

BOOK REVIEW

***THE NEW PROVINCE FOR LAW AND ORDER- 100 YEARS OF AUSTRALIAN INDUSTRIAL CONCILIATION AND ARBITRATION* BY JOE ISAAC AND STUART MACINTYRE (EDS) (SYDNEY: CAMBRIDGE UNIVERSITY PRESS 2004). 454 PAGES (HARDCOVER). PRICE: \$79.95. ISBN 0 521 84289 1.**

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This impressive book of essays has been published by Cambridge University Press to mark the centenary of the establishment in 1904 of the Commonwealth Court of Conciliation and Arbitration (reconstituted as the Commonwealth Conciliation and Arbitration Commission in 1956, and renamed the Australian Industrial Relations Commission in 1988).

The federal arbitral body was established initially under the Conciliation and Arbitration Act 1904 (Cth), the first Commonwealth statute made in reliance on the constitutional power in section 51(xxxv) of the Commonwealth Constitution. Section 51(xxxv) gives the Commonwealth parliament the power to make laws for the peace, order and good government of Australia with respect to “conciliation and arbitration of industrial disputes extending beyond the limits of any one State.” This power was included in the Constitution by the narrowest of margins (22 votes to 19 votes). The drafters of the Constitution envisaged that the resolution of industrial disputes and the determination of terms and conditions of employment would continue to be the province of the States with the federal government intervening only in disputes that crossed State boundaries.

Our founding fathers’ prediction proved to be wrong. The federal arbitration tribunal came to play a central role, for almost 100 years, in the prevention and settlement of disputes between labour and capital and the setting of fair minimum terms and conditions for a significant proportion of Australian workers. Compulsory conciliation and arbitration of industrial disputes was, in the words of the second president of the Commonwealth Court of Conciliation and Arbitration, Henry

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Bourne Higgins, the “new province for law and order” that was to displace the “rude and barbarous process of strike and lockout.”

Since the 1980s the Commission’s traditional arbitral (award-making) function has arguably become progressively less important to the industrial relations system however it has acquired other important functions. These functions include the conciliation and certification of enterprise bargaining agreements, the arbitration of unfair dismissal cases, the making of orders to terminate bargaining periods for EBAs and the prevention of industrial action.

The traditional functions of conciliation and arbitration, however, are the focus of this book. The book contains eight essays that describe and analyse, each from a particular perspective, the impact of the federal conciliation and arbitration system in Australia over the last century. The essayists are all eminently qualified in their fields and include legal experts Justice Michael Kirby and Breen Creighton (“The Law of Conciliation and Arbitration”), historian Stuart Macintyre (“Arbitration in Action”) and economists Keith Hancock and Sue Richardson (“Economic and Social Effects”). Other contributions include Gillian Whitehouse’s essay “Justice and Equity: Women and Indigenous Workers”, Malcolm Rimmer’s account of the effect on unions of the arbitration system and Bill Harley’s analysis of the success or otherwise of the arbitration system in managing industrial conflict. The book also contains essays on the political history of the Commission as well as the relationship between employer associations and the arbitration system.

These eight essays make a very worthwhile contribution to our understanding of the place of conciliation and arbitration in our labour history. These generally scholarly contributions provide many useful insights for readers familiar with the subject matter whilst still being accessible to readers coming to the collection with little background in the conciliation and arbitration system. Some overlap exists between chapters particularly with respect to the early history of the Commission’s work, the Commission’s major wage decisions and the more controversial events in our industrial relations history such as the Clarrie O’Shea affair. Each chapter does, however, provide its own particular insights into the legacy of the conciliation and arbitration system. This reader was particularly impressed with Hancock and Richardson’s comprehensive account of the complex relationship between the Commission’s wage policies and decisions, unemployment, inflation and the employers’ capacity to pay, Whitehouse’s essay tracing how indigenous workers and women were excluded from award coverage and from equal pay for a significant part of the century and Harley’s cogent analysis of the contribution of the arbitration system to industrial peace.

All of the essays attest to the adaptability of the conciliation and arbitration system to changing circumstances. As the book’s own introduction acknowledges the contributors propose no single comprehensive explanation of the system’s durability but they offer many important insights into its operation and effects.

The book’s introduction makes the observation that the persistence of industrial conciliation and arbitration over a century is no guarantee of its future. Indeed, the

current Commission's arbitration powers and functions have been reduced significantly since the passage of the Workplace Relations Act 1996 (Cth) and may be affected by further legislative changes during the current term of the Howard coalition government. It is hoped that the Commission will continue to exist and prosper into the 21st century as it seems certain that "there will continue to be a need for a national tribunal of some kind to supplement and moderate the outcomes of unregulated market forces" (chapter 4, p 138). There is little doubt however the role and function of the Commission will continue to be debated and scrutinised not least by employer associations that "have come to challenge existing employment relations that put their members at a competitive disadvantage" (chapter 6, p 274).

The New Province For Law and Order is lavishly illustrated with old cartoons, photographs and brief biographies of arbitration judges and commissioners and other key players in the industrial relations scene from the beginning of the 20th century. The book also contains some very informative data about the industrial relations scene such as the frequency of industrial action over the century. Furthermore, the book contains a detailed bibliography that is especially helpful for those who want to follow up any of the issues discussed by the authors.

This book will be of considerable interest to academics and students but is also highly recommended for anyone interested in one of the most important institutions in Australian economic and social history.