

CONCILIATION AND ARBITRATION IN AUSTRALIA — WHERE THE EMPHASIS?

BY THE HONOURABLE SIR RICHARD KIRBY*

I give personal and not official opinions in this article but as the first, and so far only, President of the Commonwealth Conciliation and Arbitration Commission the conciliation and arbitration I discuss shall be those in the national area.

The Commission's work comes under fire from many directions. Those who see it as a predominantly legal institution are very critical. Curiously enough they divide into two opposing sections, the one pointing to the Commission's failure to adhere strictly to a predictable judicial process and the other condemning it for being too legalistic. On the other hand, there are those who look on the Commission as an economic legislative body and criticise its alleged inability to gauge the impact of its decision making policy on the level of economic activity in Australia. Indeed, all criticisms, if one adopts the exclusively particular view of the Commission which each set of critics has, may have some justification. The truth of the matter, and indeed the answer to each of these and most other critics, is not in attempting to deny the point which they are seeking to advocate but simply to say that the Commission must be looked at from a broader perspective. This broader perspective is to be found in the framework of the industrial relationship in the Australian economy and the role of the Commission in maintaining a viable relationship between employers and employees. The constitutional role of the Commission is the prevention and settlement of interstate industrial disputes which one would expect to be restrictive rather than otherwise. However in the process of preventing and settling these disputes, questions relating to matters of economic policy arise and force the Commission into other spheres. Also the processes of conciliation and arbitration involve, in our system, the need for the use of legal forms and procedures as well as a knowledge of constitutional law. However, our problem is not, as I see it, one of creating a consistent cradle of case-made law or even of lore, nor is it the objective of the Commission, as presently constituted, to pursue and implement specific targets regarding economic policy. It has not the power, nor should it have the ambition to aim at these targets.

On the *stare decisis* question the High Court of Australia, whilst acknowledging the rule, rejects any notion of the immutability of its

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Conciliation Arbitration In Australia

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Conciliation Arbitration In Australia:

Australian Industrial Relations Systems Kenneth Frederick Walker, 1970 Kenneth Walker's 1956 publication *Industrial Relations in Australia* was acclaimed as the first full scale analysis of the factors shaping Australian industrial relations. Significant developments during the ensuing years however necessitated a thorough reevaluation of the field. In his revised book Walker examines these extensive developments, reorganizes his approach, incorporates much additional material and in general provides a more comprehensive view of Australian industrial relations. The organizing theme of this new work is John T Dunlop's concept of the industrial relations system which the author applies to the Australian situation, distinguishing among national, state, industry and plant systems. *Labour Market Deregulation* Russell D. Lansbury, Joseph Ezra Isaac, 2005 Keith Hancock is honoured and celebrated in this work following the significant contributions he made not only to academic research and teaching but also to the practice of industrial relations through the various roles he held as Professor, Vice Chancellor, Senior Deputy President of the Australian Industrial Relations Commission and author of major government reviews and inquiries. The workshop held in his honour included a number of commentators. More specifically the following issues arising from the papers were actively debated: Whether a decentralised and less regulated labour marketing is a necessary condition for meeting the requirements of global competition; The effects of labour market deregulation on employment and the nature of employment; on income distribution; on wage inequality; on productivity; on work stress; and on job satisfaction; The consequences of labour market deregulation for Australians; work care regime; The impact of labour market deregulation on trade unions; Whether macro economic policy has been unduly restrained by the risk of inflation in a deregulated labour market; How labour market deregulation has affected industrial relations as a field of study and research; and How the nature of rights and obligations of employers, employees and unions have been affected by the changes in labour market regulation. Contributors include Keith Hancock, Ron McCallum, Barbara Pocock, Peter Saunders, Ron Callus, Sue Richardson, RG Gregory, Rae Cooper and Willy Brown. **Official Year Book of the Commonwealth of Australia No. 1 - 1908**, Conciliation and Arbitration in Australia Australia. Department of Labor and Immigration, 1974 **Mediation as a Mandatory Pre-condition to Arbitration** Ana Ubilava, 2022-11-21 Mandatory investor state mediation (ISM) as a pre-condition to arbitration is the way forward for rebalancing the investor state dispute settlement (ISDS) regime and tackling its widely criticised shortcomings. Presenting a comprehensive doctrinal analysis of ISDS clauses of dozens of treaties, this book reveals that simply offering ISM in a voluntary format will not increase its utilisation. In this volume Ana Ubilava further debunks four common arguments and misconceptions against mandatory ISM through an innovative empirical analysis of over 600 investor state arbitration cases. She also offers recommendations for incorporating mandatory ISM in ISDS as a precondition to arbitration aimed at international policymakers. *Australian Economy and Neo-liberalism* Celal Bayari, 2012 Australia's economy has long been typified by neo liberal governance, foreign investment dependence, exports dominated by

grains resources and energy and an industrial structure in which foreign multinational enterprises play the leading role. These factors have not always contributed to stable growth and a strong manufacturing sector. Further, they have not always led to the best outcomes for Australia in its integration into the regional and global patterns. These themes form the focus of this book which presents an analysis of Australia's economic orthodoxy and its effects. Series Global Cultural and Economic Research Vol 10

Social Policy and Its Administration Joanna Monie, Adrienne Wise, 2013-10-22. Social Policy and Its Administration contains an index of literature that defines the output created by social scientists for the welfare of human beings. This literary survey originates out of the need to present a comprehensive bibliographic work. The book covers areas that encompass the concept social policy. Topics such as the standards in social welfare services are also the focus of the book. The book traces the beginning of social science and the major proponents of the subject. The improvements made on the field are also enumerated and the countries that contributed to the progress of society are named in the book. Social revolutions such as the liberation of women and the abolishment of servitude as well as the transition from colonial status to political independence are discussed in the book. The text will be a useful tool for sociologists, historians, students and researchers in the field of political science.

Labor courts and organs of arbitration, Minimum Wage Legislation in Australia Ole Kramp, 2009-04-16. Scientific Essay from the year 2009 in the subject Law Comparative Legal Systems. Comparative Law language English abstract. The minimum wage is one of the predominant topics on the political agenda in Australia. Interestingly, its importance is not adequately reflected in the legal literature. Only a few theses and essays investigate the legal underpinnings of the Australian minimum wage system. Especially in Germany, the Australian approach is often unknown and consequently neglected. This essay does not give a political statement in favour or disfavour of minimum wages in Australia but the author focuses on the legal underpinnings of the Australian minimum wage system.

Collective Bargaining for Police and Other Essential Services Giuseppe Carabetta, 2024-10-14. This book examines how collective bargaining disputes are resolved among police and essential service employees in Australia as in other common law countries. Police and other highly essential employees such as fire fighters and ambulance officers have long had access to a form of binding arbitration to settle collective bargaining disputes. The traditional arbitration based system in Australia has however been replaced in recent decades with a marked based collective bargaining system. The current Fair Work system restricts access to arbitration favouring collective bargaining based on the parties prerogative to make their own agreements and supported by a limited right to industrial action including strikes during bargaining. Yet police officers particularly are subject to considerable restraints on any entitlement to participate in industrial action. The problem is that with limited access to arbitration and an especially limited right to industrial action intractable disputes may continue indefinitely without any impasse breaking process to prevent the flow on harms of long running police disputes. This raises the essential question underpinning this study: what form of dispute resolution system is appropriate to protect both the

legitimate industrial interests of police officers and the community's interest in the uninterrupted provision of essential policing services. The author in his extensive field work research and his study of international case studies has developed a useful model for mandatory interest arbitration among police and other essential services personnel. The lessons and recommendations in the book offer insights for essential services labour law in Australia and overseas. **Mediation Law and Practice** David Spencer, Michael Brogan, 2006. This book is a comprehensive survey of the place of mediation in the expanding field of alternative dispute resolution. Official Year Book of the Commonwealth of Australia No. 44 - 1958,

Court Mediation Reform Shahla F. Ali, 2018-03-30. As judiciaries advance exploring how court mediation programs can provide opportunities for party directed reconciliation whilst ensuring access to formal legal channels requires careful investigation. Court Mediation Reform explores comparative empirical findings in order to examine the association between court mediation structure and perceptions of justice efficiency and confidence in courts. Jacaranda Humanities Alive 10 Australian Curriculum 3e learnON and Print Robert Darlington, Luke Jackson, Matthew Richardson, Jill Price, Cathy Bedson, Simon Phelan, 2023-11-20. Every lesson in the new Jacaranda Humanities Alive series has been carefully designed to support teachers and help students evoke curiosity through inquiry based learning while developing key skills. Because both what and how students learn matter. *Economic Innovations* Beth Webster, Bill Scales, 2022-07-11. This book is a series of vignettes about changes to Australian institutions, organisations and systems that have significantly improved economic and social well being for Australians. Economic system innovations have had a profound impact on our lives from the invention of banking in the middle ages to the organisations established by the United Nations post WWII. However their intangible nature means that few people identify these changes alongside physical inventions. Although invention is normally an incremental process with copying and adaption being the norm, the authors focus on reforms that were principally new to the world at the time of implementation. The book is not about the reforms and how well they worked per se, rather about the people and the political struggle to get them adopted. The authors have chosen to focus on the stories where Australia has either taken a global leadership role or made a considerable advance in a particular new institution. What these stories show is that leadership in institutional innovation can come from many quarters: academia, the community, politics and the bureaucracy. Often the most successful teams combine people from all quarters, albeit with support from the fourth estate. The work shows how many reforms began with modest beginnings, often an ordinary person with a vision, and how it takes several attempts to get change accepted. This key volume can be used to teach students of economics, political economy and politics. It illustrates the type of networks, actions and advocacy that is needed to get reform started and implemented and is written in a style to engage policy and think tank audiences. *Bulletin of the United States Bureau of Labor Statistics*, 1915.

Official Year Book of the Commonwealth of Australia No. 53, 1967, **Official Year Book of the Commonwealth of Australia No. 43 - 1957**, *Mediation in International Commercial and Investment Disputes* Catharine Titi, Katia Fach

Gómez,2019 Until now the resolution of international commercial and investment disputes has been dominated almost exclusively by international arbitration But international mediation and conciliation are now coming to the fore This book brings together a line up of highly qualified experts to address this topical complex subject from a variety of angles

Labour Relations in a Changing Environment Alan Gladstone,Hoyt Wheeler,Jacques Rojot,François Eyraud,Ruth Ben-Israel,2015-03-30 No detailed description available for Labour Relations in a Changing Environment

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