

## Foreword

*Justice FL Wright*  
*President, Industrial Commission of NSW*

This book was conceived to mark the Centenary of the Industrial Relations Commission of NSW which occurred on 30 April 2002, one hundred years after the Court of Arbitration of NSW was founded. Its aim is to give an insight into, and an appreciation of, the work of the Commission over its long history.

The Industrial Relations Commission of NSW is the practical and legal successor of the original Court of Arbitration founded in 1902 and of the Industrial Commission established in 1926. As such it is the longest continuing industrial court or tribunal in Australia and, interestingly, also the longest continuing industrial court or tribunal in the world. I am reliably informed by Professor Ron McCallum, Dean of Sydney University Law School, that the only comparable body with anywhere near as long a continuing history is the United States National Labour Relations Board which was established in the mid-1930s.

Although a substantial foundation for a history of the Commission is available in the thesis by Dr Andrew Frazer entitled *Law and Industrial Arbitration in NSW, 1890-1912*<sup>1</sup> and Macintyre and Mitchell's *Foundations of Arbitration*<sup>2</sup> it was not feasible for the history to be written in the necessary detail at the time. It was therefore decided to commission the present collection. That is, a biographical piece on each of the nine Presidents of the Commission with a survey chapter providing an overall perspective. The idea was inspired, at least in part, by Dr John Bennett's *Portraits of the Chief Justices of NSW 1824-1977*,<sup>3</sup> although the present chapters are perhaps more biographical than those in Bennett's volume which is a collection of pen portraits accompanying reproductions of the actual portraits of the various Chief Justices.

Although many books have been written about Australian industrial relations, industrial law and the Australian 'system' of industrial relations founded in the early part of the 20th century, quite often, perhaps because of the limited nature of the market for books in individual States, the material in these works tends to understate the role of the State courts and tribunals. There have been a number of books about individual judges in the industrial sphere. Again, however, the emphasis has been on the federal sphere; for example, Rickard's *HB Higgins: The Rebel as Judge*; Larmour's *Labor Judge: The Life and Times of Judge Alfred William Foster*; Dabscheck's *Arbitrator at Work: Sir William Raymond Kelly and the Regulation of Australian Industrial Relations*; D'Alpuget's *Mediator: A Biography of Sir Richard Kirby*.<sup>4</sup> A major exception is the NSW jurisdiction where Morris Graham's important book *AB Piddington: The Last Radical Liberal* has been published,<sup>5</sup> which of course has informed the relevant chapter by Dr Lucy Taksa.

Understandably, this volume concentrates on the history of the Commission which was founded as essentially a conciliation and arbitration court and tribunal. The Commission has, however, consistent with changes in the world of work and the nature of our society, evolved and changed in ways that might make it not immediately recognisable to those who sat on the original court or appeared before it in its early days. The first President of the Court was the Honourable Mr Justice Cohen, a puisne judge of the Supreme Court, and the court's first case involved a dispute between the Newcastle Wharf Labourers' Union and the Newcastle and Hunter River Steamship Company.

Other cases heard in 1902 and 1903 give a flavour of the contemporary world of work. There were, for example, cases concerning the Cigar Makers' Union, the Tailoresses' Union, the Saddle and Harness Makers' Union, the NSW Clickers' Union, the Boot Operators' and Rough Stuff Cutters' Union, the Journeymen Coopers' Union and the Trolley Draymen and Carters' Union.

In 1907, however, the Australian industrial landscape changed significantly with what is known as the *Harvester judgment*, an important federal case and a landmark judgment establishing the new principle of the minimum living wage. The *Harvester judgment* set a minimum wage of two pounds, two shillings a week, but few realise that the judgment actually followed a similar case in the NSW Court; a case involving sawmillers in 1905,

---

<sup>1</sup> A Frazer, 'Law and Industrial Arbitration in NSW, 1890-1912', PhD thesis, Australian National University, 1990.

<sup>2</sup> S Macintyre and R Mitchell (eds), *Foundations of Arbitration. The Origins and Effects of State Compulsory Arbitration 1890-1914*, Oxford University Press, Melbourne, 1989.

<sup>3</sup> JM Bennett, *Portraits of the Chief Justices of NSW, 1824-1977*, John Ferguson, Sydney, 1977.

<sup>4</sup> B D'Alpuget, *Mediator. A Biography of Sir Richard Kirby*, Melbourne University Press, Melbourne, 1977; B Dabscheck, *Arbitrator at Work. Sir Raymond Kelly and the Regulation of Australian Industrial Relations*, George Allen & Unwin, Sydney, 1983; C Larmour, *Labor Judge. The Life and Times of Judge Alfred William Foster*, Hale & Iremonger, Sydney, 1985; J Rickard, *HB Higgins. The Rebel as Judge*, George Allen & Unwin, Sydney, 1984.

<sup>5</sup> M Graham, *AB Piddington: The Last Radical Liberal*, University of NSW Press, Sydney, 1995.

two years earlier than the federal decision. The NSW Commission's decisions have frequently shaped those of other jurisdictions since that time.

Outside the traditional areas of conciliation and arbitration where the Commission has plenary powers, the changes and enlarged jurisdiction have been dramatic. New jurisdiction includes the Commission sitting in Court Session hearing most of the more serious prosecutions under occupational health and safety legislation. In the mid-1960s the Commission was provided with, and has since developed, the significant jurisdiction in the field of unfair contracts exercising wide powers unimagined in 1902. Since 1991 there has also arisen a major jurisdiction in unfair dismissal applications from significant legislative amendment.

Another feature which would have been unfamiliar to our 1902 forebears is the women members of the Commission and the hearing of cases concerning equal pay and equal remuneration. A most important development in the latter respect was the Pay Equity Inquiry conducted by Justice Glynn in 1997 and 1998.

The Pay Equity Inquiry was followed by the creation of an Equal Remuneration Principle by a Full Bench of the Commission in the year 2000. The first case decided under that principle focused on public sector librarians and was determined in March of the Centenary year. The Equal Remuneration Principle case was recently described by Justice Kirby of the High Court of Australia in this context:

The Full Bench established a new equal remuneration or equal pay principle intended to provide remedies for gender affected under-valuation of wage and salary rates involving workers in the State of NSW subject to the jurisdiction of the Commission. In the course of giving its reasons, the result enunciated was founded squarely on a human rights approach. I am aware of no more explicit recognition by an industrial tribunal in Australia of the significance of international human rights norms for Australian industrial relations law and practice.<sup>6</sup>

The nine Presidents whose lives and stories are told here, Justices Cohen, Heydon, Edmunds, Beeby, Piddington, Browne, Taylor, Beattie and Fisher, were each very unique individuals. All, of course, were lawyers who demonstrated the capacity that some trained in the law have: to combine their learning with experience in the practical affairs of their society in order to fashion an instrument for the ongoing benefit of society.

The Commission has of course had many other distinguished members. Reference to the tributes paid in 1965 and 1976, in the volumes of the *Arbitration Reports* for the respective years, by the late Sir Alexander Beattie to Sir John Ferguson and William Stratford Sheldon makes that plain as does the recent obituary by the Honourable JW Shaw QC for the late Vernon Watson QC.<sup>7</sup> Those short tributes also show how important it is for the complete history of the Commission to be written.

This study of the major State system of industrial regulation shows an interesting and unique hybrid. At once a body and an institution exemplifying both continuity and change: continuity reflecting its sense of being part of the system administering the rule of law in NSW with its members sharing and participating in a tradition combining intimate knowledge of the law and of practical affairs; change as inevitable because of the institution's daily connection with the work and enterprise of the State's businesses, departments and people.

A depiction of the Hyde Park Barracks building in Queen's Square Sydney has been chosen for the cover of this book. The Commission sat there from the inauguration of the Industrial Commission of NSW in 1927 until it moved to its present location at 50 Phillip Street in 1977. However, the illustration was chosen for more reasons than mere residence or use. It symbolises the role of the Commission in connecting the future of the State of NSW with its past, its history and its origins. The Barracks is itself one of the State's most significant historical buildings. It houses an important historical museum; it also overlooks the busy legal precinct of the re-developed Queen's Square area now dominated by the Joint Commonwealth State Law Courts Building which, for the past quarter-century, has been the home of the Supreme Court, the Federal Court in Sydney and, more recently, the sittings of the High Court in NSW. It is appropriate that an institution such as the Commission which is, and has been for over a century, part of the social fabric of NSW would operate in a location which is part of the State's history. The Barracks Building was originally a convict barracks and is now administered by the Historic Houses Trust which recently mounted a display depicting the years the Commission spent there.

The Commission's move from the Hyde Park Barracks to 50 Phillip Street was a move to another historic building, although not quite as historic as the building for which it was designed as an extension, the Chief Secretary's Building. That building was completed in 1875 and 50 Phillip Street in 1897. The Chief Secretary's Building was designed by the well-known colonial architect James Barnet.

During the Commission's occupation of both the Hyde Park Barracks and its present location, each could be described, as was Melbourne's Selbourne Chambers (in Martin's biography *Robert Menzies: A Life*) as exhibiting 'that combination of dignified severity with a slight suggestion of the down at heel, that is so often found in association with the law.'<sup>8</sup> Significantly, plans are now well advanced for the renovation of the Chief Secretary's

---

<sup>6</sup> MD Kirby, 'Human Rights and Industrial Relations', *Journal of Industrial Relations*, vol 44, No 4, 2002, pp 572 - 573.

<sup>7</sup> JW Shaw, 'Vernon Watson QC', *Australian Law Journal*, vol 76, No 2, 2002, pp 141-142.

<sup>8</sup> AW Martin, *Robert Menzies: A Life. Volume 1 1894-1943*, Melbourne University Press, Melbourne, 1993, p 33.

Building for the Commission to occupy the Chief Secretary's/ Phillip Street complex enabling the co-location of all members of the Commission in the one area.

We have been fortunate in the authors who have been prepared to work on this project. Professors Patmore, Moore and Taksa and Doctors Frazer and Shields each bring many years of experience in the fields of labour history or labour law to their contributions. A special tribute must be paid to Greg Patmore who has not only contributed four chapters, including the survey chapter, but has edited the volume and been its driving force since agreeing to take on a project the dimensions of which he may not have foreseen. The significant scholarship and analysis which characterise the whole of the book owes much to the unflagging enthusiasm of Greg Patmore for the project and his years of experience as a major scholar in Australian labour history. I thank them all.

Although the concept and commissioning of the book originated with the Commission itself, the Commission has had no role in the authorship of the various chapters. They are the independent contributions of individual scholars who tell the history and the life stories as they see them through the eye and lens of the historian's craft. Some may disagree with the analyses, the interpretations or the portraits 'painted'. That is inevitable in the field of historical scholarship in which the work has been carried out. I am confident, however, that no one reading this book can but come away with a story well-told of a group of able, well-motivated, judges – perhaps somewhat ahead of their respective times, dealing with the real problems of real people, who made significant contributions to the development and well-being of the State of NSW and its people – judges who each played a key role in laying the foundations of industrial justice.

June 2003