.

¹⁶⁹ “Luxuries Board”, *Examiner*, 6 June 1917, 7. The author says that “[t]he board has no connection with Parliament.”

¹⁷⁰ “Luxuries Board: Investigation in Camera”, above n 162.

¹⁷¹ “The Importation of Luxuries”, above n 3.

¹⁷² They were counselled by some to remember that some imports such as silks and motor cars “were really necessities” in Australia, and if the Board prohibited them, then many people would be thrown out of work. See “Commonwealth Luxuries Board”, *The Register*, 20 June 1917, 6.

¹⁷³ “The Letters of Vivienne”, *Northern Times*, 23 June 1917, 2.

¹⁷⁴ See “Commonwealth Luxuries Board”, above n 172.

One critic went so far as to compare in pejorative terms, the Board's arbitrary and secretive methods with those of a Star Chamber.¹⁷⁶

The Board's reports were deemed provocative and "necessarily"¹⁷⁷ confidential.¹⁷⁸ They were provided directly to the Prime Minister who, in a Leviathan manner, took on the conduct of the Boards' activities as his own personal mission. The reports were never even seen¹⁷⁹ or discussed¹⁸⁰ by Parliament,¹⁸¹ despite numerous requests that they should be made available to both Houses.¹⁸² Hughes was on a singular mission to implement Lloyd George's directives. At the time, Hughes appeared unconcerned that he was interfering with the free course of trade. More importantly, he seemed to be oblivious to the possibility that the prohibition of so many potential 'luxury lines' would seriously interfere with the

¹⁷⁵ Ibid.

¹⁷⁶ Letters to the Editor, "Luxuries Board", *The Argus*, 20 June 1917, 13. The critic suggested that "Star Chamber methods are always undesirable, and in matters of this kind, doubly so." He further suggested that the Board's war time recommendations could be used as a "basis for concrete and permanent tariff alterations" in the future.

¹⁷⁷ "The Luxury Board", *Sydney Morning Herald*, 16 June 1917, 15. On 13 June 1917, the secretary to the Luxuries Board sent the following missive: "The board is unable to disclose the nature of its recommendations to the Government, which are necessarily confidential."

¹⁷⁸ When I arranged for the Luxuries Board material to be viewed I was noticed that the file was marked 'confidential' and that it was obviously Hughes' personal file. All reports and correspondence by the Board's Chairman, Nicholas Lockyer and letters from Stephen Mills and Perry Whitton which were also contained in the file were personally addressed to the Prime Minister. It was not until 17 April 1973 that the decision was made to open the files. Attached to the archives records was a note that indicates that the Luxuries Board documents were part of "extremely varied collection of papers...Most of them appear to have passed backwards and forwards between the office of the Secretary and the Prime Minister's office and to have been held eventually in the Secretary's safe because of their extremely confidential character." See Lockyer, above n 164.

¹⁷⁹ One critic suggested that "the policy being formed by the Cabinet [was] in direct opposition of all ideas of freedom and British Justice." See: Fair Play, "Letters to the Editor", *The Argus*, 22 June 1917, 7.

¹⁸⁰ Lockyer said in an interview with the Argus that "the Luxury Board's work was entirely distinct from that of tariff revision, which was the subject of discussion and decision by Parliament." See "Luxuries Board: Question of Secrecy, Chairman's Reply", *The Argus*, 22 June 1917, 7.

¹⁸¹ "Importation of Luxuries: First Meeting of the Board", *The Brisbane Courier*, 6 June 1917, 7. It was made quite clear that "[t]he Board has no connection with Parliament".

¹⁸² Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 80 (Messrs Mathews and Kelly).

raising of Federal revenue and that it could prove to be a major threat to employment in Australia.¹⁸³

6.5.1 The Board's powers

The Board was given very wide powers¹⁸⁴ to control the importation of luxuries into the Commonwealth.¹⁸⁵ The *Luxury Restriction* regulations provided the Board and the Chairman with all the powers of a Royal Commission pursuant to the *Royal Commission Act, 1902-12* (Cth). This meant that witnesses could be summoned and evidence taken on oath, particularly in those cases where there was a diversity of opinion amongst members about whether any commodity was to be regarded as a luxury. It appears that during the time when the Board sat, no witnesses were summoned nor was there any evidence presented to it.¹⁸⁶

This form of regulation 'from above'¹⁸⁷ was expected to control the extravagance "that must more or less hamper the efforts of those who are anxious that Australia shall render all possible assistance in the struggle for liberty."¹⁸⁸ The Board's duty was to make recommendations to the Prime Minister from time to time as to the goods or classes of goods the importation of which, in the opinion of the Board, should be prohibited or restricted.¹⁸⁹ Once the recommendations had been approved by Cabinet they were then to take the form of a Proclamation and "would

¹⁸³ Letter from Nicholas Lockyer to William Hughes, 20 July 1917 (National Archives of Australia, Canberra, *Luxuries Board Papers*, CP290/1) 4. Lockyer informed Hughes that "it was not indicated [by Hughes] that the question of revenue, should in any way influence...[the Board's] deliberations."

¹⁸⁴ "Luxuries Boards' Powers: It can encourage industry and stop imports", *Geelong Advertiser*, 21 May 1917, 4. See also the *War Precautions (Luxuries Restriction) Regulation 1917* (Cth).

¹⁸⁵ See *War Precautions (Luxuries Restriction) Regulation 1917* (Cth).

¹⁸⁶ Letter from Nicholas Lockyer to William Hughes, 14 June 1917 (National Archives of Australia, Canberra, *Luxuries Board Papers*, CP290/1).

¹⁸⁷ Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (Cambridge University Press, 1999) 5.

¹⁸⁸ "The Importation of Luxuries", above n 3.

¹⁸⁹ Letter from Nicholas Lockyer to William Hughes, 20 July 1917 (National Archives of Australia, Canberra, *Luxuries Board Papers*, CP290/1) 2; *War Precautions (Luxuries Restriction) Regulation 1917* (Cth) reg 3.

have the force of law under the *War Precautions Act*.”¹⁹⁰ These recommendations could be characterised as a form of ‘proclamatory’ law. They had much in common with the royal proclamations and edicts of the early modern sumptuary period; both took a negative form and both were issued by a supreme executive power. The Board had the exclusive power to determine what clothing and accessories to which the public could have access.¹⁹¹ There is some evidence that Hughes did not even consult with his Cabinet on these issues.¹⁹²

Some parliamentarians felt so estranged from Hughes’ despotic¹⁹³ and highly centralised methods of determining wartime policy and governance that they began to refer to Hughes and his Cabinet as a “super Parliament.”¹⁹⁴ Macintyre suggests¹⁹⁵ that Hughes was law unto himself: he exploited his special executive power to the full and cut across the normal lines of administration. This was certainly the case with the Luxuries Board. Not only did Hughes personally direct the Board in both its scope and the procedural aspects of its activities, but he orally instructed its Chairman¹⁹⁶ to investigate those issues which he considered as pertinent in conserving Australia’s ‘liquid capital’ by the restriction of all unnecessary expenditure on importations.

¹⁹⁰ “Importation of Luxuries: First Meeting of the Board”, above n 181.

¹⁹¹ *War Precautions (Luxuries Restriction) Regulation 1917* (Cth) reg 3.

¹⁹² Rivett, above n 148, 85. Rivett suggest that “[i]t was questionable whether, for any length of time, any of his Cabinet colleagues were very close to William Morris Hughes, that supreme individualist.”

¹⁹³ “The Taxation of Luxuries”, *Evening News*, 6 July 1917, 4. The author suggests that the establishment of a Luxuries Board was a form of “despotic action against the particular habits that some official pundit does not happen to have.”

¹⁹⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 August 1917, 117 (Mr Fenton).

¹⁹⁵ Stuart Macintyre, *The Oxford History of Australia: 1901-1942 – The Succeeding Age* (Oxford University Press, 1986) vol 4, 168.

¹⁹⁶ Letter from William Hughes to Nicholas Lockyer, May 1917 (National Archives of Australia, Canberra, *Luxuries Board Papers*, CP290/1).

6.6 The Board to decide what was a ‘luxury’: not an easy task

*When will the Prime Minister take steps to prohibit the importation of luxuries, and how far does he intend to go in that direction?*¹⁹⁷

The Board members faced enormous difficulties in their attempt to resolve what was to constitute a ‘prohibited luxury’. Despite the fact that the directions in the Regulations,¹⁹⁸ which were issued on 19 May 1917, “were not accompanied by any qualification”¹⁹⁹ Mr N C Lockyer, the Board’s Chairman, was able to identify three “comprehensive groups” of goods for the Board’s particular consideration:²⁰⁰

1. Articles of luxury;
2. Any articles the importation of which is not essential to the general comfort, health, or welfare of the community; and
3. Any goods or class of goods, the production of which in Australia should be induced, encouraged or stimulated either by payment of a bounty upon such production or manufacture or by any other means.

6.6.1 The Board’s role

The Board, as a locus of power, wisdom²⁰¹ and law, was expected to fabricate, with haste,²⁰² a regulatory schema to control the wanton behaviour of those

¹⁹⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 July 1917, 14 (Mr Mathews).

¹⁹⁸ They set out the constitution and functions of the Board.

¹⁹⁹ Letter from Nicholas Lockyer to William Hughes, 20 July 1917 (National Archives of Australia, Canberra, *Luxuries Board Papers*, CP290/1).

²⁰⁰ Ibid 2.

²⁰¹ “Luxuries Restriction Board”, *The Register*, 21 May 1917, 6. Mr Cook, the Minister for the Navy, suggested that the Board’s task would “make a big call on the capacity and wisdom of the commission (sic).”

²⁰² “Importation of Luxuries: Board To Be Appointed”, above n 152. The Prime Minister indicated to the press on many occasions that once the Board was officially appointed that “no time would be lost in putting the scheme into operation.” The Board was appointed in May and set to work in preparing

who could or would not self-regulate their consumption of luxury or non-essential goods whilst there was “a world-wide struggle...raging”.²⁰³ It was for the Board to determine what was a luxury²⁰⁴ or a non-essential item. Although Mr Cook²⁰⁵ suggested that “all sections will ... be represented on the board-consumer, manufacturer, imported and Government”.²⁰⁶ Yet, in reality, consumers, particularly the working class, had no real input into this determination.²⁰⁷ Chambers of Commerce repeatedly asked the Board to give three weeks’ notice of its intentions to deal with goods that might be considered to be luxuries, in order that traders could submit objections.²⁰⁸ These requests were ignored, for the Board had already decided to make its own arbitrary decision about what goods were to be classified a ‘luxuries’.²⁰⁹

6.6.2 What is a luxury?

It was not a simple task to define “a luxury”;²¹⁰ according to a person’s social status, the question as to what constituted a luxury was seen to vary considerably.²¹¹

their first report in early June, which was then followed by a second report in later part of June. It seems that the Prime Minister verbally gave the Board many of its directions. See Letter from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1) 1.

²⁰³ “The Importation of Luxuries”, above n 3.

²⁰⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 June 1917, 80 (Mr Hughes). Mr Hughes claimed that “the word ‘luxuries’ has now a very wide meaning”.

²⁰⁵ Cook was the Minister for the Navy at the time.

²⁰⁶ “Luxuries Restriction Board”, above n 201.

²⁰⁷ As early as March 1917, there had been the expectation that members of the public who were interested in the issues discussed by the Board would be given “an opportunity to put their views before the board.” See “Importation of Luxuries”, *Examiner*, 24 March 1917, 8.

²⁰⁸ “What is a luxury?”, above n 168.

²⁰⁹ Letter from Nicholas Lockyer to William Hughes, 14 June 1917 (National Archives of Australia, Canberra, *Luxuries Board Papers*, CP290/1).

²¹⁰ One critic suggests that “superficially” the question is simple enough. One could say that a luxury “is something not necessary, but used for personal gratification”. He argues that, in reality, this is not the case. The further question arises as to what are necessities? He suggests that the needs of man in general have increased with the advance of civilianization. The luxuries of today are the necessities of tomorrow. See “What are Luxuries?”, above n 158.

²¹¹ “What is a luxury?” above n 168.

There was no strict line of demarcation between raw materials and finished products,²¹² or between luxuries and necessities.²¹³ It was a perplexing issue for merchants²¹⁴ and the public;²¹⁵ how could the Board “legitimately”²¹⁶ pick and choose between the ‘alleged luxuries’ consumed by the community:

It cannot, of its own motion, differentiate between man and man, or class and class, or trade and trade. It cannot set up its necessarily arbitrary standard of use, taste, or habit just because it happens to be clothed with the large...though...as yet ill-defined powers of the War Precautions Act. It cannot rob the poor of their luxuries because they are poor; the poor, in fact need luxuries more than the rich; nor should the Government highhandedly interfere with the simple pleasures of the rich-the odds are those folks will spend the money on some other kinds of pleasure.²¹⁷

It was expected that the Board would include a large number of imported goods in its list of ‘prohibited luxuries’.²¹⁸ There was no doubt that many expected, and some were even eager, that costly women’s apparel,²¹⁹ fancy goods²²⁰ and alcohol would be the first targets in the Board’s sights.²²¹ Imported furs,²²² silks, satins, velvets and feathers were all considered by most to be luxuries and, as such, were also targets of prohibition.²²³ Furriers predicted that furs would double in price after the Board had made its determinations.²²⁴ It is clearly evident why such goods

²¹² “Luxuries”, *Sydney Morning Herald*, 16 May 1917, 10.

²¹³ Ibid. The example was given of a motor car which would be considered a luxury when put to a luxurious use, but when used in quite another way it could be a prime necessity.

²¹⁴ “What is a Luxury?”, above n 168. Merchants were anxiously waiting for the Board to issue its ‘list’ of luxuries.

²¹⁵ Ibid.

²¹⁶ “The Taxation of Luxuries”, above n 193.

²¹⁷ Ibid.

²¹⁸ “Restricting Luxuries”, above n 131.

²¹⁹ “Specially for Women: Shutting Out Luxuries”, *Barrier Miner*, 18 August 1917, 7.

²²⁰ “British Board of Trade: All Luxuries Banned”, *Kadina and Wallaroo Times*, 22 March 1916, 2.

²²¹ “Specially for Women: Shutting Out Luxuries”, above n 219.

²²² Ibid. The author suggests that “there can be no question about made-up furs being a luxury. The prices...are so high that nobody who is not able to afford real luxuries can indulge in them.”

²²³ Ibid.

²²⁴ FUR COATS.

We still have a few of the wonderful
line of
FUR COATS.
They will be worth nearly double the

were to be targeted. For the year ending June 30 1916, £1 616 211 was paid for silks and satins alone.²²⁵ For the same period £48 287 was spent on feathers; £158 424 on perfumery; £486 027 on trimmings for apparel and £100 568 on furs.²²⁶

6.6.3 Silk: a perennial target

Silk was a controversial subject and its classification was never going to be an easy task for the Board. During the early stages of the war, silk was regarded by the British Government as a luxury and thus its importation was restricted.²²⁷ In Australia, whilst its popularity²²⁸ was also on the rise during this period, silk was still regarded as a luxury item²²⁹ and its importation was considered to be a “sinful waste.”²³⁰ Hughes could see no justification for the importation of one and half millions’ worth of silks in six months.²³¹ Others argued that it was a great mistake to assume that all silken goods should come under the heading of luxuries;²³² certain kinds of silk were not only cheaper than linen but silk was the essential raw material from which a substantial number of dress goods were made up by Australian manufacturers.²³³

Silk sold for about 2/- or 2/6 a yard compared to woollen stuffs which ranged from 3/6 to 15/- per yard. Silk was considered “economically and intrinsically the

price next year, for the Luxuries Board
is sure to prohibit their import.

Now is your chance.

The Mercury, 13 July 1917, 4 (emphasis in original).

²²⁵ This was an enormous amount when you consider that only £1 488 987 was paid during this period for “ales, beers, spirits and wine”. See “Fortunes Spent on Luxuries”, above n 4.

²²⁶ Ibid.

²²⁷ “The Future of Silk”, *Leader*, 10 June 1918, 5.

²²⁸ There had been £1 500 000 worth of silks imported into Australia in the six months prior to February 1917. See “Importation of Luxuries: Amazing Australian Figures”, *Dominion*, Volume 10, Issue 3013, 26 February 1917, 7.

²²⁹ “Is Silk a Luxury? Interesting View Given”, *Weekly Times*, 3 March 1917, 11.

²³⁰ “What are Luxuries?”, above n 158.

²³¹ “Importation of Luxuries: Restrictions Foreshadowed”, *Marlborough Express*, 27 February 1917, 5.

²³² “Is Silk a Luxury? Interesting View Given”, above n 229.

²³³ Ibid.

best value in the textile trade”²³⁴ and much less of a luxury than woollen dress goods.²³⁵ Due to its scarcity the price of cotton was abnormally high²³⁶ and this tended to make silk a favourite for all classes, particularly because of the great utility of the material.²³⁷ It was not only used for women’s and children’s clothing but also for men’s shirts and suits.²³⁸

Although Herbert Brookes, as a Protectionist and manufacturer, was totally in favour of the Luxuries Board,²³⁹ he took a different position to Hughes about classifying silk as a luxury. He reminded Hughes that the prohibition of the importation of silk would throw hundreds of young women who were engaged in the manufacture of silk clothing out of employment.²⁴⁰ The silk clothing manufacturing industry in Australia was so robust that some even suggested that Australia should have its own silk industry.²⁴¹

6.6.4 Jewellery

Jewellery was another contentious item of apparel, and many expected that it should also be targeted by the Board.²⁴² It was argued that jewellery, the ultimate ostentatious display of sumptuousness, needed to be controlled and that women of all classes should be restrained from buying imported precious and imitation

²³⁴ “Importation of Silk: Demand for Restriction opposed, Manufacturers” Representation”, above n 151.

²³⁵ Ibid. In Britain, as cotton and woollen materials became increasingly scarce, silk, despite its high price, “advanced more and more into popular demand. It was no longer regarded as a luxury but as an everyday necessity. See “The Future of Silk”, above n 227.

²³⁶ “The Ladies Letter”, *Punch*, 16 August 1917, 32. The price of cotton was rising so rapidly that the author suggests humorously that “we shall expect to see advertised in the paper: “Ladies lingerie, the latest on fashionable sackcloth and smartly-cut hessian. Porous and cool.”

²³⁷ “Is Silk a Luxury? Interesting View Given”, above n 229.

²³⁸ “Importation of Silk: Demand for Restriction opposed, Manufacturers” Representation”, above n 151.

²³⁹ He was President of the Chamber of Manufactures at the time.

²⁴⁰ “Importation of Silk: Demand for Restriction opposed, Manufacturers” Representation”, above n 151.

²⁴¹ “The Future of Silk”, above n 227.

²⁴² “Retail Jewellers Conference”, *The Register*, 30 June 1917, 12.

jewellery.²⁴³ One critic suggested that Australian women were capable “from a lofty patriotic thrift”²⁴⁴ of doing without such decorations, and that even “Eve’s poorer daughters”²⁴⁵ could sacrifice their “trumpety imitations”²⁴⁶ on behalf of the Empire. Jewellers were quick to rebuke²⁴⁷ those ‘patriotic preachers’ who demanded that the Board restrict the importation of unset stones and other raw materials that were considered necessary for the jewellery trade in Australia.²⁴⁸

6.7 Women: the usual target

*Dress is the world over, a feminine speciality.*²⁴⁹

Wartime discursive moralising practices surrounding luxury mainly targeted women, particularly those in the ‘lower orders’. Not only were they condemned for wastefulness and their ‘unhealthy’ mimetic fashion impulses but were also denigrated for contributing to national ruin in a time when men were seen as the stalwarts of the nation and the Empire.

In discussions about luxury, it was inevitable that the moralising discourse would concentrate²⁵⁰ on women and their desire for imported ‘female luxury’ goods such as furs and silks. During the war period, there were many profound social ambiguities and contradictions relating to mercantilism and consumerism. Whilst many men profited immensely from the increased trade in luxury items and were

²⁴³ “Jewels in Jeopardy: Brilliant Baubles Banned; Likely to be Listed as Luxury”, *Truth*, 14 July 1917, 1.

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ “The Jewellery Trade: Effect of the Luxuries Board”, *The Advertiser*, 23 June 1917, 9. Jewellers and watch makers were not “opposed to reasonable restrictions on importations” but wanted to devise means to counteract the possible effect of the thrift campaign on the jewellery trade.

²⁴⁹ “War Economies and Female Fashions”, *Kalgoorlie Miner*, 7 March 1917, 4.

²⁵⁰ Whilst there was some discussion in the press about male-gendered luxuries such as beer and spirits, most discussion was about feminine luxuries such as furs, silk and perfume.

esteemed for their business acumen, women were chastised for their profligacy²⁵¹ and their ‘fickle’ fashion choices. Women’s conspicuous consumption was easily detected and targeted for regulation.²⁵² Censure of women’s new aesthetic autonomy came from all quarters; Archbishop Duhig²⁵³ suggested that nine-tenths of all imported “useless luxuries... were for the comfort and convenience of women.”²⁵⁴ Another clergyman admonished those females in his congregation for wasting money on their “ducky little hats.”²⁵⁵

Much of this public condemnation and desire to intervene in private lives was directed at working class women. They had more disposable income than before the war²⁵⁶ and were buying the type of fashionable clothing, albeit cheap versions, which had never been available to them prior to the war. These changing patterns of consumption produced anxieties in those who saw an inherent instability between what ‘they imagined’ working class women ‘needed’ and what they ‘wanted’.²⁵⁷ The war highlighted the fact that the world had been turned upside down; society’s system of relative consumption was no longer operating reliably to differentiate between various members of society. The governing classes in Australia, in an attempt to reverse these ‘unacceptable’ social changes, used various discursive moralising tactics to dissuade and admonish the lower classes from continuing to ‘waste’ the nation’s wealth. Simultaneously, wealthy ‘fashion leaders’ were chastised by the press and others for leading the lower classes astray.²⁵⁸

²⁵¹ “Specially for Women: Shutting Out Luxuries”, above n 219.

²⁵² “The Critic”, *Truth*, 18 August 1917, 1. The author suggested that the Board would make some “drastic” rulings regarding women’s dress. He hoped that “the said piece of timber rules short skirts on skinny shanks out of order.”

²⁵³ He was an Irish-born Australian Catholic religious leader. Sir James Duhig was Archbishop of Brisbane from 1917 until 1965 and played an active political role during this time. See Australian National University, *Australian Dictionary of Biography* <adb.anu.edu.au/>.

²⁵⁴ “Imported Luxuries”, *Brisbane Courier*, 2 April 1917, 6.

²⁵⁵ “The War on Luxuries”, *Daily Herald*, 25 July 1917, 4.

²⁵⁶ “Curtailling Extravagance”, above n 2. The author referred to this as “quite unexampled prosperity.”

²⁵⁷ Ibid.

²⁵⁸ “Specially for Women: Shutting Out Luxuries”, above n 219.

6.7.1 Imitation from below

A persistent feature of this moralising discourse was the suggestion²⁵⁹ that the over-spending on luxury apparel by lower-class women was propelled by their desire to imitate the fashionable apparel adopted by the ‘respectable’ upper classes.²⁶⁰ It was further suggested that those women, who had “more money than they want, set the pace by dressing themselves in expensive clothing.”²⁶¹ The result was that thousands of others “who cannot spare the money at all are dragged into an attempt to follow them which runs away with a great deal more of their income than they can really spare.”²⁶²

Another critic reproached women by arguing that “the most unthrifty (sic) thing upon this earth is fashion”²⁶³ and that “[f]ashion is organised gigantic waste.”²⁶⁴ He contended that women who aspire to lead in dress, endeavour by every possible means to get ahead of other women both in appearance and in the cost of the garments they wear. He suggested that ‘fashion leaders’ only bought new clothes to excite envy.²⁶⁵ He claimed that:

unthrifty people with full purses, and probably empty minds, spend so much of their money upon dress and appearance they impress others who have not the same ample means, and who ought to have larger minds, with the idea that to be fashionable is to be that which is most desirable.²⁶⁶

This form of moralising discourse is analogous to the traditional sumptuary practice of viewing luxury through the metaphors of moral contagion and envy.²⁶⁷ Such

²⁵⁹ Ibid.

²⁶⁰ *The Ballarat Courier*, 11 July 1917, 2.

²⁶¹ “Specially for Women: Shutting Out Luxuries”, above n 219.

²⁶² Ibid.

²⁶³ *The Ballarat Courier*, above n 260.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Hunt, above n 15, 33.

discourse continually raised the spectre of social and economic ruin that was expected to occur if the “natural and necessary social order”²⁶⁸ was not preserved.

6.7.2 A censorious press

The press heaped further spurious rebukes and pressure on lower class women by continually ridiculing their fashion choices and ascribing them with poor taste and vulgar tendencies.²⁶⁹ These women were considered to be easy targets of moral and economic regulation; their moral character was frequently called into question and they were told that they needed to be saved from their own folly.²⁷⁰ They were scolded for daring to resist the ‘old’ social order in which only ‘privileged’ or ‘refined women’ were entitled to wear displays of wealth and where lower class women should remain on the margins of society and wear what the dominant classes considered to be ‘proper’ for their station in life.²⁷¹ It was argued that lower class women should not attempt to ‘disguise’ their status by wearing the traditional “indexical symbols of hierarchy”²⁷² such as furs, jewellery and silks. It was suggested that they had not been ‘trained’ from birth, as superior ‘respectable women’ had, to be stylish, moderate and ‘classy’ in their choice of clothing and the manner in which they wore it. Moreover, when lower class women attempted to look fashionable²⁷³ their clothing was often chided as ‘absurd’,²⁷⁴ ‘freakish’²⁷⁵ and ‘barbaric’.²⁷⁶ Even their choice of jewellery was denigrated: “...in the matter of jewellery they have developed a taste as barbaric as an Ashantee (sic) chief.”²⁷⁷

²⁶⁸ Ibid.

²⁶⁹ “The Importation of Luxuries”, *Daily Observer*, 30 May 1917, 4.

²⁷⁰ “Curtailling Extravagance”, above n 2.

²⁷¹ “Specially for Women: Shutting Out Luxuries”, above n 219.

²⁷² Hunt, above n 15, 119.

²⁷³ One critic suggested that since 1915 there had been in Sydney a great revival in fashions that were bizarre and strange. Nevertheless, as they had been pronounced to be “the thing”, everyone wore them. See “Noted and Notions”, above n 1.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ “Noted and Notions”, above n 1. See also “The Importation of Luxuries”, above n 269.

²⁷⁷ “Noted and Notions”, above n 1, 7.

This form of vilification harks back to the type of dichotomous tension between class and taste (refinement) that was so marked in those hierarchical and elitist manifestations of early sumptuary regulation that detailed the sites and forms of luxury display.²⁷⁸ When all classes dressed in the same manner and fashion it was “was impossible to distinguish the rich from the poor, the high from the low...from their appearance.”²⁷⁹ The vitriol spread by the Australian press during the war years sought to replace visual ‘luxury attire’, a traditional and tangible marker of status and hierarchy, with a more esoteric and aesthetic marker associated with taste, quality and refinement.

Women, of all classes were encouraged to exercise their natural ‘womanly ingenuity’ to maintain clothing for longer than dictated by “fickle fashion.”²⁸⁰ One critic suggested that during the war, women should look past fashionable trends and be more interested in clothing that was well cut and properly fitted.²⁸¹ The same critic considered that government intervention in the importation of clothing and fabric was a godsend to working class women who were ‘compelled’ to keep up with fashion:

If the clothing materials permitted to be imported were restricted to plain serviceable stuffs of the most durable character, and with not too great a variety of colors (sic), this restriction would be welcomed with joy in nine-tenths of the workers’ homes.²⁸²

Not only were women the main targets for sumptuary regulation but women, with their “comfortable but nevertheless reprehensible” consumption of luxuries,

²⁷⁸ Hunt, above n 15, 87. Hunt argued that the classic method used by the traditional elites to limit or channel the competitive display of luxury included a critique of the “tasteless”, “brash”, “upstart”, ‘unsophisticated’ rising class or emergent class-fraction.”

²⁷⁹ N B Harte, “State Control of Dress and Social Change in Pre-Industrial England”, in D C Coleman and A H John (eds) *Trade, Government and Economy in Pre-Industrial England* (Weidenfeld & Nicolson, 1976) 141.

²⁸⁰ “A W N League, Sale Branch”, above n 7.

²⁸¹ “Specially for Women: Shutting Out Luxuries”, above n 219.

²⁸² Ibid.

were also, as always, called²⁸³ to make the biggest sacrifice for the good of the nation and the Empire.²⁸⁴ Naturally, they had little opportunity to resist the regulation of those fashion items which was so dear to their hearts:

'Minds me whilst writing of whispers, that the National Anti-Luxuries Board, has finished sitting, and as far as I can learn it's made so many sweeping recommendations concerning women's luxuries that it's left us very little to wear in the future (until the war is over) 'cept our bones...The list has not seen daylight so far, but judging by hints heard, we women are in for a most chilly time. I can see Cissie, Flossie, Fannie and Ruby rushing to borrow overcoats from their Sunday-best male friend, such a course being necessary when all goods of attraction are set out on this very anti-female list.'²⁸⁵

Whilst some wealthy conservative women,²⁸⁶ led by such luminaries as Ivy Brookes,²⁸⁷ welcomed the Board's findings and readily embrace the notion that patriotic women should give up all these luxuries,²⁸⁸ others could only make a perfunctory effort to alter their consumer practices.²⁸⁹ Some instructed their dressmakers to reduce the amount of fabric used in the construction of a costume's

²⁸³ "An Appeal to Women: Patronise Australian Industry", *The Mildura Cultivator*, 3 March 1917, 15. The Empire Trade Defence Association (both Ivy and Herbert Brookes were actively involved in this Association) made appeals to "women to assist in wiping out the adverse trading balance."

²⁸⁴ "A W N League, Sale Branch", above n 7. It was argued that women were the ones who the community turned to in leading the way in practicing thrift: "our experiences as wives, mothers, members of careful households-those upon whom to so large an extent devolves the duty of seeing that our portions are so economically used, and so well husbanded, that 'they shall go far with little', these experiences should, at this time, enable us to link on to the personal, greater, and, in our present crisis, the more important national aspect of thrift."

²⁸⁵ "The Letters of Vivienne", above n 173.

²⁸⁶ At the time, newly formed women's associations adopted 'thrift' as one of their guiding principles.

²⁸⁷ An interesting aside is that Hughes had asked Ivy's husband, Herbert Brookes who was President of the Chamber of Manufactures at the time, to "place [his] services at the disposal of the Government" and take a seat on the Board. It seems this did not eventuate. See "Importation of Luxuries: Board To Be Appointed", above n 152.

²⁸⁸ C M H Clark, *A History of Australia: The People Make Laws, 1888-1915* (Melbourne University Press, 1981) vol 5, 414.

²⁸⁹ One critic suggested that despite the politicians and their rich friends "prating" about economy from platform and pulpit, one could look in vain for any substantial evidence of the use of the "pruning knife" in respect of round of pleasure and enjoyment among the well-to-do and those "comfortably situated" classes. See "Preaching v. Practice: Rich Retain their Luxuries while Preaching Economy to the Poor", *Truth*, 5 September 1916, 4.

bodice and skirt,²⁹⁰ whilst others continued to wear their furs and frippery,²⁹¹ for the prohibitions only aimed to prohibit future imports of luxury apparel items but not at the display of wealth itself.²⁹²

6.7.3 Women of means (and taste) should show the way

The National Council of Women targeted “women of position and means”²⁹³ to set the example “of economy in dress, food and pleasure.”²⁹⁴ The Council then pulled the tension tighter by insisting that “any women buying luxuries of any description will be regarded by the community in much the same way as the slacker and shirker.”²⁹⁵ This was harsh condemnation, particularly as men who ‘shirked’ their duty to fight were at this time being treated so abominably by the ‘patriotic’ majority.²⁹⁶ Some critics believed that it would not be going too far if the authorities “should interfere with affairs so much to restrict the too frequent changes in fashion”.²⁹⁷ On the whole, many women felt that they had no alternative but to be ‘loyal’²⁹⁸ and stoically accept the burden of these restrictions.²⁹⁹ Occasionally, some even tempered their loss with humour:

Is it not very “warrible”? I am already dreaming of the forbidden imports. ‘Corse-with the exception of shells and love letters-man will miss but little. But women! Well just image! Hats, dear Mary, glove, and silks and perfumery! The unfortunate females will

²⁹⁰ “Topics of the Day, Notes, The Tragedy of Dress”, above n 122. Yet prices still went up. One woman complained that she could not get a dress for her daughters for less than 17 guineas. The author argues that the world was becoming a dreadful place: either you go to war and get shot or you stay at home and “get rooked to death by dressmakers.”

²⁹¹ It was reported that at a race meeting in Melbourne, that took place after the Board’s list of prohibited items was released, “[f]ur coats came out in droves, and two or three of the new season’s veils showed pretty noses and pink-and-white complexions (the Luxuries Board had not yet stopped all...importations from France).” See “The Ladies Letter”, above n 236.

²⁹² Hunt, above n 15, 121.

²⁹³ Nance, above n 22.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Clark, above n 32, 1 & 36. Such men were referred to as “curs” and “foul parasites” while opponents of conscription were often tarred and feathered.

²⁹⁷ “Specially for Women: Shutting Out Luxuries”, above n 219.

²⁹⁸ “Imported Luxuries”, above n 254.

²⁹⁹ “The Letters of Vivienne”, above n 173.

soon be reduced to wearing---only our expressions. Wonder what our over-worked social prevaricators will do when they can only describe the dressing of their special pets in this way: “At Mrs S-D- party held last night Mrs W-looked well.”³⁰⁰

6.8 The Board’s determinations: the thread quickly runs out

*The more one looks into this question, the more complex and difficult it becomes. At first sight nothing is more simple than to cut the Gordian knot with a sword, but its ramifications are such that one seems to be cutting into the very ganglia of the economic life of the country, and we must proceed with the utmost caution.*³⁰¹

There was no such flippancy in the Board members’ interpretation of their objectives. Lockyer solemnly argued that the recommendations of the Board concerning the restriction of imported luxuries were based on four desired goals or principles:³⁰²

1. The government desired to “conserve the liquid capital” of the country for “the prosecution of the war”³⁰³ by the restriction of all unnecessary expenditures on importations³⁰⁴
2. The financial obligation of the Commonwealth and the “very grave economic developments arising out of the war”³⁰⁵ might be materially neutralised by the people being thrifty,³⁰⁶ which may in part be encouraged by restriction of articles of luxury and articles “which are not really essential

³⁰⁰ Ibid.

³⁰¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 July 1917, 33 (Mr Hughes).

³⁰² Letter from Nicholas Lockyer to William Hughes, 20 July 1917 (*Luxuries Board Papers*, National Archives of Australia, Canberra, CP290/1) 2-3.

³⁰³ Ibid 3.

³⁰⁴ Ibid 2.

³⁰⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 June 1917, 80 (Mr Kelly).

³⁰⁶ Ibid. Mr Kelly suggests that the Government in restricting the importations of luxury goods was not dictated by the need to keep import tonnage for the carriage of munitions and food but “rather to encourage thrift amongst the Australian people.”

for general use, pleasure or adornment; or articles which may be reasonably met in Australia”³⁰⁷

3. Industrial unemployment resulting from war conditions and the disorganisation of trade rendered it “very necessary, as far as practicable” that local manufacture and production should be stimulated³⁰⁸

4. In view of the increasing diminution of shipping facilities, freight space should be reserved for the importation of raw materials for the purpose of Australian industry and “for other indispensable articles of public necessity”³⁰⁹

The Board insisted that its activities were justified and were closely interrelated with the “campaigns for the encouragement of Thrift and in advocacy of the investments of savings in our War Loans.”³¹⁰ Despite this, its members, particularly its Chairman, had attracted much adverse criticism in the press because it conducted its proceedings in private.³¹¹ However, the Board members would not be deterred in their desire to retain secrecy when making their determinations. Lockyer argued that publicity would give the public “a clear indication of the articles it proposed to deal with”³¹² and this would then inevitably be followed by speculation, additional disturbance to trade and by attempts to anticipate and thus nullify the effect of the prohibitions or restrictions.³¹³

The Board submitted only three reports to the Prime Minister, even though it had expected to submit an ongoing series of reports ‘in due course’.³¹⁴ The Board’s first report,³¹⁵ which was accompanied by succinct draft regulations,³¹⁶ was

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Ibid.

³¹³ Ibid.

³¹⁴ See Lockyer, above n 164.

³¹⁵ To avoid disputes in the classification of goods they referred in each case to the Divisional and Item Numbers of the 1914 Tariff, so that the Customs classification of goods for assessment on Import Duty “would also apply to those the importation of which is prohibited or restricted.” See

submitted to the Prime Minister on 14 June 1917, only seven days after its first meeting. The report was expected to “embrace imports that by stretch of imagination can be regarded as essential to the community.”³¹⁷ The report targeted many domestic items such as blacking, bottles and flasks and writing paper. Lockyer advised Hughes that, in the attempt to save unnecessary delay in the issue of the first report,³¹⁸ the members “avoided any procedure which might be safely dispensed with”³¹⁹ and confirmed that they had called no evidence.³²⁰ The Board had devoted special attention to the possibility of extending a preference to the products of France “in recognition of her unexampled and heroic sacrifices in the cause of Liberty and Humanity.”³²¹ However, the members declined to do this as this would have meant the importation of luxuries that “would only advantage the more affluent of our citizens.”³²²

On 19th June 1917, a second report concerning the importation of pharmaceutical preparations was sent to Hughes and the Board recommended that it was unwilling to deal with these imported goods by means of prohibition.³²³ The Board suggested that the local production of the preparations would diminish the need for their importation.³²⁴ The third and final report was submitted to Hughes on 22 June 1917. Its scope was much broader than the first 2 reports. The report

Commonwealth, Letter from Nicholas Lockyer to William Hughes, 14 June 1917 (*Luxuries Board Papers*, National Archives of Australia, Canberra, CP290/1).

³¹⁶ The regulations, particularly the provisions relating to exemptions, make interesting reading. It is notable that prohibition would not apply to passengers’ personal affects and this would be advantage to those in the upper classes who purchased luxury clothing and accessories whilst overseas.

³¹⁷ “A Ban on Luxuries: Order to be issued shortly”, *The Advertiser*, 15 March 1917, 8.

³¹⁸ Lockyer stressed in his report that “the determinations represent the unanimous opinion of the whole of the members of the Board.” See Commonwealth, Letter from Nicholas Lockyer to William Hughes, 14 June 1917 (*Luxuries Board Papers*, National Archives of Australia, Canberra, CP290/1).

³¹⁹ *Ibid* 1.

³²⁰ This meant that the Board would not be “an itinerant body” or “a roving commission of inquiry” and would meet at the Inter-State Commission rooms in Melbourne.

³²¹ See Letter from Nicholas Lockyer to William Hughes, 14 June 1917 (*Luxuries Board Papers*, National Archives of Australia, Canberra, CP290/1) 2.

³²² *Ibid*.

³²³ Letter from Nicholas Lockyer to William Hughes, 19 June 1917 (*Luxuries Board Papers*, National Archives of Australia, Canberra, CP290/1) 1.

³²⁴ *Ibid*.

recommended the absolute prohibition of such imported items as tobacco, most forms of liquor, feathers, furs, felt hats, caps and bonnets, parasols and perfumery. Partial prohibition was recommended for velvets, lace, gloves, millinery and dress nets and buckles and clasps.³²⁵

None of the reports were released by the Prime Minister.³²⁶ When challenged about this non-disclosure, Hughes became evasive.³²⁷ He sought to justify the delay in the release of the reports by arguing that the issue of importation of luxuries was complex and full of difficulties and was “receiving the most serious consideration of the Government.”³²⁸ Even as the Board was in the process of making its determinations Hughes began to have reservations about the efficacy of the Board. He was realising³²⁹ that the prohibition of luxuries was not the simple exercise of curtailing the waste of “liquid capital” on luxuries by recalcitrant citizens, which he had so unreservedly foreshadowed in his press releases earlier in the year. At the same time, the Board members were being criticised for their partiality,³³⁰ their secrecy and failure to call evidence. It was becoming obvious that there were serious commercial ramifications concerning the schema to prohibit imported luxuries and that it now needed more consideration:

Its ramifications are so extensive that it is not to be determined without due consideration of the effects of prohibition in all quarters. It would be foolish, and even suicidal, to shut out, by sort of guillotine procedure, goods which are essential to the industrial life of the nation, and, although it is a minor matter, there is also the question

³²⁵ Letter from Nicholas Lockyer to William Hughes, 22 June 1917 (*Luxuries Board Papers*, National Archives of Australia, Canberra, CP290/1) 1..

³²⁶ Hughes had indicated to the press that he would say nothing about the reports until the decision of the board was put into force. See “Luxuries Board: Question of Secrecy, Chairman’s Reply”, above n 180.

³²⁷ “Importation of Luxuries”, above n 131. Hughes replies to questions about this delay were considered by some to be “most indefinite and unsatisfactory.”

³²⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 June 1917, 124 (Mr Hughes).

³²⁹ William Hughes, ‘T&C Minute Paper’ (Prime Minister’s Department, 31 July 1917, *Luxuries Board Papers*, National Archives of Australia, CP290/1).

³³⁰ “Untitled”, *The Argus*, 11 July 1917, 8. The author makes a good point when he stated that Board only obtained evidence from business people (presumably from only those members of the Board), and apparently assumed that the information given was the last word to be said for or against a certain course. He argues that an investigation of this kind cannot have been other than partial and unjust.

of revenue to be considered in relation to the industrial and national welfare. Above all, we must keep in mind the effect on shipping of the prohibition of a not inconsiderable body of imports. The word “luxuries” has now a very wide meaning.³³¹

By 20 July 1917, Lockyer and the other members of the Board had become uneasy and very frustrated about Hughes ambivalence towards their recommendations. They were defensive about their assignment and were worried about Hughes’ lack of positive response to their reports.³³² Moreover, they were vexed that their work seemed to have been met with disapproval by Cabinet.³³³ In addition, they were continuing to be bombarded with numerous petitions and representations³³⁴ about the scope of their determinations as well as receiving persistent “adverse criticism”³³⁵ from the daily press.³³⁶ Lockyer insisted that the Board members had conscientiously done their best despite having never been provided with any proper ‘qualifying directions’ and without being advised that the question of revenue “should in any way influence [the] Board’s deliberations”.³³⁷ In reality, the Board had become the scapegoat for Hughes’ hastily prepared and ill conceived ‘prohibition of luxuries’ policy, and its members were expected to wear most of the adverse criticism that was being directed towards this sumptuary policy.

Prime Minister Hughes began to panic about his hasty decision to restrict luxuries. He sought advice from various quarters to assist him in determining

³³¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 June 1917, 15 (Mr Hughes).

³³² Letter from Nicholas Lockyer to William Hughes, 20 July 1917 (*Luxuries Board Papers*, National Archives of Australia, Canberra, CP290/1) 6.

³³³ This fear was not without substance. One press report suggested that the Government and the Board were at a deadlock because the Government had disagreed with the Board’s findings in its report. See “What is a Luxury?”, above n 168.

³³⁴ There were many retailers who were concerned that the goods they sold would be included on the list of luxuries. Booksellers were especially concerned that imported books, newspapers and periodicals would be prohibited, as they had been in Great Britain. See “The Luxuries Commission”, *Brisbane Courier*, 28 May 1917, 6.

³³⁵ *The Argus*, above n 330, 8.

³³⁶ Ibid 8. The author suggested that the state of uncertainty for the business community should end and that the “manner in which the board (acting no doubt under direction) conducted its inquiry had given rise to grave dissatisfaction.”

³³⁷ Letter from Nicholas Lockyer to William Hughes, 20 July 1917 (*Luxuries Board Papers*, National Archives of Australia, Canberra, CP290/1) 4.

whether he should release the Board's full reports and whether he should then proceed to prohibit the various items as recommended by the Luxuries Board. He sought advice from Stephen Mills,³³⁸ the Comptroller-General of the Department of Trade and Customs about potential lost revenue. He also verbally directed Perry Whitton, the Chief Prices Commissioner of the Commonwealth, to provide a "personal opinion"³³⁹ to him about the proposed "Prohibition of the Importation of Luxuries".³⁴⁰ Only two days before the prohibited luxuries list was to be proclaimed, Whitton provided Hughes with a comprehensive statement. In most part, Whitton's missive provided Hughes with a justification why the list of prohibited imports, which the Luxuries Board had so painstakingly prepared, should be reduced. Whitton confirmed the difficulty involved in defining what a luxury was. He suggested that all classes, except the very poorest, were making use of articles that were not wholly necessary to their welfare. He suggested that Hughes should adopt the following test:

To decide what articles can be dispensed with with the least detriment to the general public and those, the restriction of which, would tend to increased activity in the labour class locally and thus provide employment to both male and female workers.³⁴¹

Whitton took a pragmatic view as to what should constitute the notion of luxury during the war period. He suggested to Hughes that it was important for the value of certain lines such as silk, cotton and woollen to be reassessed. In his correspondence with Hughes, he stressed that:

[i]t is almost beyond doubt that silk for some considerable time will be a cheaper article than woollen piece goods and probably than many of the cotton piece goods, whereas prior to the war, silk was looked upon almost as a luxury.³⁴²

³³⁸ See Chapter 1.

³³⁹ See Letter and Statement from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1) 1.

³⁴⁰ Ibid.

³⁴¹ See Statement from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1) 1.

³⁴² See Letter and Statement from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1) 1.

Whitton identified furs, gloves,³⁴³ jewellery—including cameos, precious stones and imitation jewellery— as items “which may be regarded as extravagances”.³⁴⁴ He also recommended that clothing, including shirts, collars, ties and women’s and children’s clothing, that were “over a certain price,”³⁴⁵ be treated as luxury items. He claimed that perfume could be manufactured locally and this industry could provide employment for both sexes.³⁴⁶ Interestingly, the liquor trade was given a huge reprieve from sumptuary restraint. Whitton argued that the restriction in liquor lines would affect wine and spirit merchants, hotelkeepers, certain café proprietors, and certain houses in the grocery trade.³⁴⁷

Whitton explored the arguments for and against the necessity for Australia to prohibit luxuries during the remainder of the war. In Britain, the problem concerning the lack of shipping space had been regularly raised as a justification for the prohibition of imported luxuries. However, he discounted this issue for Australia. He maintained there was there more than sufficient shipping available “to convey troops, foodstuffs and other necessities.”³⁴⁸ Whitton also confirmed that, whilst the issue of revenue was hardly worth the consideration for Britain, this was not the case for Australia. Here the tariff was essential in raising revenue for the Commonwealth.³⁴⁹ In addition, he suggested that the Customs administration, rather than a luxuries Board, was the best and fairest method to deal with imported luxuries for “the persons, who can afford to indulge in them, would appear to be those who are best able to pay the taxation on them.”³⁵⁰

According to Whitton, Australia was in no danger of being deprived of essential supplies. He maintained that Australian producers could supply all

³⁴³ Other than winter and workmen’s gloves. See Statement from Perry Whitton to William Hughes, 10 August 1917 (National Archives of Australia, Canberra, CP290/1) sch 1.

³⁴⁴ Statement from Perry Whitton to William Hughes, 10 August 1917 (National Archives of Australia, Canberra, CP290/1).

³⁴⁵ Ibid.

³⁴⁶ Ibid sch 1.

³⁴⁷ Ibid 1.

³⁴⁸ Ibid 2.

³⁴⁹ Ibid 1.

³⁵⁰ Ibid 2.

necessary “foodstuffs, clothing, etc.”³⁵¹ for all local needs and still leave them a wide surplus for export.³⁵² He did, however, caution Hughes that if “effect was given to general prohibition”³⁵³ then care would have to be taken to see that monopolies, leading to excessive prices and profits, should not be allowed to ‘rise’ in Australia.³⁵⁴

Eventually,³⁵⁵ a small list³⁵⁶ of prohibited luxuries was proclaimed on 10 August 1917.³⁵⁷ As expected, fur apparel,³⁵⁸ perfumery and jewellery were included in the list.³⁵⁹ What is noticeable about the prohibited items is the items favoured by the lower classes were again expressly targeted. For instance, only “imitation precious stones”,³⁶⁰ and not “precious stones”³⁶¹ as favoured by the wealthy, were

³⁵¹ See Letter and Statement from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1).

³⁵² Ibid 1.

³⁵³ See Statement from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1).

³⁵⁴ Ibid.

³⁵⁵ See Letter and Statement from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1).

³⁵⁶ There were 10 items on the list:

1. Ale and other beer, porter, cider and Perry, spirituous, in bulk or in bottle
2. Potable spirits
3. Perfumed spirits and bay rum
4. Biscuits
5. Confectionary
6. Eggs, in shell or otherwise
7. Fur apparel
8. Perfumery
9. Jewellery, imitation jewellery, and imitation precious stones (*Obviously the jewellers' petitions and lobbying had been successful*).
10. Bodies for motor vehicles, whether imported separately or forming part of a complete vehicle.

³⁵⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 10 August 1917, 39 (Mr Jensen). Bonded goods and goods in the course of transport were to be allowed to be delivered to Australia.

³⁵⁸ The prohibition only covered made up articles and not raw materials. Jensen said that a large number of people in Australia found employment in making up imported skins. See “Importation of Luxuries: A Natural falling Off”, *The Argus*, 14 August 1917, 5.

³⁵⁹ Jensen did suggest that representations might be made for certain jewellery to be allowed to enter Australia but gave no further explanation about this. See Commonwealth, *Parliamentary Debates*, House of Representatives, 10 August 1917, 39 (Mr Jensen).

³⁶⁰ Ibid.

³⁶¹ Ibid.

featured on the list. When challenged with the question: “[a]re those all the luxuries that you intend to prohibit?” the Minister for Trade and Customs, Mr Jensen responded with caution:

There are many things which might be deemed to be luxuries, but the Government have to take into consideration the effect of a prohibition on the revenue.³⁶²

The brevity of the list proved to be controversial and disappointing³⁶³ to those protectionists³⁶⁴ and others³⁶⁵ who had insisted that Australians should be ready to sacrifice all creature comforts to eliminate waste and conserve the wealth of the community.³⁶⁶ One journalist pronounced it to be “a shallow and palpable counterfeit solution.”³⁶⁷ Another described the list as “a poor, almost laughable prohibition”.³⁶⁸

After taking into consideration the budget figures Hughes and his Cabinet argued that there were three reasons why the list was so short.³⁶⁹ First, as mentioned

³⁶² Ibid.

³⁶³ “Announced List Disappointing”, *The Argus*, 14 August 1917, 5. The President of the Victorian Chamber of Manufactures argued that the question of the Customs revenue should not have entered into consideration in limiting imported luxuries. He also argued that, although some Customs revenue might be lost, “the country would gain more by the money being spent to better advantage on other things.”

³⁶⁴ The Chamber of Manufacturers was so disappointed that, on 14 August 1917, it adopted a resolution that the short list of prohibited items “did not meet the national needs for economy, and the saving of waste in unnecessary imports.” See “Prohibition of Luxuries: Does not go far enough”, *Warrnambool Standard*, 14 August 1917, 5.

³⁶⁵ One journalist suggested that “the strangely absurd list of ‘luxuries’ [was] evidence [of] some attempt at doctrinal compromise” between a War Cabinet which consisted of “every shade of fiscal opinion from fiscal atheists, to moderate protectionists and prohibitive tariffists (sic) and free-traders”. See “Curtailing Extravagance”, above n 2. This journalist also argued that that “[t]here ought to be no doubt that the will of the people is that wanton folly in luxurious (sic), extravagance during the war, however created or stimulated, must be rigorously checked.”

³⁶⁶ “Announced List Disappointing”, *The Argus*, 14 August 1917, 5.

³⁶⁷ “Win-the-war Compliments”, *Worker*, 6 September 1917, 19.

³⁶⁸ “Prohibited ‘Luxuries’”, *Northern Times*, 14 August 1917, 4.

³⁶⁹ “Curtailing Extravagance”, above n 2. Jensen argued that the importation of luxuries had been checked naturally by the war and there was little need for legislation by the Government. He stated that for the 12 months ended 30 June 1917 the value of the total importations was £75 463 568 as compared for 1915-16 of a decrease of more than £2 000 000. See “Importation of Luxuries; A Natural Falling Off”, *The Argus*, above n 358. He is obviously overlooked the fact that Hughes had put into place an interim measure which had curtailed imports and also that many loads of luxuries had been held on the docks.

above, there was a question of lost revenue.³⁷⁰ Stephen Mills had advised Hughes that the prohibition of goods recommended by the Luxuries Board would result in a loss of revenue to the Commonwealth of £1 038 834. There would be £25 000 lost from imported fur apparel; £36 290 from perfumery and £44 463 from jewellery (rolled gold and jewellery under 9 carat as well as imitation jewellery). The biggest item affected was 'Spirits and Spirituous Liquors' which, if 25% was prohibited, would lose £450 000 in revenue.³⁷¹ Secondly, it was argued that there was the complex problem as to what precisely should be embraced in the elastic term 'luxuries'. And thirdly, there was the issue as to whether such 'luxuries', whether they be imported or locally produced, when ascertained and gazetted, should be wholly prohibited.³⁷²

By mid-1917, it had finally become clear to Hughes that he could no longer adhere to a sumptuary project which, despite its moral and thrift-based objectives, carried with it so many actual and potential economic problems for Australia.³⁷³ Hughes had no alternative but to ignore Lloyd George's intrusive imperialist edict that he had enthusiastically embraced in the early months of 1917. It had become evident to Hughes, his advisors and the press that the sumptuary restrictions imposed by Great Britain on her own people, were underpinned by different trepidations to those being experienced in Australia.³⁷⁴

Great Britain was running short of foodstuffs and this meant that shipping space was one of the most important considerations when Lloyd George decided to implement restrictions on the importation of luxuries. This was not a problem for Australian shipping. The issue of lost revenue was also a different matter for each country. The effect on British revenue "was so small a matter that it was hardly

³⁷⁰ Mr Jensen, the Minister for Trade and Customs, stated that if the prohibitions went ahead there would be a loss of revenue to the extent of £1 750 000 on potable spirits alone. See "The Ban on Luxuries: Our Revenue Largely Depends on...Alcohol", *Geelong Advertiser*, 14 August 1917, 6.

³⁷¹ Ibid.

³⁷² "Curtailling Extravagance", above n 2.

³⁷³ Ibid.

³⁷⁴ See Statement from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1).

worth consideration.”³⁷⁵ Unlike Australia, there was practically no Tariff imposed on imported luxuries in Great Britain and the latter did not have to rely on customs duties for the raising of revenue to the same extent that Australia did.

Despite the fact that Hughes and his supporters desperately wanted to use the British sumptuary regime as a sumptuary template to curtail waste and extravagance in Australia, the dire economic effects of such a regime in an Australian context could not be ignored.³⁷⁶ It was no longer a question of conserving Australia’s ‘liquid capital’ but rather a question of maintaining the important and substantial income that was being generated by Australians’ consumption of imported luxuries. Hughes could no longer allow the Board to proceed with its sumptuary task, as there was no feasible alternative way for the Australian Government to raise the money³⁷⁷ that would otherwise be lost in customs duty on imported luxuries.³⁷⁸ Although the Government promised that the 10 August proclamation would be “only a start”³⁷⁹ in the prohibition of imported luxuries, it became apparent by the end of August 1917, that the death knell had rung out for the Luxuries Board; without a report ever being released to Parliament or the public.³⁸⁰ The failure of the Luxuries Board as a wartime sumptuary project echoed the failure of the sumptuary laws of the early modern period.

³⁷⁵ Ibid.

³⁷⁶ It appears from the Luxuries Board File that Stephen Mills, Comptroller-General of the Department of Trade and Customs, advised Hughes in July 1917 that the prohibition of goods recommended by the Luxuries Board would result in a loss of revenue to the Commonwealth of £1 038 834 (\$92 340 000). See William Hughes, ‘T&C Minute Paper’ (Prime Minister’s Department, 31 July 1917, *Luxuries Board Papers*, National Archives of Australia, CP290/1).

³⁷⁷ In an attempt to recoup the money lost due to Lloyd George’s interim actions to prohibit luxuries sent from Great Britain to Australia, the Minister for Customs sought to increase duty on imported alcohol by 30 shillings per gallon and to increase the excise on beer by a penny per gallon. This measure would provide the Government with additional revenue of £6000 000 which was almost equal to the amount lost owing to the prohibition of the importation of certain luxuries. See “Federal Items”, *The Northern Miner*, 14 August 1917, 4.

³⁷⁸ See Statement from Perry Whitton to William Hughes, 8 August 1917 (National Archives of Australia, Canberra, CP290/1).

³⁷⁹ Mr Jensen, the Minister of Trade and Customs said the proclaimed list was “only the start”. See “Only a Start”, *Leader*, 18 August 1917, 39. It was also “the finish”.

³⁸⁰ “Luxuries Prohibition”, *The Richmond River Express and Casino Kyogle Advertiser*, 25 September 1917. It became obvious that the Luxuries Board was never to meet again when the Prime Minister informed the Protectionist Association that the list was not going to be added to.

6.9 Conclusion

It may be argued that the sumptuary laws of the early modern era were unique in that they visibly protected and reinforced hierarchical access to items of dress and ornamentation that carried the symbolic expression of that hierarchy. However, this chapter suggests that the motives underlying the establishment of the Luxuries Board and its recommendations, albeit transitory, had the same *objectives* and *effects* as sumptuary law. By prohibiting the importation of cheap motors cars, imitation jewellery, furs and perfumery, “workers and clerks *and others* who before the war had been content with careful economies”³⁸¹ were to be denied access to what were traditionally “indexical symbols of hierarchy.”³⁸² Instead, they were limited only to those items that the dominant classes considered to be essential for their survival.

It was not the object of the Board to restrict the wearing of luxurious apparel³⁸³ but rather to prevent ‘workers and clerks’ from imitating the wealthy by spending their money on ‘luxuries’ that were previously unavailable to them.³⁸⁴ The wealthier classes could continue to wear their ‘exclusive’ furs and jewellery whilst the poorer classes could only continue to dream of *owning and wearing* such luxuries.

After this Chapter’s deviation into the war-time sumptuary project known as the ‘Luxuries Board’, Chapter 7 will briefly explore two other sumptuary projects that ‘erupted’ during the First World War. The chapter will argue that these projects also shared many discursive features of sumptuary laws of the early modern period.

³⁸¹ “Curtailling Extravagance”, above n 2 (emphasis in original).

³⁸² Hunt, above n 15, 119.

³⁸³ “Melbourne Letter: The Rule of Law”, *Upper Murray & Mitta Herald*, above n 61.

³⁸⁴ “Curtailling Extravagance”, above n 2.

7 SUMPTUARY IMPULSES TIED UP WITH FILM AND KHAKI

*A revival of the sumptuary laws, a heavy tax on all amusements and luxuries might help to check the extravagant tendencies of the times, but something severe will have to be done if the war is to be brought to a successful termination.*¹

*Mr Blacket is surely not blind to the teaching of history in all countries that sumptuary regulations may be easily invoked-as is the case in Australia at the present time-but are extremely difficult of enforcement.*²

7.1 Purpose and structure of the chapter

The purpose of this chapter is to briefly explore two ‘non-appearance’³ sumptuary projects in the context of war time conditions in Australia: the proposed Anti-Shouting laws and the *Entertainments Tax Act 1916* (Cth). Whilst the main focus of this thesis is on the sumptuary regulation of women’s dress in Australia during the first three decades after Federation, one cannot ignore the presence of other forms of projects of sumptuary regulation that were manifestly present during this period. These ‘other’ sumptuary projects were particularly ‘alive’ during the war years; a period marked by comparable social and economic anxieties and preoccupations with national security and morality that prompted the creation of the original sumptuary laws.

In the early modern period, sumptuary laws were not limited to just to the regulation of personal appearance through rules relating to dress.⁴ They also targeted the private consumption of food and alcohol, social ceremonies, entertainment and

¹ “Monetary and Mining”, *The Argus*, 19 July 1916, 6.

² “The War and the Drink Traffic”, *The Register*, 22 February 1917, 9.

³ Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (MacMillan Press, 1996). “Appearance” is a term used by Hunt. It is a reference to those sumptuary laws that related to appearance, dress and clothing. I have adopted the use of the word for ease of expression.

⁴ Ibid 1.

economic wealth.⁵ Whilst these laws often aimed to limit or regulate the private expenditure of citizens,⁶ they were also concerned with the social manifestations of consumption and always involved some combination of social, economic and moral regulation.⁷

This chapter argues that the Anti-Shouting laws as proposed by the Australian government in the latter part of the war, and the *Entertainment Tax Act 1916* (Cth) were clear sumptuary measures and analogous to those of the early modern period. These sumptuary measures focused on the wartime control of alcohol consumption practices and the taxing of public amusements. They were also entwined with an impulse for moral regulation that operated in response to wider governmental concern for Australia's public well-being and economic future.

The first part of the chapter will deal with the Anti-Shouting laws as proposed during the latter part of the war, and the second part will provide an overview of the *Entertainments Tax Act 1916* (Cth). Drawing on the various discourses that surrounded these projects, this chapter will reveal that whilst these projects were ostensibly focused on alcohol consumption practices and the taxing of public amusements respectively they were also clad with same impulse for moral regulation found in the early modern period. This chapter will also illustrate that this impulse for moral regulation was, in most part, a response to a wider concern which the government, in a time of crisis, had for the public well-being and economic future of the Australian population.

⁵ Ibid 7.

⁶ Ibid 2-3.

⁷ Ibid 7.

7.2 Anti-Shouting Laws

7.2.1 Drowning out the Shouting

*To “shout” or not to “shout” that is the question which is agitating the minds of many folk.*⁸

‘Anti-shouting’ or ‘no-treating’ laws that were promulgated in countries such as the United Kingdom, New Zealand⁹ and Australia to control alcohol consumption practices during World War I.¹⁰ This form of sumptuary regulation was encouraged in Australia to a large extent by the Australian Temperance Movement.¹¹ This Movement, with its push for national sobriety and prohibition, sought to interfere with the private autonomy of the military and civilian populations by controlling their drinking practices.¹² Numerous other temperance organizations and churches also sought to “protect outgoing and returned soldiers from temptation”¹³ by advocating the total prohibition of alcohol, particularly during the war and the period of demobilisation.¹⁴ At the same time, many anti-shouting campaigns were also instigated by individuals and other groups concerned with the impact of shouting on the wellbeing and maximum efficiency of servicemen and the level of their contribution to the ‘win-the war’ project:¹⁵

⁸ “Untitled”, *The Register*, 1 June 1917, 6.

⁹ There were regular reports in the Australian press about the enforcement of New Zealand anti-shouting legislation (*War Regulations Amendment Act 1916* (NZ) and *War Regulations Amendment Act 1917* (NZ)). See “Anti-Shouting”, *The Daily News*, 16 June 1917, 4. One report stated that in North Auckland in 1917, five men were fined £195, plus costs, for breaking this law. The licensee was fined £75, the man who shouted £30 and each of the three men for whom he shouted £30. See also “Anti-Shouting”, *Dandenong Advertiser and Cranbourne, Berwick and Oakleigh Advocate*, 25 January 1917.

¹⁰ “Anti-Shouting”, *Sydney Morning Herald*, 2 May 1917, 9. The English Parliament had introduced their anti-shouting measures in 1915 when it enacted the *Defence of the Realm Act (No 3) 1915*, 5 & 6 Geo 5, c 42. See “Anti-Shouting Campaign”, *The Shoalhaven Telegraph*, 16 May 1917, 7. The New Zealand Act was passed in 1916. See “Anti-Shouting”, *The Daily News*, 9 June 1917, 3.

¹¹ “War-Time Prohibition Urged in Sydney”, *Leader*, 25 May 1918, 39.

¹² *Ibid.*

¹³ “Anti-Shouting”, *The Braidwood Review and District Advocate*, 3 July 1917, 7.

¹⁴ “Congregational Union”, *The Sydney Morning Herald*, 24 April 1918, 8.

¹⁵ “Anti-Shouting”, above n 9.

The evil effects of shouting are so obvious that it is scarcely necessary to stress them... Nowhere is the harm more apparent than among the soldiers in camp, or those who are outgoing or homecoming. At a time when they are particularly susceptible to the influence of alcohol, the recovery of our brave heroes is seriously menaced because their friends press upon them as a sign of appreciation of their bravery.¹⁶

The Interim Select Senate Committee's Report (*Intoxicating Liquor-Effect on Australian Soldiers and best method of dealing with sale*) was presented to the Senate on 1 May 1918 and recommended: "[t]hat there should be no discrimination between soldier and civilian in the matter of drink supply."

Although the Temperance Movement had achieved a major success in 1915/1916 by forcing the government to bring about a mandatory 6 PM closure of hotel bars and public houses in the four southern States,¹⁷ it continued to zealously campaign for a drastic decrease in the liquor trade and the elimination of its associated 'abuses', including the practice of 'shouting',¹⁸ a practice that had become more widespread during the war years. 'Shouting' had become a popular social custom for many of those men who drank at hotels and other licensed premises. They sought to acknowledge and reward the 'gallant' efforts of returned soldiers by 'shouting' or 'treating' these soldiers to gratuitous alcoholic drinks.¹⁹ Some critics argued that this type of largesse or *bonhomie* was a misplaced form of benevolence provided by "false patriots"²⁰ who "persist[ed] in buying drinks for the man in khaki, [even though it was] not always for the good of the nation."²¹ Although many considered that this sort of 'matey' largesse was a distinctive 'Australian custom', there were others who believed it to be an 'evil' curse or menace that adversely

¹⁶ Ibid.

¹⁷ Walter Phillips, "'Six o'clock swill': The introduction of early closing of hotel bars in Australia", (2008) 19 *Historical Studies* 250. This new closing time led to the notorious six o'clock 'swill' when customers would rush to consume alcohol rapidly and heavily in anticipation of the early closing time.

¹⁸ Ibid.

¹⁹ "How Anti-Shouting Works", *The Daily News*, 2 June 1917, 4.

²⁰ Ibid.

²¹ Ibid.

impacted on the happiness of the family,²² the health of the community and the efficiency and wealth of a nation at war.²³

A more reprehensible custom centred on the practice of touting. Soldiers, after drawing their deferred services pay, were often targeted by “those who looked out for them, hotel touts, and all sorts of men who want to be treated.”²⁴ Touts would ‘shepherd’ vulnerable returned soldiers to specific hotels and encourage the latter to cash in their pay-cheques so they could then treat all their ‘new friends’.²⁵ Soldiers would frequently not leave the hotels until all their money was gone²⁶ and would often become so inebriated that they could hardly walk.²⁷ The effects of such drunken behaviour had become very worrisome for the Australian Parliament and those authorities involved with recruitment and troop mobilisation.²⁸ In its efforts to curb the ‘deplorable’ and ‘horrible’ scenes that were common when transport ships ‘touched’ the Western Australian coast,²⁹ the government ensured that all harbour hotels within a certain radius would be closed whilst soldiers were in port.³⁰ Whilst this strategy “resulted in a very great deal of good”³¹ it was not in itself sufficient to control the problems associated with the drinking habits of soldiers, particularly those who were invalided from active service.³²

²² “Anti-Shouting”, *Sydney Morning Herald*, 9 May 1917, 5. The reporter suggests that the ‘jolly good sport’ in the bar, ready with a smile and a slap on the back for all and sundry, and an invitation to ‘have another’ “turns into a very sour and bad tempered specimen as soon as he gets on the inner side of his own front fence.”

²³ Chick, “Anti-Shouting”, *Donald Times*, 6 August 1918, 2.

²⁴ Commonwealth, *Parliamentary Debates*, Senate, 5 December 1918, 82 (Senator Guy).

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Commonwealth, *Parliamentary Debates*, Senate, 16 May 1918, 54 (Senator Thomas).

³² Ibid.

7.2.2 A call to stop the shouting

*Here...in this our young Commonwealth we are allowing politicians to become dictators, and to impose upon us restraints and coercion ...*³³

The problem of shouting or treating was also seen as a form of extravagance and moral degeneration associated with the ‘wasting’ of economic resources in a time of crisis.³⁴ Further, some argued that these practices that would be responsible for bringing about the moral and financial ruin of individuals and the nation.³⁵ Organisations such as the National Council of Women,³⁶ which supported some of the temperance ideals,³⁷ sought the cooperation of all national women’s councils of Australia in petitioning the Federal Government. They demanded that the *War Precautions Act 1914 (Cth)* and regulations be used to prohibit this allegedly pernicious practice of ‘shouting’.³⁸ Senator Guy suggested that if amendments to this legislation were not passed, Parliament would have “criminally failed”³⁹ the true interests of Australia.⁴⁰ Reverend B S Hammond contended that there was “an urgent desirability”⁴¹ for establishing an anti-shouting policy that would considerably help the ‘win-the-war- movement’.⁴² He used the familiar tropes and rhetoric of war to

³³ “Coercion v Equity”, *The Horsham Times*, 27 November 1914, 4.

³⁴ “How Anti-Shouting Works”, above n 19. The reporter suggested that, as a consequence of the anti-shouting laws in Britain, many a sixpence and shilling was saved and had “become available for national purposes.”

³⁵ Ibid.

³⁶ This organisation was so dedicated to the anti-shouting campaign that they appointed an organiser, Miss Grace Burrows, for the four weeks of the campaign. “Anti-Shouting”, *Sydney Morning Herald*, 11 May 1917, 7. Volunteers, both men and women, were called to canvass the city, suburbs, and country districts to spread the campaign’s message. “Anti-Shouting”, *Sydney Morning Herald*, 21 May 1917, 8.

³⁷ “Anti-Shouting”, *Albury Banner and Wodonga Express*, 25 May 1917, 32. Organisers saw their anti-shouting campaign as neither a total abstinence nor a prohibition movement, but “simply a precautionary measure.”

³⁸ “Anti-Shouting”, *Albury Banner and Wodonga Express*, 6 July 1917, 33. The petition contained 102 000 signatures and measured two miles in length, and was rolled onto two garden rollers.

³⁹ Commonwealth, *Parliamentary Debates*, Senate, 5 December 1918, 82 (Senator Guy).

⁴⁰ Ibid.

⁴¹ “Anti-Shouting Policy”, *Albury Banner and Wodonga Express*, 4 May 1917, 31.

⁴² Ibid.

impress the dangers of alcohol upon the general public and to castigate its interference with the efficiency of Australian troops:

The time had come when a long suffering community had a right to demand that alcohol, which had so often proved itself a traitor to the Empire, be cast aside, and like alien traitors, be interned.⁴³

Many politicians⁴⁴ responded to the demand for interventionist action, particularly those who already advocated the 6 PM closure of hotels, by arguing that effective legislation, similar to that of Britain and New Zealand, be passed to prohibit the ‘treating’ of soldiers.⁴⁵ It was argued that drink was “the worst enemy”⁴⁶ to discipline and fitness of the soldier⁴⁷ and that an anti-shouting law was a “necessity”⁴⁸ because “the evil effects of drink”⁴⁹ was preventing “the people from doing their best in the task before them.”⁵⁰ It was further contended that soldiers fighting Australia’s battles “needed to be in the very pink of condition”⁵¹ and that alcohol had an adverse physical effect on outgoing and returned servicemen.⁵² Furthermore, it was suggested that there was evidence that alcohol was the root of 90 per cent of all trouble amongst servicemen; ‘crime’ and absence without leave were both attributed to this social ‘evil’.⁵³ Alcohol was not just a problem at home; 40 per

⁴³ Ibid.

⁴⁴ There was some concern about whether ‘shouting’ was a Federal or State matter. See “Anti-Shouting”, above n 13.

⁴⁵ “Anti-Shouting”, *Western Age*, 31 December 1915, 2. The Committee was given the authority to move from place to place and to obtain evidence from various witnesses, including officers who held high positions in military rank, representatives from some churches and temperance societies, some returned servicemen and four representatives of licensed victuallers.

⁴⁶ Commonwealth, *Parliamentary Debates*, Senate, 5 December 1918, 82 (Senator Guy).

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ “Anti-Shouting”, above n 10.

⁵² “War-Time Prohibition Urged in Sydney”, *Leader*, 25 May 1918, 39.

⁵³ Commonwealth, *Parliamentary Debates*, Senate, 5 December 1918, 82 (Senator Guy). Brigadier-General Forsyth, State Commander of South Australia gave evidence that during one 6 month period there were 588 cases of absence without leave, some for short periods and some for months. The camp records showed that about 60 per cent of these cases were due to ‘drink’. At least 70 per cent of what the Army called ‘crime’ was due to ‘drink’.

cent of out-of-action soldiers who were returned to Australia as “undesirables”⁵⁴ were confirmed alcoholics even though authorities considered it to be an “unpardonable sin in a soldier, whether officer or man”,⁵⁵ to be inebriated at the Front.⁵⁶

7.2.3 “Shouting” is an undoubted abuse, but whether it could or should be put down by an Act of Parliament is another question.⁵⁷

Finally, in January 1918, a Select Senate Committee was appointed⁵⁸ to inquire into the extent that intoxicating liquor was adversely affecting outgoing and returned soldiers, and to determine the best method of dealing with the sale of liquor during the period of the war, demobilisation and repatriation.⁵⁹ In its interim report issued in May 1918, the Committee announced that from the start of the war over £70 million had been wasted in Australia on alcohol.⁶⁰ Senator Thomas, who was the Chairman of the Committee, stated that from the outset, the Committee was faced with a difficult problem:

[i]n the view of the fact that Australia had, on two occasions, decided to carry on the war voluntarily, we felt that it would be unjust, and certainly somewhat unfair, to say to a man who decided to volunteer to go to the Front and risk his health and, perhaps, his life, should be denied some personal gratification, and, it be may be, some social pleasures, that were not denied to those who remained behind.

The Committee made recommendations which had dual purposes: discipline and surveillance. Whilst the Committee acknowledged that there some inequity in

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid. Senator Guy refers to evidence that indicated that out of the 12 men who had been sent to the Inebriates Home, half had had been actually under fire and the other half were men who had a trip to Egypt and “did very little except to make a nuisance of themselves.”

⁵⁷ “Untitled”, above n 8.

⁵⁸ In January 1918. See “Soldiers and Drink: Senate Committee Reports”, *Bendigonian*, 28 November 1918, 18.

⁵⁹ Commonwealth, *Parliamentary Debates*, Senate, 16 May 1918, 54 (Senator Thomas).

⁶⁰ “War-Time Prohibition Urged in Sydney”, above n 52.

denying “some personal gratification”⁶¹ to volunteer servicemen who risked their health and even their lives for their country, it recommended that no liquor should be supplied⁶² to invalided soldiers⁶³ whilst under the care of the military.⁶⁴ They deemed those men coming back from the war as sick and disabled, with “their nerves out of order”⁶⁵ were not “normal”⁶⁶ and had no will power.⁶⁷ There was medical evidence before the Committee that, for the returned invalid soldier, particularly if he was suffering shell shock, drink was not to him a beverage “but practically an irritant poison, which had a maddening effect.”⁶⁸ It was suggested that alcohol seriously retarded recovery and it was even suggested that for these soldiers “only one drink might possibly send them mad.”⁶⁹ The Committee also recommended all invalided soldiers be identified by having to “wear a distinguishing badge on the arm”⁷⁰ during the period that they were under medical care.⁷¹

The Committee recommended that an “anti-shouting” law be passed.⁷² During its hearings, it accepted evidence that ‘shouting’ contributed to the ‘unduly’ and immoderate drinking habits of many of the soldiers.⁷³ It was suggested to the

⁶¹ Commonwealth, *Parliamentary Debates*, Senate, 16 May 1918, 54 (Senator Thomas).

⁶² By any hotelkeeper or any other person, except under the direction of a recognised military medical officer. See “‘Anti-Shouting’ Regulations: Federal Action Demanded”, *The Advertiser*, 2 May 1918, 6.

⁶³ Commonwealth, *Parliamentary Debates*, Senate, 16 May 1918, 54 (Senator Thomas).

⁶⁴ Ibid. The Committee recommended that hotel keepers should not be permitted to supply liquor to any invalid soldier until he had been discharged from the Forces.

⁶⁵ “Anti-Shouting”, above n 37.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Commonwealth, *Parliamentary Debates*, Senate, 16 May 1918, 54 (Senator Thomas). Of course, there was the question of what was the definition of an “invalid”. See “Anti-Shouting”, *Port Macquarie News and Hastings River Advocate*, 1 June 1918, 4.

⁶⁹ Commonwealth, *Parliamentary Debates*, Senate, 5 December 1918, 82 (Senator Guy). It was suggested by one reporter that the “the law as it stands” could deal with those returned men, who, by reasons of shattered nerves, had a tendency to over-indulge in alcohol. See “Anti-Shouting”, above n 68.

⁷⁰ “Anti-Shouting Regulations”, above n 62. This was the practice in England. See “Drink to Soldiers: Stringent Recommendation”, *Examiner*, 2 May 1918, 6.

⁷¹ “Anti-Shouting Regulations”, above n 62.

⁷² “Liquor and the Soldier: Select Committee’s Report”, *Western Argus*, 14 May 1918, 29.

⁷³ Ibid. See also Commonwealth, *Parliamentary Debates*, Senate, 5 December 1918, 82 (Senator Guy). Evidence was given to the Committee that drink had interfered with “the Tasmanian quota” when 1 191 men who enlisted in Tasmania failed to embark.

Committee that an ‘anti-shouting’ law would confer a “great benefit”⁷⁴ upon both soldiers and the civilian population.⁷⁵ The restriction, which was analogous to the English law,⁷⁶ meant that it would be illegal for an individual to be ‘shouted for’ or to ‘shout’ for others.⁷⁷ In addition, it was proposed that licensees would assist with the enforcement of this sumptuary regulation.⁷⁸ Any licensee who permitted the law to be broken could risk the loss of their liquor licence.⁷⁹ It was argued that this form of sumptuary regulation would not only benefit the invalided soldier but would especially be an advantage for those very young recruits who had enlisted when the enlistment age had been lowered.⁸⁰

Of course it was to be expected that the churches⁸¹ and temperance societies, particularly the abolitionist Rechabites⁸² would be heavily involved in the anti-shouting campaign and that they would provide evidence before the Senate Committee.⁸³ These organisations sought the total prohibition of liquor traffic in an attempt to force uniformity of habits and tastes upon all members of the population even though Australians exhibited variations in personal characteristics “to an

⁷⁴ Commonwealth, *Parliamentary Debates*, Senate, 16 May 1918, 54 (Senator Thomas).

⁷⁵ Ibid.

⁷⁶ Ibid. Senator Thomas advised Parliament that there was stricter alcohol prohibition in Canada, USA and New Zealand. He argued “that it may be said that [the restrictions] are less in Australia, perhaps, than in any other English-speaking country engaged in the war.”

⁷⁷ Ibid.

⁷⁸ “Anti-Shouting”, above n 9.

⁷⁹ Ibid.

⁸⁰ “Anti-Shouting”, *The Tumut Advocate and Farmers and Settlers’ Advisor*, 4 June 1918, 4.

⁸¹ “Congregational Union”, above n 14. Reverend A Deans BA, convenor of the Church’s public morals committee, moved the following resolution: “[t]hat this assembly heartily approves of the anti-shouting campaign in the interests of national efficiency and economy, especially relating to our brave soldiers. That we ask the Federal Government to issue a minute under the *War Precautions Act* forbidding shouting in the matter of alcoholic beverages during the war and for a year after peace is proclaimed.”

⁸² Commonwealth, *Parliamentary Debates*, Senate, 5 December 1918, 82 (Senator Guy). The Rechabites are members of an organisation whose objectives are to promote voluntary total abstinence from alcohol through temperance education and other activities in the community. See Independent Order of Rechabites Fraternity (New South Wales) Inc, *Rules for an Incorporated Association* (13 October 2007) Independent Order of Rechabites Salford Unity <australianrechabites.org.au/>.

⁸³ Commonwealth, *Parliamentary Debates*, Senate, 16 May 1918, 54 (Senator Thomas). Senator Thomas was a member of this Committee. He claimed that despite being a well-known advocate for temperance, he “never endeavoured to pack the witness-box” with other temperance supporters.

infinite degree”.⁸⁴ As it was doubtful that they would convince the Government to adopt a strict moralistic prohibition to protect men against the temptation of drink, they accepted anti-shouting legislation as the next best measure. They considered that it would do much to protect the returned soldier “who, in his weak, nervous, and shell-shocked condition”⁸⁵ was so easily tempted.⁸⁶

Prime Minister Hughes was very cautious about supporting this type of interventionist legislation, even though the *Select Senate Committee on Intoxicating Alcohol* in their preliminary report had recommended that all invalided soldiers should be prohibited from having any intoxicating alcohol whilst under the care of the military.⁸⁷ Whilst Hughes insisted that his sympathies were with those who were against shouting, he nonetheless argued that the State “should interfere with the individual only when society would derive benefit from such interference.”⁸⁸ As we see in Chapter 6, this stance is strangely incongruous with his desire to interfere in the private lives of Australian when, in the same year, he pressed for the establishment of the Luxuries Board and the prohibition of imported luxuries.

7.2.4 Sumptuary laws are frequently broken that they are apt to bring all law into contempt. An “anti-shouting” law would be more honoured in the breach than in the observance.⁸⁹

Anti-shouting campaigners who advocated for this type of ‘sumptuary regulation’ were not without their critics. Their call for total national abstinence caused them to be lambasted as being “cold-tea cranks”⁹⁰ and accused of ‘shrieking’

⁸⁴ “Notes and Queries: The War and The Drink Traffic”, *The Register*, 22 February 1917, 9.

⁸⁵ Commonwealth, *Parliamentary Debates*, Senate, 5 December 1918, 82 (Senator Guy).

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ “Anti-Shouting: Monster Petition to Prime Minister”, *Daily Observer*, 29 June 1917, 2.

⁸⁹ *The Register*, above n 8.

⁹⁰ “The Same Old Whine”, *Truth*, 16 June 1917, 4. These anti-shouting campaigners were collectively called “the cold-tea coterie”. See “Anti-Shouting”, *The Sunday Times*, 15 July 1917, 8.

moralistic rhetoric.⁹¹ They were branded as “wowsers”⁹² and were blamed for working up war-time hysteria in their attempts to further restrict “the liberty of the subject”⁹³ in the name of national economy and wartime efficiency.⁹⁴ At best, the proposal to prohibit ‘shouting’ altogether was considered by some commentators to be well-meant, a “grandmotherly”⁹⁵ proposal that was easily evaded and “as practicable as trying to hold water in a sieve.”⁹⁶ Supporters argued that ‘shouting’ was a civilised custom that, unless carried to the extreme, was neither detrimental to private nor public good:

Shouting is a social custom of hoary antiquity, and like every other social custom it has some human instinct or need underlying it. It is an act of goodwill and a sealing of friendship and serves a legitimate purpose, and it is difficult to suggest a satisfactory substitute for it.⁹⁷

Many considered believed that if an anti-shouting law was passed, it would be resisted, for most people would treat it as a joke⁹⁸ perpetrated to satisfy the “whimsies of a few dyspeptic wowsers”.⁹⁹ In Britain, ‘innumerable ruses’ had been used by the public “to defeat the new [anti-shouting] order”.¹⁰⁰ Customers evaded the intention of the order by exchanging money when entering and leaving the bars.¹⁰¹ Whilst ‘treating’ was permitted with meals, there was hopeless disagreement with the owners of lunch bars as to what constituted a meal.¹⁰² It was argued that no power on

⁹¹ Ibid.

⁹² Ibid.

⁹³ “Anti-Shouting”, above n 68.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ “Anti-Shouting”, *Western Mail*, 13 July 1917, 28.

⁹⁸ “Anti-Shouting”, *The Richmond River Express and Casino Kyogle Advertiser*, 15 October 1915. There was the suggestion that this type of law was inconsistent with the practice of serving soldiers in the trenches with a ration of rum before and after battle. To debar them from procuring alcohol on their return home was regarded as “pretty inconsistent”. See “Anti-Shouting”, above n 68.

⁹⁹ “Anti-Shouting”, above n 90.

¹⁰⁰ “Anti-Shouting”, above n 98. There were those who were under the impression that “no one in England seriously kicked (sic) when men were told that they would no longer be allowed to shout for each other...the public knuckled down to this [win-the-war measure] without a murmur.” See “How Anti-Shouting Works”, above n 19.

¹⁰¹ “Anti-Shouting”, above n 98.

¹⁰² Ibid.

earth could prevent a man from being hospitable to his friends “if he wants to be hospitable.”¹⁰³ The proposed anti-shouting law was clearly a ‘sumptuary law’ which, like the sumptuary laws of the early modern period, would easily be invoked but it would be difficult to enforce.¹⁰⁴ One critic suggested that whilst such sumptuary law may be well-intentioned, it was probably doomed to fail:

Sumptuary laws may remain on the statute books of the country, but, unless they are broad based on the people’s will, they will lamentably fail of effect.¹⁰⁵

The same critic suggested that there was a need for the education of public opinion, without which, all remedial or restrictive laws “must be ineffectual.”¹⁰⁶ Further, it was argued that any attempt to treat returned Australian soldiers as third class citizens, in regard to the liquor laws “would rightly be strongly resented”:¹⁰⁷

No man should be reduced to the status of an aboriginal as far as liquor is concerned by reason simply of the fact that he has been a soldier.¹⁰⁸

In September 1918, the Liquor Trade Defence Union representatives gave evidence before the Committee¹⁰⁹ about the effects of total prohibition of alcohol.¹¹⁰ They insisted that prohibition would seriously affect the loss of revenue for the Commonwealth and that it would foster a black-market trade in liquor that would then tend to create greater social “evils”.¹¹¹ Unionists argued that Australian soldiers were on the whole “exceptionally temperate”¹¹² and that the sale of liquor did not prejudice recruitment.¹¹³ Furthermore, they contended that prohibition would

¹⁰³ “Anti-Shouting”, above n 90.

¹⁰⁴ Ibid. The reporter suggested that a period of laxity was the inevitable sequel to sumptuary laws. See also “Notes and Queries: The War and The Drink Traffic”, above n 84. See also “The Liquor Question”, *The Register*, 10 August 1916, 7.

¹⁰⁵ “Local Option in Victoria”, *The West Australian*, 25 October 1920, 4.

¹⁰⁶ Ibid.

¹⁰⁷ “Anti-Shouting”, above n 68.

¹⁰⁸ Ibid. At the time, there was a law which “heavily penalised” those who supplied liquor to “blacks.” See “Anti-Shouting”, *Bunyip*, 191 September 1919, 2.

¹⁰⁹ “Soldiers and Drink: Senate Committee’s Enquiries Closed”, *Daily Herald*, 19 September 1918, 7.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

interfere with the personal liberties and profits of “well-balanced citizens”¹¹⁴ who had entered the industry in good faith.¹¹⁵

On 28 November 1918, almost three weeks after the war had ended, the Select Senate Committee tabled its final report.¹¹⁶ In the report, four¹¹⁷ of the seven Senators argued that prohibition was not necessary.¹¹⁸ They claimed that any problems with over-indulgence in drink could be remedied with anti-shouting legislation. On the other hand, the minority¹¹⁹ urged the adoption of total prohibition during the wartime and repatriation period.¹²⁰ However, by this time, the Committee’s recommendations to establish a wartime anti-shouting law had lost much of their relevance and urgency. Eventually, the proposal to impose an Australian ‘sumptuary law’ restricting the practice of ‘shouting’ or ‘standing treat’ became another in a long list of interesting wartime legal curiosities. However, the anti-shouting issue was to raise its head again during the Second World War; but this may be the subject for future scholarship.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ “Soldiers and Drink: Senate Committee Report”, *Chronicle and North Coats Advertiser*, 29 November 1918, 4. See also “Pinch for Stale News”, *Punch*, 5 December 1918, 3. The commentator suggested that the Committee of seven Senators had broken a record by bringing in their report after the war was finished.

¹¹⁷ The Committee members in the majority were Senators Foll, Grant, Rowell and Buzacott.

¹¹⁸ “Soldiers and Drink: Senate Committee Report”, above n 116.

¹¹⁹ The Committee members in the minority were Senators Thomas, Guy and Bolton.

¹²⁰ “Soldiers and Drink: Senate Committee Report”, above n 116.

7.3 Sumptuary law at the movies: *Entertainments Tax Act 1916* (Cth)

*Picture shows are becoming a cancer which is eating into the very vitals of our national, domestic, and religious life, and poisoning the whole.*¹²¹

In 1916, it cost an ordinary family of four as little as threepence (3d)¹²² each to be seated in the stalls to watch *The Floorwalker*, the latest Charlie Chaplin movie.¹²³ In this movie, Chaplin adopting his traditional ‘Tramp’ persona, attempts to leave a shopping establishment with half the lace counter in his pockets. When a store detective (the eponymous floorwalker) attempts to apprehend him, chaos breaks out and this results in the inevitable comedic chase on a “running staircase”¹²⁴ and a hilarious ‘mirror scene’. This kind of light-hearted movie was the most popular and, in most cases, the only form of amusement for working-class families during the war years.¹²⁵ Although the national standard of living had improved slightly over the last 30 years,¹²⁶ this social class did not have much disposable income.¹²⁷ However, many could afford to scrape together just enough pennies to attend the movies once a week “to get a little relaxation from the humdrum course”¹²⁸ of their every-day lives and enjoy a break away from war time anxieties.¹²⁹ The ‘well-to-do’ had a wider choice of entertainment: they had the luxury of being able to afford to attend live theatre, concerts, opera and “legitimate drama.”¹³⁰ Moreover, they could also pay an

¹²¹ “Picture Shows Condemned”, *Illawarra Mercury*, 3 March 1916, 1.

¹²² For an explanation of currency during this period, see Lawrence Officer and Samuel Williamson, *Five Ways to Compute the Relative Value of Australian Amounts, 1828 to the Present*, Measuring Worth <measuringworth.com>.

¹²³ “Entertainments”, *Geelong Advertiser*, 15 August 1916, 5. If the family wanted more comfortable seats they could spend up to a shilling each for seats in the dress circle.

¹²⁴ *Ibid.*

¹²⁵ There was some suggestion that “formerly” there used to be a lot of dancing but this type of amusement was considered not to be suitable for families. See Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 147 (Mr Mathews).

¹²⁶ *Ibid* 148 (Mr Archibald).

¹²⁷ *Ibid* 132 (Mr Kelly).

¹²⁸ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 55 (Senator Guy).

¹²⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 134 (Mr Fenton).

¹³⁰ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 68 (Senator Bakhap).

extra booking-fee to reserve their seats in theatres.¹³¹ They could enjoy tax-free entertainment in their homes;¹³² “they [had] their balls and parties, with bands playing; they have their pianos and pianolas”.¹³³ Unlike people of ‘small means’, the upper classes generally did not patronise “picture entertainments”¹³⁴ and, if they did, they would not purchase the 3d or 6d tickets for the stalls.¹³⁵ They could afford to pay for the more expensive seats.

During the first two decades of the twentieth century, the American movie industry flourished and there was a corresponding growth in the importation of American movies into Australia.¹³⁶ This new form of entertainment was considered to be mainly working man’s entertainment and to accommodate it, thousands of picture theatres appeared in both urban and rural areas throughout Australia.¹³⁷ For instance, in Sydney and in its surrounding suburbs there were 113 picture theatres, with an average weekly attendance of 427 000.¹³⁸ Allowing for an average charge of sixpence for admission, this attendance meant that approximately £11 000 was spent each week on this form of entertainment.¹³⁹ These theatres provided evening sessions on most nights and there were various sessions during the day for families with

¹³¹ Ibid 68 (Senator Findley). Senator Findley suggested that many of the lower classes were willing to suffer the inconvenience and discomfort of waiting outside places of entertainment because they were not in a financial position to pay for a higher-priced seat. The richer classes, on the other hand, only occasionally patronised “picture entertainments” because they preferred to go to the theatre and could “usually pay a booking-fee in addition to the price of the ticket in order to engage their seats beforehand.”

¹³² Ibid 44 (Senator Stewart).

¹³³ Ibid.

¹³⁴ Ibid 68 (Senator Bakhap).

¹³⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 148 (Dr Maloney). Another MP (Mr Hannan) advised the House that, as a well-paid politician, he could, with his wife and children, visit “picture shows, the drama, musical comedies, and the vaudeville”. He stated that he could afford “to pay any price that [was] put on as a result of this taxation.” However, he pointed out that five years before he came to the House, when he was working for 8 s 6d per day just “as the biggest section of [the community] was now doing, he could not afford to pay for this type of entertainment. See also Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 159 (Mr Hannan).

¹³⁶ “Picture Shows”, *The West Australian*, 3 May 1916, 8. In May 1916, the average number of pictures “released” in Perth annually was about 40.

¹³⁷ “Picture Shows”, *Northern Star*, 29 April 1916, 3.

¹³⁸ Ibid.

¹³⁹ Ibid.

younger children.¹⁴⁰ However, despite attendance numbers rising dramatically after the advent of ‘moving pictures’ in Australia, the high costs of movie importation,¹⁴¹ advertising and theatre hire, meant that many picture show proprietors only made a bare living.¹⁴² Proprietors feared their income would be further curtailed after the State and Federal Governments decided to impose a tax on the price of admission.¹⁴³

7.3.1 War Games

*This is not the time to play games, for we are engaged in a life and death struggle for the existence of the Empire.*¹⁴⁴

During the war, Australian governments were anxious to find all possible opportunities to raise revenue and in most circumstances they tended to follow the austerity measures implemented by the British Government. An amusements or entertainments tax was one such measure.¹⁴⁵

War conditions have brought about a change of circumstances in taxation, as in everything else, and we are quite justified in adopting every available source of income.¹⁴⁶

In 1916, the British Government had imposed an inflexible¹⁴⁷ entertainments tax¹⁴⁸ on ‘amusements’ as part of its policy to raise revenue to fund the war effort.¹⁴⁹

¹⁴⁰ One critic suggested that “the picture shows” were running all day and “practically all night”. See Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 75 (Mr Corser).

¹⁴¹ There were 50% customs duties imposed on imported films. See “An Amusement Tax”, *The Register*, 11 September 1916, 4.

¹⁴² Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 139 (Mr Mathews). Mr Mathews said he doubted whether many proprietors made more than 8% on the money they had invested. It was also suggested that attendance numbers had dwindled since the beginning of the war because many who had patronised these shows “had gone to the Front”.

¹⁴³ This was not a concern for many politicians who argued that this level of profit was due to mismanagement rather than the loss of patronage. See Ibid 148 (Mr Archibald).

¹⁴⁴ “Lord Robert’s Warning: No Time for Games”, *The Register*, 31 August 1914, 9. Whilst Lord Roberts was specifically referring to cricket and football, this exhortation was used as part of the rhetoric used by those who opposed many forms of amusements during the war. See Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 55 (Senator Lynch).

¹⁴⁵ Ibid 44 (Senator Stewart).

¹⁴⁶ Ibid 49 (Senator De Largie).

Surprisingly, it seemed to work well and “the people [in the Old Land] were cheerfully putting up with it.”¹⁵⁰ Following Britain’s lead, and expecting the same success, the Australian Government resolved to impose a similar sumptuary tax, and at short notice the *Entertainments Bill* was brought before Parliament.¹⁵¹ The legislation did not have an easy passage. When the Bill failed to pass through both Houses, Senate and House Committees were appointed to examine the viability of this proposed tax. The Senate Committee originally proposed that it would be ‘just’ for the government to impose 1d tax on a 6d entertainment ticket and that the 3d ticket, usually favoured by children and very profitable for theatre proprietors, should be exempted from tax.¹⁵² By December 1916, the government had dropped the proposal to tax sixpenny tickets.¹⁵³ This was mainly as a result of the strong pressure on government and on the Prime Minister, in particular, from picture show proprietors who contended that there was “a well-defined and limited sum”¹⁵⁴ that the public was prepared to spend on the price of admission.¹⁵⁵ The government had characterised the entertainments tax as a “temporary tax”¹⁵⁶ that “would not have

¹⁴⁷ The British tax had practically no exception and there was “certainly no exemption on a sixpenny admission fee”. See Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 144 (Mr Burchell). On all prices from 6d upwards, there as a graduated scale of tax.

¹⁴⁸ See *Finance (New Duties) Act 1916*, 6 Geo 5, c 11 and *Finance Act 1916*, 6 Geo 5, c 11, s 12. In England, the tax was levied on every form of entertainment, with practically no exemptions. See Ibid 144 (Mr Burchell).

¹⁴⁹ See Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 144 (Mr Burchell).

¹⁵⁰ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 53 (Senator Newlands). One politician argued that this assertion was questionable. He contended that “we often get information [about what is happening in Britain] that is not correct.” See Ibid 139 (Mr Mathews).

¹⁵¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 132 (Mr Kelly).

¹⁵² Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 79 (Mr Sampson). The original proposal included a tax on the 3d tickets. However, there was a strong protest about a tax that appeared to target ‘kiddies’. There were some exemptions, such as when no admission fee was charged. See Ibid 145 (Mr Page).

¹⁵³ “Federal Entertainments Bill: Tax on Sixpenny Tickets Dropped”, *The West Australian*, 19 December 1916, 6.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid. This proposed change in the taxing threshold would mean a drop of £100 000 in anticipated revenue.

¹⁵⁶ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 46 (Senator Findley).

been heard of but for the war.”¹⁵⁷ It was anticipated that people would “rather welcome [this] taxation”¹⁵⁸ or at least “not seriously oppose it.”¹⁵⁹ In the 1916 Federal Budget statement on 27 September 1916, the Government predicted that this new tax could be expected to yield £1 000 000 in a half year.¹⁶⁰

It was proposed that the tax be paid on all payments for admission to ‘entertainment’, which included “any exhibition, performance, lecture, amusement, game or sport”.¹⁶¹ Some forms of entertainments were to be exempted from the tax.¹⁶² An exemption was also allowed where the Tax Commissioner was satisfied that the takings would be devoted to philanthropic, religious or charitable purposes or if the entertainment was of a wholly educational character.¹⁶³ There would also be no tax on entertainment that was intended for children and where the charge was less than sixpence per person.¹⁶⁴

The Federal Government decided not to tax the proprietors controlling the entertainments, because it presumed that proprietors would, in all likelihood, just pass the tax onto their clientele.¹⁶⁵ Instead, the tax was to be directly added to the price of admission to picture shows, theatres and sporting fixtures.¹⁶⁶ A number of

¹⁵⁷ Ibid.

¹⁵⁸ Ibid 51 (Senator Turley).

¹⁵⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 143 (Mr Massy-Greene).

¹⁶⁰ “Federal Budget: Heavy New Taxation”, *Wodonga and Towong Sentinel*, 29 September 1916, 3. This estimate was later considered to be erroneous as it had been “based on an error”. A more correct estimate of the revenue which the Government expected to raise from this form of taxation was £350 000 in a half year. See Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 44 (Senator Russell).

¹⁶¹ *Entertainments Tax Assessment Act 1916* (Cth) s 2.

¹⁶² Ibid s 12. In South Australia, the exemptions applied to “horticultural, floricultural (sic), poultry, dog and similar shows.” Proceeds from patriotic, religious, educational, and scientific entertainments solely devoted to any of these purposes were also to be tax-free. See “The Amusement Tax: The Government Proposals”, *The Advertiser*, 30 August 1916, 11. See also *Stamp Act Further Amendment Act 1916* (SA) s 10(3). There was also no tax payable on complimentary tickets. See “Entertainments Tax: In Force on January 1”, *Sydney Morning Herald*, 23 December 1916, 10.

¹⁶³ *Entertainments Tax Assessment Act 1916* (Cth) s 12 (a)–(b).

¹⁶⁴ Ibid (Cth) s 2(c). There was a further exemption for entertainment that was provided for partly educational or partly scientific purposes by a society, institution, or committee not conducted or established for profit. See Ibid s 12(d).

¹⁶⁵ Commonwealth, *Parliamentary Debates*, Senate, 3 October 1916, 12 (Senator Findley).

¹⁶⁶ Ibid.

States had already passed this type of legislation,¹⁶⁷ with the result that many consumers were facing double taxation on their entertainments.¹⁶⁸ Proprietors of the various entertainments also expected to experience “manifest inconvenience”¹⁶⁹ as well as additional responsibilities with the introduction of the tax.¹⁷⁰ Proprietors were obliged to exhibit a notice at each entrance to the venue stating the amount of charge for admission and the amount of Federal tax payable on the charge.¹⁷¹ They were not only to act as collection and enforcement agents for the Government,¹⁷² but would also incur heavy fines if they did not comply with these duties.¹⁷³ In March 1917, Frank O’Dowd, the proprietor of Prahran “Pops”, was charged with failing to forward, by 19 February 1917, all stamped tickets to the Deputy Commissioner of Taxation. He was also charged with failing to cause all persons purchasing tickets above 6d to pay the relevant stamp duty. On each charge, he was fined £5, with £1/1/ costs. Mendel Saider, the proprietor of the Armadale Picture Theatre, was charged with two similar offences and on each charge was fined £10 with £2/2/ costs.

¹⁶⁷ These included South Australia and Tasmania. See *Amusements Duty Act 1916* (Tas) and *Stamp Act Further Amendment Act 1916* (SA).

¹⁶⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 135 (Mr Fenton). In South Australia, it was estimated that approximately £30 000 would be returned in revenue from the South Australian amusement tax. See “The Amusement Tax: The Government Proposals”, above n 162.

¹⁶⁹ “An Amusement Tax”, above n 141.

¹⁷⁰ Ibid.

¹⁷¹ “Entertainments Tax: In Force on January 1”, above n 162.

¹⁷² “The New Taxes: How They Will Affect the Picture Shows”, *The Bathurst Times*, 3 October 1916, 3. Tickets, with no stamp duty attached, had to be purchased from the government at an increased price. See also “Entertainments Tax”, *Northern Star*, 30 December 1916, 4. Proprietors had also increased reporting obligations (particularly those using ‘automatic barriers’) and had to render returns to the Commissioner of Taxation. The proprietors had also to give security to the Commissioner to ensure that the full amount of taxation would be paid to the Taxation Office. See “Entertainments Tax: In Force on January 1”, *The Sydney Morning Herald*, 23 December 1916, 10. See also “State Amusement tax: Provisions of the Bill”, *The Mercury*, 8 December 1916, 8.

¹⁷³ See “Amusements Tax”, *Prahran Chronicle*, 24 March 1917, 5. On 1 December 1917, another proprietor was accused of being guilty of behaviour that amounted “almost to a swindle in the manipulation of tickets”. See “Amusements Tax Evaded”, *The Argus*, 13 December 1917, 4. See *Entertainment Tax Assessment Act 1916* (Cth) ss 14–18. The offences included forging of die and stamps (14 years imprisonment); making paper in imitation of stamp paper (imprisonment for seven years); unlawful possession of stamp paper (imprisonment three years); and fraudulent acts (imprisonment for one year).

An entertainments tax had the potential to be used by government to raise an enormous revenue from social activities which had not been previously taxed.¹⁷⁴ As seen in Chapter 6, some people had, to varying degrees, a little more surplus income than before the war.¹⁷⁵ By 1917, a large amount of money was changing hands in Australia “in connexion (sic) with outdoor and indoor entertainments.”¹⁷⁶ Some attempted to justify the imposition of this tax by arguing that people were inclined to forget that Australia was at war.¹⁷⁷ It was argued that those who had such “surplus cash,”¹⁷⁸ after “the ordinary demands of life [had] been met,”¹⁷⁹ and used it to patronize places of amusement, should be expected to “cheerfully acquiesce”¹⁸⁰ to a tax that would meet the extra demands of the war.¹⁸¹ It was suggested that whilst some Australians were doing their patriotic duty by ‘going to the front’, others should be equally patriotic by “finding the money for the prosecution of the war.”¹⁸²

7.3.2 A Class Tax

*I am quite sure that people who patronize picture shows and sports of different kinds will be quite prepared to pay their share of taxation for the conduct of the war.*¹⁸³

An entertainments tax was ostensibly “one of the easiest methods possible”¹⁸⁴ to raise revenue for the war effort. Those who supported the creed that the war

¹⁷⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 79 (Mr Sampson).

¹⁷⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 132 (Mr Kelly).

¹⁷⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 79 (Mr Sampson).

¹⁷⁷ “Amusement Tax”, *Newcastle Morning Herald and Miners’ Advocate*, 2 October 1916, 5.

¹⁷⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 142 (Mr Massey-Greene).

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Commonwealth, *Parliamentary Debates*, House of Representatives, 6 December 1916, 133 (Mr Charlton).

¹⁸³ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 53 (Senator Newlands).

should be won at ‘any cost’ thought that it was only fair that everyone should make some form of sacrifice “to carry on the war”.¹⁸⁵ The Treasurer, Mr Poynton, argued that this platitude alone justified the imposition of a form of consumption tax.¹⁸⁶ He maintained that if people could not afford to pay the tax, they should go less frequently to these places of entertainment.¹⁸⁷ This uncompromising policy was not welcomed by some pro-tax politicians who believed that, as a consequence of the combined operation of both the Federal and State amusement taxes, there might be a danger that the anticipated revenue from this tax might ‘dry up altogether’.¹⁸⁸ This position might be further exacerbated if the tax were to dislocate “that branch of industry”¹⁸⁹ and close up many places of amusements.¹⁹⁰

This form of “justificatory discourse”¹⁹¹ became a strong validation for a sumptuary tax that, in most part, was considered a “special class tax”¹⁹² that mainly targeted the working classes. Whilst this consumption tax was to apply to many types of entertainment, it would, according to some parliamentarians, mainly “clip”¹⁹³ the

¹⁸⁴ Ibid 46 (Senator Findley).

¹⁸⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 79 (Mr Sampson), 81 (Mr Higgs). Mr Higgs supported the tax and argued that “[w]hile we are as a community are attending picture theatres and other establishments the price of admission to which is 6d or 1s, there are men in the trenches in Europe who have to be provided for, and we can provide for them only by taxation.”

¹⁸⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 148 (Mr Poynton). In October 1916, the Treasurer Mr Higgs resigned because of the split in his party over conscription. Mr Poynton was then appointed Federal Treasurer.

¹⁸⁷ Ibid 147 (Mr Mathews). See also “Federal Finances and New Taxation”, *Daily Herald*, 29 September 1916, 4. The reporter in this article suggested that this was not a compulsory levy, “[but] the only means of escape is to abstain from patronising public entertainments, which are almost as necessary for the mental wellbeing of the community as is food to keep body and soul together.”

¹⁸⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 8 December 1916, 123 (Mr W Elliot Johnson).

¹⁸⁹ Ibid.

¹⁹⁰ Ibid. There was also a concern that the government would lose the benefit of customs duty on the importation of films, accessories and machinery associated with the film industry. See “Picture Shows”, *The Brisbane Courier*, 22 January 1916, 7. It was feared that the tax might mean the closing down of 90 out every 100 picture show theatres and that this would have an enormous impact on the 7000 workers in the industry. See “Amusement Tax”, above n 177.

¹⁹¹ Hunt, above n 3, 276.

¹⁹² Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 46 (Senator Findley).

¹⁹³ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 148 (Mr Fenton).

amusements of the very poor whilst “allowing those of the very rich to go free”.¹⁹⁴ The tax in effect, was considered by critics as a “levy upon a luxury”:¹⁹⁵ a simple luxury enjoyed by the poorer classes.

This was not a concern to Mr Archibald MP, who held that the working classes were in a much better position than they had been in previous years:

One has only to look at our working classes, and especially our women folk, and to note the way that they dress, to satisfy oneself that this talk of poverty amongst the workers is all claptrap...¹⁹⁶

Mr Higgs, a former Federal Treasurer, suggested that if people wanted entertainment, they need not necessarily go to a picture show or a theatre:

Following the advice of Buskin (sic), they might sit on a hill and watch the clouds on a beautiful afternoon, or spend the evening in watching the stars. If they prefer a theatre, what is to prevent their coming to this House, admission to which is free.¹⁹⁷

However, he described the tax as indirect taxation “of the worst kind”¹⁹⁸ because it was mainly targeted at one class.¹⁹⁹ Others described it as a ‘class tax’ on one section of the community “which believed in having some form of social enjoyment”.²⁰⁰ Mr Fenton MP criticised the Federal government who he said appeared to have no compunction about “continually heaping [tax] on the shoulders

¹⁹⁴ Ibid. Others disputed this contention. Mr Archibald MP, for instance, claimed that “the cost of war comes largely out of the revenue obtained from the income tax and the land tax”. Mr Burns challenged this claim, suggesting that such taxes were “passed onto them”. See also comments made by Dr Maloney who argued that government might consider taxing the “guzzling” that was carried on at Lord Mayors’ banquets and other large dinner parties.

¹⁹⁵ “South Australian Parliament: Legislative Council”, *The Advertiser*, 20 September 1916, 11.

¹⁹⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 148 (Mr Archibald).

¹⁹⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 81 (Mr Higgs).

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 159 (Mr Hannan).

of those least able to bear it”²⁰¹ even when the State governments were doing the same.²⁰²

However, other State and Federal politicians disputed that the tax was a ‘class tax’ because it would apply to all forms of amusements (including racing, cricket and football). Yet, for many there was no doubt that the tax primarily targeted those who patronised picture show movies:²⁰³

[this is] an irritating class levy which has proved to be exceedingly unfair in its incidence, even in London and other large cities, where places of amusement are attended by tens of thousands of a floating population upon whom-as well as the resident population- the burden of the tax falls.²⁰⁴

It was thought by some to be a “miserable tax”²⁰⁵ upon the ‘working man’.²⁰⁶ Mr Mathews MP condemned those who advocated that there should be no enjoyment during the war period and intimated that everyone should “be in sackcloth and ashes”.²⁰⁷ Mr Fenton maintained that ‘the picture show’ was “the working man’s entertainment”²⁰⁸ and that, before the ‘pictures’ came into existence, it was rare for workers to enjoy any leisure activities.²⁰⁹ He pointed out that movies were a new and rare luxury for working families and that the relative low admission price to the movies meant that “father, mother and children could go at least once per week.”²¹⁰ It was argued that taxation of sixpenny (6d) tickets would mean a great deal of hardship to a working man with a family²¹¹ and that this type of an impost had the

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ “The Amusement Tax: The Government Proposals”, above n 162.

²⁰⁴ “An Amusement Tax”, above n 141.

²⁰⁵ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 55 (Senator Guy).

²⁰⁶ Ibid.

²⁰⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 139 (Mr Mathews).

²⁰⁸ Ibid 134 (Mr Fenton).

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

potential to “farther and farther remove”²¹² any sort of luxury of life from the masses.²¹³

Matthews pointed out that the working classes had already been savagely hit by large increases in the cost of their furniture, food and rent, and the proposed tax sought to squeeze them even more by increasing the cost of the only cheap form of amusement they had been able to afford.²¹⁴ Matthews even went so far as to suggest that the *Entertainments Tax* was only a subterfuge to compel the closing down of places of entertainment, thus forcing male employees to enlist.²¹⁵

The proposal to tax amusements was met with an enormous amount of hostility and criticism from both theatre proprietors and movie goers despite the flood of nationalistic sentiment from Parliament and the press about the need to raise wartime revenue whilst also protecting public morals from the salacious effects of the movies.²¹⁶ There was concern that the imposition of this type of tax was short-sighted. It was argued that it would not only adversely affect patrons but it would discourage those involved with the entertainment industry from continuing to gratuitously provide their services and facilities in raising funds for the war effort.²¹⁷ It was also suggested that the tax would adversely affect “tens of thousands” of people who were, directly and indirectly, engaged in the theatre, and show business in Australia; the tax would “strike a blow”²¹⁸ and could mean the “absolute ruination”²¹⁹ of this section of the entertainment industry.²²⁰

²¹² Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 46 (Senator Findley).

²¹³ Ibid.

²¹⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 147 (Mr Mathews).

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 159 (Mr Hannan).

²¹⁹ Ibid.

²²⁰ Ibid.

7.3.3 Movies and morals

*We should tax a man, not for what he does, but for what he has.*²²¹

There were others who considered that the tax could also be regulatory and target extravagance, luxury and the erosion of morals in the Australia.²²² There were pessimists who were fearful that the hegemonic order was increasingly being challenged by new forms of popular culture and leisure activities, particularly those enjoyed by the ‘profligate’ lower classes: “[a]s all people of a non-saving disposition, having money in their pockets will do, they will naturally go out and try and get the best they can out of life.”²²³ Movies were particularly beleaguered as being an ‘evil’ or a ‘vice’ that caused a “dreadful effect”²²⁴ on the young mind.²²⁵ It was argued that the quality of the subjects presented in popular movies was not conducive “to the best results of the juvenile mind”²²⁶ and that the increased popularity of movies was threatening to become a kind of “national disease” that needed to be excised.²²⁷

It was argued by some alarmists that picture shows pandered to lust by depicting incidents that bordered on the indecent, or at least encouraged “an inane mirth,”²²⁸ which they considered was quite inconsistent with the gravity of the war years.²²⁹ They argued that only a class of movie, that was imbued with convincing

²²¹ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 44 (Senator Stewart).

²²² Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 132 (Mr Kelly).

²²³ Ibid.

²²⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 139 (Mr Mathews).

²²⁵ Ibid. Mr Mathews maintained that the same thing had been said about the dreadful effect of the Edward Lytton Wheeler “Deadwood Dick” yarns found in “dime novels” published between 1877 and 1897. These were also referred to as the “penny dreadfuls”. See “The Picture Shows”, *Western Mail*, 7 July 1916, 31 -32.

²²⁶ “Children and Picture Shows”, *Newcastle Morning Herald and Miners’ Advocate*, 21 October 1916, 12.

²²⁷ Ibid.

²²⁸ “Picture Shows”, above n 136.

²²⁹ Ibid.

moral lessons or those movies which were “clean, sweet and wholesome,”²³⁰ should be shown to the public.²³¹

When the entertainments tax was being proposed, much of the economic discourse surrounding its introduction was coupled with moralising critique analogous to that expressed by reformers of the early modern age who pressed for sumptuary laws.²³² Both critiques invoked concerns about ‘present’ moral danger in times of national crisis and appealed for urgent government intervention to help alleviate these anxieties:

No sensible man would approve of this method of raising revenue in normal times, but it is necessary to meet a special emergency.²³³

As seen in Chapters 3, 5 and 6, the post-Federation Australian government was already predisposed to intervene in widening spheres of social and economic life. As anxieties intensified about wartime spending, so did the attacks on luxury and extravagance, which were seen as the ‘enemy’ of all righteous Australians who valorised both thrift and self-sacrifice as crucial patriotic virtues.²³⁴ For such people, an amusement was a luxury, and they demanded: “why should not people pay [tax on] a luxury?”²³⁵

Even though the government insisted that the tax was introduced as a war measure to assist with ‘prosecuting’ the war, there was no doubt that the morals of ‘the masses’ were the main target of this tax.²³⁶ Dr Maloney MP made it very clear that he resented the actions of the ‘wowser’ element who he considered to be

²³⁰ Ibid.

²³¹ Ibid.

²³² Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 77 (Mr Rodgers).

²³³ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 148 (Mr Archibald).

²³⁴ Ibid.

²³⁵ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 46 (Senator Finley).

²³⁶ Ibid.

members of an “aristocracy of religion,”²³⁷ who having no regard for the pleasures of others, found their only pleasure within “the narrow limits of the churches.”²³⁸ Mr Hannan MP, argued that the tax was pressed by ‘wowsers’ who did not go to any ‘entertainments’ but sought, through their letters to the press,²³⁹ to condemn and penalise “tens of thousands of young Australians”²⁴⁰ who went to the movies, football matches and plays.²⁴¹ He contended that ‘wowsers’ who did not “believe”²⁴² in theatricals or pictures shows would eventually seek the closure of such places of entertainment.²⁴³ Hannan suggested that these ‘wowsers’ were the same sort of moralists who considered that a woman who took her children to a picture show was not ‘respectable’ and the sort who wrote letters to the press about the ‘immoral’ practice of “mixed bathing.”²⁴⁴

Movie aficionados such as Dr Maloney, argued that movie-making should be celebrated because it had enormous potential as an uplifting educative tool for the community.²⁴⁵ He maintained that ‘movies’ could display to audiences the scenery and “manufactures”²⁴⁶ of many lands as well as demonstrate to them the devastating effect of war on life and property.²⁴⁷

Patrons...have...learnt more of history, geography and science, more of the arts and mysteries of trade and manufacture, more of the manners and customs of other peoples, more of the world in which they live, than they have learned from books and all other sources of information.²⁴⁸

²³⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 159 (Dr Maloney). Dr Maloney sarcastically suggested that a tax be levied on the “threepenny bit” collected during church services.

²³⁸ Ibid.

²³⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 159 (Mr. Hannan).

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid 159 (Dr Maloney).

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ “The Picture Shows”, above n 225.

Senator Findley argued that in earlier years, the lower classes had had few opportunities for ‘mental improvement’ or the ‘privilege’ of the sort of pleasures “which fell to the lot of a certain favoured section of the community.”²⁴⁹ One journalist argued that the government should not deny “harmless pleasure”²⁵⁰ to the younger generation. He maintained that it was far better for them to attend pictures than for them to “be walking the streets and hanging around hotels till all hours”.²⁵¹ Mathews suggested that the Government should sponsor amusements in the country “in order to give people in isolated portion of [the] continent an opportunity of seeing some life instead of having their lives restricted.”²⁵² Similarly, Mr Page MP insisted that the movies provided the opportunity for audiences to participate in palpable forms of emotional release, particularly in times of personal disquiet:

When an amusing picture is shown on the screen, the theatre is filled with that sweetest sound on earth...the rippling laughter of children. I never hear it without feeling myself a better man; and those who think that the human heart cannot be touched by pictures have only to look round when a sad play is being shown to see the handkerchiefs raised surreptitiously in the darkened hall.²⁵³

Whilst many movies were not always considered educational, some argued that they were, nevertheless, very interesting and enjoyable.²⁵⁴ Even if they were at times ‘suggestive,’ they were according to some politicians, considered no more ‘suggestive’ than live stage shows and what was seen in every-day life.²⁵⁵

²⁴⁹ Commonwealth, *Parliamentary Debates*, Senate, 18 December 1916, 46 (Senator Findley).

²⁵⁰ “Picture Shows”, *The Brisbane Courier*, above n 190.

²⁵¹ Ibid.

²⁵² Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 139 (Mr Mathews).

²⁵³ Ibid 142 (Mr Maloney). See also Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 76 (Mr Page).

²⁵⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 December 1916, 139 (Mr Mathews).

²⁵⁵ Ibid.

Eventually, on 21 December 1916 the *Entertainments Tax Act 1916* (Cth) gained assent and came into operation on 1 January 1917.²⁵⁶ A flurry of deputations from the entertainment industry and an huge backlash from the public concerning the possible imposition of tax on 3d and 6d tickets,²⁵⁷ forced the Government to alter its original proposal and to declare that the tax on admission tickets over 6d was to be as follows:

- Tickets costing more than sixpence, but not exceeding one shilling would attract 1d tax
- Tickets costing more than one shilling, the rate of tax was 1d for the first shilling, and one half-penny for every sixpence or part of sixpence by which the payment exceeded one shilling²⁵⁸

This tax, although originally purported to be a war time measure, continued to be a source of government revenue for the following 17 years until it was repealed in 1933.²⁵⁹ Over that period, the rates of tax were varied²⁶⁰ and some further exemptions and exceptions were provided. These included exemptions for entertainments that funded the erection, maintenance or furnishing of halls for public purposes or memorial halls for the use of returned servicemen.²⁶¹ It is interesting to note that a similar form of tax was imposed on entertainments during World War II, but again this is a topic for future research.²⁶²

²⁵⁶ “Entertainments Tax”, above n 172. Pending the printing of “Federal stamp tickets”, all proprietors of entertainments were to affix on admission tickets, in postage stamps, the amount of tax payable, before tickets were presented at the entrance to the entertainment.

²⁵⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 December 1916, 46 (Mr Findley).

²⁵⁸ *Entertainments Tax Act 1916* (Cth) s 4.

²⁵⁹ *Financial Relief Act 1933* (Cth).

²⁶⁰ See *Entertainments Tax Act 1918* (Cth); *Entertainments Tax Act 1919* (Cth); *Entertainments Tax Act 1922* (Cth); *Entertainment Tax Act 1925* (Cth). In 1922, tax was abolished on tickets costing less than a shilling.

²⁶¹ *Entertainments Tax Assessment Act 1924* (Cth).

²⁶² See *Entertainments Tax Act 1942-1949* (Cth) & *Entertainment Tax Assessment Act 1942-1949* (Cth).

7.4 Conclusion

Sumptuary regulation has never been limited to the regulation of appearance; at various times it also extended to the regulation of other aspects of social life including food, alcohol and entertainment. This chapter explores the proposed wartime Anti-Shouting laws and the *Entertainments Tax Act 1916* (Cth), both legislative projects which, although not concerned with the regulation of appearance, were nevertheless distinctively marked by sumptuary characteristics. Both projects were advocated by the state in response to perceived threats of social disorder and moral laxity, and were proposed as a particular ‘imagined social order’ during a period of uncertainty and anxiety.

The discourse that surrounded the creation of these sumptuary projects was discursively linked with wartime discourse concerning the notions of luxury, morality and national duty. This chapter has illustrated that the Anti-Shouting laws and the *Entertainments Tax Act 1916* (Cth) were also disciplinary sumptuary projects that targeted the choices made by individuals about their consumption practices. Furthermore, the chapter also demonstrates the manner in which these projects were intimately linked with wider concerns that government had for national well-being during a period of social and economic crisis.

After our digression into other areas of war-time sumptuary regulation, Chapter 8 takes us back into the realm of ‘appearential’ sumptuary regulation. In the post-war period we begin to see, in discourses surrounding the importation of inexpensive clothing, a discursive shift from a persistent emphasis on the moralisation of luxury to an increasing focus on national economic well-being. However, Chapter 8 demonstrates that this discursive shift was less apparent when the ‘problem’ of women’s fashion was being discussed in Parliament or the press.

8 WOMEN AND MORALISATION V MEN AND RATIONAL PROTECTIONISM

The fickleness of that symbolical lady [Dame Fashion] has been blamed by the boot manufacturers, milliners, clothing manufacturers and others for many of the trade depressions that have taken place at various times.¹

8.1 Purpose and structure of this chapter

As was shown in Chapter 4,² during the first decade following Federation there was a preponderance of moralising rhetoric within Parliament and throughout the press attacking women and their alleged extravagance in dress.³ In that chapter it was argued that this type of rhetoric took on a noticeable engagement with the language of sumptuary regulation. Chapter 6 contends that during the war years this type of gendered moralising rhetoric was zealously linked with a critique of luxury and that there was a constant demand for government, already increasingly concerned with economic waste and national ruin, to impose sumptuary regulation.⁴ Whilst moralising invective was directed largely against general female extravagance it seems that during this period the lower classes became the primary target of government sumptuary interventionist policies.

By the early 1920s, the influx of low-priced imported apparel had increased enormously. As a result, the sumptuary impulse became even more manifestly apparent in the vigorous attempts by protectionists to suppress the importation of such goods. However, by the mid-1920s, it *appeared* that the sumptuary focus was beginning to shift from a moralising critique of luxury and extravagance to a

¹ “The Cost of Fashion: The Brush Trade Suffers”, *Gippsland Times*, 3 August 1925, 6; “Dame Fashion and Tariff Duties”, *The Bathurst Times*, 8 August 1925, 5.

² See above Chapter 4.

³ See above Chapter 4.

⁴ See above Chapter 6.

protectionist discourse that focused more on the well-being of the national economy. However, this chapter and what follows will illustrate that whilst excessive consumption of imported goods, including women's felt hats, corsetry, hosiery and men's underwear, was increasingly linked with economic protectionism and national interest, there still nevertheless remained during this time, strong threads of sumptuary moralisation intertwined with protectionist discourse.

What becomes apparent from this chapter is that these threads of sumptuary moralisation only remained evident in discourses associated with women and 'fashionable apparel'. Women's fashion persistently continued to excite general moral condemnation and it was clear that it stimulated the sumptuary reflex to a much greater extent than any matter concerning imported male apparel. This disparity will become more apparent later in the chapter when we see that discourse concerning imported men's underwear was driven not by a desire for moral regulation but by purely protectionist motives.

The Chapter is comprised of two parts. The first part explains how 'fashionable' women during the war years and in the 1920s were persistently blamed for all manner of social and economic ills. Not only were 'fashionable' women vilified for their alleged fickleness and profligacy but they were also accused of being responsible for the destruction of many fledgling Australian industries and for causing a dramatic increase in the cost of living. Critics linked women's 'obsession' with fashion with national ruin and moral decay. During the war, concerns about women's fashion were indicative of broader national anxieties about the need to protect the national economy during times of economic distress. The critique of luxury, patriotic duty and protectionism thus became even more discursively interwoven with moral regulation. This part will also reveal how the Tariff Board was called upon to intervene by increasing tariffs on gendered items of apparel.

The chapter will also demonstrate that 'fashionable women' were not only constantly under attack from masculinist institutions but also from prominent women such as Ruth Beale who took it upon herself to guide women towards a parsimonious ideal of gendered patriotism. This chapter will illustrate that, during the latter stages of the war, the activist Ruth Beale labelled 'fashionable women' as unpatriotic because they were squandering national resources on trivial and inappropriate

fripperies. As a self-appointed female agent of protectionism and moral duty, she sought government intervention to retard the economic effect of rapidly changing women's fashions. At the same time she sought to encourage Australian industries by advocating the standardisation of female workers' dress.

This chapter will also demonstrate that whilst post-Federation women had been accorded new public freedoms and visibility as a waged workers and consumers, they were excluded from public debate. They were denied the opportunity to formally participate in masculinist decision-making processes that were constantly denouncing women's fashion and penalising female consumers by initiating high prices on gendered 'necessities'.

As a counterpoint to this form of hegemonic female marginalisation, this chapter will describe an occasion when members of the Housewives Association cleverly overcame their exclusion from the public domain by deploying collective strategies to subversively challenge these same masculinist processes. These rebellious women, who were denied the opportunity to sit on boards such as the Tariff Board, effectively thwarted the Board's objectionable tariff policies by exercising the only power which a masculinist hegemonic society afforded them: their 'spending power'.

Although a collective of militant women may have successfully challenged hegemonic practices on this one occasion they nevertheless continued to be mostly excluded from the public tariff debate concerning female apparel. This chapter will describe how the issue of female fashion was to continue to remain exclusively with the male members of the Tariff Board.

The second part of the chapter deals with the prohibitive protectionist measures associated with the importation of workingmen's underwear into Australia in the 1920s. The chapter will reveal that these measures were prompted by pure 'unashamedly' rational economic motives rather than those moral anxieties that usually triggered sumptuary measures towards women's fashion apparel and

‘luxuries’.⁵ This part begins with an examination of the prohibitive effect of those tariff duties imposed on men’s underwear during the period from 1921 until 1926. During this period, local underwear manufacturers persistently demanded that government increase tariffs on imported men’s underwear. Some even demanded that the male consumers be *forced* to relinquish their right to wear what they chose and be *compelled by government* to support local industries by wearing only Australian-made underwear. Furthermore, it will describe the role the Tariff Board played, as the ‘institutional voice of protectionism’, in restricting the choices of working class consumers. This part also looks at the xenophobic anxieties that prompted Australian manufacturers to demand that Australian workers be forced to eschew the more practical and inexpensive imported cotton underwear in favour of the more costly Australian-made woollen underwear. Finally, this part examines how the working man was afforded no opportunity to voice his concerns about an impost that had such a drastic impact on his consumer choices.

8.2 Women’s Fashion excites moral condemnation

8.2.1 Women attack fashion

*She produced [a standard costume]. It was suitable for women of all ages, and could easily conform to the passing fashions by slight alterations to cuffs and collars.*⁶

Throughout the early decades after Federation, there a noticeable and persistent⁷ discursive emphasis within media reports and in Parliamentary debates

⁵ See above Chapters 4 and 6.

⁶ “Notes and Notices”, *The Australasian*, 13 July 1918, 33.

⁷ It interesting that some articles denigrating women and fashion were regularly recycled in the press, sometimes with great gaps of time elapsing between repetitions of the article. For instance, in 1892, an article was published in “Women who Over Dress”, *Borderwatch*, 5 October 1892. The exact same article was reprinted in *Burrowa News*, 7 October 1910. The article suggests that, unlike women of average means, “rich women” never over dress. Instead “the nice and refined women, the women of

on the alleged social and economic ills created by the ‘problem’ of women’s fashion.⁸ During this period, the vagaries and the apparent extravagance of fashion apparel appeared to have disturbed sensitive moralists and ‘patriotic’ protectionists and activists such as Ruth Beale and Ivy Brookes, in the same manner as it disturbed the governing classes in the early sumptuary epoch.⁹

In July 1918, Miss Ruth Beale, the Secretary of the Women’s National Economy Association, which had been inaugurated just after the outbreak of the war, pressed for all Australians to demand home products and manufacturing.¹⁰ During this time, Beale had close links to Ivy Brookes, who was President¹¹ of the Empire Trade Defence Association, a “sister”¹² organisation, with similar social objectives, which was established in Melbourne.¹³ Both women were heavily influenced by the protectionist dogma espoused and enforced by the male members of their families.¹⁴

When giving evidence before the Commonwealth Inter-State Prices Commission, Beale, defined herself as a ‘patriotic’ agent of protectionism. She forthrightly declared her ‘patriotic’ allegiance to protectionist ideology by demanding that the Commission prohibit the importation of feminine luxury products such as furs, fur skins, fancy goods, perfumery and trimmed millinery.¹⁵ Furthermore, she positioned herself as a feminine ‘traitor’ by scorning the trappings of a fashion industry that at the time seemed so dear to the hearts of her fashion-

taste, are not the purchasers of the showy fabrics and misfit hats...A refined woman never dresses loudly”.

⁸ “The Cost of Fashion: The Brush Trade Suffers”, above n 1; “Women to Women: Problems of the Day”, *The Argus*, 31 March 1920, 4-5.

⁹ Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (MacMillan Press, 1996) 273.

¹⁰ “Extravagance in Female Clothing’ Prohibition of Sumptuous Gowning: Over-Dressed women Bleed the Wounded”, *Border Morning Mail and Riverina Times*, 11 July 1918, 2.

¹¹ “Empire Trade Defence Urged”, *Weekly Times*, 16 March 1918, 9. Ivy was elected as President of the Empire Trade Defence Association in March 1918.

¹² “Home Products to the Fore”, *Sunday Times*, 13 October 1918, 13. Beale visited and addressed this “sister body” in October 1918.

¹³ “Empire Trade Defence Urged”, above n 11.

¹⁴ Both Beale and Brookes had male family members who were staunch Protectionists.

¹⁵ “Extravagance in Female Clothing’ Prohibition of Sumptuous Gowning: Over-Dressed women Bleed the Wounded”, above n 10.

conscious sisters; the mannequin parades, special advertising and window dressing.¹⁶ It is not surprising that Mr Piddington, the Chairman of the Commission, agreed with Miss Beale. However, in his response he was not confident that this form of gendered intervention would be successful: “[m]y own opinion is that this is an abominable absurdity to operate in war times, but can you stop it?”¹⁷

Beale, concerned about need for severe wartime rationing, used the Commission hearing as a public forum to denounce fashionable women because of their hedonistic attachment to consumerism, as being unpatriotic. In her call for government intervention towards women’s extravagant spending habits, she maligned over-dressed women for “bleeding the wounded”.¹⁸ Whilst Piddington, again concurred with her, but he appeared to be more realistic about the curtailment of these activities:¹⁹ “I am with you, but, to put it bluntly, are these matters which could be stopped by government exacting penalties?”²⁰

Undaunted, she then proceeded to tread on “tenderer corns”²¹ by advocating the standardisation of women’s clothing.²² Her recommendation that standard uniforms be adopted in certain industries in which women were employed appeared to be underpinned her preoccupations with protectionism, the moralisation of luxury and by traces of sumptuary hieratic impulse.²³ In terms of sumptuary intervention, it has been argued that uniforms were often used as instruments of social control imposed on working class employees.²⁴ Whilst Beale’s uniforms might signify uniformity, patriotism and frugality, they were also antithetical to women’s freedom of self-expression and independence: “[t]o-day everybody is free to dress and live

¹⁶ Ibid.

¹⁷ “Standard Dress”, *The Richmond River Express and Casino Kyogle Advertiser*, 19 July 1918, 6.

¹⁸ “Extravagance in Female Clothing’ Prohibition of Sumptuous Gowning: Over-Dressed women Bleed the Wounded”, above n 10.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Nance, “The Home: Standard Dress”, *Leader*, 27 July 1928, 43-44.

²² Ibid.

²³ “Standard Costumes: A Woman Advocate”, *The Argus*, 11 July 1918, 6. Beale sought this form of uniform for factory, shop and office girls. See “Boots and Shoes” Women Give Evidence”, *The Sydney Morning Herald*, 29 May 1918, 12.

²⁴ Donna Crane, *Fashion and its Social Agendas: Class, Gender, and Identity Clothing* (University of Chicago Press, 2001) 94.

according to personal taste so far as the purse permits.”²⁵ For working class women, uniforms would act as a symbol of discipline, subjection and stereotypical conservatism. It is notable that Beale’s proposed form of collective regulation of identity exhibited similarities with the normative and codified regimen that we see in Chapter 5 when Higgins J and other arbitration judges prescribed ‘appropriate dress’ for working class women.

By trying to enforce explicit dress codes for female factory and shop workers, Beale sought to reaffirm an earlier social order that had been marked by clear class distinctions. Before the war, many of these female factory workers would probably have been employed as domestic servants. They would have been traditionally clothed in ‘appropriate’ uniforms that submerged ‘the personal’ and identified them as submissive and as part of a codified hierarchical order. Without a uniform, the same women and their ‘status’ were no longer so easily identifiable and this caused anxiety for some people. As one critic later suggested that: “[i]t is becoming more and more difficult every day to tell to what station in life a woman belongs by the clothes she wears or by the way she wears them.”²⁶

Beale also suggested to the Commission that wholesale and retail standardisation should cover the nature of the fabric, colour and pattern of clothing.²⁷ Beale claimed that standard locally-made fabrics such as serge, worsted and tweed be produced locally and sold with a government-fixed price.²⁸ She insisted that this Australian-made fabric would be cheaper by reason of its increased output, and claimed that its reduced cost would then enable women to clothe themselves and their children more “suitably and economically”.²⁹

Beale declared that her motives for proposing this intrusive form of prescriptive gendered intervention were based on her patriotic desire to “keep the

²⁵ “Dress Extravagance in the Olden Days”, *Albury Banner and Wodonga Express*, 3 May 1918, 14.

²⁶ “Women’s World: Clothes and the Woman”, *Frankston and Somerville Standard*, 13 November 1925, 5.

²⁷ Nance, “The Home: Standard Dress”, above n 21, 43-44. See above Chapter 6.

²⁸ “Standard Cloth”, *Moree, Gwydir Examiner and General Advertiser*, 18 June 1918, 2.

²⁹ *Ibid.*

industrial fires burning”³⁰ for returned soldiers. She insisted that she wanted to eliminate the prejudice against local textiles, and keep prices down by compelling Parliament to fix the price of the cloth at the mills.³¹ She sought to legitimise this proposed form of sumptuary intervention by contending that standardisation of dress had been successfully adopted as a wartime measure in England, and also in America, where Lady Duff-Gordon was supposedly responsible for the successful introduction of a form of standardised female costume.³² Beale was severely censured by some critics for her proposal.³³ In endeavouring to fend off criticism about the harshness of this form of state intervention, she argued that, whilst the wearing of the standard costume would disclose that the wearer was practising economy, the costume itself was in no sense a uniform.³⁴

It is noteworthy that Commissioner Piddington remained loath to endorse an extreme form of social intervention that would require compulsory state action to *force* women to adopt standard uniforms.³⁵ He contended that even under the *War Precautions Act*, he could hardly see the Federal Government “laying down”³⁶ that the State Governments *compel* their employees to wear certain uniforms.³⁷

³⁰ “National Economy Campaign”, *The Argus*, 13 September 1918, 8.

³¹ *Ibid.*

³² “Standard Costumes: A Woman Advocate”, above n 23. One critic disputed Beale’s suggestion that Lady Duff-Gordon had introduced a ‘standard’ dress for women. “I do not know where she got her information from”, she said. It may well be that Beale was referring the ‘apron’ named after Herbert Hoover, who was the Head of the US Food Administration in 1917. The apron could overlap in either direction and could be worn twice before it became too dirty to wear. It became a popular garment during the latter days of the war. See Linda Przybyszewski, *The Lost Art of Dress* (Basic Books, 2014) 4. Hoover also introduced the “Hoover costume” or “uniform”, a patriotic outfit won by women who ‘pledged’ to join his Wartime Food Administration which espoused sumptuary food regulation. The uniform was of blue chambray and had a pointed collar and cuffs of white pique and a cap of white lawn. The uniform” server as “an active signifier of a woman’s commitment to her country... and a powerful tool for exerting peer pressure on others.” See Marlis Schweitzer, “Patriotic Acts of Consumption: Lucille (Lady Duff Gordon) and the Vaudeville Fashion Show Craze” (2008) 60 *Theatre Journal* 607.

³³ “Standard Costumes: A Woman Advocate”, above n 23.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

8.2.2 Women attack tariffs on ‘necessities’

*These kinds of things, gloves, stockings, boots and shoes etc., the prices asked and paid are enormous, but to a large number of the community they are almost prohibitive. Goodness only knows how mothers of large families feed and clothe their offspring these times.*³⁸

After the war, many women became increasingly concerned about the high cost of living and the prohibitive tariffs on imported ‘necessary’ items such as food and clothing.³⁹ Numerous women’s associations held meetings that specifically addressed such issues. Their members were particularly concerned that women continued to be omitted from tariff decision-making processes,⁴⁰ and they frequently urged the government to appoint women to those boards that decided issues relating to the family budget.⁴¹

Whilst women were denied the right to *formally* participate in institutional decision-making processes, they were, nevertheless able to exercise some level of collective influence over government policy. In 1919-20, there transpired an extraordinary instance of female collective revolt against a tariff regime that was forcing them to endure increased prices on imported apparel occurred.⁴² What was even more notable was that this example of gendered insurgency specifically targeted a masculinist taxing decision-making process from which they were persistently excluded.⁴³

In 1919, the Melbourne branch of the Housewives’ Association met to discuss possible solutions to current problems concerning “the prevailing high prices for necessary commodities.”⁴⁴ Members argued that women should have to pay no

³⁸ “General Items”, *Western Mail*, 12 February 1920, 35.

³⁹ “Prices and Profits: Women Discard Gloves”, *The Argus*, 9 October 1920, 21.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² “Housewives’ Boycott”, *The Mercury*, 13 October 1920, 4.

⁴³ “Women and the Tariff”, *The Mercury*, 27 June 1925, 8.

⁴⁴ “Influence of Fair Sex on Problems of the Day”, *Daily Herald*, 15 October 1920, 4.

more than “reasonable prices”⁴⁵ for mere ‘necessities’ such as gloves and stockings, particularly at a time when the cost of living was so much higher than it had been six years previously.⁴⁶ The Association freely acknowledged that luxuries were a different matter, and that people should expect to pay much more for them.⁴⁷

The members resolved, as part their proposed campaign against profiteering and the high cost of living, to do without articles of attire that were not “absolutely indispensable”⁴⁸ to them. The Association, as a collective, had had some measure of success with previous boycott campaigns in relation to the local price of potatoes⁴⁹ and price of shoes.⁵⁰ The boycott on high-priced shoes, for instance, was effectively introduced when some parents in various districts in Melbourne sent their children to school barefooted.⁵¹ The aim of such a boycott was to force down prices on essential food and clothing:

They simply boycott the article; the members leaving it severely alone and either do without it, or in the cases of resourceful women (and what woman has not this quality who thinks at all?) makes a substitute do for the time being.⁵²

In October 1919, the Association decided that the first line of attack was against the wearing of gloves.⁵³ At the time, women’s gloves were invested with

⁴⁵ “General Items”, above n 38.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ “Influence of Fair Sex on Problems of the Day”, above n 44.

⁴⁹ It seems that the Housewives Association had adopted a successful policy advocated by the Housewives League in the United States of America. See “General Items”, above n 38. The boycott against the price of potatoes was very effective. The members saw that “the word was passed round” and they took off potatoes from the daily “bill of fare”. Pumpkins and Marrows were substituted. (See “Producers, Consumers, and Prices”, *Northern Star*, 20 January 1920, 4.) Not only was there a big drop from five pence per pound to twopence per pound for old potatoes and to threepence per pound for new potatoes, but the change happened within a short space of time.

⁵⁰ “Women to go Gloveless”, *The Register*, 6 December 1919, 8. In October, “an indignation meeting” of the Housewives Association was held at the Sydney Town Hall in protest against the wholesale exportation of eggs and other foodstuffs. The mover of the resolution called upon every woman to revolt by declaring not to bear children until “the men makes this country a safe place to live in by seeing they were provided with sufficient supplies of nourishing food at a reasonable price”. See “Here, There, and Everywhere”, *Albury Banner and Wodonga Express*, 15 October 1920, 19. At this time, there were other feminine collective campaigns targeting the price of sugar and other essential commodities.

⁵¹ “Women to go Gloveless”, above n 50.

⁵² “General Items”, above n 38.

cultural meaning. They were part of a socially approved form of femininity and social custom. They were an ‘essential’ accoutrement for respectable and genteel women, and were regarded as a cultural signifier that communicated with other women as a part of an idealised form of fashion. An ‘un-gloved’ woman was considered by other women to be ‘unladylike’ and in some cases, risqué.

The Association formally adopted a recommendation that all women should wear gloves “as little as possible”⁵⁴ in an attempt to force down the high price of imported gloves.⁵⁵ Its members were determined to challenge tariff policies that targeted what was an ‘essential’ part of feminine dress. They were willing to forgo a normative item of cultural feminine apparel to publicly contest the inequity of a tariff regime that targeted women’s clothing.⁵⁶ Gloves, as a gendered item of dress thus became invested with political significance and gestured towards women’s desire to intrude into the male-dominated public arena. This form of protest was not only a sign of defiance but it acted in symbolic opposition to what these women considered to be oppressive forms of institutional power.

In pursuing their ‘fight’ against high prices, the members’ main concern was whether they would find sufficient numbers to make their action effective.⁵⁷ To forego the wearing of gloves was not an easy task for many middle class women, especially as it was generally acknowledged that “all women loved good gloves and boots.”⁵⁸ Yet, it was decided that if women would sacrifice these things for three months, then the country would see the level of their sincerity that underpinned their campaign to lower prices.⁵⁹

There was an enormous positive response to this new form of gendered direct action and self-regulation.⁶⁰ It was so popular that the women’s section of the Public

⁵³ “Influence of Fair Sex on Problems of the Day”, above n 44.

⁵⁴ “Women to go Gloveless”, above n 50.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ “Influence of Fair Sex on Problems of the Day”, above n 44.

⁵⁸ “Prices and Profits: Women Discard Gloves”, above n 39.

⁵⁹ Ibid.

⁶⁰ “Price of Gloves: Movement Spreading”, *The Daily News*, 29 October 1920, 6.

Service Association joined the movement.⁶¹ The Sydney branch of the Association also recommended to its members that they should refuse to wear gloves until “they came to a reasonable price.”⁶² It was reported that ten thousand Sydney women resolved to discontinue wearing gloves until the prices came down from “sky-high level”.⁶³ The boycott proved to be very successful, and was only lifted in January 1921 after the prices of gloves had dropped considerably.⁶⁴ As a result of their actions, the Housewives’ Association was considered by some to be a guiding light in the fight against profiteering and the high cost of living:⁶⁵ “[t]he Housewives’ Association had struck one of the most serious blows at the high cost of living yet struck in Australia.”⁶⁶

However, this gendered boycott encountered criticism from some merchants who were concerned that the boycott could adversely affect their own vested interests.⁶⁷ For instance, one “leading Adelaide merchant”⁶⁸ suggested that only “fanatics”⁶⁹ would support the boycott of gloves, which he contended were “absolutely essential to the appearance of a well-dressed lady”.⁷⁰ Another critic suggested that to carry out this boycott successfully, women would need “backbone and determination.”⁷¹ He challenged their tenacity and authority by asking what form of retribution could be applied against those “fair ladies”⁷² who sought to ignore the

⁶¹ Ibid.

⁶² “General Items”, above n 38.

⁶³ “Producers, Consumers, and Prices”, above n 49.

⁶⁴ “Melbourne Women May Wear Gloves”, *National Advocate*, 10 January 1921, 3.

⁶⁵ “Prices and Profits: Women Discard Gloves”, above n 39.

⁶⁶ This is part of speech delivered by Professor Meredith Atkinson to the Housewives Association meeting in Melbourne on 8 October 1920. See “Prices and Profits: Women Discard Gloves”, above n 39. Despite these tributes, there were sections of the media that sought to denigrate and destabilise this significant political achievement. For instance, it was reported that some ladies who saved money by not wearing gloves were spending this money on expensive veils for Melbourne Cup functions.

⁶⁷ “Gloves Essential”, *Gippsland Times*, 14 October 1920, 4.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ “Influence of Fair Sex on Problems of the Day”, above n 44.

⁷² Ibid.

directive or “scab”⁷³ on their sisters.⁷⁴ The Association had a ready response: those women who were disloyal would be “shamed”⁷⁵ into doing their duty.⁷⁶

Following the Association’s successful boycott on the price of gloves, the Chairwoman of the Housewives’ Association moved a motion in October 1920 seeking that the Association demand that women be appointed to all boards and commissions that deal with questions affecting the interests of women and children.⁷⁷ However, her demand was dismissed by authorities who considered women as economically untrustworthy.⁷⁸ Moreover, they continued to accuse every woman of profligacy and spending “every penny she [could] wring from her unfortunate spouse” on dress.⁷⁹

8.2.3 The move to formal regulation: the Tariff Board and fashion

*Crises, strikes, and riots may ruin their thousands, but Dame Fashion ruins her tens of thousands!*⁸⁰

In the post-war period, Australian manufacturers continually sought increased protection against the barrage of imported fashion clothing, which was designed and produced in Europe and America.⁸¹ Manufacturers were anxious that they could not compete with overseas manufacturers, either in price or in the variety of fabric and design, unless they could be provided with a higher enough tariff that would guarantee the security of the Australian market.⁸²

Australian manufacturers were also concerned about the apparent parochial prejudice against locally manufactured goods. This prejudice was to some extent

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ “Prices and Profits: Women Discard Gloves”, above n 39.

⁷⁷ Ibid.

⁷⁸ “Women and the Tariff”, above n 43.

⁷⁹ Ibid.

⁸⁰ “Victims of Fashion: Industries that suffer through shorn tresses”, *Huon Times*, 21 August 1928, 4.

⁸¹ “Textile Duties: Effect of New Impost”, *The Argus*, 11 September 1925, 13.

⁸² Ibid.

countered by the proliferation of jingoistic ‘buy Australian-made’ campaigns and propaganda slogans established during and after the war.⁸³ Many of these campaigns and associated propaganda, although often instigated by masculinist interests, were steered by women’s associations and auxiliaries, and were often led by eminent social advocates and civil luminaries such as Ruth Beale and Ivy Brookes.⁸⁴

It was a time when wages in Australia were reasonably high.⁸⁵ Some sections of society were not only accused of spending “lavishly and ostentatiously”⁸⁶ but also blamed for aggravating “the trouble of poorer people”.⁸⁷ It was often argued that ‘thoughtless’ people were making the hardships of those more hard pressed seem “bitterer”⁸⁸ by contrast, by creating a demand for unnecessary and expensive clothing.⁸⁹ Of course, throughout the 1920s, women continued to be the especial target for this form of public disparagement and gendered moralising discourse:⁹⁰ “[t]here was a tendency to brand as luxuries, and place high duties on, things worn by women and children.”⁹¹ For instance, in an article in the *Advocate* in August 1924, the whole gambit of sumptuary ‘sins’ were laid against contemporary women for their “fantastic extravagance ...over dress.”⁹² The author used the text as a vehicle to disparage all female consumers; they were branded as shallow, weak, silly, vain, capricious, fickle, spendthrift, insincere, flighty, pitiful, vulgar, contemptuous, wasteful and reckless.⁹³ The subtext underpinning this gendered invective implied that women’s consumption habits were a social disease that was weakening society and was in need of intervention or cure:⁹⁴

⁸³ “Housewives Association”, *The Register*, 22 September 1927, 13.

⁸⁴ Ibid.

⁸⁵ “Women to Women: Problems of the Day”, above n 8.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ “Feminine Extravagance”, *Advocate*, 19 August 1924, 2.

⁹¹ “Housewives Association”, above n 83.

⁹² “Feminine Extravagance”, above n 90.

⁹³ Ibid.

⁹⁴ This type of disease metaphor was often used in discourses of sumptuary regulation. See Hunt, above n 9, 274.

Fashion dictates; women follow, with no reason apparent to ordinary observers. It matters nothing how hideous the apparel or head-dress may be, how unsuited to slim and stout, small and large women - if that 'deformed thief fashion' dictated, his decrees will be obeyed.⁹⁵

In contrast, men in the article were prized for their 'masculine' virtues. They were portrayed as conservative, rational, careful and measured in their choice of clothing.⁹⁶ The author characterised men as being almost 'without sin', and thus maintained the traditional paradigm of men being positioned as socially and culturally superior to women.⁹⁷

Fashions still change in the garments of men, but with so mild an ebb and flow that male vanity may be said to have ceased, except in that interesting freak the dude. This fact makes a striking contrast to the development of feminine absorption in personal vanity.⁹⁸

During the 1920s, the fashion/luxury debate continued to excite moral censure and to stimulate the sumptuary impulse especially amongst thrift campaigners and those concerned with national waste and extravagance. Working class female consumers were regularly targeted for sumptuary intervention. They were condemned and ridiculed for over-dressing and for wasting both their husbands' and the nation's resources by indulging in extravagant 'fashion apparel'.⁹⁹

But woman has ears only for Fashion's latest edict. With admirable courage, fat women make themselves look fatter and thin women thinner. So long as it is new and fashionable they are satisfied. Tomorrow it will be discarded as old and they will be eagerly awaiting the ephemeral new.¹⁰⁰

These women were also derided for being 'unpatriotic' because they eschewed the limited range of Australian-made 'conservative' woollen serges and

⁹⁵ "Feminine Extravagance", above n 90.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Onlooker, "Letter to the Editor", *The Argus* 27 June 1925, 27; "Women's Attire", *Examiner*, 30 September 1925, 7.

¹⁰⁰ "Chasing the Chic: Worm is Spurned", *The Daily News*, 3 April 1928, 6.

tweeds promoted by Beale, in favour of fashionable imported weaves and fabrics that included gabardines, marocain¹⁰¹ and those with fancy checks and stripes.¹⁰²

In the 1925 and 1927 Tariff Board apparel hearings, the Board received complaints about the capriciousness of Australian women and the manner they were ‘ruining’ Australian industries.¹⁰³ Women were blamed for the general depression “throughout every branch”¹⁰⁴ of the women’s clothing trade, chiefly because they were not in the habit of favouring Australian-made clothing.¹⁰⁵ It was alleged that the future of industries, such as the Australian woollen apparel industry, was in a precarious position because fickle fashion-conscious women were demanding artificial silks and other ‘chic’ fabrics rather than choosing the less fashionable woollen apparel that was currently being produced by Australian manufacturers:¹⁰⁶

At her will the clash of machines is stilled, kings of commerce bemoan a debit balance, new factories rise in brick and concrete, tariff walls are capped with a few more bricks, fortunes are made and lost on the Stock Exchange. And all because of a woman’s clothes.¹⁰⁷

Many of the applicants seeking increased protection insisted that the depression in the industry was due to changes in women’s fashion.¹⁰⁸ They pleaded that increased level of tariff protection was necessary to protect their industries from the importation of cheap clothing.¹⁰⁹ They insisted that many Australian factories had closed their doors, and workers were put off, because they could not compete with the enormous influx of imported apparel from Japan, England and USA.¹¹⁰ Often their complaints were couched in the same kind of xenophobic and alarmist

¹⁰¹ Marocain is crepe fabric made of silk, wool, or rayon, or a combination of these fibres, and distinguished by a strong rib effect, used in the manufacture of dress and women’s suits.

¹⁰² Onlooker, above n 99.

¹⁰³ “Tariff Board: Australian Made Hats”, *The Mercury*, 10 November 1927, 12.

¹⁰⁴ Commonwealth Tariff Board, *Apparel Hearings*, 1 June 1925 (Robert Howard Morgan).

¹⁰⁵ Onlooker, above n 99.

¹⁰⁶ Ibid.

¹⁰⁷ “Chasing the Chic: Woman Rules Commerce”, above n 100.

¹⁰⁸ “Tariff Board Inquiries”, *The Argus*, 2 June 1925, 15. Mr Clarence Edwards speaking on behalf of the Retail Traders’ Association of New South Wales.

¹⁰⁹ “Prices of Clothing: A Tariff Board Enquiry”, *The Advertiser*, 10 November 1926, 17.

¹¹⁰ “The Tariff: Developing Australian Industries”, *The Advertiser*, 4 March 1926, 19.

rhetoric that sumptuary law proponents had adopted in proclaiming their grievances about foreign imports in the early modern period:

So far as Japanese goods are concerned, we have nothing to fear from them in Australia. They had their chance during the war, and I defy any honourable member to prove to my satisfaction that anything good ever came from Japan. Their productions are the cheapest and the shoddiest that have ever come into this country. ¹¹¹

One witness explained to the Tariff Board in the 1925 Apparel Hearings that, “owing to the trend of fashion,”¹¹² Australian women were currently wearing “25 per cent less clothing”¹¹³ than they had worn three or four years previously, due principally to simplicity in fashions.¹¹⁴ This meant that women were wearing garments made from only three to four yards of material compared with the six or seven yards used for women’s costumes in 1921.¹¹⁵ This comment suggests that current women’s fashions were not only affecting the profits of manufacturers but were also to be considered to be rather scandalous and immoral. This witness suggested that “[t]hat since Eve appeared in Eden never have civilised women been more scantily dressed.”¹¹⁶ The same witness predicted that this fashion trend would continue to have an ongoing adverse effect on the profits of Australian manufacturers.¹¹⁷ Tariff Board member, Herbert Brookes, was concerned about this situation and sought qualification from the witness: “[t]here must be limit to that of course?”¹¹⁸ he asked. The witness responded: “[o]ut of decency’s sake probably there is”.¹¹⁹ In this exchange, both men intimate that women were pushing the boundaries of traditional morality towards future social and cultural degeneration.

¹¹¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 124 (Mr Foley).

¹¹² Commonwealth Tariff Board, *Apparel Hearings*, 1 June 1925 (Robert Howard Morgan); “Tariff Board Inquiries”, above n 108.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ “Women’s Dress: By a Mere Man”, *The Daily News*, 23 May 1925, 13.

¹¹⁷ Commonwealth Tariff Board, *Apparel Hearings*, 1 June 1925 (Robert Howard Morgan).

¹¹⁸ *Ibid.*

¹¹⁹ “Women Wear Less Clothes”, *News*, 2 June 1925, 2.

During the same period as the Apparel hearings were conducted, Mr Pratten, the Minister of Trade and Customs, reprimanded “many thoughtless women”¹²⁰ for the large importations of apparel, and reproached them for never inquiring into the country of origin of their purchases.¹²¹ Later, Mrs Eleanor Glencross,¹²² in an exchange with Pratten, again called for the government to appoint a woman to the Tariff Board, claiming that “the mere man”¹²³ had given up in despair attempting to estimate what it cost a woman to dress.¹²⁴ Pratten sniped that he thought that “the persons most concerned [with the cost of women’s dress] are the husbands, who earn the money for the women to spend.”¹²⁵

Mrs Glenross advised Pratten that, when the Board considered articles of women’s apparel and domestic use, a women’s advice was imperative.¹²⁶ When Pratten challenged her to name some articles that called for a women’s expert advice, she immediately responded by saying “corsets.”¹²⁷ She reminded him that when the Board had considered the tariff on imported corsets, it had to obtain its information by “attending a display of mannequins wearing them”.¹²⁸

Pratten indicated that he was rather inclined to believe that if women wanted to “do their share of work in connection with the tariff”¹²⁹ they might start by buying Australian-made goods.¹³⁰ He even sought to pit woman against woman when he counselled the Victorian Housewives’ Association to educate their “denser sisters”¹³¹ into buying Australian-made goods.¹³² Similarly, he suggested that women could be

¹²⁰ “Women and the Tariff”, above n 43.

¹²¹ Ibid.

¹²² As President of the Housewives Association.

¹²³ “Women and the Tariff”, above n 43.

¹²⁴ Ibid.

¹²⁵ “Women and the Tariff: Purchase Australian Goods”, *Western Star and Roma Advertiser*, 15 July 1925, 6. This is a comment made by Mr Pratten to Mrs Glencross when she requested that women be appointed to the Tariff Board.

¹²⁶ “Women and the Tariff”, above n 43.

¹²⁷ The Idler, “Diary of a Man About Town”, *Table Talk*, 2 July 1925, 15.

¹²⁸ Ibid.

¹²⁹ “Women and the Tariff”, above n 43.

¹³⁰ Ibid.

¹³¹ “Woman’s Way: Women and the Silk Tax”, *Worker*, 2 July 1925, 19.

¹³² Ibid.

as effective as any tariff, if they “thought in making their purchases to keep work in Australia and encourage Australian goods.”¹³³

8.2.4 The continuing spectre of moral regulation

*Some of the worst evils now confronting civilised nations may be laid at the door of the feminine craze for indecent dress.*¹³⁴

As mentioned earlier in this chapter, the spectre of moral regulation continued during the 1920s to hover around discourse regarding women who ‘followed’ fashion trends. “Moralists and ecclesiastical authorities”,¹³⁵ protectionists, the media and women’s organisations regularly called upon the state, and women themselves to initiate some form of corrective action.¹³⁶ In the media, there were frequent pleas for the return of “old-time propriety”¹³⁷ in women’s mode of life and conduct.¹³⁸ Women were regularly counselled to stop “gadding”¹³⁹ about and keeping late hours.¹⁴⁰ Women were instructed to consider the nation’s interests and forego their fashionable attire, their artificial silk and cretonne costumes, in favour of the plainer and more serviceable Australian woollen garment.¹⁴¹

It was even suggested that the Parliament should completely prohibit the wearing of all imported apparel, and to force Australians to wear only Australian-made goods.¹⁴² However, this particular prohibitive sumptuary proposal was rejected by Pratten on the basis that such a proposal would be too difficult to introduce because it would need the acquiescence of all State Parliaments.¹⁴³ Women were

¹³³ “Women and The Tariff: Purchase Australian Goods”, above n 125.

¹³⁴ “Dress and Morals”, *Freeman’s Journal*, 11 August 1921, 31.

¹³⁵ “Bushy Whiskers and Short Skirts”, *The Advertiser*, 4 April 1925, 12.

¹³⁶ “Women Wear Less Clothes”, above n 119.

¹³⁷ “Women’s Education”, *The Mercury*, 20 May 1922, 11.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ “Textile Duties: Effect of New Impost”, *The Argus*, 11 September 1925, 13.

¹⁴² “Women and the Tariff: Purchase Australian Goods”, above n 125.

¹⁴³ *Ibid.*

constantly being reminded in newspaper articles and parliamentary debates of the privations experienced in the war; the need for post war-restraint and for ‘consideration for others’:¹⁴⁴

The spenders must restrain their desire to spend, must resist the temptation offered by beautiful things in the shops and over-full purses. No woman who has a sympathetic nature or an understanding mind could appear extravagantly dressed or indulge in expensive amusements in these times.¹⁴⁵

It was not just male-dominated institutions that called for women to be more circumspect in their spending on imported fashion clothing. Women sought to closely juxtapose women’s dress and morality. For instance, the women’s section of the Victorian Farmer’s Union stirred the sumptuary instinct when it declared that morality demanded “a stricter supervision over women’s dress”.¹⁴⁶ However, whilst modern ‘fashionable’ women were condemned by the clergy, the media and others as immoderate, immodest and immoral because of their short or slashed skirts, bare-arms, low necklines, makeup and silk stockings,¹⁴⁷ some changes in women’s fashion actually had a positive effect on the economy by stimulating the creation and growth of new industries.¹⁴⁸ For example, the wearing of shorter skirts was openly accredited for the boom in Australian sales of domestically produced coloured and ‘better class’ hosiery.¹⁴⁹

The fashion of a short skirt has been a blessing to the stocking dealers who have turned out such leg wrappings in all the tints of the rainbow, from sun-burst vermillion to moonshine opal

¹⁴⁴ “Women to Women: Problems of the Day”, above n 8.

¹⁴⁵ Ibid.

¹⁴⁶ “Stricter Supervision Over Women’s Dress”, *Young Witness*, 29 March 1923, 6.

¹⁴⁷ “Clothes Women Wear: Comparison with Man”, *Wellington Times*, 24 May 1926, 3; “Women’s Attire”, above n 99. A journalist summed up the hurdy-gurdy effect of fashion changes: “[t]he short skirts boomed the shoe and stocking trades, but they slackened the trades that made dress materials.” See “High Boots For Women”, *Barrier Miner*, 2 January 1926, 7.

¹⁴⁸ “Shorter Skirts: Better Stockings”, *The Advertiser*, 1 July 1927, 15.

¹⁴⁹ Ibid. Short skirts were also extolled for being hygienic and practical: “Short Skirts do not pick up the sweepings of the streets, which don’t drag on the hips, and distort the body, are hygienic, and enable exercise to be taken without fatigue.” See “Wear Less: Doctor’s Advice”, *Cumberland Argus and Fruitgrowers Advocate*, 12 March 1926.

... hosiers have run to riotous designs, such as clocks and lace insects, and have made some select cobwebby stockings of a gun-metal chiffon that is a sartorial sonata.¹⁵⁰

Whilst many condemned women for causing society's ills in the 1920s, they overlooked the fact that the unexpected high level of revenue raised from indirect taxation on imported fashion goods was not only welcomed by the Government but it ensured that the Government did not have to rely on direct taxation to pay for the costs of government.¹⁵¹ Whilst customs revenues had increased "very materially"¹⁵² from £22 597 000 to nearly £31 832 000 in 1926-27, direct taxation, in comparison, had shown only a slight increase during the same period.¹⁵³

8.2.5 Women and the cost of living

*Women do not buy for quality: they buy for the sake of fashion, which means higher prices.*¹⁵⁴

Fashionable women were blamed for increased living costs. It was often suggested by the media, various Boards of Trade and community organisations, that there was an undesirable link between the change in women's fashion and the increasing cost of living.¹⁵⁵ For instance, in October 1926, Mr W N Gillies, the Chairman of a Board of Trade Clothing Inquiry, maintained that the "rapid change in fashion"¹⁵⁶ was one of the factors responsible for the high cost of living.¹⁵⁷ The Board heard evidence from a number of witnesses about the phenomenon of rapidly changing fashion. They generally made the observation that fashion seemed to be

¹⁵⁰ "Painted Legs", *Daily Telegraph*, 1 October 1927, 13.

¹⁵¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 24 November 1927, 95 (Mr Coleman).

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ "Clothing Inquiry. Why Prices are High: Short-Lived Fashions", *Queensland Times*, 28 October 1926, 3.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

changing weekly and that 'fashion apparel' was becoming more extravagant every year.¹⁵⁸ Furthermore, it was contended by some witnesses that the general public could not be protected financially against these sudden changes or 'the tyranny of fashion'.¹⁵⁹

As usual, women were thought to be beguiled and blinded by fashion, and were targeted for sumptuary intervention because of their purported profligacy and folly.¹⁶⁰ "[t]he [female] consumer is becoming more extravagant every year. Some of the expensive flimsy goods did not wear so well as some of the cheaper goods."¹⁶¹

Although women were considered to be largely responsible for the rise in the importation of luxuries and the resultant high prices for female apparel, patriarchal authorities nevertheless continued to deny them the right to participate in the public debate about the level of duty which should be imposed upon their own clothing.¹⁶² Instead, women were counselled not to "rush so madly"¹⁶³ into fashion and to manage and contrive their budgets as "cheerfully as possible".¹⁶⁴ They were warned that unless they were compliant in their own self-governance, the alternative might be that they would be subjected to a strict sumptuary regime; they might even be compelled to wear uniforms.¹⁶⁵

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ "Fickle Fashion: Why Clothes are Dear", *Northern Star*, 28 October 1926, 5.

¹⁶² "Women and the Tariff Board", *News*, 21 November 1928, 8.

¹⁶³ "Clothing Inquiry. Why Prices are High: Short-Lived Fashions", *Queensland Times*, 28 October 1926, 3.

¹⁶⁴ "Women to Women: Problems of the Day", above n 8.

¹⁶⁵ "Clothing Inquiry - Why Prices are High: Short-Lived Fashions", above n 163. This alternative was suggested by Mr Allan, a representative of retailers during the Board of Trade clothing inquiry in October 1926.

8.2.6 An exemplar: Bobs and Hats

*An industry is affected by a change in fashion-in fact not only one but several.*¹⁶⁶

When the fashionable ‘shingle’ and ‘bob’ were introduced into Australia in early 1925, the effect on merchants “was immediate.”¹⁶⁷ As Australian women quickly began to adopt new hair styles, importers and local manufacturers of hair brushes, hairpins and hatpins became increasingly fearful that these radical new hair fashions would adversely impact on their businesses.¹⁶⁸ By the end of 1925, sales of split horn and whalebone brushes was “practically nil.”¹⁶⁹ Furthermore, there was no indication that women were switching over to other types of brushes,¹⁷⁰ particularly as these new hair styles took less time to maintain and required fewer, if any, hairpins and hatpins:¹⁷¹ “[s]hingled heads knocked out the hairpin industry, on which millions of pounds had been spent for patents and plants.”¹⁷²

The level of anxiety amongst merchants was extraordinary, and it prompted a hasty call for Government intervention.¹⁷³ By July 1925, the Tariff Board was hearing evidence in an application for increased duty on imported hair brushes.¹⁷⁴ Mr Levy, who opposed the application, denied that importers were responsible for any slump which might have taken place in the Australian manufacture of brushes.¹⁷⁵ Instead, he blamed the latest fashion in ladies’ hair dressing.¹⁷⁶ Similarly, a representative of one English firm of brush makers suggested that the sales of hairbrushes had fallen off greatly “since shingled hair had become popular”.¹⁷⁷ In

¹⁶⁶ “Shingling and The Tariff”, *Barrier Miner*, 4 June 1927, 7.

¹⁶⁷ “Bobbed Hair Evils: Heads Much Less Healthy”, *The Register*, 1 June 1927, 9.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ “Shingling and the Tariff”, above n 166.

¹⁷² “Painted Legs”, above n 150.

¹⁷³ “Shingling and the Tariff”, above n 166.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

contrast, Mr Anderson, an Australian brush manufacturer, insisted that the “bobbed-hair argument”¹⁷⁸ had no real significance because the demand for brushes was still sufficient to keep Australian factories employed if there were not excessive importation of brushes from overseas.¹⁷⁹

In 1927, Mr Edward Holland raised, as a justification for increased tariffs on imported hair brushes, the issue of women’s health before the Tariff Board.¹⁸⁰ He advised the Board that the new trends in hair fashion had rendered the use of the hairbrush almost obsolete.¹⁸¹ Furthermore, he argued, that women’s heads were much less healthy because they did not brush their short hair “anything like the extent that was necessary when it was long”.¹⁸² He claimed that women were instead *wasting* an average of 2/- on a ‘shingle’ at hairdressing salons every three weeks.¹⁸³ His evidence gave the impression that the state of women’s health was being ruined because of their ‘sin of pride’ and intimated that this sin was in need of a cure.

The Chairman of the Board, Mr Hall, had similar concerns about the effect on women’s health and paternalistically reminded women that their hair ‘required brushing’. His comments invoked the metaphor of disease when he suggested that the decline in the use of hairbrushes could be the harbinger of ruin and decline. Hall warned women that if this national ‘contagious’ ‘malady’ continued, they would become “bald like men”.¹⁸⁴ Others suggested that the shingle was partly responsible for the formation in women of “solar ray blemishes”¹⁸⁵ and “actual pre-cancerous conditions”.¹⁸⁶ It is obvious in the 1920s, just as in other eras, that the sumptuary impulse was quickly stimulated whenever the ‘problem’ of women’s fashion was debated.

¹⁷⁸ “The Cost of Fashion: The Brush Trade Suffers”, above n 1.

¹⁷⁹ Ibid.

¹⁸⁰ “Bobbed Hair Evils: Heads Much Less Healthy”, above n 167.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ “Untitled”, *Sunday Times*, 23 June 1929, 6.

¹⁸⁶ Ibid.

Whilst women's hair fashions had an enormous negative impact on the brush industry, it had an even bigger sway on the sale of imported women's hats, artificial flowers and millinery ornaments.¹⁸⁷ In 1920/21, the Greene Tariff had increased protection for Australian manufacturers of hats, millinery hat ornaments, flowers and hairnets.¹⁸⁸ However, it proved ineffective in stemming the volume of imported millinery that continued to pour into Australia during the 1920s.¹⁸⁹ During the 1927 Tariff Board inquiry into the importation of felt hats, it was contended that the increased volume of trade of imported women's felt hats was directly "susceptible to changes in fashions,"¹⁹⁰ and particularly to the 'hair-shingling' fashion that Australian women had adopted in the mid-1920s:¹⁹¹

The ladies of Australia, for some reason, probably because of the fashion of shingled hair, went into in for close fitting felt hats in conformity with the straight lines of their costumes.¹⁹²

Her cloche hat sits neatly on a cool, tidy, and hairpin-less shingled head.¹⁹³

Between 1922 and 1927, the rise of imported felt hats was phenomenal and was, according to Frederick Millin of the Retail Traders Association of New South Wales, directly related to the 'dictates of fashion'.¹⁹⁴ In 1922, 150 dozen wool felt hats were imported, with a value of £6 166. By 1927, 74 002 dozen hats, valued at £164 635 arrived in Australia.¹⁹⁵ At the time, Australian hat manufacturers were unable to supply the type of hats that were demanded by Australian women.¹⁹⁶ Women were looking for variety, quality and a greater selection of colours.¹⁹⁷ Most of the hats popular with Australian women were designed and manufactured in Italy

¹⁸⁷ "The Tariff", *The Braidwood Dispatch and Mining Journal*, 21 October 1927, 2.

¹⁸⁸ "Dressing the Daughters", *The Argus*, 1 April 1920

¹⁸⁹ "Tariff Board: Duty on Hats Opposed", *The Argus*, 10 November 1927, 13.

¹⁹⁰ "Duty on Felt Hats", *The West Australian*, 13 January 1928, 18.

¹⁹¹ "Felts from France: Shingle Boosts Imports", *Examiner*, 21 October 1927, 9.

¹⁹² Commonwealth, *Parliamentary Debates*, House of Representatives, 24 March 1926, 105 (Mr Parsons).

¹⁹³ "Cant about Clothes", *South-Western News*, 21 August 1925, 5.

¹⁹⁴ Commonwealth Tariff Board, "Inquiry on Felt Hats" (Report, 13 October 1927) (Mr Millen).

¹⁹⁵ "Imported Felt Hats: Volume Increasing", *Western Argus*, 25 October 1927, 9.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

and France.¹⁹⁸ From 1925, Italy's hat trade with Australia had increased by 17 per cent and the trade with France had increased by 92 per cent.¹⁹⁹ Australian hats were regarded by women and merchants as inferior to the imported brands.²⁰⁰ It was said that the reason Australian manufacturers were unable to compete with the overseas market, was because Australian manufacturers were "most unenterprising"²⁰¹ and "lacked designing ability".²⁰²

In the early 1920s, there was growing alarm about the increased importation of winter and summer headwear from Europe, South America and Asia, as well as the ostensible prejudice against the locally made article.²⁰³ In 1925, it was predicted that the importation of felt hats for winter wear and Javanese and imitation Bangkok (sic) "hoods"²⁰⁴ for summer wear, would cause a "great deal of unemployment"²⁰⁵ in the Australian hat and millinery trades.²⁰⁶ Not only was the extent of importations criticised, but the processes, materials and producers were also derided.²⁰⁷ For instance, it was reported that the "hoods" were made from Bangkok (sic) straw, tree shavings, plaited grass and flax and were woven "by mere children"²⁰⁸ in a "mysterious water-weaving process".²⁰⁹ These cheap hoods arrived in bales, "soft and shapeless,"²¹⁰ from Northern Italy, South America, Java and Japan.²¹¹ The only work remaining for Australian machinists and milliners was to block and trim the hats.²¹²

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ "Duty on Felt Hats", above n 190.

²⁰² Ibid.

²⁰³ Commonwealth, Tariff Board, 'Report and Recommendations on Hats, Fur Felt and Wool Felt' (Report, September 1925) 34.

²⁰⁴ "My Lady's Hat", *The Advertiser*, 25 May 1925, 9.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

In 1925, the Tariff Board heard evidence about the languishing state of the Australian women's hat industry.²¹³ Those in favour of increased protection for the Australian hat trade argued that Australian manufacturers could not compete with overseas industries, where wages and conditions were far below those in Australia.²¹⁴ It was alleged that employees of foreign competitors did not work under an award, and that overseas factories used cheap female labour to a greater extent than in Australia.²¹⁵ Furthermore, applicants seeking increased duty claimed that Australian manufacturers had invested £1 000 000 in the industry and this investment was at dire risk because of the large extent of imported women's hats.²¹⁶ Mr G A Carter, secretary of the Amalgamated Clothing and Allied Trades Union, censured the Tariff Board for its lack of intervention and suggested that it was "probably asleep"²¹⁷ when allowing such importations.²¹⁸ He argued that it was the Board's duty to make a public statement on the matter before "hundreds of hands were put off".²¹⁹

Unfortunately for the Victorian and New South Wales felt hat manufacturers', their application for increased duties on wool and fur and felt hats failed.²²⁰ The Board's disinclination to provide further industry assistance was due to a large extent to the fact that it had become increasingly critical of, and less compelled to strictly adhere to the 'settled policy of protectionism'. Manufacturers could no longer expect the Board to routinely rubber stamp their applications for increased protection.²²¹ The Board began to appear more objective in its stance and more critical of those industries seeking protection:

²¹³ The Board was provided with evidence that 70 per cent of the demand for men's hats was for Australian-made goods, with the difference of 30 per cent being made up of the better-class of imported hat.

²¹⁴ Tariff Board, above n 203.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ "My Lady's Hat", above n 204.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Tariff Board, above n 203.

²²¹ "Manufacturers: High Protection", *Sydney Morning Herald*, 23 June 1925, 8. It was common knowledge that "very high protection" had been granted to most manufacturers.

It meant that applicants for tariff assistance have had to do more than merely ask for protection. They have had to present some sort of reasonable case and to bring definite evidence before the Board.²²²

The Board even began to call for balance sheets and other evidence of efficient manufacturing processes.²²³ Moreover, as the Board's hearings were now open to the public, and closely scrutinised by the press and critics of protectionism, it seemed that the members were more clearly concerned with the appearance of transparency and objectivity in its processes and determinations:²²⁴

The public ventilation of the proceeding was highly educational to the taxpayers, and has been largely influential in fomenting the present deep and wide popular resentment and distrust with our 'Settled Policy'.²²⁵

By 1925-26, the Board appeared to be more reluctant to participate in protectionist intervention, particularly in cases where it considered that an increase in tariff was unwarranted or undeserved.²²⁶ The Board became increasingly focused on the efficacy of a protectionist policy that seemed to foster unproductivity and inefficiencies. For instance, in the felt hat hearings, the Board decided that it could not recommend an increase in duty because the current duty was "sufficiently high,"²²⁷ and that the trade in both States was in need of reorganisation to cure the "excessive"²²⁸ internal competition or infighting, which the Board considered was "responsible for so many of the factories being unable to get sufficient trade to keep them busy".²²⁹ The Board was of the opinion that the locally made hats had not reached the standard of the best imported hats.²³⁰ The Board also recommended that

²²² R C Mills, "The Tariff Board of Australia" (1927) 3 *Economic Record* 52, 81.

²²³ Commonwealth Tariff Board, "Inquiry on Felt Hats" (Report, 1927).

²²⁴ "Tariff Board Terrified: A Fiscal Funk", *Bunbury Herald and Blackwood Express*, 14 October 1927, 6.

²²⁵ *Ibid.*

²²⁶ Tariff Board, above n 203.

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ *Ibid.*

the quality and price of locally-made hats could be brought “before the notice of Australian users” more prominently,²³¹ if the industry adopted “better selling methods”,²³² regulated output, increased efficiency and promoted their products through an “intensive advertising campaign”.²³³ The government was displeased with the Board’s refusal to increase protection for hat manufacturers, and its apparent ‘loss of faith’ in its ‘settled policy’ of protectionism.²³⁴ However, after some short delay, the Minister of Trade and Customs eventually tabled the Board’s Report and its recommendations were adopted by Parliament.²³⁵

During the 1927 felt hat inquiry, the Board was provided with further evidence concerning the Australian felt hat industry’s struggle to compete with the “hurtful”²³⁶ competition from British and Italian *Borsalino* hats.²³⁷ The Board was warned that the industry seemed incapable of functioning efficiently, as it was unable to coordinate the various opposing interests of nine mills that were, at the time, being merged into 2 combines.²³⁸ Moreover, each factory, “pitted against one another”,²³⁹ was displeased with the mergers.²⁴⁰ The Board declined to provide any further assistance to the industry as it considered that an extra duty on imported hats would not be in the interests of the public.²⁴¹ Furthermore, the Board declared that manufacturers’ claims regarding the severe overseas competition had not been substantiated, and that Australian manufacturers had not made “the best efforts”²⁴² to cater for, and capture, the trade from foreign made articles.²⁴³ The Board decided that

²³¹ Ibid.

²³² Ibid.

²³³ Ibid.

²³⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 11 September 1925, 6 (Mr Pratten).

²³⁵ Ibid. Mr Riley MP had queried the length of the delay and asked the Minister as to whether he would “lay on the table of the House” this report.

²³⁶ “Felt Hats: Australian Output Decreased”, *The Register*, 10 November 1927, 13.

²³⁷ Ibid.

²³⁸ Ibid. The main combine was called United Felt hats Proprietary Ltd.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ “No Increase: Duty on Felt hats”, *Townsville Daily Bulletin*, 23 March 1929, 5.

²⁴² Ibid.

²⁴³ Ibid.

Australian manufacturers were generally unable to meet the demand, “either in variety or quality,”²⁴⁴ of Australian consumers.²⁴⁵ The Board received some support from the press: “[w]e do not need an increased tariff: we are spoon-fed enough at present. We need more brains and enterprise.”²⁴⁶ The Board, in its 1929 report, again refused the request to increase duties on imported hats. The Minister, became even more displeased with the Board’s, and declined to table its recommendations for a number of months after they had been submitted to him.²⁴⁷

Other industries associated with the hat trade were also severely affected by changes in millinery fashions.²⁴⁸ For instance, the “very peculiar”²⁴⁹ artificial flower trade was a fashion trade that was dependent entirely upon the frequent and capricious edicts emanating from the fashion centres of Paris, London and New York.²⁵⁰ After the sober war years, Australian women had become more interested in wearing fashion hats and had no qualm in “follow[ing] the dictates of the creators of fashions in those centres”.²⁵¹ Those Australian importers who supplied milliners with flowers, ornaments and trimmings for women’s hats, were especially devastated by changes in hair fashions and promptly supported the application for an increased tariff on imported felt hats.²⁵² Others considered that there was no future in this industry and advised those importers, left with surplus and redundant stock, to ‘scrap’ their stock and move into a “more profitable occupation”.²⁵³

²⁴⁴ “Duty on Hats: Opposition to Increase”, *The Argus*, 11 November 1927, 12.

²⁴⁵ *Ibid.*

²⁴⁶ “Tariff Board: Duty on Hats Opposed”, above n 189.

²⁴⁷ This report was one of 23 reports which were not tabled for some number of months. See “Tariff Board”, *Brisbane Courier*, 14 February 1929, 6. Stanley Bruce advised Parliament that the reason why the report was not tabled quickly was that the Board was making “further inquiries into certain aspects of the wool felt hat industry”. See Commonwealth, *Parliamentary Debates*, House of Representatives, 20 September 1928. It was finally tabled on 22 March 1929. See “Felt Hat Duty: Increase Imposed”, *Brisbane Courier*, 23 March 1929, 19.

²⁴⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 24 March 1926, 105 (Mr Parsons).

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Ibid.*

²⁵³ *Ibid.*

In the next part we see that the rhetoric surrounding the regulation of imported men's apparel in Australia during the 1920s was increasingly linked with economic rationalism and national interest. The anxieties that triggered the sumptuary response were not moral ones but were instead those associated with the establishment of internal markets and the fear of 'cheap' overseas competition.

8.3 Men's Underwear: a sumptuary impulse sparked by rational protectionism

*My company is confident that if the proposed duties are granted there will be no shortage of underwear, and the price to the consumer will not be increased.*²⁵⁴

8.3.1 A Poor Man's Tariff

*The public should be able to buy Underwear (sic) at a low price since many working people and their families will otherwise be forced to go without it.*²⁵⁵

Whilst almost every other form of taxation had been reduced in Australia after the end of the war, customs duty had steadily increased.²⁵⁶ In the 1919-20 financial year, customs revenue was £21 576 559 and by the 1925-26 year it was estimated to be about £40 000 000.²⁵⁷ One journalist suggested that the prohibitive customs duty on the “necessities of life in the humblest homes”²⁵⁸ was like taking “the shirt off a man's back without his knowing who has taken it”.²⁵⁹ He maintained that, not only were the duties on textiles prohibitive, but they kept prices high, and made “living difficult”²⁶⁰ for the lower classes.²⁶¹

Before the war, most Australian workingmen generally wore imported underwear made of fabric called “merino,”²⁶² which was also the trade name for a poorer class of article. Traditionally known as “a working man's article”,²⁶³ it was an

²⁵⁴ Rupert McLean, Director of George A Bond & Co) quoted in “Australia's Underwear Imports”, *Albury Banner and Wodonga Express*, 20 May 1927, 11.

²⁵⁵ “Underwear”, *Maitland Daily Mercury*, 23 September 1925, 6.

²⁵⁶ “Tariff Taxes”, *Evening News*, 8 March 1926, 6.

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² Commonwealth Tariff Board, ‘Inquiry’ (Report, 1924–5) (Robert Howard Morgan). It seems that the word “merino” was a term used by the Germans before the war.

²⁶³ *Ibid.*

English-manufactured underwear line either made of pure cotton or containing up to ten per cent wool. It attracted no duty and retailed at 2s 11d per garment.²⁶⁴ These garments were serviceable and practical for working men and for others who favoured cotton garments. In 1925, one importer told the Tariff Board that these ‘merino’ garments were “decently smooth”²⁶⁵ garments and similar to those which he wore himself, as he was unable to wear wool next to his skin.²⁶⁶ He considered them to be “a very nice class of cheap stuff,”²⁶⁷ but lamented that such garments were no longer available because of the high tariff on their importation. “These days are gone forever” he told the Board.²⁶⁸

During the war, Australian clothing manufacturers were ‘blessed’ with little overseas competition, and they “practically had the whole of the home market to themselves”²⁶⁹ for the higher grade lines of underwear. They also enjoyed “exceedingly high artificial aid”²⁷⁰ in the form of costly shipping overheads.²⁷¹ After the war, the growth of tariff-assisted Australian manufacturing continued to be “phenomenal.”²⁷² The cheap imported underwear then attracted a 25 per cent duty.²⁷³ Despite the growth in locally-made garments, in 1921 Pratten maintained that it was essential for Australia to be more economically pragmatic in the face of changing global conditions.²⁷⁴

Now the world is shaking down again ... it seems to me that the time has arrived when we should consider what our permanent policy with regard to local industries is going to be. Notwithstanding the artificial protection during the war, the home industries of Australia are not even yet satisfying the requirements of Australian people in many directions. Plenty of

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Commonwealth, *Parliamentary Debates*, Senate, 15 July 1921, 31 (Senator Pratten).

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Commonwealth, *Parliamentary Debates*, House of Representatives, 14 October 1921, 40 (Senator Pratten).

²⁷³ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 101 (Senator Payne).

²⁷⁴ Commonwealth, *Parliamentary Debates*, Senate, 15 July 1921, 31 (Senator Pratten).

room exists for further development, not only in the establishment of new industries, but in the multiplication of old ones.²⁷⁵

Pratten became enthusiastically involved in activities to educate Australian purchasers “to the merits of the goods made in their own country.”²⁷⁶ As President of the Chamber of Manufacturers of New South Wales, he inaugurated the movement “All Australian Manufacturers Week”²⁷⁷ that sought to advertise the expansion in Australian industries “of all sorts and descriptions,”²⁷⁸ and to promote the adage that Australian made goods were the “best”.²⁷⁹ His vision was for all Australian shop windows to be full of Australian goods in the not distant future.²⁸⁰

In 1921, the Minister for Trade and Customs, Mr Massy-Greene, also attempted to control the flood of imported underwear by creating a new sub-item in the Tariff Schedule that included woven undershirts, combinations and underpants of wool, or those that contained wool, or consisted wholly of cotton.²⁸¹ Greene justified this new formal classification on the basis that traders said they found it difficult to discriminate between goods made of cotton and those made wholly of wool.²⁸² Mr Lazzarini MP dismissed this pretext as “absurd”.²⁸³ He pointed out that it was inequitable to protect cotton goods in favour of Australian manufacturers to the same high level as was afforded to the woollen industry. He argued that protection should not be provided until such time that cotton underwear manufacturers were able to obtain their raw material in Australia.²⁸⁴ He insisted that there were many parts of Australia where garments made wholly of cotton were far more comfortable than woollens during the summer months. Furthermore, he argued that in many inland

²⁷⁵ Ibid.

²⁷⁶ Ibid. By 1925, Pratten was no longer a Senator but was a member of the House of Representatives.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 14 October 1921, 42 (Mr Lazzarini).

²⁸² Ibid.

²⁸³ Ibid.

²⁸⁴ Ibid.

districts, “artisans and labourers”²⁸⁵ found it *absolutely necessary* to wear cotton garments.²⁸⁶ Mr Gregory MP, agreed and suggested that the cotton underwear industry should not be built up by spoon-feeding, but instead should be established upon “a sound and solid basis.”²⁸⁷

The underwear debate was so contentious that it even triggered internal discord amongst protectionists themselves. Senator Payne, although a protectionist, positioned himself as a champion for the working class consumer. He maintained in 1921, that the working man had no choice and was *compelled* to wear imported cotton underwear because it was much lower in price than locally manufactured ‘ordinary natural wool undergarments.’²⁸⁸ He reminded his colleagues that if the working man had no alternative but to choose clothing made in other countries other than Great Britain, he would be severely penalised because this clothing would attract the higher duty of 55%.²⁸⁹ Payne also insisted that such duties were unfair because they were ‘class based’,²⁹⁰ and that it was “almost impossible”²⁹¹ for the bulk of the people to clothe themselves with suitable underwear, considering the “very high prices”²⁹² that were presently being charged.²⁹³ He cited the example of the average working man, earning £4 to £4 5s per week, who had a wife and family to support, and who had difficulty clothing himself and his family comfortably, especially during the winter months.²⁹⁴ Payne suggested that even if the working man wanted an all-woollen garment he would expect to pay 50 per cent more than he would have normally paid before the war.²⁹⁵ Payne recommended that much lower tariff duties be levied upon those lines of imported cotton and light-weight woollen

²⁸⁵ Ibid.

²⁸⁶ Ibid (emphasis added).

²⁸⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 May 1921, 98 (Mr Gregory).

²⁸⁸ Commonwealth, *Parliamentary Debates*, Senate, 16 November 1921, 63 (Senator Payne) (emphasis added).

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 157 (Senator Payne).

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Commonwealth, *Parliamentary Debates*, Senate, 16 November 1921, 63 (Senator Payne).

²⁹⁵ Ibid.

underwear that were currently being manufactured in Australia.²⁹⁶ Whilst he acknowledged that such ‘lower’ duties might still represent a “fairly high Tariff”,²⁹⁷ he considered Greene’s proposal to increase duty on imported underwear from 25% to 40%, as more than “he could swallow”.²⁹⁸

Whilst politicians such as Payne, Gregory and Lazzarini were troubled about the impact that a prohibitive tariff would have on the working man, others appeared more concerned about Australia’s fiscal position. For instance, the Treasurer, Sir Joseph Cook, acutely aware that Treasury would receive “an enormous revenue” (sic)²⁹⁹ from Customs duties in 1921 on goods such as men’s underwear, contended that Commonwealth revenue would suffer if Australia reduced its Customs duties.³⁰⁰ Gregory took issue with Cook, and argued that if the duties were too high, then consumers would not be able to buy imported goods, and Cook would then not “get any revenue at all from that source”.³⁰¹ Gregory claimed that whilst he would do nothing to injure Australian industries, but wanted to see “fair conditions for the people of this country”,³⁰² as well as some assistance for the Motherland, who was experiencing severe post-war economic distress.³⁰³

Further tariff increases were demanded in 1925 and 26 by Australian manufacturers who insisted that they were unable to compete in the face of the boost in imported apparel.³⁰⁴ Protectionists kept asking: “[h]ow are we to build [the underwear industry] up if we do not spoon-feed or shovel feed it?”³⁰⁵ Some critics maintained that the new 1925/26 tariff was a “rich man’s tariff”³⁰⁶ that victimised the

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 May 1921, 98 (Mr Gregory).

³⁰⁰ Ibid 98 (Sir Joseph Cook).

³⁰¹ Ibid 98 (Mr Gregory).

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ “What the Tariff means: Consumers’ Burden”, *Evening News*, 10 September 1925, 6.

³⁰⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 May 1921, 98 (Mr Austin Chapman).

³⁰⁶ “Great Britain’s Trade: Affected by Tariff”, *The Argus*, 19 September 1925, 36.

working class even more than the 1921 tariff had done.³⁰⁷ By 1926, the average working man, who had been able to previously purchase an undershirt or a pair of under-trousers for about 5s or 5s 6d, was “compelled,”³⁰⁸ after the application of new tariff rates on imported underwear, to pay anything from 7s 6d to 8s for each item.³⁰⁹ It was argued that the subsequent increased financial burden would be largely borne by working men and their families³¹⁰ because it focused on “indispensable articles of daily and general use.”³¹¹ In some cases, the tariff acted as *a complete prohibition* on many of the imported clothing lines purchased by working men, including cotton underwear and cotton tweeds.³¹² Parliament was told that Sydney traders had suggested that cheap underwear was “absolutely necessary”³¹³ in the interests of the health of the community. They insisted that the public should be able to buy sound underwear at a low price³¹⁴ or otherwise, many working people and their families would be forced to “go without these garments”.³¹⁵

Some importers suggested that if Australian workers were unable to afford the British “commoner grades of stuffs”³¹⁶ then they would be forced to buy an even lower grade article.³¹⁷ For instance, Sydney Neilson Rice, a representative of the Australasian Association of British Manufacturers, warned the Tariff Board that the workingman, unable to afford to purchase the cheaper grade of garment made in Great Britain or the locally manufactured “better class of underwear,”³¹⁸ would be “forced to purchase the inferior Japanese article.”³¹⁹ Rice endeavoured to convince the Board that if the tariff were increased, it would not act as “a protective duty but a

³⁰⁷ Commonwealth, *Parliamentary Debates*, Senate, 16 November 1921, 64 (Senator Payne).

³⁰⁸ Commonwealth, *Parliamentary Debates*, Senate, 3 June 1926, 56 (Senator Payne).

³⁰⁹ Ibid.

³¹⁰ “Great Britain’s Trade: Affected by Tariff”, above n 306.

³¹¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 March 1926, 52 (Mr Mann).

³¹² Ibid (emphasis added).

³¹³ “Great Britain’s Trade: Affected by Tariff”, above n 306.

³¹⁴ Ibid.

³¹⁵ “Reconsideration Urged: Requests by Sydney Traders”, *The Argus*, 19 September 1925, 36.

³¹⁶ Tariff Board, above n 262.

³¹⁷ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 157 (Senator Payne).

³¹⁸ Tariff Board, above n 262 (Sydney Neilson Rice).

³¹⁹ Ibid.

prohibitive duty”.³²⁰ Whilst the threat of the Japanese market seemed to be of some concern to the Board, it was not a sufficient ground for it to deny the application for increased duty.³²¹

8.3.2 Fear about national security and sustainability

*I want to see a self-sustained country with manufacturing industries which will furnish us with a large variety of occupations capable of keeping men fit, so that they will always be in a position to defend our country.*³²²

When endorsing this national protectionist project in Parliamentary debates, Pratten and Fenton and other committed protectionists, regularly used language that was imbued with traditional sumptuary notions of national independence and economic caution.³²³ Not only did they insist that Australia should be “self-contained and self-supporting”,³²⁴ by exporting heavily and importing lightly,³²⁵ but they frequently applied sumptuary tropes when voicing their fears about national security and economic ruin.³²⁶ There was also periodic anxiety about the need to build up Australian secondary industries in order that Australians would be in a position to “populate”,³²⁷ “defend”,³²⁸ and “protect”,³²⁹ their country. By 1921, this anxiety about national security and the need to encourage home industry was so palpable that it prompted Gregory to declare that Pratten and his cohorts sought to “build a tariff

³²⁰ Ibid.

³²¹ Ibid.

³²² Commonwealth, *Parliamentary Debates*, House of Representatives, 25 May 1921, 109 (Mr Anstey).

³²³ Commonwealth, *Parliamentary Debates*, Senate, 15 July 1921, 31 (Senator Pratten).

³²⁴ Ibid.

³²⁵ Ibid.

³²⁶ Ibid.

³²⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 11 March 1926, 73 (Mr Killen).

³²⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 19 March 1926, 56 (Mr Blakeley).

³²⁹ Commonwealth, *Parliamentary Debates*, Senate, 7 March 1928, 52 (Senator Graham).

wall around Australia akin to the Great Wall of China.”³³⁰ He argued that whilst they might preach peace, they in fact desired “a trade war against other countries.”³³¹ Mr Killen suggested that this form of “extreme protectionism”³³² would not only be detrimental to the Australian economy but would diminish Australia’s trade reputation.³³³

The doggedness of the barrage of ‘buy only Australian-made goods’ propaganda which was being promulgated by protectionists during the 1920s even overburdened the common man.³³⁴ For instance, Barney O’Mick, in a letter to the Editor of *The Argus* in September 1925, vented his irritation about the dissemination of such propaganda by manufacturers and their agents.³³⁵ Whilst acknowledging that everyone had the desire to be patriotic, he railed at the relentless message that one of the “greatest evidences of patriotism”³³⁶ was to buy in ‘a dear market’.³³⁷ He argued that this message was so firmly implanted in Australians that manufacturers, as “custodians of patriotism”³³⁸ forever sought to make the market dearer in order to “improve the quality of our patriotism”.³³⁹ For critics such as O’Mick, patriotism did pay: it paid the manufacturer.³⁴⁰

Others suggested that some members of the opposition, including Senator Payne, were actively engaged in a campaign of vilification against Australian-made goods.³⁴¹ Senator Guthrie became affronted when Senator Payne suggested that the knitting mills which produced knitted goods, including underwear, were not properly equipped and that they turned out goods which wore badly and had a tendency to

³³⁰ Commonwealth, *Parliamentary Debates*, 22 November 1927, 97 (Mr Gregory).

³³¹ Ibid.

³³² Commonwealth, *Parliamentary Debates*, House of Representatives, 3 March 1926, 73 (Mr Killen).

³³³ Ibid.

³³⁴ Barney O’Mick, “Does Patriotism Pay?”, Letter to the Editor, *The Argus*, 19 September 1925, 36.

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 19 March 1926, 56 (Mr Blakeley).

shrink.³⁴² Guthrie attacked Payne for his loss of faith in the ‘settled’ canon of protectionism, and for trying to “wreck”³⁴³ the Australian woollen industry.³⁴⁴ Guthrie insisted that it was “pure humbug”³⁴⁵ to say that these mills were not turning out satisfactory articles.³⁴⁶ As a demonstration of his confidence in Australian-made apparel, he assured the Chamber that he had worn Australian-made underwear for the past four or five years and it had not shrunk.³⁴⁷

8.3.3 The 1925 Tariff Board Apparel Hearings: men’s underwear becomes ‘a hot issue’

*Articles of underwear and overwear are brought before the tribunal, and subjected to a searching inspection, with the object of ascertaining whether something inferior is not good enough for the working class.*³⁴⁸

Throughout the 1925 Tariff Board Apparel Hearings, the tariff on men’s imported underwear proved to be a significant issue. During these hearings the Board heard an application by an Australian underwear manufacturer for an increase in duty upon particular brands of imported workingmen’s cotton underwear.³⁴⁹ The Board was advised by various witnesses that the cheaper brands of underwear, including “Brown Cotton”,³⁵⁰ “Natural Merino”³⁵¹ and “Balbriggan”,³⁵² were not only popular with workingmen because they suited their occupations, but also because they were

³⁴² Commonwealth, *Parliamentary Debates*, Senate, 4 June 1926, 28 (Senator Guthrie).

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ Ibid. Guthrie was so vexed with Payne’s claims that he mockingly suggested that Payne must be different from other people: “[h]e must keep his underwear on him so long that it is glad to get off him, and shrinks so that it may not have to be worn by him again.”³⁴⁷

³⁴⁸ “The Degradation of Wage Fixing”, *The Australian Worker*, 13 October 1921, 3.

³⁴⁹ “Apparel N E I” means “Not Elsewhere Included”.

³⁵⁰ Tariff Board, above n 262 (Robert Howard Morgan). Commonwealth Tariff Board, ‘Apparel Hearings’ (Report, 29 April 1925) (Sydney Neilson Rice).

³⁵¹ Ibid.

³⁵² Ibid.

“within the buying limit of working men’s income.”³⁵³ What seems absurd about this application was that Australian manufacturers, at the time, were neither producing, nor had any desire to produce this lower grade and less profitable class of underwear.³⁵⁴ Payne had earlier in 1921 pointed out the injustice of such an application. He told Parliament: “[i]t is a wrong attitude to impose a heavy Tariff on articles which people need, and must have, and which are not produced in Australia.”³⁵⁵

If this application had proved successful then the Tariff Board would effectively be sanctioning an increase in tariff duty, to ostensibly ‘protect’ *phantom* or non-existent Australian manufacturers from overseas competition.³⁵⁶ In reality, the tariff on cheap imported men’s underwear was nothing but a purely prohibitive tariff and it exhibited all the marks of a sumptuary impost. Whilst it would significantly increase revenue, it would also severely affect workingmen because they would be no longer able to afford to purchase the cheaper British lower grades of underwear.³⁵⁷

Although the Board heard ample evidence that workingmen had always traditionally purchased cheap lines of ‘brown cotton underwear’, its members, as ‘committed Protectionists’, were determined to explore the issue of whether the working classes should be *compelled* to wear Australian made woollen underwear.³⁵⁸ During the hearing, Herbert Brookes asked Robert Howard Morgan, a representative of the Melbourne Chamber of Commerce, “how essential”³⁵⁹ the cheaper garments were to the workers and whether any “loading up”³⁶⁰ of duty on them would “put such garments quite out of the range of working men’s pockets?”³⁶¹ Brookes was

³⁵³ Tariff Board, above n 262. Tariff Board, above n 350 (Sidney Neilson Rice).

³⁵⁴ Ibid.

³⁵⁵ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 101 (Senator Payne).

³⁵⁶ Tariff Board, above n 262.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ibid.

³⁶⁰ Ibid.

³⁶¹ Ibid.

also keen to ascertain if extra duties would “*force* the working population of Australia”³⁶² to use a better class of underwear.³⁶³

However, the evidence presented did not support Brookes’ expectation that working men could be *compelled* to support the Australian underwear industry. Rather, it confirmed that working men would not be able to afford the better article.³⁶⁴ The extra charges sought by manufacturers would heavily penalise the workingman because he would have to “pay a higher price for the ... same stuff he uses ..., or he [would] have to take cheaper articles-[and] getting a poorer quality for the same outlay”.³⁶⁵ Nevertheless, Brookes and his fellow Board members ignored the evidence and recommended that there should be a significant increase in the tariff on imported British cotton underwear, even though Australian underwear manufacturers were not producing the cheaper line of underwear favoured by the working classes.³⁶⁶

8.3.4 Protection as xenophobia

*The cheapest and nastiest labour one could imagine would be producing those goods, and we would be using them whilst our own people were turned into hewers of wood and drawers of water.*³⁶⁷

As already been noted in Chapter 3, the Board, by 1925, was hearing complaints from protectionists and manufacturers who were increasingly anxious about the increased incursion of foreign goods onto the Australian market. The 1921 Greene Tariff schedule had proved to be ineffective in allaying this anxiety.³⁶⁸

³⁶² Ibid (emphasis added).

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1927, 94 (Mr Scullin).

³⁶⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 19 March 1926, 56 (Mr Blakeley).

During this period, Protectionism was becoming even more aligned with the expression of national duty and pride³⁶⁹ and there was also a corresponding surge in sumptuary protectionist rhetoric being uttered in Parliament and in the press.³⁷⁰ One protectionist politician declared:

I am a protectionist because I am Australian, and love my country, because I believe that it is infinitely better to have one Australian working for good wages and under decent conditions than to have ten Japanese, Chinese, Germans, Frenchmen, Americans, or Britishers (sic) working on our behalf in their country. I believe that this is our job, and that no other country can do it half so well as we can.³⁷¹

As noted earlier, nationalistic sentiment continued to be voiced by those who feared that a low tariff would bring Australian workers “down to the level of cheap labour countries”.³⁷² Whilst fervent protectionists abhorred the influx of all imported goods from all sources, there were others who desired to maintain a good trade relationship with Great Britain.³⁷³ Whereas some strict protectionists and manufacturers considered that trade with Great Britain was “dangerous competition,”³⁷⁴ there were, on the other hand, some merchants who insisted that nothing but good could come from “fair and healthy”³⁷⁵ competition with British manufacturers.³⁷⁶ More particularly, these merchants claimed that trade with Britain would ensure that the standard of Australian secondary industry would maintain a high standard of efficiency and “grade of production”.³⁷⁷

Imperialists were particularly apprehensive about “cute Japanese”³⁷⁸ manufacturers who had undercut their Australian counterparts³⁷⁹ because they were

³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Commonwealth, *Parliamentary Debates*, Senate, 7 March 1928, 52 (Senator Graham).

³⁷³ “Great Britain’s Trade: Affected by Tariff”, above n 306.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Ibid.

³⁷⁷ Ibid.

³⁷⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 14 December 1927, 130 (Mr Mann).

“shrewd”³⁸⁰ enough to discover a way to “get around”³⁸¹ the prohibitive effect of the 1926 tariff on imported cotton underwear.³⁸² It seems that Japanese manufacturers had found a loophole “through which they bought in piece goods knitted in tubular form, which only had to be cut into lengths, a few stitches inserted and the finished garment was produced.”³⁸³ This fabric attracted much lower duty compared to the duty on the finished imported finished article,³⁸⁴ and with the expenditure of a little labour, it could be made into underwear in Australia.³⁸⁵ This novel method of underwear production caused a drastic effect on Australian underwear manufacturers:³⁸⁶

While the textile Rome was burning, the Government fiddled away in recess ... [w]e did not do it deliberately but we allowed a loophole which permitted the makers of garments from imported material practically to throttle the Australian industry.³⁸⁷

It was even suggested that this tariff loophole³⁸⁸ was the main reason why George Bond and Co. Limited, of Sydney, the biggest hosiery and underwear spinners and weavers in Australia, went into voluntary liquidation in 1927.³⁸⁹

³⁷⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 2 December 1927, 87 (Mr Charlton).

³⁸⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1927, 94 (Mr Scullin).

³⁸¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 2 December 1927, 87 (Mr Charlton).

³⁸² Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1927, 94 (Mr Scullin).

³⁸³ *Ibid.* In 1924-25 importations of cotton piece goods in tubular form were valued at £6 000, whilst in 1925-26 the same type of imported goods were valued at £72 000 and in 1926-27 they were valued at £175 000.

³⁸⁴ *Ibid.*

³⁸⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 2 December 1927, 87 (Mr Charlton).

³⁸⁶ *Ibid.*

³⁸⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 14 December 1927, 136 (Mr Blakeley).

³⁸⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1927, 94 (Mr Scullin).

³⁸⁹ *Ibid.* Although Bonds had financial problems, it seems that, after ‘restructuring’ the company, it then went on to become very successful. See Commonwealth, *Parliamentary Debates*, House of Representatives, 14 December 1927, 130 (Mr Charlton).

These alarmists contended that, whilst some Australian underwear manufacturers might be perturbed about competing with British imports, these manufacturers should be even more uneasy about competing with underwear manufactured in less ‘desirable’ low-wage countries:³⁹⁰

Textiles can be produced in Japan and sold on the Australian market at a price with which Australians cannot possibly compete. The same remark applies to articles manufactured in China, Germany, France, Czecho-Slovakia (sic), and other European countries. We cannot compete against those low-wage countries, nor do we desire to do so if it means that our wages are to be reduced and our working hours increased.³⁹¹

8.3.5 No voice for the consumer

*Little has been heard of one matter from which much was expected in 1921, namely the protection of the consumer where a manufacturer was shown to be taking ‘undue advantage’ of the tariff.*³⁹²

Whilst the Board provided a forum for tariff discussions and determinations, there was a noticeable absence in this forum of the person most affected by such discussions and determinations: the consumer. This omission was at odds with Hughes’ 1919 election promise, when he undertook that the Board would be established to provide a protective tariff, “coupled with security for the consumer”.³⁹³ Hughes insisted that the Board would be “charged with the duty of protecting the consumer”,³⁹⁴ against manufacturers who might make use of the tariff to exact unduly high prices.³⁹⁵ Yet, in its early determinations, there was no evidence

³⁹⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 19 March 1926, 56 (Mr Blakeley).

³⁹¹ Ibid.

³⁹² Mills, above n 222, 77.

³⁹³ Ibid 59.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

that the Board, took the interests of the consumer into consideration when it decided to increase the tariff on many imported items of apparel.

Mr Duncan-Hughes MP argued that “very few people ever appear to think of the consumer.”³⁹⁶ He told the House that he was surprised that some members had not risen to “say a word for [the consumer]”.³⁹⁷ “Surely he has rights as well as the manufacturer and the primary producer”, he asked.³⁹⁸ Furthermore, he argued that he saw no compensating advantage in the future for the additional prices that the majority of the people would have to pay for cotton goods.³⁹⁹ Robert Howard Morgan made a similar comment when giving evidence before the Tariff Board on 1 June 1925.⁴⁰⁰ Morgan noted that no evidence had been given “on behalf of the consumers”⁴⁰¹ who, he said, were the people who were principally affected by any tariff increase.⁴⁰² He told the Board that he was disappointed that there was no representation by retail distributors, who he believed were “nearer to the public”⁴⁰³ than anyone else.⁴⁰⁴ He maintained that if evidence from distributors had been available, it “should undoubtedly be very helpful to the Board”⁴⁰⁵ about the effect that such an increase would have on consumers.⁴⁰⁶ Morgan nonchalantly explained to the Board, that the whole of his evidence was being given solely “to help the Board in coming to a decision over a very big question which is under inquiry”.⁴⁰⁷ He contended that distributors, whether wholesale or retail, had “nothing to lose or

³⁹⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 23 March 1926, 93 (Mr Duncan-Hughes).

³⁹⁷ Ibid.

³⁹⁸ Ibid.

³⁹⁹ Ibid.

⁴⁰⁰ Commonwealth Tariff Board, ‘Apparel Hearings’ (Report, 1 June 1925) (Robert Howard Morgan).

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ Ibid.

gain”⁴⁰⁸ by any increase in tariff duties on imported underwear, for the duties were passed on to the consumers “at a profit”:⁴⁰⁹

We wholesale people really do not care twopence what the duty is. It does not make any difference to us because we merely pass it on. That is recognised in respect of both wholesale and retail distribution.⁴¹⁰

Morgan contended that the only people who would be affected by the increase in duty were those poorer consumers:

whose circumstances will not permit [them] to buy the higher quality pure wool article, and who purchased merino-that is a garment containing less than ten per cent of wool.⁴¹¹

Pratten sternly warned manufacturers during a discussion about the new tariff schedule in the early part of 1926, that “no shrift”⁴¹² would be given by the Government to those industries which unnecessarily raised their prices to consumers. However, for critics such as R C Mills, this warning was a hollow one for he maintained that the issue of consumer protection would, as far as he was concerned, continue to remain a “dead letter”.⁴¹³

In the 1926 Debates, the issue about the inappropriateness of woollen underwear in tropical climates was again raised.⁴¹⁴ Senator Guthrie, advocated that the Commonwealth government should *force* all Australians to support the Australian woollen industry by compelling them to wear only woollen overwear and underwear garments, regardless of the climatic conditions which they experienced.⁴¹⁵ Senator Payne dismissed this demand, and declared that anyone favouring this attitude was likely to be regarded as a “real autocrat”.⁴¹⁶ He argued that people *must*

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

⁴¹² Mills, above n 222, 78.

⁴¹³ Ibid.

⁴¹⁴ Commonwealth, *Parliamentary Debates*, Senate, 30 June 1926, 41 (Senator Findley).

⁴¹⁵ Commonwealth, *Parliamentary Debates*, Senate, 10 June 1926, 70 (Senator Payne) (emphasis added).

⁴¹⁶ Ibid.

have “light material”⁴¹⁷ during certain periods of the year and, in some parts of Australia, throughout the whole year.⁴¹⁸

Payne, a Tasmanian, tried to impress upon his Victorian colleagues that the climate in Queensland was very different from that of Victoria.⁴¹⁹ He maintained that a man in Queensland “would not attempt to wear the heavy garments that are required in the southern part of Australia.”⁴²⁰ Furthermore, he contended that the imposition of additional duty on underwear which was especially made for hotter climates, would not protect any industry, and would be purely a revenue duty.⁴²¹ During the debates there was much discussion about the extra duty imposed upon cotton singlets, which were especially made to suit residents in tropical and subtropical regions of Australia.⁴²² It seems that the only reason these singlets attracted increased duty was because they were bound round the neck with a binding of ‘special material’ containing a little silk.⁴²³ Silk was, of course, traditionally considered to be a luxury fabric and constantly attracted sumptuary attention.⁴²⁴ Payne claimed that this extra duty was an “unjust imposition”⁴²⁵ as it meant that workers were called upon to pay an additional 3s to 4s for this class of undervest.⁴²⁶ Payne suggested that the addition of the silk binding gave a “nicer appearance”⁴²⁷ to the singlets, than if they had been made of cotton.⁴²⁸ Moreover, he argued that it was not the intention of Parliament to “penalize”⁴²⁹ the wearers of cotton garments by making them pay the heavier duty imposed on silk or woollen garments, “simply because the tape on the neck of a garment contain[ed] a little silk”.⁴³⁰ He maintained

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ Commonwealth, *Parliamentary Debates*, Senate, 3 June 1926, 44 (Senator Payne).

⁴²⁰ Ibid.

⁴²¹ Ibid.

⁴²² Ibid 49 (Senator Payne).

⁴²³ Ibid 37 (Senator Payne).

⁴²⁴ Ibid.

⁴²⁵ Ibid 49 (Senator Payne).

⁴²⁶ Ibid.

⁴²⁷ Ibid 44 (Senator Payne).

⁴²⁸ Ibid.

⁴²⁹ Ibid 37 (Senator Payne).

⁴³⁰ Ibid.

that the imposition of this additional duty did not protect any Australian industry but was, in fact, only a revenue raiser.⁴³¹

*Why therefore any increased protection is a mystery, except that some of the Victorian companies have pleaded to the Tariff Board for more baksheesh.*⁴³²

8.4 Conclusion

By the 1920s, the quantity of various types of imported apparel had increased enormously and the presence of sumptuary impulse was still manifestly apparent in the vigorous attempts by protectionists to suppress the importation of such goods. At the same time, it *appeared* that the sumptuary focus was shifting from a moralising critique of luxury and extravagance to a protectionist discourse that focused on the well-being of the national economy. However, this chapter demonstrates that whilst excessive consumption of imported goods, including men's underwear and women's felt hats, was increasingly linked with economic protectionism and national interest, there still remained some threads of sumptuary moralisation intertwined with tariff discourse. What is apparent in this chapter is that this form of sumptuary moralisation was more markedly evident in discourses associated with women and 'fashionable apparel'.

Chapter 9 considers the rise of two iconic Australian industries in the 1920s and continues to follow the shift in the sumptuary focus from a moralising critique of luxury to one that had an increasing emphasis on economic interests and national well-being.

⁴³¹ Ibid 44 (Senator Payne).

⁴³² "Protection and the Producer", *Sunday Times*, 13 September 1925, 4.

9 A STRONG SHIFT TO A RATIONAL FORM OF PROTECTIONISM

Much money was spent by Protectionist organizations in propaganda and continual repetition of catch cries in appeal to the public to protect local industries-whether efficient or not-on presumably patriotic grounds.¹

9.1 Purpose and structure of this chapter

This chapter will examine the manner in which sumptuary regulation manifested itself through prohibitive tariffs on imported hosiery and corsetry during the war period and early 1920s. This chapter will explore how economic concerns and national interest lay behind a more rational economic form of sumptuary regulation that developed during this period into a conscious promotion of local industries and an active discouragement of foreign imported goods. This new “eruption”² of sumptuary regulation was one where the sumptuary ethic was focused more on economic regulation than on moral regulation. The moralising tones that accompanied discourse on luxury and women’s fashion were in these instance were subsiding and were being replaced with discourses of nationalism mixed with mercantilist preoccupations.

The chapter specifically explores the establishment of two iconic industries: the hosiery and corsetry industries that were managed by George Bond and Frank Burley, two ‘new-age’ businessmen, who had keenly embraced the unexpected opportunities opened up by the war. This chapter will also demonstrate how the government and the Tariff Board, as the “institutional voice of protectionism”,³ were both committed to protectionism, often to the detriment of the consumer. They

¹ ‘Too Much Protection’, *The Register*, 14 February 1925, 10.

² Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (MacMillan Press, 1996) 357.

³ F Castles, *Australian Public Policy and Economic Vulnerability* (Allen & Unwin, Sydney, 1988) 94.

considered that a high Tariff on imported apparel was essential to encourage and support emerging secondary industries and maintained that strong domestic industry underpinned the government's plan to make Australia more independent and prosperous. They recognised that Australian manufacturers were working under difficult trading conditions that were peculiar to Australia, and that these conditions placed Australian manufacturers at a disadvantage so far as competition with imported goods was concerned.

This chapter will also expose the presumptuous demands of many prospective manufacturers such as Burley and Bond who insisted that the government 'guarantee' sumptuary protection for their industries even before they commenced production and before they had *proved* that they were 'capable' of satisfying the ever increasing Australian demand for corsetry and hosiery respectively. It was not surprising that an 'avowedly protectionist' government and a compliant Tariff Board both readily acceded to these manufacturers' demands for such pre-emptive protection. They eagerly accepted submissions from these 'heroic and courageous' manufacturers that the newly-established hosiery and corsetry industries were 'entitled' to absolute protection because they were industries necessary for the economic growth of the country. It was readily acknowledged that each venture had the potential to be "one of the greatest of Australia's secondary industries."⁴

⁴ Commonwealth Tariff Board, 'Report and Recommendations on Socks and Stockings' (Report, September 1925) 1.

9.2 Early Australian Hosiery Manufacturers: demand protection

*Some Australian manufacturers at present are having a 'rough spin' both in hosiery and in other woollen manufactured goods because material is being dumped in at prices which ... is below what we know it has cost to manufacture in England.*⁵

As seen in Chapter 4, before the war, imported socks were considered a luxury because of the prohibitive tariffs imposed upon them.⁶ Whilst importations of hosiery continued throughout the war, they fell off quite dramatically by 1917-18 because of the *Trading with the Enemy Acts 1914-16* (Cth) and with problems with transport and increasingly high tariffs.⁷ During the war years, tariffs on hosiery had become even more exorbitant than before, despite Australian hosiery factories fulfilling only a small portion of the country's demands for these goods.⁸ Whilst manufacturers were extending their factories and substantially benefiting "by the abnormal conditions arising out of the war",⁹ there were still only a small number of hosiery factories in Australia. Most of these were small concerns employing only about five to ten persons.¹⁰ In New South Wales, there were nine "establishments"¹¹ manufacturing knitted goods and hosiery, and these employed only a total of 371 workers.¹² Even though consumers in New South Wales was buying up to £301 166

⁵ Commonwealth, *Parliamentary Debates*, Senate, 3 October 1922, 62 (Senator Guthrie).

⁶ Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 27 (Senator Findley).

⁷ Prices Investigations Committee, 'Clothing' (Report No 11, Inter-State Commission of Australia, 1918) 39. The value of imported hosiery and knitting (sic) apparel from United Kingdom in 1916-17 was £304 487 but this dropped to £103 219 in 1917-18. There were similar reductions in importations in goods from Japan (£138 794 to £39 935), United States of America (£116 066 to £38 122) and Switzerland (£41 116 to £6 970). The total value of these goods had dropped from £624 539 in 1916-17 to £196 420 in 1917-18.

⁸ Ibid 40.

⁹ "Our Chance: More About Woollens", *Barrier Miner*, 26 September 1914, 2.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid. Six of these establishments employed an aggregate of 91, whilst the other three employed an aggregate of 283 workers.

worth of imported socks and stockings, its hosiery and knitted goods industry was only paying out £16 226 in wages and £2 202 in salaries.¹³

9.2.1 A new war industry

*The manufacture of hosiery in Australia might well be classed as a war industry. Previously to that it was infinitesimal.*¹⁴

Most socks and stockings worn by Australians in the pre-war period were ready-made and came from the United Kingdom and Germany.¹⁵ Before 1914, Germany had developed a profitable hosiery market within Australia.¹⁶ In 1912, Australia imported £549 446 worth of silk, woollen and cotton socks and stockings from the United Kingdom and £193 390 worth of similar hosiery from Germany.¹⁷ In particular, German hosiery manufacturers supplied £158 029 of the cotton socks that were so popular with working-class Australians.¹⁸ It was anticipated that, ‘but for the outbreak of the war’, German manufacturers would have eventually established and expanded hosiery factories within Australia to purposely avoid the incidence of the high Australian tariff on hosiery items.¹⁹

The press was quick to counsel Australian manufacturers that the wartime prohibition of the trade in ‘enemy’ imported goods could be turned to an advantage: they could enlarge their factories²⁰ and thus corner the market in hosiery sales.²¹ Besides, it was predicted that the industry could provide “clean, healthy employment

¹³ Ibid.

¹⁴ “The Tariff : Slow Progress”, *The Sydney Morning Herald*, 28 May 1921, 13.

¹⁵ “Our Chance: More About Woollens”, above n 9, 2.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid. Australia was “very far” from being Germany’s sole customer. Germany “had a great export trade to other parts of the world in cotton socks and stockings.” The reporter suggests that Britain “would be out” to capture those markets.

²⁰ Ibid. The reporter suggested that the Australian stocking factories “we want, must be bigger” than those which employed 5-10 persons.

²¹ Ibid.

for female labour.”²² Both the press and manufacturers were confident that Australia would ‘eventually’ be in a far better position than Germany had been in to manufacture cotton goods such as stockings.²³ At the same time, they were actively coveting German “ocean possessions”²⁴ such as Samoa, which Australia might “hope to keep after [her] conquest of them.”²⁵ It was proposed that if there were such an acquisition, that the whole cotton sock industry, “from the cotton field to the salesman,”²⁶ could then exist independently within Australian territories.²⁷

This scheme appeared expedient at the time, as the leading hosiery manufacturers in Leicester and Nottingham were unable to fulfil orders for shipment to Australia because of the pressure of an enormous local demand.²⁸ Moreover, it was suggested in 1920, that there was no reason why the Australian cotton industry, with proper cultivation and management, “should not be in a flourishing position in Australia in the near future.”²⁹ To achieve these goals a propaganda campaign was recommended to promote the growing of cotton in Australia:³⁰

What is needed is a propaganda (sic), not a mere Gazette notice of the offer of the Government. The people of Australia, particularly those living in localities suitable for growing cotton, should be told that the Government are ready to stand behind them in any effort to grow cotton.³¹

²² “The Tariff: Commission’s Report”, *The Maitland Daily Mercury*, 1 July 1915, 7.

²³ “Our Chance: More About Woollens”, above n 9.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ “Hosiery Scarce: British Mills Cannot Supply”, *The Argus*, 9 July 1920, 6.

²⁹ Commonwealth, *Parliamentary Debates*, Senate, 19 March 1920, 11 (Senator Foll). There had been a cotton industry in Queensland at the time of the Civil War in America. During this period Australia was called upon “to help make good the world’s shortage”. When the Civil War was over, the price of labour fell considerably and “coloured labour” was called upon for the greater part of the work. See Commonwealth, *Parliamentary Debates*, House of Representatives, 20 May 1920, 45 (Mr Corser).

³⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 March 1920, 107 (Mr Fenton).

³¹ Ibid.

Of course, securing labour was a problem.³² Whilst some politicians were not deterred by the “old idea that cotton growing is a black labour industry,”³³ others realised that it was not *the growing* of cotton that was the trouble, but, rather *the gathering* of it.³⁴ However, despite insistent rhetoric from the press that there were ‘potential’ opportunities to establish a ‘holistic’ cotton industry in rural areas favoured with good soils and a good cotton-growing climate, Parliament was advised by the Inter-State Commission in 1915 that no amount of assistance, whether by bounties or by import duties could possibly lead to “any reasonable development of this industry in Australia.”³⁵ The Commission stressed that a cotton industry was not viable in Australia until the invention of a “successful picking machine”³⁶ could overcome the cost and difficulties with hand picking.³⁷

Hosiery manufacturers were also keen to increase the production of woollen hosiery, especially as Australia was so well endowed with the ‘raw materials’, and because, in some cases, they already had the necessary machinery to cater for aspects of its production and distribution.³⁸ But this was not enough for some manufacturers: “we want more [protection]”³⁹ was the persistent catch cry that continually echoed through the corridors of Parliament⁴⁰ and in evidence presented to the Commission.⁴¹

³² Ibid 107 (Mr Bowden).

³³ Commonwealth, *Parliamentary Debates*, Senate, 19 March 1920, 10 (Senator Foll). Foll pointed out to Parliament that “in America today the most satisfactory results have been obtained from cotton growing carried out entirely by white labour.” In 1916 it had been suggested that child slaves were used in the woollen industry in the United States, and this cheapened the production of goods which could be dumped into Australia. See “The Textile Industry: Higher Duties Asked”, *Weekly Times*, 6 May 1916, 34.

³⁴ Commonwealth, *Parliamentary Debates*, Senate, 19 March 1920, 10 (Senator Rowell) (emphasis added).

³⁵ “New Industries: And Old Ones Capable of Expansion”, *Daily Herald*, 30 November 1915, 3.

³⁶ Ibid.

³⁷ Ibid.

³⁸ “Our Chance: More About Woollens”, above n 9, 2.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ “Claims for Tariff Help” Wire Rope, Socks, and Cement”, *Geelong Advertiser*, 18 November 1914, 4.

9.2.2 Increased importation of hosiery

*Notwithstanding the impetus given to this industry during the war, and by the protection under this Tariff, we have imported into Australia during the past nine months no less than £2 368 000 worth of hosiery.*⁴²

Despite these ambitious wartime plans to enlarge the Australian cotton hosiery industry in Australia, little advancement occurred for many years⁴³ because of the difficulty with obtaining the necessary machinery to produce such hosiery. In the meantime, the tariff duty on imported cotton socks and stockings became “almost prohibitive”.⁴⁴ Mr Tudor MP, a former Minister of Trade and Customs⁴⁵ who had had experience in the cotton industry,⁴⁶ advised Parliament in 1920 that it was impossible to get machinery for the manufacture of hosiery⁴⁷ because overseas engineering firms were attempting to fulfil orders to replace machinery that had been destroyed in the war.⁴⁸ Although Tudor supported protectionism, he objected to the proposed duty on cotton hosiery lines that were not even being manufactured in Australia.⁴⁹

⁴² Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 1921, 19 (Mr Greene).

⁴³ “Hosiery and Knitted Goods for All”, *The Argus*, 22 September 1937, 34. In 1937, it was stated that, by the end of the war, there were 68 knitting and hosiery factories in Australia with a total of 2 176 employees.

⁴⁴ “The Tariff: Higher Duties Imposed”, *The Argus*, 25 March 1920, 7. The price of cotton hose had advanced in price from its pre-war price of about 15/ a dozen to 72/. The price of silk anklets hose had risen from 16/ to 84/- per dozen. However, because of the current enormous demand for these goods, it was suggested that a “substantial increase” in price appeared inevitable. See “Hosiery Scarce: British Mills Cannot Supply”, above n 28.

⁴⁵ Tudor was in this position from 1908-09, 1910-13 and 1914-16.

⁴⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 1 July 1920, 139 (Mr Tudor). Tudor advised Parliament that he had been employed “in connexion with the cotton industry in England for four years”.

⁴⁷ Ibid 138 (Mr Tudor).

⁴⁸ Ibid 138, 140 (Mr Tudor). It appears that the Institute of Science and Industry (later called CSIRO), which was set up in the 1920s, had “nearly invented a machine for picking cotton”.

⁴⁹ Ibid 139 (Mr Tudor).

Whilst some hosiery manufacturers, especially Bonds⁵⁰ may have been actively proclaiming their message to some Parliamentarians that they *were capable* of producing a large amount of cotton hosiery, they were at the time only producing a small number of samples that they touted around to interested politicians.⁵¹ Senator Payne was so aghast at the colour of one sample that he exclaimed to the Chamber: “[t]he colour is execrable”.⁵² Despite the manufacture and circulation of these samples, it seems that local manufacturers had not yet “got into the wholesale market.”⁵³

They claim they can now produce a certain output of cotton hosiery, that is socks and stockings, but where are the visible signs of its attempted completion in the local markets, in view of their statement that they can turn out 42 000 pairs weekly? Their advertisements do not mention cotton socks or stockings. Why do they not utilise the yarn they state they have on hand and begin operations at once, instead of contenting themselves with an assertion that ‘they can produce’ not ‘they do produce’?⁵⁴

Even though it was obvious to many, including Tudor and Gregory, that the cotton hosiery manufacturing industry had “not got much beyond the sample stage”,⁵⁵ George Bond would not going abandon his demand for full protection without a fight. He publicly berated Tudor for providing an ‘incorrect inference’ to

⁵⁰ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 161 (Senator Russell). It seems that the firm known as Hughes and Mayor of Sydney also *intended* to manufacture cotton hosiery. Senator Russell says that Fay and Gibson made 40 000 dozen pairs of cotton hose during 1919. Other Victorian firms which were *supposed* to be engaged in manufacturing cotton hosiery included Lincoln Knitting Mills and L H Mellor and Company. The writer has found nothing to collaborate these assertions. It was more likely that these factories considered that they *could* produce cotton hosiery if given sufficient tariff protection. The Bond’s Redfern hosiery factory was later referred as “the pioneer” of the hosiery industry. See “Hosiery and Knitted Goods for all”, above n 43.

⁵¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 1921, 17 (Mr Gregory). See Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 161 (Senator Payne) (emphasis added).

⁵² Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 161 (Senator Payne).

⁵³ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 1921, 17 (Mr Gregory).

⁵⁴ Ibid.

⁵⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 125 (Mr Gregory).

Parliament that cotton hose could not be made in Australia.⁵⁶ He even delivered a sample pair of cotton hose, made at his mills in Redfern, to sympathetic parliamentarians, as “practical proof”⁵⁷ that such Tudor’s inference was “absolutely and unreservedly untrue”.⁵⁸ Furthermore, he vowed that his machinery was suitable to economically and efficiently produce cotton hose. He explained that he had only desisted from commencing production because of the “huge quantities of cotton (imported from Japan and The United States of America)”⁵⁹ that were in bond and in warehouses at the time.⁶⁰ He complained that the market for this class of goods was being “greatly over supplied.”⁶¹

Bond claimed that his company had, ‘in good faith’, invested over £3 000 000 in hosiery production within Australia with an expectation that the proposed new Tariff would give his business protection.⁶² He sought to sway parliamentarians by proclaiming that his new factory in Redfern employed 300 hands and that additional buildings were currently being erected.⁶³ He warned Parliament that if the protective tariff was removed, then Australia would become the dumping ground for “foreign-made hosiery.”⁶⁴ Moreover, he maintained that this would not only have an adverse impact on his expansion of operations and cause the loss of employment to “some hundreds of Australian men and women,”⁶⁵ but it would also seriously jeopardise national security.⁶⁶

Bond had many supporters in Parliament and they were all clearly impressed with his vision to establish a cotton hosiery industry in Australia.⁶⁷ Some even

⁵⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 1921, 18 (Mr Charlton). Mr Charlton read a letter in Parliament from Bond addressed to Mr Tudor.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid. Bond stated that “unfortunately, work on the extensions had been held up pending the outcome of the current tariff discussions and the possibility of importing interests prevailing.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 125 (Mr Riley).

accepted his invitation to visit his new factory at Redfern.⁶⁸ Later, they enthusiastically praised Bond for his commercial acumen and insisted that Bond and other Australian hosiery manufacturers could produce cotton hosiery “much cheaper than the imported article.”⁶⁹ Furthermore, they suggested that “if sufficient inducement”⁷⁰ were provided to Bond and other hosiery manufacturers, they would be in a better position grow their own cotton to manufacture hosiery.⁷¹ In contrast, Senator Payne, after visiting hosiery factories, concluded that Australian hosiery manufacturers had not reached the stage at which “it pays to make cotton hosiery”.⁷²

9.2.3 Resisting the sumptuary directive

Payne and Tudor were part of a small group of parliamentarians who were concerned about the right of the consumer to choose apparel that was affordable or suitable to his/her needs. Payne explained to protectionist Senators that there was a fairly large quantity of cotton hosiery in bond because “a great many people find it necessary to wear it”⁷³ for economical and health reasons.⁷⁴ He pointed out that the foot “is perhaps the most sensitive portion of a man’s anatomy”⁷⁵ and many men could not wear worsted or woollen socks.⁷⁶ Others, he said, could not wear cotton socks.⁷⁷ Moreover, he suggested that the proposed prohibitive tariffs on imported cotton hosiery would *force* everyone in Australia to wear woollen or Australian-

⁶⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 1921, 20 (Mr Charlton). At least two members of Parliament inspected the factory. It appears that Senator Payne might have visited Bonds or some other similar establishment and was impressed with the range of silk hosiery being produced there. When he asked to see samples of Australian-made cotton hose, the manager told him that they did not have any and that “we can make them, but there is no demand for them”. He noticed that they had no cotton hosiery in stock. Further, he was told that they had such a demand for cashmere and silk hose that the factory was not making any cotton goods.

⁶⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 125 (Mr Riley).

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Commonwealth, *Parliamentary Debates*, Senate, 16 November 1921, 77 (Senator Payne).

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

made silk (artificial or real) hosiery.⁷⁸ In Chapter 8, we see that Payne expresses similar concerns about the prescriptive nature of prohibitive tariffs on workingmen's underwear.

Tudor contended that, in certain parts of northern Australia woollen hosiery could not be worn.⁷⁹ Whilst he saw no problem imposing an extra duty on silk stockings, which were considered by most to be a luxury, he couldn't accept that women would wear "merino hosiery."⁸⁰

9.2.4 A new Greene Tariff expecting to 'dam' the flood of imported hosiery

*If we are protectionists let us give protection.*⁸¹

By July 1920, there had been a marked increase in the value of imported hosiery in comparison for the same month in 1919. Socks and stockings had advanced from £185 978 in July 1919 to £235 557 for July 1920.⁸² The new Greene Tariff proposed to target socks and stockings in an extremely prohibitive manner even though only 5% of the supply of socks and stockings was made in Australia and that "practically the whole of the remainder [came] from the British mills."⁸³ Formerly, these cotton items had been duty-free under the British preferential tariff, but imported English cotton hosiery was to become dutiable at 30%, whilst 45% was to be imposed against other foreign imports.⁸⁴ Greene continued to maintain that the cotton hosiery industry was "peculiarly adapted to establishments in country

⁷⁸ Ibid (emphasis added).

⁷⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 1 July 1920, 138 (Mr Tudor).

⁸⁰ Ibid.

⁸¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1925, 132 (Mr Riley).

⁸² "Imports Increase: Australia's Trade grows", *Daily Herald*, 21 September 1920, 3. The total imports for July 1920 was £12 864 915 as compared to £7 321 562 for July 1919.

⁸³ "Hosiery Scarce: British Mills Cannot Supply", above n 28, 6. It is notable that by 1920, George Bond's hosiery/underwear manufacturing business was flourishing. During the war, he had set up his hosiery manufacturing business in Redfern. However, whether Bond and other hosiery manufacturers had been successful in lobbying for this early massive increase in tariffs on hosiery is pure conjecture.

⁸⁴ "The Tariff: Higher Duties Imposed", above n 44, 7.

districts”⁸⁵ and that there was no reason why 90% of the country towns should not have their own mills supplying the requirements of the districts.⁸⁶ He repeatedly vowed that plant was not costly and the manufacture was simple.⁸⁷

It was not just cotton hosiery that was problematic for politicians and the population. There been an “enormous rise”⁸⁸ in the price of Australian-made hosiery and the Australian woollen hosiery factories were unable to keep up with demand.⁸⁹ Moreover, much of the woollen hosiery produced in Australia was often considered to be below standard.⁹⁰ For instance, Mrs Glencross, the Chairwoman of the Housewives Association, claimed that frequently “purchasers found that a pair of stockings would come in two at the first time of wearing”.⁹¹ Nevertheless, it was proposed that the duty on English woollen socks and stocking be raised from 25% to 35% and that the duty on ‘foreign’ woollen hosiery be raised from 30% to 50%.⁹² Despite these proposed increases, the demand for British-made socks and stockings continued to be so great that the leading manufacturers in Leicester and Nottingham were unable to fulfil orders for shipment to Australia.⁹³ The situation was so dire for the ordinary housewife, that Mrs Glencross suggested at a National Housewives Association Conference that the duty on woollen stockings should be suspended “until the [Australian] manufacturing plants were improved”.⁹⁴

After the war, there was an enormous dissatisfaction amongst politicians about the fact that Australia was exporting 95% of its wool crop overseas and

⁸⁵ “Tariff Debate: Stockings’ Importation”, *The Daily News*, 30 May 1921, 7.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ “Housewives in Conference: Australian-Made Stockings and Socks”, *Northern Star*, 19 October 1920, 2.

⁸⁹ The value of imported woollen socks and stockings in 1920-21 was £604 477. The 34 woollen mills in Australia were highly profitable. In 1920-2, there were 9 mills in New South Wales employing 1650 hands; 9 mills in Victoria employing 3343 hands; 2 mills in Queensland; 2 mills in South Australia; 4 mills in Tasmania. There were 33 hosiery and knitting factories in New South Wales and 115 in Victoria. The total output of Australian woollen mills during this period was £2 888 172. See “Woollen Mills: Australia’s Opportunity”, *The Brisbane Courier*, 7 November 1922, 8.

⁹⁰ “Housewives in Conference: Australian-Made Stockings and Socks”, above n 88.

⁹¹ Ibid.

⁹² “The Tariff: Higher Duties Imposed”, above n 44.

⁹³ “Hosiery Scarce: British Mills Cannot Supply”, above n 28.

⁹⁴ “Housewives in Conference: Australian-Made Stockings and Socks”, above n 88.

“bringing it back again in the shape of underwear, hosiery, jerseys, and cloth.”⁹⁵ They argued that Australia “should see that all the wool that can be used in Australia is made up here”.⁹⁶ Tudor considered that this type of ‘tariff tussle’ was detrimental to the Australian working class:⁹⁷

It is no wonder that there is so much industrial unrest when people realize that articles manufactured from raw material which we produce are constantly increasing in price. Instead of the position improving it is becoming worse.⁹⁸

Nevertheless, many protectionists including Sir Robert Best continued to demand that high tariffs be imposed upon imported cotton hosiery.⁹⁹ Best argued that he wished to give his fullest support in encouraging “our own industries”¹⁰⁰ and to encourage, “so far as we may,”¹⁰¹ the wearing of woollen hosiery in Australia.¹⁰² Tudor disagreed, and reasoned that it was useless to place a duty on cotton hosiery “in order to compel people to wear woollen hosiery.”¹⁰³

During 1921 tariff schedule debates, Greene announced that he was ‘staggered’ to see the “enormous”¹⁰⁴ current level of imported hosiery.¹⁰⁵ Despite the provision of earlier protection for the Australian hosiery industry,¹⁰⁶ in the nine months up to May 1921, £2 358 000 worth of mostly cotton hosiery was imported and there was £500 000 worth of cotton socks in bond.¹⁰⁷ Furthermore, Greene was

⁹⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 28 April 1920, 34 (Mr Tudor).

⁹⁶ Ibid.

⁹⁷ Commonwealth, *Parliamentary Debates*, Senate, 2 September 1920, 41 (Senator Payne).

⁹⁸ Ibid.

⁹⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 1921, 21 (Sir Robert Best).

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Commonwealth, *Parliamentary Debates*, House of Representatives, 1 July 1920, 138 (Mr Tudor).

¹⁰⁴ “Federal Parliament: The Tariff”, *Daily Herald*, 28 May 1921, 5.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ “Tariff Debate: Stockings’ Importation”, above n 85. In other reports, it was contended that the importation of cotton socks and stockings in 1919-20 was valued at £632 682, of which goods to the value of £201 608 were dutiable under the United Kingdom tariff, and goods to the value of £420 810 were dutiable under the general tariff. See “Senate Powers: The Tariff”, *Sydney Morning Herald*, 9 July 1921, 12.

perturbed that the charges for the importation and distribution of such imported hosiery had reached a level “that was entirely unwarranted,”¹⁰⁸ especially considering that he believed that the industry was one that could easily be adapted to Australia.¹⁰⁹ Nevertheless, Greene remained hopeful that Australian manufacturers “would soon be able to produce all [the hosiery] that was required in Australia.”¹¹⁰ At the time, the government was making extraordinary efforts to encourage and protect this budding Australian industry.¹¹¹ For example, Stirling Taylor, the Director of the Bureau of Trade and Industry, was sent on a ‘whistle-stop’ trip throughout rural Australia to promote the establishment of country mills:¹¹²

He went up and down the country making people believe that, even in relatively small towns, they could run mills successfully. The craze extended to this Parliament.¹¹³

As a direct consequence of these promotional campaigns, many small country mills were established.¹¹⁴ However, after a short period, many failed to prosper.¹¹⁵ The problem was that the government’s “new-born zeal”¹¹⁶ to transfer people from the cities to work in the country mills failed to produce results.¹¹⁷ This meant that many small newly established mills lacked the manpower, organisation and machinery already available in the bigger and more efficiently-equipped concerns.¹¹⁸ However, it is notable that mills such as The Australian Knitting Mills and the Onkaparinga Mill, which did not require “the artificial aid of even the existing

¹⁰⁸ “Federal Parliament: The Tariff”, above n 104.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 11 March 1926, 77 (Mr Foster).

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

duties,”¹¹⁹ proved to be successful and were praised nationally for their efficiency and productivity.¹²⁰

9.2.5 The problem of ‘dumping’

*Unfortunately ... British manufacturers are dumping hosiery into Australia at such a price that the Australian manufacturers are unable to sell their product at a profit, and many of the factories are practically at a stand-still, and will at an early date be dismissing a number of employees.*¹²¹

Sawer says that after Federation, manufacturers were constantly lobbying Parliament about the practice of ‘dumping’ goods on the Australian market to the detriment of Australian-produced goods.¹²² Mr Jowett MP was so concerned in 1921 about the problem of ‘dumping’, that he proposed a further 5% increase on items on top of the already Greene prohibitive Tariff.¹²³ As an active member and representative of the Australian sheep-breeders Association,¹²⁴ it was not surprising that Jowett argued that “the cheap imported cotton article”¹²⁵ from Britain and the America was the most serious competitor of Australian-made woollen socks and stockings.¹²⁶ He contended that whilst the manufacture of hosiery in Australia might be claimed as a

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Commonwealth, *Parliamentary Debates*, Senate, 3 October 1922, 60 (Senator Reid).

¹²² Geoffrey Sawer, *Australian Federal Politics and Law 1901-1921* (Melbourne University Press, 1956) 42. Often the ‘dumped’ goods were poorly made clothing lines (sometimes called shoddy) which were being produced in other countries, particularly Britain and Japan, at a cost that was far less than Australian manufacturers could achieve. The *Australian Industries Preservation Act 1906* (Cth) was enacted to penalise those who engaged in this practice.

¹²³ “Federal Parliament: The Tariff”, above n 85.

¹²⁴ “Half Cotton ‘Pure Wool’ Socks”, *Camperdown Chronicle*, 3 March 1936, 1.

¹²⁵ “Jowett’s Jerky Judgment”, *Construction and Local Government Journal*, 7 June 1921, 6.

¹²⁶ Ibid. It was frequently suggested that British hosiery was being landed in Australia at less than the cost of production. See Commonwealth, *Parliamentary Debates*, Senate, 3 October 1922, 60 (Senator Reid).

“war industry,”¹²⁷ current competition with imported hosiery meant that 90% of the machines in Australian woollen factories were idle.¹²⁸ Others suggested that the Japanese were the greatest threat to the Australian hosiery industry.¹²⁹ Mr Foley MP, however, was not troubled with the Japanese goods, for he considered the Japanese manufacturers had “missed the boat”¹³⁰ and “had not delivered the goods”:¹³¹

So far as Japanese goods are concerned, we have nothing to fear from them in Australia. They had their chance during the war, and I defy any honourable member to prove to my satisfaction that anything good ever came from Japan. Their productions are the cheapest and the shoddiest that have ever come into this country.¹³²

Jowett reasoned that cotton socks and stockings were not really ‘cheap’ to the consumer because woollen socks lasted ten times longer than cotton socks.¹³³ One commentator pointed out that whilst Jowett resided in Victoria and had no problem wearing woollen socks, this would not be the situation if he was expected to wear woollen socks in Queensland during the summer months:¹³⁴ “[m]embers of Parliament are inclined to get parochial and inconsiderate of the wants of others in their enthusiasm to establish factories and pile on duties.”¹³⁵

Foley maintained that the duties proposed by Greene were “a direct impost on the working classes.”¹³⁶ He stressed that cotton stockings and socks were not made in Australia¹³⁷ and that “there is no industry to encourage”.¹³⁸ Likewise, Mr Gregory

¹²⁷ “The Tariff” Slow Progress”, *Sydney Morning Herald*, 28 May 1921, 13.

¹²⁸ “House of Representatives: Tariff Schedule”, *The Argus*, 28 May 1921, 11.

¹²⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 May 1921, 20 (Mr Foley).

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ “Jowett’s Jerky Judgment”, above n 125.

¹³⁴ *Ibid.* Greene argued against Jowett’s proposal to further increase the duties on hosiery, and “astonished the ultra-protectionist members” by suggesting that the duty was already sufficient. See “The Tariff” Slow Progress”, above n 127.

¹³⁵ “Jowett’s Jerky Judgment”, above n 125.

¹³⁶ “The Tariff: Protectionist Activity”, *Advocate*, 27 May 1921, 2.

¹³⁷ *Ibid.* Mr Mathews MP advised Parliament that there was factory in Victoria that was producing 2000 000 dozen pairs of cotton stockings annually. However, there appears to be no corroborative evidence to this effect. Mathews may well have been confused with woollen hosiery.

¹³⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 124 (Mr Considine).

MP protested against the imposition of high duties purchased by the poorer sections of the community.¹³⁹ One critic argued that members of Government, by piling tariffs high on imported hosiery, was receiving enormous amounts of revenue whilst at the same time taking “their people down”¹⁴⁰ in a shocking fashion,¹⁴¹ especially when “the local factories [had] contributed very little to the supply.”¹⁴² It was not only the government that was condemned for its misuse of the tariff.¹⁴³ Textile manufacturers were often accused of profiteering¹⁴⁴ and it was suggested that rather than using the Tariff to build up Australian industry they were using it as means of rapidly increasing their own wealth.¹⁴⁵

The issue remained contentious in parliamentary debates. For instance, Foley insisted that the poorer paid workers in his division were obliged to wear cotton stockings and demanded that duties on cotton hose to be made cheaper.¹⁴⁶ He argued that the lower-paid men had no choice but to clothe their wives and families in cotton hose, as the price of woollen goods was “almost prohibitive”.¹⁴⁷ On the other hand, Mr Considine MP objected to Foley’s proposal on the basis that he wanted the standard of living raised so that the workers would not *need* to wear cotton socks:¹⁴⁸ He told Parliament: “I would prefer that they should wear the woollen article. I want to see every worker in this country in a position to wear the very best material that is obtainable.”¹⁴⁹

¹³⁹ “Tariff Debate: Stockings’ Importation”, above n 85.

¹⁴⁰ “Jowett’s Jerky Judgment”, above n 125.

¹⁴¹ Ibid. It was suggested that a total duty of £254 426 was paid for imported cotton hosiery in 1991/20. This was £254 426 higher than the amount paid under the 1908-11 schedule (where cotton hosiery free from duty) and £211 345 higher than would have been the case under the 1914 schedule (when general duty was 10 %). See “Senate Powers: The Tariff”, *Sydney Morning Herald*, 9 July 1921, 12.

¹⁴² “Jowett’s Jerky Judgment”, above n 125.

¹⁴³ Ibid.

¹⁴⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 27 April 1921, 107 (Mr Lazzarini).

¹⁴⁵ Ibid.

¹⁴⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 126 (Mr Considine was referring to Foley’s comment in Committee).

¹⁴⁷ Ibid 124 (Mr Foley).

¹⁴⁸ Ibid 126 (Mr Considine) (emphasis added).

¹⁴⁹ Ibid.

As some Australian manufacturers were having a “rough spin”,¹⁵⁰ there were calls for the newly established Tariff Board to make “further inquiries”¹⁵¹ as to whether Australian hosiery industries should be provided with more protection especially as British imported hosiery was being sold for less than the cost of the raw material.¹⁵² Protectionists such as Senator Guthrie was confident that the tariff would be increased and saw no difficulty for Australian manufacturers to “submit a good case”¹⁵³ to the Tariff Board.¹⁵⁴ However, when the question of hosiery came before the Tariff Board in 1922, ardent protectionists submitted that existing prohibitive tariffs on hosiery were not sufficiently high to protect the hosiery industry.¹⁵⁵ The Board heard complaints about Australian manufacturers who were constantly faced with “unfair competition”¹⁵⁶ from countries that were suffering depreciated currencies. This meant that German and French makers were able to undersell British and Dominion markets with both finished and unfinished goods.¹⁵⁷ There were also numerous allegations of hosiery and knitted goods being manufactured in Great Britain from yarn ‘dumped’ from Continental countries, and then sent to Australia.

Manufacturers were constantly looking to the Board to enforce penalties, pursuant to the *Australian Industries Preservation Act 1906* (Cth), against those who were engaging in these alleged practices.¹⁵⁸ It was also alleged that when goods were being imported wholesale to England in cartons from Germany, they were ‘disguised’ and falsely marked “English Make”¹⁵⁹ before being sent directly to the Australian markets.¹⁶⁰ This form of “malpractice”¹⁶¹ was condemned by the unions

¹⁵⁰ Commonwealth, *Parliamentary Debates*, Senate, 3 October 1922, 62 (Senator Guthrie).

¹⁵¹ Ibid 60 (Senator Reid).

¹⁵² Ibid.

¹⁵³ Ibid 62 (Senator Guthrie).

¹⁵⁴ Ibid.

¹⁵⁵ “Protection for Hosiery: Before the Tariff Board”, *Southern Morning Herald*, 12 October 1923, 2.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ “Hosiery and Knitting Industry”, *News*, 8 January 1924, 6. In order to make out a case under the Act, Australian manufacturers had to prove that there had been a sale at less than the domestic price in the country of origin, or at less than a ‘reasonable’ price, or that the raw material had been dumped into the country of manufacture.

¹⁵⁹ “English Make: Imported Textiles”, *Advocate*, 18 January 1924, 8.

¹⁶⁰ “Imported Textiles”, *The Australian Worker*, 16 January 1924, 15.

who were anxious to “dam up”¹⁶² the flood of German textiles.¹⁶³ Australian manufacturers were, on occasion, encouraged to pool their resources to wage a publicity campaign in favour of Australian textiles.¹⁶⁴

9.2.6 The Board takes flack for the failure of the Australian hosiery industry

*If something is not done speedily to check the importations of hosiery and knitted goods there will soon not be a mill in the county.*¹⁶⁵

In its 1925 Annual Report, the Board clearly acknowledged that Australian secondary industries were “more or less in a developmental stage”¹⁶⁶ where the conditions and needs of the various industries were constantly changing.¹⁶⁷ However, the Board advised Parliament that it was not possible to provide a Tariff that would make provision “for all the needs that might arise.”¹⁶⁸ It acknowledged that the industry was “suffering severely”¹⁶⁹ from overseas competition from Great Britain, Europe, the United States and Japan¹⁷⁰ and was also very mindful that some Australian hosiery manufacturers, who had invested £4 000 000 in capital¹⁷¹ in establishing and maintaining the industry, were ‘anxiously’ awaiting its determination about an increase in tariff on imported hosiery.¹⁷² Furthermore, manufacturers had *warned* the Board that there were 6 000 employees who would

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ “Something Attempted-Not Much Done”, *Sunday Times*, 24 August 1924, 12.

¹⁶⁶ Commonwealth Tariff Board, *Annual Report*, 30 June 1925.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ “Knitting Industry: Dumping Duties Not Justified”, *The Maitland Weekly Mercury*, 5 January 1924, 9.

¹⁷⁰ In 1923, Japan sent £67 335 worth of hosiery and knitted articles to Australia. See “Trade with Japan: Exports Last year Over £9 000 000”, *The Argus*, 21 October 1924, 8. Trade with China during the same period was small: £275 000 worth of imports.

¹⁷¹ “Alleged Dumping: To Crush Australian Industry”, *Sydney Morning Herald*, 30 January 1925, 9.

¹⁷² Ibid.

not be assured of their employment if higher duties were not imposed on imported duties.¹⁷³ However, the Board was to receive an enormous amount of criticism from hosiery manufacturers and the press when its members “reluctantly”¹⁷⁴ declined manufacturers’ request to take action pursuant to the Act.¹⁷⁵

The Board heard evidence from many interested parties. For instance, Mr Rupert Neil McLean, a director of George A Bond Limited gave evidence that his company had sold thousands of dozens pairs of hose without profit in its endeavour to develop mass production.¹⁷⁶ He sought to convince the Board that his company aimed to protect consumers by “[stopping] the importation of shoddy goods”.¹⁷⁷ The manager of Bond’s hosiery department also submitted samples to the Board of imported stockings that were introduced at prices lower than it cost to produce them in Australia.¹⁷⁸ For example, one sample submitted was an imported line that sold at 12/6, but could not be produced by Bond’s for less than 28/6.¹⁷⁹

However, the Board “reluctantly”¹⁸⁰ determined that this evidence was not sufficient to justify a recommendation from it to the Minister for the imposition of dumping duties.¹⁸¹ The Board advised the Minister that it would continue “to watch the situation closely”¹⁸² with a view to recommending more immediate relief than could be given by a revision of the tariff, should further evidence be obtained that would justify such a recommendation.¹⁸³ The use of the word “reluctantly”¹⁸⁴ points to the Board pro-Protectionist bias. This prompted one critic to suggest that the

¹⁷³ “Tariff Board: Increased Protection Sought”, *The Register*, 30 January 1925, 8.

¹⁷⁴ “Hosiery and Knitted Goods”, *Western Argus*, 1 January 1924, 29. The Board undertook its own investigation of these dumping practices in Great Britain. In the main, the Board relied on information obtained through the High Commissioner’s Office.

¹⁷⁵ *Ibid.*

¹⁷⁶ “Alleged Dumping: To Crush Australian Industry”, above n 171.

¹⁷⁷ “Tariff Board: Increased Protection Sought”, above n 173.

¹⁷⁸ “Tariff Board”, *Sydney Morning Herald*, 6 March 1925, 6. The Manager was Mr George A Williams.

¹⁷⁹ *Ibid.*

¹⁸⁰ “Knitting Industry: Tariff Board Inquiries”, *The Sydney Morning Herald*, 29 December 1923, 8.

¹⁸¹ “Knitting Industry: Dumping Duties Not Justified”, above n 169, 9.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ “Knitting Industry: Tariff Board Inquiries”, above n 180.

Board, in its determinations, was always thinking of the manufacturer and that it had no concern for the consumer.¹⁸⁵ In spite of its bias, it was suggested that the “determining factor”¹⁸⁶ that moved the Board to decline the request to impose dumping duties was that it had apparently ‘discovered’ that “some makers”¹⁸⁷ in Australia were able to earn substantial profits under the exiting duties.¹⁸⁸ It was conceded that the Board’s disinclination to impose dumping duties in this case produced a practical and an ‘enlightened effect’ upon other manufacturers.¹⁸⁹

It is understood that a good deal of reorganisation is going on in several mills in order to increase efficiency. Advance in this direction may enable further reference by some of them to the Tariff Board to be avoided.¹⁹⁰

The Board was blamed for the ‘depressing’ state of affairs existing in the Australian hosiery industry, and in particular for the closure of a number of mills.¹⁹¹ It was suggested that between 32 to 34 smaller hosiery mills had been “obliged”¹⁹² to close their doors because they had had difficulty with securing trade.¹⁹³ In October 1924, Gold’s Hosiery Mills Ltd., with mills at Redfern, Alexandria, Erskineville and Homebush, ceased operations,¹⁹⁴ even though the company had made “excellent profits”¹⁹⁵ during, and for a few years following the war.¹⁹⁶ However, in 1922 and

¹⁸⁵ “The Tariff Board: It’s ‘Reluctance’”, *Goulburn Evening News*, 3 January 1924, 4.

¹⁸⁶ “Hosiery and Dumping”, *The Register*, 3 January 1924, 4.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ “Australian Woollen Goods: Proposed Dumping Duties”, *The Argus*, 5 January 1924, 23. It was suggested by one reporter that when the mill closed, the “latest and most expensive textile machinery” became mere scrap iron and some of which was sold to Japan for a mere fraction of what Australian manufacturers had paid for it. See “Shocking State of Textile Industry: Local manufacturers Lose Huge Sums”, *Sunday Timers*, 18 April 1924, 11.

¹⁹² “Australia Industries: Work of the Protection League”, *The Advertiser*, 18 April 1924, 11.

¹⁹³ *Ibid.*

¹⁹⁴ “Hosiery Mills Fail: 500 Employees Thrown Idle”, *The Australian Worker*, 29 October 1924, 15. Another newspaper reported that 400 were unemployed as a result of the closure of the mills. See “Empty Stockings: Hosiery Mills to Close”, *The Advertiser*, 22 October 1924, 9.

¹⁹⁵ “Gold’s Hosiery Mills Ltd”, *The Mercury*, 25 October 1924, 4.

¹⁹⁶ *Ibid.*

1923 the business had been conducted at a loss¹⁹⁷ even though considerable reconstruction work had been carried out at the mills.¹⁹⁸ The company's directors blamed both the high price of wool and the "inaction of the Tariff Board"¹⁹⁹ for not providing the relief that it had expected when faced with a high level of imported hosiery.²⁰⁰

The unions criticised the Government's 'apathetic' failure to apply the provisions of the *Australian Industries Preservation Act 1916* (Cth) to help the hosiery industry, which they insisted had been "badly hit"²⁰¹ by wholesale dumping.²⁰² They also declared that thousands of workers had been thrown out of their jobs and warned that unless dumping was prevented, "a valuable industry"²⁰³ would inevitably perish. The *Australian Worker* accused the Board of being disinclined "to give effect to Australia's fiscal policy"²⁰⁴ because of the "sinister influence"²⁰⁵ exercised on it by the "wealthy importers of Flinders-lane" (sic).²⁰⁶ The newspaper claimed that the Board's "glaring dereliction of duty"²⁰⁷ was the cause of this textile industry being in a "very critical condition":²⁰⁸ "[i]t would be a disaster, very far reaching in its evils effects, if the business which has been built up were to be broken down."²⁰⁹ In contrast, the *Register* suggested that the Board was not at fault in declining to "recommend action"²¹⁰ pursuant to the *Australian Industries Preservation Act 1906* (Cth).²¹¹ It was alleged that the Board was directed to do so by the Minister of Trade and Customs: "[b]odies like the Tariff Board are usually wise to

¹⁹⁷ "Hosiery Mills Fail: 500 Employees Thrown Idle", above n 194.

The loss for the year ended June 1924 was £21 159. The total loss was £74 876.

¹⁹⁸ "Gold's Hosiery Mills Ltd", above n 195.

¹⁹⁹ Ibid.

²⁰⁰ "Hosiery Mills Fail: 500 Employees Thrown Idle", above n 194.

²⁰¹ "Textile Industry Menaced", *The Australian Worker*, 2 January 1924, 11.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ "Protecting the Knitting Industry", *News*, 3 January 1924, 6.

²¹⁰ "Federal Politics: Notes of the Week", *The Register*, 7 January 1924, 8.

²¹¹ Ibid.

the desires of a Minister, and it is not impossible that the weakening of Mr Chapman is at the back of this decision.”²¹²

The Board was also criticised for not being more transparent in its evidence-gathering processes and for holding its hearings “behind closed doors”.²¹³ There were calls that these hearings should, “in the interests of the consuming public”,²¹⁴ be opened to the public and that notice of the Board’s intention to hear applications ought to be given through the press.²¹⁵ The Minister of Trade and Commerce endeavoured to justify the Board’s closed hearings by arguing that most of the evidence presented before it was contained in correspondence and departmental reports. He argued that to take oral evidence was not practicable and would result in long delays and “that would make the Act a dead letter”.²¹⁶ The Adelaide Chamber of Commerce rejected the Minister’s explanation.²¹⁷ The Chamber’s representative stated that there was no means of knowing when the Board was conducting an enquiry on any particular class of goods. Further, he claimed that importers had no opportunity of placing evidence before the Board, even though the Minister had assured the Chamber that the Tariff Board was “quite ready at all times to consider representations made in regard to any case.”²¹⁸

Even the notion of ‘scientific protection’, which was advanced as an intrinsic part of the Federation process, came in for intense criticism.²¹⁹ Whilst it was conceded that the ‘scientific tariff’ had worked fairly well before the war when there was some stability in wages, hours worked and social conditions in competing overseas countries,²²⁰ this form of economic stability disappeared with the onset of the war. It was also alleged that the Greene Tariff, with its “small scientific

²¹² Ibid.

²¹³ “Anti-Dumping Duties: Chamber of Commerce Protest”, *The Register*, 12 January 1924, 7.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ “Fallacy of ‘Scientific’ Protection”, *Sunday Times*, 4 May 1924, 12.

²²⁰ Ibid.

protection,”²²¹ proved to be useless in the face of the constantly changing conditions in competing countries.²²² It was claimed that disturbed industrial conditions and depreciated rates of exchange in these countries were at odds with the upward trend of wages and standard of living in Australia.²²³ And it was suggested that all these circumstances had had a disastrous effect on local industries:²²⁴

Many of our industries that in 1920-21 were considered to be prosperous, or promised to be so, are now placed in a very precarious position by the flooding of our markets with goods from cheap labour counties.²²⁵

9.2.7 Anti-Australian sentiment

*Many honourable senators ... have no use for Australian made goods.*²²⁶

Whilst some politicians, such as Mr Stirling Taylor,²²⁷ preached that Parliament should “ordain”²²⁸ that Australians should only wear clothes made in Australian factories, others contended that there was a “distinct prejudice against Australian goods”.²²⁹ As an illustration, James G Hare, the managing director of Dominion Knitting Mills advised the Tariff Board that the firm had frequently been requested by Flinders Lane firms to leave off the brand ‘Made in Australia’.²³⁰ Senator Payne suggested that Australian manufacturers would find a “ready sale”²³¹ for their goods if Australian hose was consistently of a better quality and free of

²²¹ Ibid.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 118 (Mr Mathews).

²²⁷ “Tariff Reform: Australia’s Position”, *The Brisbane Courier*, 9 February 1928, 14. Taylor was the former director of the Bureau of Commerce and Industry.

²²⁸ “Alleged Dumping: To Crush Australian Industry”, above n 171.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Commonwealth, *Parliamentary Debates*, Senate, 4 June 1926, 27 (Senator Payne).

imperfections.²³² Payne, who himself had had a bad experience with some lines of Australian-made hosiery, insisted that he and other consumers in the same position, would make every effort in the future to “carefully avoid purchasing certain brands of Australian made clothing.”²³³ It was argued by many protectionists that ‘effective protection’ should be full and unconditional protection and should be provided for all Australian industries.²³⁴ As noted in previous chapters,²³⁵ this type of protectionism was considered by many to be inextricably linked with nationalism and patriotism.

9.2.8 The Gospel of National Self-Reliance...Government Affirms Principle of Protecting Local Industry²³⁶

*We have emerged from the tradition that imported goods are better than those made here... The surest way to keep secondary industries inefficient is to inadequately protect them.*²³⁷

In August 1924, the Prime Minister, Mr Stanley Bruce, promised that the government would give many secondary industries further assistance to relieve the “ever-increasing”²³⁸ strain of the “excessive importations”²³⁹ of manufactured goods.²⁴⁰ Many manufacturers were still facing difficulty keeping their hands fully employed, and often new “large up to-date plants”²⁴¹ were working far below their full capacity.²⁴² The owners complained that they had been “buoyed up”²⁴³ with the

²³² Ibid.

²³³ Ibid.

²³⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 1925, 132 (Mr Riley). Mr Riley declared “[i]f we are protectionists let us give protection.”

²³⁵ See above Chapter 4.

²³⁶ “New Tariff Schedule Presented by Minister for Customs”, *Advocate*, 3 September 1925, 5.

²³⁷ Ibid.

²³⁸ “Something Attempted-Not Much Done”, *Sunday Times*, 24 August 1924, 12.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Ibid.

hope that the Government would fulfil its promise to “give them protection against the manufacturers of cheap labour and low currency countries”.²⁴⁴

On 2 September 1925, the Minister of Trade and Customs, Mr Pratten, introduced a new a tariff Schedule that he said represented a “thoroughly Business proposal”²⁴⁵ and which would assist in encouraging Australia’s “own productions,”²⁴⁶ and thus make it more self-reliant.²⁴⁷ To this extent, Pratten was encouraged by the many “most estimable leagues”²⁴⁸ that were educating the people “in the direction of a sound national sentiment.”²⁴⁹ Protectionism had become the settled policy of the country and a religion in which the government placed its trust and belief:²⁵⁰ “[t]here can be seen sermons in windows. The Government is in full accord with the gospel of self-reliance and national sentiment.”²⁵¹

The government also used various strategies and ‘propaganda’ to encourage Australians to purchase only Australian-made goods.²⁵² In addition, various ‘protection’ leagues and associations, including the Australian Industries Protection League and the Australian Natives Association, began to actively disseminate fresh “public propaganda”²⁵³ concerning the need for increased protection for Australian industries, and about the “folly”²⁵⁴ of sending overseas for articles which could be made quite efficiently “at home”.²⁵⁵ This ‘buy-Australian’ rhetoric become rampant and powerful. During the parliamentary tariff debates in March 1926, the call to protect local industries was couched in explicit terms using religious nomenclature

²⁴⁴ Ibid.

²⁴⁵ “New Tariff Schedule Presented by Minister for Customs”, above n 236.

²⁴⁶ Ibid. The reporter is directly quoting part of Mr Pratten’s speech to Parliament.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 2 September 1925, 113 (Mr Pratten).

²⁵¹ Ibid.

²⁵² “Australian-Made Goods”, *The Mercury*, 28 October 1924, 5.

²⁵³ “Australia Industries: Work of the Protection League”, above n 192.

²⁵⁴ Ibid.

²⁵⁵ Ibid. The League was also focusing on the necessity of maintaining “the engineering shop in Australia as an insurance against “absolute helplessness should war again be declared”.

and ‘patriotic’ propaganda.²⁵⁶ This protectionist dogma was elucidated in a moralising epistle called the “Ten Commandments for Good Australians.”²⁵⁷ Every ‘patriotic’ Australian was expected, for their own good, to comply closely with this edict in the same manner that was expected in traditional sumptuary laws. For instance, the 9th Commandment declared that the manufacturer was to be given special treatment by the Australian consumer:

The manufacturer has a special claim to support. He is to a great extent a pioneer. He is a man of courage. He has faith in his country and his people, and every Australian should try to prove to him that his faith is justified.²⁵⁸

Any Australian who was found to be reluctant to wear Australian boots, or an Australian hat, or an Australian suit of clothes made of Australian cloth was to be branded as “really ashamed of Australia”.²⁵⁹

9.2.9 Protectionist dogma

*Most of the applications for increased duties had been presented by manufacturers whose works were inefficient, whilst those working on efficient methods did not need protection.*²⁶⁰

It was argued that if Australians were loyal to Australian industries then it would not be necessary to impose many customs duties.²⁶¹ One parliamentarian even claimed that the main purpose of duties was “to protect Australians against themselves”.²⁶² However, by 1926 some protectionists, such as Senator Hayes,

²⁵⁶ The Hansard Reports for this period actually makes reference to the “Ten Commandments for Good Australians” in its page headings.

²⁵⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 11 March 1926, 64.

²⁵⁸ “Ten Commandments for Good Australians”, *Maryborough Chronicle, Wide Bay and Burnett Advertiser*, 9 January 1926, 3.

²⁵⁹ Ibid.

²⁶⁰ “Too Much Protection”, above n 1.

²⁶¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 11 March 1926, 64 (Mr Rodgers).

²⁶² Ibid.

advised Parliament that they were losing their ‘faith’ in very high protection.²⁶³ They maintained that the Australian hosiery industry was struggling because manufacturers were inefficient,²⁶⁴ inexperienced and because they were using outdated machinery and processes. Mr Seabrook MP argued that if the Australian hosiery industry could not ‘carry on’ with a protective duty of 35 per cent and was asking for 55 percent, then the only conclusion he could make was that either the industry was “inefficiently managed”²⁶⁵ or because the workers engaged in it were inefficient.²⁶⁶ Others argued that inefficient management was causing factories to produce an ‘unsatisfactory’ hosiery article.²⁶⁷ Complaints often were directed at workers because they lacked industry experience and training causing customers to be unhappy with socks and stockings that shrunk considerably after a couple of washes.²⁶⁸ It also had marked impact on customer satisfaction and sales.²⁶⁹

Owing to inexperience in the manufacturing of hosiery some Australian factories at their outset of their operations produced socks and stockings which, when washed, shrunk considerably, and that was responsible for a reduction in sales.²⁷⁰

It was suggested that the large increase in revenue that accompanied the high rate of imported goods was a financial boon that the Government could not ignore.²⁷¹ For instance, the revenue collected from July 1923 until the end of January 1924 was £21 150 529 which was £3 855 529 larger than expected for the period.²⁷² Others, on the other hand, suggested that the higher the tariff, the higher the cost of living.²⁷³

²⁶³ Commonwealth, *Parliamentary Debates*, Senate, 4 June 1926, 33 (Senator Hayes).

²⁶⁴ *Ibid.*

²⁶⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 10 March 1926, 91 (Mr Seabrook).

²⁶⁶ *Ibid.*

²⁶⁷ Commonwealth, *Parliamentary Debates*, Senate, 4 June 1926, 27 (Senator Payne).

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid* 33 (Senator Reid).

²⁷⁰ *Ibid.*

²⁷¹ “Boom in Imports: Record Customs Receipts”, *Daily Herald*, 6 February 1924.

²⁷² *Ibid.* The receipts for January 1924 were a record. The reporter suggested that even as early as February it appeared that the total year receipts for 1923-24 would exceed the 1922-23 record customs revenue of £32 872 129.

²⁷³ “Australian-Made Goods”, above n 252, 5.

Unionists declared that it was unfair for Australian manufacturers of hosiery to compete against importations from foreign countries where workers worked longer hours and were paid much lower wages than Australian workers.²⁷⁴ Yet, the Board acknowledged, in its Annual Report for the year ended 30 June 1925, that Australian manufacturers faced many conditions that put them at a disadvantage “so far as competition with imported goods is concerned”.²⁷⁵ The Board listed higher wages, shorter hours, payments for holidays, high cost of material, limited markets for products and “consequent restricted production”²⁷⁶ as conditions that were problematic for Australian manufactures.²⁷⁷

9.2.10 Hosiery Mills Fail

*The relief anticipated from possible action by the Tariff Board did not eventuate. The position of the company, therefore, has gradually become worse.*²⁷⁸

In February 1925, Mr Henry York, managing director of Lustre Hosiery Mills gave evidence to the Board that the largest woollen hosiery mills in New South Wales were struggling to compete with cheap foreign importations.²⁷⁹ Yet, it seems that those mills producing silk and artificial silk hosiery were busy supplying the popular coloured hosiery that was in “heavy demand”,²⁸⁰ even though importers could bring in similar goods from overseas and land them in Sydney at a lesser price.²⁸¹ In this case, transport time and the fickleness of fashion were in their favour. Wholesale customers were happy to purchase from local mills and pay a higher price because they would “not risk their judgement in regard to colours” four months from

²⁷⁴ Commonwealth, *Parliamentary Debates*, Senate, 4 June 1926, 27 (Senator Guthrie).

²⁷⁵ “Federal Tariff: The Board’s Report”, *The Daily News*, 5 September 1925, 9.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ “Hosiery Mills Fail: 500 Employees Thrown Idle”, above n 194.

²⁷⁹ “Tariff Board: Duty On Hosiery. Increase Urged”, *Sydney Morning Herald*, 25 February 1925, 11.

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

the date of purchase.²⁸² However, it was suggested that hosiery manufacturers could not be complacent, because “the moment fashion decided”²⁸³ to embrace the ordinary standard shades, such as black, white, “nigger”,²⁸⁴ and tan, the bulk of the business they were enjoying would again be “placed overseas”.²⁸⁵

The Board suggested to Parliament in September 1925, that as it had already recommended an increase in the duty on wool yarn by 10%, that a corresponding increase should be made on the duty on socks and stockings of all other material other than cotton.²⁸⁶ However, it endorsed a smaller increase in duty on silk socks and stockings because Australian manufacturers of these articles were already competing well against imported goods.²⁸⁷ In fact, the “better classes” practically held that business.²⁸⁸ Eventually the new tariff changes were lauded by the press as “an honest effort”²⁸⁹ to protect Australia’s “Infant factories”²⁹⁰ against foreign competition.²⁹¹ Not all parties were so pleased with the new tariff. When the Board recommended a new tariff on hosiery in 1925, Leicester hosiery manufacturers decided to cable the Australian Prime Minister, Mr Bruce, protesting against its application on their ‘on-route’ shipments of hosiery to Australia.²⁹² They also sought a concession on goods in transit which were ‘on order’.²⁹³

However, by 1926, the Board began to take a more conciliatory attitude towards the consumer. At the same time, it began to question the “declared policy”²⁹⁴ of the Commonwealth to routinely and absolutely protect local industries against overseas competition.²⁹⁵ In its 1926 Annual Report, it attempted to reassure

²⁸² Ibid.

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ “The New Tariff: reasons for Changes”, *The Register*, 11 September 1925, 21.

²⁸⁷ Ibid.

²⁸⁸ Ibid. The Board’s recommendations were adopted by the Ministry.

²⁸⁹ “The Tariff”, *Braidwood Dispatch and Mining Journal*, 11 September 1925, 1.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² “Tariff Increases: More Reports Tabled”, *The Argus*, 17 September 1925, 13.

²⁹³ Ibid.

²⁹⁴ Commonwealth Tariff Board, *Annual Report*, 30 June 1927.

²⁹⁵ Ibid.

consumers that when making its determinations, it constantly sought to ascertain what the effect of any proposed increase in duties would have upon prices to the public.²⁹⁶ Furthermore, it became critical about abuse of protection, particularly when it appeared to have an adverse impact on the consumer.²⁹⁷

There are times when the local manufacturer desires the superior article he is making at a far greater cost to be protected as to force the cheaper one off the market, and there are on the other hand instances known to the Board where he is making an inferior article and asks that it be protected against a superior one.²⁹⁸

It had become very obvious that the Board was no longer the stalwart face of protectionism in Australia and that it was at times 'at odds' with Mr Pratten, the Minister of Trade and Customs. As a result, the Board's comments and reluctance to recommend increase in tariff protection for mismanaged and inefficient industries were neither embraced nor appreciated by the Minister.²⁹⁹ By 1926, the Minister began to purposely fail to table the Board's reports even though they should have been laid before the House within seven days of their presentation.³⁰⁰ Previously, it had been the practice of the Minister to always table the Board's reports forthwith on their receipt. The Board began to retaliate, and in its 1928 Annual Report openly criticised Minister for his failure to table its reports.³⁰¹ Without the benefit of 'absolute' protection, some companies began to struggle to meet their overextended financial obligations. For instance, in November 1927, the directors of George A Bond and Company Limited, considered entering into voluntary liquidation.³⁰² Not only had the Company's bank overdraft limit been exceeded but it was predicted that it was unlikely that its "heavy stocks"³⁰³ could be realised.³⁰⁴ Its annual report listed

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² "Financial: George A Bond and Company", *Sydney Morning Herald*, 29 November 1927, 13. George A Bond Cotton Mills Ltd., an associated company, was not involved in this proposal for liquidation.

³⁰³ Ibid.

the increase in the importation of hosiery as a factor contributing to the company's difficulties.³⁰⁵

In the next part we see another example of a post-Federation fledgling industry, led by the iconic Frank Burley, which expected an 'avowedly' protectionist government to provide unlimited protection even though such protection tended to increase the prices of both imported and locally-produced goods, particularly for female consumers.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

9.3 Cossetting Australian Corset-Makers

Before the war, the Australian corsetry industry was mostly comprised of small enterprises that employed only a handful of staff that only made hand fitted corsets.³⁰⁶ By 1921, the industry had grown to include twenty four small manufactures in various capital cities, as well as four major “wholesale houses”:³⁰⁷ Berlei Limited, the Australia Corsets Limited, Messrs Robert Paxton, all of Sydney, and the Elasco Corsets and Tie Company of Melbourne.³⁰⁸ The bulk of their output was children’s corsets and brassieres, which Mr Lister MP told his colleagues that a brassiere was a “form of bust bodice”.³⁰⁹ Even though corsets “continued to dominate notions of female beautification”,³¹⁰ less than five per cent of the corsets worn by Australian women in 1920 could be manufactured locally.³¹¹

The wearing of female corsetry had not been abandoned in the 1920s with the onset of the ‘new era’ of “modish”³¹² slim form flapper silhouette.³¹³ However, many of the traditional “stiff-boned”³¹⁴ or rigid corsets purchased up to and during the war went out of fashion and were replaced with shorter and slender corsets that sat “barely above the waist”.³¹⁵ These new types of corsets were more comfortable to wear and were generally “supple garments marked by dainty trifles of silk and satin that few women could resist.”³¹⁶ All forms of corsets, including medical and surgical

³⁰⁶ Commonwealth, *Parliamentary Debates, Senate*, 16 November 1921, 52 (Senator Payne).

³⁰⁷ Ibid 58 (Senator Duncan).

³⁰⁸ Ibid.

³⁰⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 100 (Mr Lister).

³¹⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 1 July 1920, 139 (Mr Tudor); “Tariff Debate: Resumed by Mr Tudor”, *The Argus*, 2 July 1920, 8.

³¹¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 1 July 1920, 139 (Mr Tudor); “Tariff Debate: Resumed by Mr Tudor”, *The Argus*, 2 July 1920, 8.

³¹² “For Australian Women: Modes That Are Coming”, *Table Talk*, 17 November 1921, 4-5.

³¹³ “Slender Corsets”, *The Advertiser*, 10 November 1921, 9. It was even common for corsets to be rarely worn with an evening dress.

³¹⁴ Ibid.

³¹⁵ “Fashions of the day: The Correct Corset”, *Newcastle Morning Herald and Miners’ Advocate*, 19 November 1921, 1; Commonwealth, *Parliamentary Debates, Senate*, 16 November 1921, 52 (Senator Payne).

³¹⁶ Margaret Maynard, “Lady be beautiful’: selling corsets in the 1920’s” (2007) 9 *Journal of Australian Studies* 146.

corsets, continued to remain in high demand during this period: in 1921 there were “some 2 000 000 women in the Commonwealth requiring these articles of apparel.”³¹⁷

9.3.1 Small beginnings for the Australian corset industry

*Until 1920 the industry was not very successful in Australia, although there have always been a few persons making corsets to order.*³¹⁸

In 1914, £262 000 worth of corsets were imported and Australian manufactures only supplied 10% of the market.³¹⁹ Although all the raw materials for corset-making had to be imported, none of these materials, except for lace and embroidery, attracted customs duty.³²⁰ England supplied the cheapest lines, being the bulk of trade, and America supplied the higher class of corsets.³²¹

Whilst the issue of tariffs on imported corsetry was dealt with in the 1908 Tariff Schedule, it was not until 1914 that tariff protection was more fully explored for Australian corset-makers.³²² The question of protection for a nascent and struggling Australian corsetry industry was first investigated by the Inter-State Commission in 1914, when an application was made by W. Zander and Co., of King Street Sydney, for an increase of the duty on corsets from 10% (British preference)

³¹⁷ Commonwealth, *Parliamentary Debates, Senate*, 11 August 1921, 151 (Senator Drake-Brockman).

³¹⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 114 (Mr Gregory).

³¹⁹ “Duty on Corsets: An Increase Sought”, *The Register*, 3 July 1914, 7.

³²⁰ “The Price of Figure: Corsets to be Dearer”, *Daily Herald*, 15 May 1920, 7. It seems that “every scrap” of raw material for the manufacture of corsets, including the bones, coutil, busks (rigid element at front of corset), eyelets, laces and suspenders, corset strings had to be imported.

³²¹ “Duty on Corsets: An Increase Sought”, above n 319. In 1913, America supplied £115 771 worth of corsets to Australia. By 1917-18, American corset makers were supplying £144 379 worth of corsets to the Australian consumer. See Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 150 (Senator Russell).

³²² Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 121 (Mr West).

and 15 % (general) to 20% and 25% respectively.³²³ Mr Wilhelm Zander argued that whilst his business of selling corsets and corset accessories had increased since 1913, and was profitable, he was concerned that he was not receiving a “satisfactory profit.”³²⁴ He told the Commission that he was alarmed with the increase in the number of imported corsets from Britain,³²⁵ Germany³²⁶ and America.³²⁷ He claimed that he continually struggled with high labour costs and with a prejudice against locally-made corsets.³²⁸ He pleaded that if the duty were increased sufficiently, he would be able to compete with the imported articles in other grades.³²⁹

Others in the corset industry, such as Frank Burley of Unique Corsets asked for even higher tariffs than Zander on imported corsetry.³³⁰ Burley, who employed 30 to 40 hands, pointed out that American corsets sold well in Australia because they were “so well advertised”.³³¹ He explained that the only reason why local corset industry existed at all was because of the early tariff imposed on imported corsetry.³³² This view was later verified in 1921 when Senator Payne advised the Senate that the Australian corset-making industry had made good progress during the

³²³ “Duty on Corsets: An Increase Sought”, *The Register*, 3 July 1914, 7. In the 1908-11 Tariff Schedule, corsets came under item 106B.

³²⁴ Ibid.

³²⁵ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 150 (Senator Russell). In the years 1913 and 1914-15, the United Kingdom supplied £114 197 and £111 875 worth of corsets to Australia respectively.

³²⁶ “Our Chance: German Stocks and Stockings”, *Queensland Times*, 19 September 1914, 5. It was reported in September 1914 that £4 487 worth of corsets were imported from Germany.

³²⁷ “Duty on Corsets: An Increase Sought”, above n 319.

³²⁸ Ibid.

³²⁹ “Tariff Revision: Corset Trade”, *Sydney Morning Herald*, 3 July 1914, 4.

³³⁰ “Duty on Corsets: An Increase Sought”, above n 319. William Lewis, representing J G Kleinert Rubber Company (NY) asked for a duty on imported suspenders that attached to corsets. He advised the Commission that he used to import stocking suspenders, but then began to manufacture them from material which was imported free from duty. He also requested that corsets and corset accessories be classed as apparel for tariff purposes, which would mean that they would be protected much more than in the 1908-11 Tariff.

³³¹ “Tariff Revision: Corset Trade”, above n 329.

³³² Ibid.

war even though it had been initially developed under a 10 per cent preference tariff and 15 per cent foreign tariff.³³³

In July 1915, the Commission recommended that the duty on corsets should be not less than on general apparel, and that corsetry should be included under the classification of apparel and attire,³³⁴ which at the time attracted 35 % preferential and 40% general tariff.³³⁵ The Commission advised Parliament³³⁶ that it considered that the corset industry was an industry that, “with fair encouragement”,³³⁷ should succeed in Australia.³³⁸ It was extolled as an industry with “great variety of design, shape and size,”³³⁹ which could provide a wide avenue of employment. Whilst the proposed increase in duty was to ostensibly assist Australian corsetry manufacturers, it would also potentially have a significant economic impact on female consumers. Women were already facing significant increases for these ‘essential’ items of feminine attire because of higher freights on “the most sought after corset”³⁴⁰ from America and the cost of extra bone in the modern style of corset.³⁴¹

9.3.2 The War opens up opportunities for Australian corset makers

*The idea ... is to make Australia not only one of the greatest producing countries of the world, but self-supporting so far as the manufactures are concerned.*³⁴²

³³³ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 147 (Senator Payne).

³³⁴ Corsets were to be included under Item 106 (a), Apparel and Attire N. E. I. See “Australian Tariff: Encouraging Local manufactures”, *Western Mail*, 9 July 1915, 16. It is interesting that two manufacturers actually asked for reduced duties on imported corsets. Presumably, these manufacturers also imported corsets. However, they provided no particulars as to local output, though they stated they employed about 80 hands.

³³⁵ “Australian Tariff: Encouraging Local manufactures”, *Western Mail*, 9 July 1915, 16.

³³⁶ Mr Greene MP suggested that the Commission could not be accused of having suggested any duties that were not really warranted. See Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 101 (Mr Greene).

³³⁷ “Australian Tariff: Encouraging Local Manufactures”, above n 335.

³³⁸ *Ibid.*

³³⁹ *Ibid.*

³⁴⁰ “Drapery Bills Must Go Up”, *Sunday Times*, 18 July 1915, 6.

³⁴¹ *Ibid.*

³⁴² “Earnest Trade Campaign: Against Hydra-headed Peril of Hun Control”, *Sunday Times*, 9 January 1916, 27.

The war began not long after the Commission took evidence from Zander and Burley. This event, of course, had an enormous impact on the importation of all corsetry, especially with regards to German lines.³⁴³ The prohibition of German imported corsetry was considered to be a boon for a small Australian manufacturing industry that had previously struggled to compete with inexpensive German products.³⁴⁴ During the war, Australians were cautioned that German manufacturers were in the process of secretly planning a post-war trade campaign that would ‘dazzle’ Australian consumers with bargains they could not refuse.³⁴⁵ During this xenophobic campaign, the “minds of thoughtful people”³⁴⁶ were also actively engaged in developing strategies and campaigns to foster the development of Australian industry and overseas trade.³⁴⁷ Australian manufacturers were urged to seize the commercial opportunities that the war, with its associated problems with trade, freight and isolation, had opened up.³⁴⁸ They were especially encouraged to fill the gaps left in the supply of German commodities that before the war had been so vital to the Australian importer, and so popular with the consumer.³⁴⁹

Yet, despite all of this patriotic rhetoric, the corsetry industry failed to advance during the war because it lacked the necessary skilled workers and imported materials for manufacturing corsets.³⁵⁰ Furthermore, just as it was impossible during this time to obtain machinery for the hosiery industry, it was “absolutely impossible”³⁵¹ to obtain machinery to manufacture corsets within the Commonwealth.³⁵² Yet, this obstacle did not hinder Australian manufacturers

³⁴³ Ibid.

³⁴⁴ “Our Chance: German Stocks and Stockings”, above n 326; “Commercial Side of War: British Markets and German Good”, *Sunday Times*, 25 October 1914, 8.

³⁴⁵ “Earnest Trade Campaign against Hydra-Headed Peril of Hun Control”, above n 342.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

³⁴⁹ Ibid.

³⁵⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 104 (Mr Gregory).

³⁵¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 1 July 1920, 139 (Mr Tudor).

³⁵² Ibid.

lobbying for additional tariff protection to protect an industry that was still in its embryonic stage and as yet remained untested.

By 1921, the issue of increased protective tariffs on imported corsets had become a significant, and a strangely incongruous topic of passionate debate within the Australian Parliament.³⁵³ Senator Payne, who had been engaged in the corset trade,³⁵⁴ called the issue one of the “most important items in the Tariff from the point of view of the general community.”³⁵⁵ The topic was so hotly and emotively debated that it even warranted all-night sittings.³⁵⁶ The hostility in the debates was palpable, with some senators being accused of being unpatriotic, and for having “no use for Australian-made goods”.³⁵⁷

An avowedly Protectionist Government proposed to raise the tariff appreciably on corsets to 40 per cent (preferential), 50 per cent (intermediate) and 55 per cent (general).³⁵⁸ This meant that a particular line of corset that retailed before the war for 5s 11d, and then sold during the war at 9s 6d, would be sold under the new increased rates for 12s 6d; this was an increase in price of over 100 per cent.³⁵⁹ Opponents were concerned that the imposition of this proposed tariff increase was a purely revenue raising-exercise and that the revenue “thus raised ... [would come] out of homes which can ill-afford to pay it.”³⁶⁰ Others³⁶¹ pointed out that the corset industry was asking more than most other clothing industries and it was

³⁵³ Commonwealth, *Parliamentary Debates, Senate*, 16 November 1921, 52 (Senator Payne).

³⁵⁴ Ibid 54 (Senator Guthrie).

³⁵⁵ Ibid 52 (Senator Payne).

³⁵⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 121 (Mr West).

³⁵⁷ Commonwealth, *Parliamentary Debates*, Senate, 13 October 1921, 118 (Mr Mathews).

³⁵⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 104 (Mr Gregory).

³⁵⁹ Ibid.

³⁶⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 117 (Mr Richard Foster).

³⁶¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 101 (Mr Greene). Mr Greene MP pointed out that the corset industry was asking for more protection than most other clothing industries and it was “anomalous” for it to receive different treatment from that extended to ordinary apparel. It is interesting that it was Greene, who was the Minister for Customs and Trade at this time, would make this comment. He actively supported an increase in tariffs on corsetry but he obviously took a more moderate approach than other members of the Government.

“anomalous”³⁶² for it to receive different treatment from that extended to ordinary apparel.³⁶³

Payne insisted that a tariff increase would be an incentive for Australian manufactures to substantially increase the price of their corsetry.³⁶⁴ He told the Chamber that after the previous tariff increase, the price of corsets of Australian manufacture was put up by “several shillings”.³⁶⁵ Gregory agreed and insisted that an increase in tariffs on corsets would be the “same old story as during the war”³⁶⁶ when the local manufacturer, once safely secure “behind protection,”³⁶⁷ would put up his prices as near as he could to the cost of the imported article.³⁶⁸ Importers of corsetry, including Sir Horace Bayer, were indignant about the increase of tariff on corsetry, particularly as the new tariff would adversely affected thousands of corsets that were currently on route to Australia and those held in bond.³⁶⁹ Bayer labelled the new tariff as “Bolshevik laws”³⁷⁰ and characterised himself as a “victim of legalised robbery.”³⁷¹ He threatened to retaliate against what he considered to be a “gross dishonesty”³⁷² of Custom procedures by using his connections in Ireland and Scotland to “prevent anyone of the farm immigrant types from coming to Australia.”³⁷³

³⁶² Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 101 (Mr Greene).

³⁶³ Ibid.

³⁶⁴ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 147 (Senator Payne); Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 104 (Mr Gregory).

³⁶⁵ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 147 (Senator Payne).

³⁶⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 104 (Mr Gregory).

³⁶⁷ Ibid.

³⁶⁸ Ibid.

³⁶⁹ “Corsets and Customs”, *The Richmond River Express and Casino Kyogle Advertiser*, 15 January 1923. Bayer was a corset manufacturer who claimed that his ‘CB’ corsets were ‘as easy fitting as a perfectly cut kid glove, with a complete absence of pressure upon the respiratory organs’. His prices ranged from 10/6 to three guineas and he claimed to use the ‘the daintiest French fabrics, both plain and fancy.’ He had several factories, including ones at Bath, Bristol, Portsmouth, Gloucester and London. His corsets had fanciful names, for example, *The Imperial Cygnia*. See “Friends of West Norwood Cemetery” (Newsletter, No 71, West Norwood Cemetery, May 2011).

³⁷⁰ “Corsets and Customs”, above n 369.

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Ibid.

In August 1921, the Senate was advised that D & A Co of America³⁷⁴ and Warner Bros of America were intending to establish factories in Australia.³⁷⁵ This expansionist plan caused alarm with protectionists such as Senator Pratten who recommended that the only way that American capital could be kept out of the country was if there was a rapid development of the Australian industry.³⁷⁶ Some politicians actively encouraged the nascent industry.³⁷⁷ They suggested that Australian-made corsetry would not only be equal in quality to corsetry made in America but they could be made and sold more cheaply³⁷⁸ because of the added packing and freight costs of imported corsets.³⁷⁹ Senator Elliott even glibly recommended that the industry could be started without “great expenditure of capital”³⁸⁰ and in a “small room containing a few sewing machines”.³⁸¹ He was naïve when he suggested that by extending this ‘simple’ enterprise to a dozen country centres that it would “soon bring down the price of the article to the Australian buyer”.³⁸²

Others such as Gregory, Lazzarini and Payne were more pragmatic and were clearly cognisant of the impact that prohibitive tariffs would have on the ordinary consumer. Gregory stressed that the Australian corsetry industry was still in its embryonic stage.³⁸³ He advised the House that the statistics for 1919 showed that imported corsets, principally from America and Great Britain, were worth £876 000, as opposed to Australian-made corsets that were worth only £36 000.³⁸⁴ He argued

³⁷⁴ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 150 (Senator Russell).

Senator Russell indicated that this was a Canadian firm.

³⁷⁵ Ibid 153 (Senator Pratten); 150 (Senator Russell).

³⁷⁶ Ibid 153 (Senator Pratten).

³⁷⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 104 (Mr Greene).

³⁷⁸ Ibid.

³⁷⁹ Ibid 105 (Mr Richard Foster).

³⁸⁰ Commonwealth, *Parliamentary Debates*, Senate, 16 November 1921, 57 (Senator Elliott).

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 114 (Mr Gregory).

³⁸⁴ Ibid. To further support his argument about the scarcity of Australian-made corsets, Gregory cited the case of the Housewives Association who directed two ladies to visit the shops to ascertain if

that until Parliament had “concrete evidence”³⁸⁵ that the corset industry was large enough to be profitably conducted ‘in the Commonwealth’, then Parliament should avoid imposing ‘heavy duties’ on the imported article.³⁸⁶ Gregory maintained that women should be able to buy the corset of her choice and not be *forced* to buy the potentially second-rate Australia item:³⁸⁷

Every lady wishes to buy the style of corset that suits her best, and undoubtedly the American manufacturers, having paid more attention to hygiene than their British rivals, have won popularity for their goods which insures them a more ready sale.³⁸⁸

Although Payne would not denigrate the Australian product, he took the trouble to remind his fellow Senators that the corset-making industry was “a specialized industry.”³⁸⁹ He claimed that skilled corset-makers in Europe and America were, with their superior knowledge of the industry,³⁹⁰ at a “stage of perfection”³⁹¹ that could not be achieved by the Australian industry for many years:³⁹² “no matter what facilities are given in Australia, it [would] be many years before we can possibly hope to supply the whole of the needs of Australian users of corsets.”³⁹³

Australian corsets were available. He says that they reported back to the Association and advised that such corsets were “unprocurable”.

³⁸⁵ Ibid.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ Commonwealth, *Parliamentary Debates*, Senate, 16 November 1921, 55 (Senator Payne).

³⁹⁰ Ibid.

³⁹¹ Ibid.

³⁹² Ibid.

³⁹³ Ibid.

9.3.3 The Tariff targets women

*How women of slender means are going to provide themselves with good corsets of good quality and design I do not know.*³⁹⁴

It was obvious to politicians such as Gregory that the increased tariff would have an enormous impact on the female consumer. Yet, Mathews strongly denied that the increased tariff on imported corsets was a “sex tax”.³⁹⁵ He claimed that the tariff was clearly a protective duty which, unlike the “old Tariff,”³⁹⁶ was merely a revenue duty.³⁹⁷ He was an avowed protectionist who went so far as to declare that he would place a duty of “1,000 per cent” on every corset that could be manufactured in Australia.³⁹⁸ Richard Foster, who like Payne, had been in the “trade,”³⁹⁹ considered that protection on corsets was a “heavy tax upon the womenfolk in ... the community”.⁴⁰⁰

Some members of Parliament were more informed and pragmatic than others when articulating the corsetry needs of women. For instance, Gregory emphasised to the members of the House that “[a]lmost every woman in civilised communities [wore] corsets, and [had] done so for generations”⁴⁰¹ and that there was evidently “some natural and physical reason for their universal adoption.”⁴⁰² Senator Payne instructed his ‘brother’ Senators, that “proper shaping”⁴⁰³ was needed for each individual corset in order to make them comfortable for women to wear.⁴⁰⁴

³⁹⁴ “The Price of a Figure: Corsets to be Dearer”, *Daily Herald*, 15 May 1920, 7.

³⁹⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 103 (Mr Mathews).

³⁹⁶ Ibid.

³⁹⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 110 (Mr Richard Foster). Richard Foster argued that the proposed duty was good for revenue purposes and that this was “its only redeeming feature.”

³⁹⁸ Ibid 118 (Mr Mathews) (emphasis added).

³⁹⁹ Ibid 119 (Mr McWilliams).

⁴⁰⁰ Ibid 114 (Mr Gregory).

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 147 (Senator Payne).

⁴⁰⁴ Ibid.

Furthermore, he recommended that a large amount of care and attention would have to be applied by Australian manufacturers in order to supply appropriate corsets that had to be “moulded to a great variety of forms”.⁴⁰⁵ At the same time, Payne warned his colleagues that it was important to remember a gendered truism, for it could seriously impact on their own personal happiness: “every man knows how essential it is to a woman’s comfort that her corsets should fit well.”⁴⁰⁶

Payne suggested that many women preferred the French or American corsets because of their “peculiar shape,”⁴⁰⁷ and claimed that the British manufactures had gone “leeward”⁴⁰⁸ because of their inflexibility in providing ‘lines’ that met “the real needs of the people.”⁴⁰⁹

We are not all built alike. Fortunately there are varieties of feature, and in the same way there are varieties of form. Every woman cannot wear the same kind of corset. It is essential for each woman to wear whatever corset suits her form, no matter where it may be made.⁴¹⁰

Payne claimed that women before the war could purchase a good British, American or French corset for 7s 6d or 8s. However, after the 1921 Tarff increase, the cost was 10s a pair.⁴¹¹ On the other hand, Foster pointed out that it was not possible to compare the pre-war and post-Greene Tariff prices on corsets.⁴¹² He suggested that corsetry fashions had changed over this period and that there was “a marked change in the character”⁴¹³ of corsets that had much to do with “hygiene.”⁴¹⁴ He suggested that women in 1921 were generally asking for “a very much superior article”⁴¹⁵ to the “old style”⁴¹⁶ of corsets of pre-war days.⁴¹⁷ Furthermore, Foster

⁴⁰⁵ Commonwealth, *Parliamentary Debates*, Senate, 16 November 1921, 52 (Senator Payne).

⁴⁰⁶ Commonwealth, *Parliamentary Debates*, Senate, 11 August 1921, 147 (Senator Payne).

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

⁴¹² Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 105 (Mr Richard Foster).

⁴¹³ Ibid.

⁴¹⁴ Ibid.

⁴¹⁵ Ibid.

⁴¹⁶ Ibid.

maintained that the Australian corset industry was only producing about 3% of Australian demand and that the more expensive locally-made corsets were lower grade articles that were not popular with Australian women who were only able afford a reasonable quality imported article.⁴¹⁸ Payne insisted that the only options for consumers were to do without or to continue to purchase the imported items, even though they attracted prohibitive duties.⁴¹⁹

It was clear to many that the increased tariff on corsetry was not only a 'sex tax' but was also a "class tax",⁴²⁰ as the woman who possessed a "large purse"⁴²¹ could continue to have her corsets made to order in the "expensive salon."⁴²² Lazzarini suggested that there were some women who would be willing to pay 42s for a pair of corsets and who would not care if there was "a duty of 200 per cent imposed".⁴²³ It was suggested that the majority of women with little money were, however, forced to wear Australian corsets, even if they were unsuitable "on account of the prohibitive price."⁴²⁴ McWilliams contended that the small manufacturers were being "coddled in the big cities of Sydney and Melbourne,"⁴²⁵ and as a result, women were being compelled to pay "an enhanced price"⁴²⁶ to protect manufacturers against overseas competition.⁴²⁷ He branded the new Tariff as "a monstrosity from start to finish"⁴²⁸ and cautioned the House that the burden of the tariff on corsets was one which was squarely on the shoulders of the lower classes: "[r]ich people do not

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ Commonwealth, *Parliamentary Debates*, Senate, 4 June 1926, 27 (Senator Payne).

⁴²⁰ V Jennings, Letter to the Editor, "Duties on Corsets", *The Argus*, 7 June 1921, 4.

⁴²¹ Ibid.

⁴²² Ibid.

⁴²³ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 111 (Mr Lazzarini).

⁴²⁴ V Jennings, above n 420.

⁴²⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 119 (Mr McWilliams).

⁴²⁶ Ibid.

⁴²⁷ Ibid.

⁴²⁸ Ibid.

care what they have to pay. The working people are the real sufferers. It is not a fair deal.”⁴²⁹

During the war and early post-war period, some parliamentarians sought to invoke the sumptuary critique of luxury to justify their protectionist position. They insisted that corsets were luxury items and should ‘naturally’ attract high tariffs. Some were aghast at the notion that when Australia was in the “grip of a titanic war struggle - a struggle for national existence,”⁴³⁰ that luxuries such as corsets and feathers still poured into Australia at “an alarming amount”.⁴³¹ It was pointed out that during the year ended 30 June 1916, £259 479 worth of corsets “to encircle the graceful [female] forms”⁴³² were imported into Australia.⁴³³

In the 1920s, the critique of corsets as luxury items was often given short shrift by others who vehemently argued that corsets were a necessity to women. They maintained that it was unfair to impose excessively high duties and “thus penalize the womenfolk of Australia”.⁴³⁴ Mr Jowett MP was so confused about the issue that he sought guidance from Mr Greene, the Minister for Trade and Customs, as to whether corsets were luxuries or necessities.⁴³⁵ Receiving no response, Jowett “turned, as a last resource, to the information supplied in the daily press”.⁴³⁶ It turned out that this polemic, which tested men’s “intelligence and judgement”,⁴³⁷ could only be answered by a woman. Mrs Glenross, President of the Housewives Association sought to confirm men’s ignorance about women’s personal clothing when she wrote to Greene and asked whether he knew the difference between “corsets and brassieres”.⁴³⁸ Needless to say, she also received no reply.⁴³⁹ She was reported to

⁴²⁹ Ibid.

⁴³⁰ “Restriction of Imports”, *Myrtleford Mail and Whorouly Witness*, 1 March 1917, 5.

⁴³¹ Ibid.

⁴³² Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 100 (Mr Lister).

⁴³³ “The Economic Drift: Luxury or Bankruptcy”, *The Mildura Cultivator*, 3 March 1917, 15.

⁴³⁴ Commonwealth, *Parliamentary Debates*, Senate, 16 November 1921, 54 (Senator Guthrie).

⁴³⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 112 (Mr Jowett).

⁴³⁶ Ibid.

⁴³⁷ Ibid.

⁴³⁸ “A Challenge to Men”, *The Advertiser*, 8 December 1922, 14.

⁴³⁹ Ibid.

have told a meeting dealing that: “[m]en do not seem to see the necessity of corsets. They do not seem to care a button whether we wear them or not.”⁴⁴⁰

9.3.4 Women in Parliament: who better to advise what corset a woman ‘needed’

*Mrs Glenross admitted that not every woman was fitted for Parliamentary duties, but not by the wildest flight of imagination could it be assumed that every man who was there was fitted for the position.*⁴⁴¹

As seen in Chapter 8, there was an increasing demand in the media and elsewhere for institutions such as the Arbitration Courts and Board of Trade during the post war period to allow women a voice about their clothing needs: a subject which they alone had intimate knowledge and experience. This demand for female participation was amplified in 1921 because of comments made by Federal Parliamentarians and the press during the tariff debates about imported corsetry. This was particularly the case when it was reported that male parliamentarians were prone to much entertainment when viewing and handling samples of corsetry, of which they knew so very little.⁴⁴²

A pair of Australian-made corsets was produced, much to the amusement of many members of the House. There was a great deal of joking of the self-conscious kind. A member had only to handle the article to raise a laugh, and the older the member the greater the mirth.⁴⁴³

⁴⁴⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 112 (Mr Jowett).

⁴⁴¹ “Women and Politics”, *The Argus*, 2 September 1921, 7.

⁴⁴² Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 116 (Mr Fenton). In October 1921, when the Senate’s tariff’s requests were being considered and a reduction of the duty on corsets was sought, “no fewer than three pairs of Australian-made corsets were produced” in Parliament. See “Corsets in Parliament”, *Chronicle*, 22 October 1921, 23.

⁴⁴³ “Corsets in Parliament”, above n 442. It was reported that Mr Mathews, when demonstrating that good corsets could be manufactured in Australia, was “waving the mysterious thing, with its complicated network of cords and elastic, over his head”. He expounded the virtues of the articles “amid a storm of facetious interjections”. One Member of Parliament even asked with an “air of innocence” if the article was “a blouse”. See “Corsets in Parliament”, *Great Southern Herald*, 8 June 1921, 4.

Mr Lister MP, a progressive politician, suggested that there should be “representatives of the opposite sex”⁴⁴⁴ in the Parliament to assist men in the discussion of “matters of this kind.”⁴⁴⁵ Dr Maloney made an “impassioned declaration”⁴⁴⁶ for female representation. He argued that it would be a very good thing for the House if there women members who could instruct “the mere males”⁴⁴⁷ on matters affecting “the corset-wearing sex”.⁴⁴⁸ He maintained that women were quite capable of making important decisions and that it was time that there were some women in Parliament, particularly to speak on gendered issues such as the importation of corsets.⁴⁴⁹

If there were women here to speak for their sex, there would not be so much foolishness spoken on their behalf as we hear now. Thirty years ago I moved in this Chamber to separate women from the criminals and lunatics with whom they were classed in being deprived of the right to vote. Woman has since obtained some of her rights, but she is not yet the political equal of man. This Parliament is not as civilised as that of Finland, which has twenty-two women in a House of 200 members. On one occasion, when there was some labour trouble, the care of the principal city was intrusted to a committee elected from these twenty-two women.⁴⁵⁰

It was pointed out that women knew what type of corset they wanted and that, over time, they had been “well educated on the subjects of corsets,”⁴⁵¹ and would never by choice wear one which was “ill-fitting or badly cut”.⁴⁵² Yet, women continued to be denied a voice in those Parliamentary debates that deliberated on their most personal and feminine forms of apparel.

⁴⁴⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 100 (Mr Lister).

⁴⁴⁵ Ibid.

⁴⁴⁶ “Corsets in Parliament”, above n 442, 23.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

⁴⁴⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 115 (Dr Maloney).

⁴⁵⁰ Ibid.

⁴⁵¹ “The Price of a Figure: Corsets to be Dearer”, above n 394.

⁴⁵² Ibid.

9.3.5 Frank Burley's Castle of Dreams

*This is a story of dream and its fulfilment: the story of one who dreamed big dreams and then worked, night and day, with heart and brain and hand, to make his dreams come true.*⁴⁵³

Just as cotton hosiery was considered by many to be a great opportunistic wartime industry and very suitable for Australian conditions, the establishment of an Australian corsetry industry was similarly endorsed by Parliament and the press.⁴⁵⁴ Greene argued that an Australian corset industry could provide employment for many hands,⁴⁵⁵ and he predicted that the industry could quickly satisfy Australia's demand for corsetry.⁴⁵⁶ Furthermore, just as George Bond and other hosiery manufacturers were championed by the press and some parliamentarians as entrepreneurial visionaries leading the development of a new cotton hosiery industry in Australia, there was a parallel anointment of Frank Burley⁴⁵⁷ as a heroic visionary who led the Australian corsetry industry.⁴⁵⁸

Like George Bond, Burley was the consummate salesman and political lobbyist. He vigorously bragged to politicians and the press that his business was 'capable' of "turning out over 600 000 pairs of corsets per annum".⁴⁵⁹ Prompted by his own self-interests, when describing his products he continually spruiked the

⁴⁵³ "Young Man's Castle of Dreams Houses Berlei Ltd.", *Sunday Times*, 8 May 1917, 10.

⁴⁵⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 106 (Mr Riley).

⁴⁵⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 107 (Mr Greene).

⁴⁵⁶ Ibid.

⁴⁵⁷ "Young Man's Castle of Dreams Houses Berlei Ltd", *Sunday Times*, 8 May 1917, 10. It seems that Burley's knowledge of corset making was initially "limited to a few hazy ideas gathered as a boy, when at odd times he scraped the corners of the boning for his aunts, who had made these garments". Burley's first business (Unique Corsets Ltd) was opened off George Street, Sydney on July 1, 1912. He struggled to compete with competition with imported goods and turned to mostly making brassieres whilst continuing to make a few corsets. He and his staff regularly travelled to Europe and America where "he carefully studies materials, markets and methods of manufacture".

⁴⁵⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 May 1921, 105 (Mr Richard Foster).

⁴⁵⁹ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1921, 107 (Mr Greene) (emphasis added).

fashionable axioms about female health, beauty and comfort.⁴⁶⁰ He doggedly criticized the low tariff on corsets and proclaimed that the industry was “scarcely protected at all.”⁴⁶¹ He also advocated that it was the duty of the Tariff Board to protect “a certain class of persons...against themselves”⁴⁶² by the imposition of a protective tariff that would remove the temptation from women to buy imported corsets:⁴⁶³ “[t]he Australian corset should be insisted upon, and that can only be brought about by the operations of the Customs House, or better still, by drastic legislation.”⁴⁶⁴

Furthermore, Burley insisted that the Australian woman “should be taken in hand”⁴⁶⁵ by her menfolk, who he said were expected to pressure her to buy only Australian-made corsetry.⁴⁶⁶ He declared that a protected corset-industry, which concerned itself with “the health, beauty and physique”⁴⁶⁷ of Australian women, was at the core of the future development of “the Australian race”.⁴⁶⁸ Burley maintained that Australian women “must be educated”⁴⁶⁹ and *forced* to visit his factory, so they could appreciate that only Australian corset makers knew how to make corsets for Australian women. He insisted that a woman who wore the French or American corset⁴⁷⁰ was either guilty of “thoughtlessness or ignorance.”⁴⁷¹

The danger and absurdity of the Australian women wearing in the month of February in Australia a corset made for a woman in the north of England in December must be apparent to anybody.⁴⁷²

⁴⁶⁰ “Word of Advice to Our Women: How Beauty can be Gained and Retained”, *Sunday Times*, 24 February 1924, 4.

⁴⁶¹ Ibid.

⁴⁶² Ibid.

⁴⁶³ Ibid.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid.

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

⁴⁷² Ibid.

By 1926, it became obvious that some protectionist parliamentarians were becoming increasingly sceptical about the type of artificial protection that many Australian manufacturers continually expected from government.⁴⁷³ They began to oppose proposals to increase tariffs on imported clothing because they were conscious of the adverse effect such duties were having on consumers.⁴⁷⁴ Even those members of the Tariff Board who were committed protectionists, were becoming concerned about the level of protection being accorded to those emerging industries that made every attempt to “shelter plant, machinery and methods which have passed, or are passing out of date under stress of modern development.”⁴⁷⁵ These Board members maintained that such practices should not be encouraged and urged Parliament to ensure that opportunities for the abuse of the protectionist system be eliminated.⁴⁷⁶

By 1930, the Board, despite considerable criticism from the authors of the Brigden Report and other quarters, was more realistic about the reasons for stagnating industries and government debt. The Board was “inspired by “a kind of gloomy wisdom”⁴⁷⁷ and began to regularly reject unwarranted manufactures’ claims for increased protection and dismiss exhortations that every national misfortune and economic difficulty should be blamed on “greedy trade unionists and cunning foreigners.”⁴⁷⁸

9.4 Conclusion

Chapter 9 examines two fledgling Australian clothing industries that sought, with the assistance of government, to expand their control over the Australian domestic market. During the early post-war period private business interests were

⁴⁷³ Commonwealth, *Parliamentary Debates*, Senate, 3 June 1926, 60 (Senator Kingsmill).

⁴⁷⁴ Ibid.

⁴⁷⁵ Commonwealth Tariff Board, *Annual Report*, 1916 – 1927.

⁴⁷⁶ Ibid.

⁴⁷⁷ W K Hancock, *Australia* (Earnest Benn Limited, 1930) 198.

⁴⁷⁸ Ibid.

enthusiastically encouraged by governments that insisted Australia's future development was dependent upon a robust manufacturing sector. This meant that during this period the tariff continued to remain the major instrument of economic policy. For protectionists, the tariff was a populist regulatory technique that government was obliged to use to achieve its ideals of national wealth and prosperity. It helped create employment, protected the cost of living and encouraged 'appropriate' immigration.

In Chapters 4, 6 and 8 we see that during the first two decades following Federation the sumptuary impulse was stimulated by both protectionist aims and concerns about morality. In Chapters 8 and 9 we see that by the early 1920s, sumptuary discourse had shifted its discursive emphasis from this mixed protectionist/morality focus to one that was increasingly preoccupied with national economy. In chapter 9, there is little evidence of the anti-luxury, moral regulation discourses of the earlier period even in those industries that were concerned with *basic* women's apparel.⁴⁷⁹ Instead, sumptuary discourse is increasingly underpinned by 'nationalistic' demands that Australians should be *forced* to support local industries by wearing only Australian-made apparel. This chapter also demonstrates that whilst government was giving manufacturers their unreserved support, the Tariff Board was beginning to doubt the efficacy of providing unlimited support to industries that were clearly inefficient and mismanaged.

Chapter 10 will present the final conclusion for this thesis, initially summarising the key findings from each chapter, and then providing some examples of how the sumptuary ethic has today had lingered in different forms.

⁴⁷⁹ Hunt, above n 2, 373 (emphasis added).

10 CONCLUSION

10.1 The purpose of this chapter

This thesis had provided an interdisciplinary analysis concerning the ‘eruption’ of sumptuary regulation in Australia in the early decades following Federation. It demonstrates that sumptuary law did not disappear with the passing of time as generally believed. Rather, it surprisingly resurfaced in new guises in Australia after Federation.

This chapter draws together the threads of sumptuary regulation that surfaced during this period: the moralisation of luxury and extravagance, the hierarchical ordering of appearance and the protection of domestic industry. The interlacement of these threads reveals a fresh sumptuary narrative shaped by those atypical social, economic and political conditions that prevailed in Australia during its early years as a fledgling nation.

Whilst Australians are not currently subject to specific sumptuary hierarchical laws that control the type and quality of clothing that is worn by Australian people, this chapter briefly demonstrates that, nonetheless, traces of the sumptuary ethic persistently underlie some contemporary legislation and government policy.

10.2 Structure of this chapter

The chapter begins by discussing the themes and observations in each chapter of this thesis. The chapter then moves to remark on the presence of the sumptuary ethic in modern day legislation and policy.

10.3 Drawing together the threads

At the outset, this thesis proposed to demonstrate manifestations of sumptuary regulation in Australia during the first three decades following Federation. This period was one that was marked by momentous social, technological and political anxieties and vicissitudes. Australia was in the process of trying to define its new subjectivity as a fledgling Federated Commonwealth, whilst at the same time, it sought to position itself economically and culturally as an essential but isolated member of the British Empire. The war brought forth further unparalleled political, economic and social difficulties that challenged the freedoms and choices of ordinary Australians.

To cope with these challenges, authorities sought to implement a wide range of social and economic policies. In many instances, these policies sought to strictly regulate the private and public behaviour of certain sections of the Australian population to more closely reflect traditional hegemonic values and expectations. This thesis argued that in many instances these interventionist policies, many of which were exercised as wartime measures, closely reflected the interventionist nature of the sumptuary laws of the early modern period.

This thesis had a particular focus on the regulation of dress. Whilst post-Federation Australian interventionist tariff policies may not have *aimed* to regulate dress, it was in their *effects* that we saw clear evidence of the sumptuary ethic. Whilst most of the research focuses on the regulation of dress, Chapter 7 highlighted the presence of other targets of sumptuary regulation during these first decades after Federation.

Chapter 2 drew on the research of Hunt and Baldwin and provided an opportunity to deconstruct the sumptuary laws of the early modern period. This deconstruction revealed those warp threads that underpinned the sumptuary ethic: its moralising tendencies, its hierarchical paradigms, its implicit nationalism and its desire to protect local industries. During the deconstruction process, supplementary weft threads of class and gender were also exposed.

This chapter explained that the sumptuary laws of this period sought to control the type and cost of clothing that was worn by various ranks in society. These

laws were often complicated edicts that provided meticulous hierarchical dress codes that were based on rank, income, position and wealth. Furthermore, the chapter revealed how the moralisation of luxury was at the core of discourses surrounding the demand for sumptuary laws.¹ However, at times, the sumptuary reflex was also stimulated by economic motives, especially when authorities sought to protect local industries from overseas imports. Often, authorities employed sumptuary regulation as a ‘paternal’ interventionist regimen that aimed, with mixed motives, to ‘guide’ and protect both the moral and economic lives of their people.

Chapter 3 provided a contextual cache that can be drawn upon in understanding the motivations and influence of Australian individuals and institutions that figured prominently in later chapters played in the revival of sumptuary regulation in the early 20th century.

A large part of this thesis dealt with the sumptuary effect of prohibitive taxation (in the form of tariffs) on clothing in the first few years following Federation. Chapter 4 was a foundational chapter that served to illustrate the shift in taxing policies on goods from 1788 until 1914. By 1914, government no longer relied upon taxation just for the provision of revenue. The chapter argued that government began to use taxation as an interventionist tool to modify the consumption practices of its people to reflect its favoured economic policy of protectionism.

Chapter 4 demonstrated that, by the end of the first decade, a strong symbiotic relationship had developed between this type of taxation and protectionism. Whilst the express purpose and primary effect of tariff policy was the protection of local industries, at the same time, the *effects* of protectionist policies began to bear a striking resemblance to the aims and effects of sumptuary laws of the early modern period. This chapter exposed the sumptuary threads that began to resurface in protectionist discourse. It also illustrated that prohibitive tariffs on

¹ Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (MacMillan Press, 1996) 77.

imported goods, such as clothing, were beginning to have a clear sumptuary influence on the consumption practices of many Australians, especially those of the lower classes. In particular, prohibitive tariffs on imported clothing could effectively regulate the type and quality of clothing that certain people could wear.

The research in Chapter 4 also demonstrated how the figure of Luxury excited moral condemnation and stimulated the regulatory reflex in post-Federation Australia. Chapter 4 showed that Parliament and the press were anxious about the ‘evil’ effect of imported luxuries and women’s extravagance in dress. Lower class women were particularly targeted for regulation. There were even calls for the revival of ‘the old sumptuary laws’ as a way to control extravagance and women’s desire for ever-changing fashion apparel. The chapter revealed that Australia’s particular brand of protectionism was revitalising the sumptuary ethic long after the disappearance of the English sumptuary legislation of the early modern period.

Having established the sumptuary *effect* of early post-Federation protectionist policies affecting imported clothing, the thesis shifted to Chapter 5 to demonstrate that the imposition of prohibitive tariffs on imported clothing was not the only form of sumptuary regulation that surfaced in the post-Federation period. This chapter examined the sumptuary effect of female ‘living wage’ determinations made by Australian arbitrations courts before and after the First World War.

In cases such as *Fruitpickers*² and *Archer*,³ arbitration judges posited themselves as both official arbiters of taste and as adjudicators of ‘normative’ dress for working class women. This chapter explained how these judges, when assessing the minimum wage for female workers, placed a skewed emphasis on the cost and ‘appropriateness’ of their apparel. Judges sought to curtail the alleged fickleness and extravagance of female workers by denying them a sufficient wage that would allow them to afford to purchase the clothing of their choice. Furthermore, they arbitrarily

² *Rural Workers’ Union and South Australian United Labourers’ Union v The Employers, Parties to the Temporary Agreement referred to in the Order of the President, dated the 1st December 1911* (1912) 6 CAR 70 (‘*Fruitpickers*’).

³ *Federated Clothing Trades of the Commonwealth of Australia v Archer* (1919) 13 CAR 647 (‘*Archer*’).

set prescriptive standards of dress for these female workers whilst at the same time taking the opportunity to chastise them for their profligacy and to encourage them to better equip themselves for marriage by adopting thrifty practices.

During the war, governing classes became even more anxious about the increased demand for imported clothing and the problem of squandering national wealth. They were concerned that many Australians, particularly the lower classes, were wasting their money on luxuries and fashionable apparel, at a time when they should be saving their money for future exigencies or ‘patriotically’ investing their surplus funds in war bonds. Chapter 6 demonstrated that it was during this period that the demand for sumptuary regulation to control extravagant spending on ‘inappropriate’ luxuries reached its apogee in Australia.

This chapter revealed the extent to which luxury became a focus of moral critique and a target for regulation for Australian governments during the war years. After appeals for self-regulation had been ignored, Prime Minister Hughes, in May 1917, introduced a modern manifestation of sumptuary regulation when he established the Luxuries Board to determine the categories of luxury goods that were to be denied to Australian consumers until the end of war. Chapter 6 suggested that the establishment of the Board could be characterised as a unique interventionist sumptuary scheme that sought to quell wartime anxieties about economic waste, extravagance and mimesis; the same kind of anxieties that prompted the sumptuary laws of the early modern period.

It was revealed in Chapter 2 that sumptuary laws of the early modern period were not limited to the regulation of dress and that at times sumptuary laws targeted the consumption of food, alcohol, social ceremonies, entertainment and wealth. Chapter 7 demonstrated the pervasiveness and malleability of sumptuary regulation in Australia during the post-Federation period. In particular, this chapter argued that the sumptuary impulse that surfaced in Australia during the early decades following Federation was similarly not limited to the regulation of dress. In fact, this chapter argued that the sumptuary impulse became evident in all manner of guises of interventionist policy. This was especially the case during the war when governments, beset by issues concerning national security and morality, made use of the *War Precautions Act 1914* (Cth) to constrain personal freedoms. The chapter

foregrounded two such wartime ‘non-appearance’ projects: Anti-Shouting laws and the *Entertainments Tax Act 1916* (Cth).

As shown in chapter 2, luxury and extravagance in dress in the early modern period persistently excited moral censure and stimulated the regulatory reflex. Chapter 8 demonstrated the robustness of the perennial treatment of luxury and female dress in an Australian context. The chapter showed how ‘fashionable’ Australian women in the early decades after Federation were labelled as ‘unpatriotic’ and viciously chastised by masculinist institutions, individuals and women’s groups for squandering national resources on trivial and inappropriate imported fripperies. The chapter revealed that war-time exigencies and governments’ ‘fervent’ devotion to protectionism further exacerbated these gendered attacks. The chapter demonstrated that these women were vilified for their alleged fickleness and profligacy and were also held responsible for the failure of various Australian industries and for increasing the cost of living. Manufacturers, protectionists and ‘patriots’, such as Ivy Brookes and Ruth Beale, called for women to curtail their obsession with rapidly changing imported fashion apparel and to support local industries. They went so far as to demand that government *force* women to eschew imported fashion apparel in favour of Australian made clothing.

Chapter 8 set up a contrast between the treatment by government and the press concerning women’s fashion and men’s underwear. It was argued that whilst moralisation persistently continued to underpin discourse concerning women’s fashion apparel into the 1920s, the regulation of men’s clothing via the imposition of prohibitive tariffs was sparked more by purely economic objectives than with a concern with moral regulation. It is in only the *effects* of these tariffs on working men and the self-serving demands of manufacturers that we see evidence of the sumptuary impulse.

Chapter 9 illustrated the shift in the discursive context surrounding the incidence of sumptuary regulation in Australia during the 1920s. By the end of the First World War, protectionism had become Australia’s ‘settled’ economic policy. In 1921, legislation was enacted for establishment of as the ‘institutional voice’ of protectionism and its role was to encourage and support emerging domestic industries that were facing enormous overseas competition. Sumptuary regulation

became more about economic intervention than about moral regulation. However, sumptuary regulation was not completely subsumed by protectionism during this period. The two case studies within Chapter 9 demonstrated that, at least in the case of the hosiery and corsetry industries, the sumptuary ethic remained unmistakably intact. In seeking to control the domestic market, hosiery and corsetry manufactures sought to increase the level of demand for their products by insisting that governments *force* certain sections of society to wear only Australian-made hose and corsets. Chapter 9 revealed how those involved with the establishment of two iconic industries took full advantage of opportunities opened up by the war as well as the generous protection offered by government and the Tariff Board.

10.4 Remnants of the Sumptuary Impulse in present day consumer culture

Hunt suggests, the sumptuary laws did not die but were transfigured into more modern regulatory projects.⁴ Despite this transformation, the sumptuary ethic has remained resilient and pervasive since the early modern period. It has been suggested that sumptuary regulation has been in the habit of making “many final curtain calls”.⁵ For instance, this thesis argues that the threads of sumptuary regulation were clearly visible in Australia in the interventionist projects in the early decades following Federation. These sumptuary threads were also evident in the US prohibitionist policies of the 1920s and 1930s.⁶ They again resurfaced in Germany before the Second World War when certain fashion clothing was forbidden by the Nazi regime in favour of Aryan national costumes and uniforms.⁷ In Australia, sumptuary regulation resurfaced during this war under the guise of rationing and austerity measures.⁸ During this period, economy was “arbitrarily forced upon

⁴ Hunt, above n 1, 361.

⁵ Ibid 389-90. Hunt gives the examples of ‘Prohibition’ and anti-pornography ordinances.

⁶ Ibid.

⁷ Fabrice d’Almeida, *High Society in the Third Reich* (Polity, 2008) 208.

⁸ “Clothes Rationing: Echoes from the Past”, *Glen Innes Examiner*, 19 November 1952, 3.

[Australians]”.⁹ It was accompanying by the same moralising discourse that sought to chastise Australians about their extravagance and self-indulgence during the early years following Federation.¹⁰ The sumptuary ethic has continued to resurface occasionally in Australia in the press and in Parliament in discussions about the propriety of dress and the need for dress codes in certain social and business situations.¹¹

Whilst modern legal commentators may be hesitant to characterise or label current regulatory dress codes or consumption-based laws as sumptuary law, it is evident that many of the modern codes and laws concerning dress, luxuries and consumables are “built upon the foundations of early sumptuary laws.”¹² Furthermore, it has been suggested that the modern dress standards for some industries and occupations provide in some instances, a “platform for interventionist” and such standards are often linked with the moralisation of gendered appearance.¹³

Hunt suggests that the critique of extravagance has not entirely disappeared. He argues that it still lives on “with considerable vitality”¹⁴ in the moralisation that underpins the regulation of gambling.¹⁵ Furthermore, moralisation is also still present in legislation and government policies that seek to regulate the use and promotion of drugs, alcohol and tobacco.¹⁶ Hunt argues that this form of moral regulation has increasingly become associated with discursive medicalisation discourse.¹⁷ He contends that the state continues to play a decisive role in the sponsorship and

⁹ “Trappings of Pride: Old-Time Clothes Rationing-Extravagant Raiment”, *North-Eastern Advertiser*, 24 July 1942, 1.

¹⁰ *Ibid.*

¹¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 6 August 1961, 103 (Mr Haylen). On this occasion, this Member of Parliament invoked the notion of sumptuary regulation and its hierarchic paradigms during debates about appropriate dress for men and women who visited the parliamentary gallery.

¹² Lucille Ponte, ‘Echoes of the Sumptuary Impulse: Considering the Threads of Social Identity, Economic Protectionism and Public Morality in the Proposed Design Piracy Prohibition Act’ (2009) 12 *Vanderbilt Journal of Entertainment & Technology Law* 48.

¹³ Hunt, above n 1, 397.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid* 397-8.

coordination of what he calls these “medico-moral projects.”¹⁸ Hunt argues that it is only in the field of the governance of sexuality where “pure forms of moral regulation”¹⁹ still exist. He cites the continuing contestation over pornography as “the classic case”.²⁰

It is evident that the sumptuary ethic still lingers under various guises. In the last few years there had been a trend by some US academics to link current regulation “of attire or grooming”²¹ with traditional sumptuary law.²² For instance, Lucille M Ponte argues that there are clear linkages between the foundational tenets of traditional sumptuary laws and the proposed *Design Piracy Prohibition Act (US)*.²³ She suggests that whilst the Act, which was to be introduced in a time of “great transition and flux”,²⁴ ostensibly aimed at protecting the creative efforts of fashion designers from manufacturers who copy and sell replicas of designers’ creation to retailers, it is nonetheless underpinned by sumptuary imperatives.²⁵ Ponte contends that the drafters of the proposed Act sought to shield the US fashion industry by promoting government control over social identity and by enforcing notions of public morality.²⁶ She insists that the Act would not only assist the wealthy to use fashion to differentiate themselves from the general public but it would deny lower-status people from accessing cheap ‘knock-offs’ from overseas.²⁷ A similar issue has arisen in Australia when local manufacturers and business retailers demanded that government protect their interests by the imposition of GST on overseas internet purchases.²⁸

¹⁸ Ibid 398.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ruthann Robson, ‘Beyond Sumptuary: Constitutionalism, Clothes, and Bodies in Anglo-American Law’ (2013) 2 *British Journal of American Legal Studies* 478.

²² Ibid.

²³ Ponte, above n 12, 51.

²⁴ Ibid 75.

²⁵ Ibid 51.

²⁶ Ibid.

²⁷ Ibid 82-84.

²⁸ Crikey, *Netflix Tax Well and Good, but it’s time to add GST to Overseas Purchases* (12 May 2015) <<http://www.crikey.com.au/2015/05/12/netflix-tax-well-and-good-but-its-time-to-add-gst-to-overseas-purchases/?>>.

Barton Beebe suggests that certain areas of intellectual property law have adopted a sumptuary role by seeking to provide a means to preserve “our conventional system of consumption-based social distinction”.²⁹ Whilst he acknowledges that the express purpose of intellectual property law remains the “misappropriation and the promotion of technological and cultural progress”³⁰ he argues that legislators have increasingly invested this law with sumptuary purposes.³¹ Beebe argues that legislators have turned to intellectual property laws to protect forms of distinction from imitation and overproduction.³²

In conclusion, whilst the sumptuary laws on dress of the early modern age have been dismissed by many legal commentators as “dusty relics of pre-industrial societies”,³³ this thesis has demonstrated that the sumptuary imperative is resilient and has continued to resurface unexpectedly in various transfigurations since these laws themselves have waned.

²⁹ Barton Beebe, “Intellectual Property Law and the Sumptuary Code” (2010) 123 *Harvard Law Review* 2, 5.

³⁰ *Ibid* 5.

³¹ *Ibid*.

³² *Ibid*.

³³ Ponte, above n 12, 48.

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