Chapter 2

Proposals for reform

Introduction

The problems with Australian industrial relations practice discussed in Chapter 1 provide the impetus for the reforms proposed here. The feasibility of the reforms and their implementation is discussed in Chapter 3.

What is proposed here is a series of changes which would reduce the primacy of the Conciliation and Arbitration Act and the equivalent State statutes, in the practice of industrial relations and provide more effective means of securing industrial peace. There are three essential reforms proposed, and no interdependence exists between the three. The proposals do not involve rapid change, nor do they involve compulsion. Any changes which eventuate will be undertaken at times which suit the employers and employees concerned, and these will be given encouragement to change rather than being required to do so. Those employers and employees who derive particular benefits from the systems of conciliation and arbitration may not wish to change, but, on the other hand, no benefits provided by those systems would be unavailable under the new proposals which may involve additional benefits.

It is to be emphasised that the proposals advanced here could not be expected to operate without encountering difficulties in the 'start-up' phase, nor could they promise a dispute-free world. Some conflict between labour and management is inevitable, but it can be reduced, and it can be directed to issues within the control of labour and management. It is also to be noted that proposals such as out-

lined here will not cope with all situations. There are a few cases in which bargaining power becomes widely disparate, often at critical production phases or at certain seasons. One will have to accept that new ways of doing business in these industries may have to be found. It should be pointed out that the instances in which major reform is required are fewer than is often assumed, and perhaps there are many cases in which the development of a system of mutual trust between manager and employee is the critical factor for improving their working relations. The tripartite nature of the arbitral system is one factor that inhibits the development of this trust. However, where reform is needed, it should be remembered that in the past it has been found possible to reform extremely poor industrial relations performance, and the maritime and waterfront industries are two in which this has been achieved. Finally, it should be understood that this text does not address itself to every legal difficulty that may be thrown up. There are, naturally, points where specific legislation may be challenged, but the proposals advanced here are technically feasible.

Primary reforms

The first two propositions advanced are for a means of introducing contractual agreements and a means of supplementing the existing Commission and State industrial tribunals with alternative tribunal forms. Each of these proposals would require amendments to the existing definition of industrial dispute in the various statutes. That is to say, a dispute would be defined not to include the issues subject to contractual agreement, (necessarily, the contracting parties would need to be free to contract irrespective of any concomitant award) or issues covered by an agreement reached under an alternative tribunal.

Contractual agreements

At present under common law there is no impediment, aside from some obscure State statutes, to labour and management reaching a normal contractual agreement. What is lacking is an inducement to undertake such agreements, and it is apparent that many unions, particularly those wishing to use industrial power for broad social objectives, would see their independence circumscribed, without any compensating advantage, by such agreements. Some unions do

therefore oppose entry to such agreements, and it is difficult to see that they can be induced to change this. Experience suggests that legislative requirements to enforce contractual arrangements would carry an unacceptable short term cost.

What is proposed, therefore, is that union members should be given an incentive to prefer contractual agreements. That incentive can be provided by the application of preferential taxation treatment to those working under contractual arrangements, and the case of Fairfax v. Commissioner of Taxation (1966, 114 CLR:1) and McCormack v. Commissioner of Taxation (1984, 58 ALJR: 268), suggests that this is a constitutionally feasible option. That is, a law devoted to collection of a varied tax will be valid law. Provided a tax is not discriminatory or arbitrary the courts will not inquire into the motives underlying tax scales, and will not concern themselves with social policy. The exact nature of the tax benefit would need to be worked out carefully and in the context of budgetary and financial needs, but it is suggested here that the concessions would need to be substantial. Their purpose is to induce working men and women, not accustomed to debating or questioning union policy, to do this; the reward needs to be attractive.

A reduction in taxes would reduce government revenues of course, but it is to be noted that to the extent the proposed measures are adopted, few public resources will need to be connected to the administration of industrial relations. Before venturing into the area of quantum it is appropriate to consider the logic of the proposal linking contractual agreements and tax deductions. Why should such employees be given tax deductions?

There are several reasons. The first is simply that experience suggests that if we are to alter industrial relations behaviour, it will be necessary to offer powerful incentives to both individual employers and to individual unionists. The existing tribunal methods are geared to the needs of the collective or representative organisations of labour and management, and these seem to be insufficiently sensitive to capture individual preferences. Our nation has tried to structure industrial relations behaviour by both exhortation and compulsion, and, as neither has worked, we should try to woo individuals by incentives.

A second factor is that, as the parties do not require the government's assistance in managing industrial relations, they should not be taxed at the same levels as those who require it. There is no suggestion, of course, that the tax concession should match precisely

the diminution of demand for government services, rather it is that taxation obligations should move in the same direction as the demand for services.

The most important justification is the anticipated effect on productivity of the internalised system. As was discussed in Chapter 1, the external systems, the conciliation and arbitration systems, often have difficulty in addressing themselves to the quite specific problems of labour management which have to be resolved in individual plants wishing to improve efficiency. It is undeniable that many tasks in industry are done by methods that are far from the most economical, and in many cases both managers and employees are aware of this. There is little point in seeking to identify the party responsible for this state of affairs but managerial weakness and ineptitude, and labour's obstinacy and aversion to change, are probably the major causes. Much more important than the origin of this inefficiency is the prospect for changing it.

Most of the readily identifiable areas for change require the co-operation of labour, which is not to say that labour created the situations in question. However, if managers find that there is a third operator on a machine designed for two, on any reasonable interpretation of human behaviour, one would predict that workers would reject either a proposal or an instruction to reduce the crew to the designated size. On the other hand, it is often possible to provide incentives and guarantees that will induce the necessary agreement, but at times these will involve the difficult problem of upsetting intra-plant wage relationships. Where this occurs, the solution to the original problem can trigger a series of new problems and difficulties, and while some Australian companies have shown themselves capable of reaching agreements to resolve these problems (Riach and Howard: 1973), the majority have not.

The logic of the process is that employees can be offered an incentive, by way of increased pay, to accept altered working conditions because that incentive will be financed by resultant productivity improvement. That is, if employees agree to work in ways that reduce costs of production, from the increase in profits (in the simplest case), it is possible to provide an increased wage without increasing prices. At its simplest, a productivity increase of 10 per cent would permit both profits and wages to be increased by 10 per cent while keeping prices stable.

In the context of the individual firm, it is possible to make fairly precise calculations: an agreement to work to new manning specifications can be calculated to contribute a productivity gain of X per cent. That gain in turn will facilitate a wage increase of X per cent which will induce the workers concerned to make the changes needed to produce that gain. The proposal advanced here, that of providing a tax concession to employees who sign contractual agreements, is derived from this logic. In agreeing to a contract, employees will have foregone the capacity they have at present to seek alterations to pay and working conditions at will and without penalty. They will have foregone their demands on government services, and they will have convinced their employers that it is a desirable step to accept the contractual agreement.

It is the last aspect that promises to be the most economically advantageous. For employees to gain the benefit of increases in their pay packets, it will probably be necessary for them to offer employers a little more than the advantages of a contractual agreement, considerable as these are. Some employers may wish to change certain job methods before agreeing to the contract proposals, and these would be changes designed to enhance productivity. Over time, as employees indicated their wish to enter successive contractual agreements, it might become customary to expect changes in working methods to be negotiated regularly. It is argued that over time, the improvements in industrial performance to be derived from the improved management and utilisation of labour are likely to compensate adequately for the reductions in taxation receipts entailed.

It is difficult to forecast the effect of adopting the contractual system on taxation revenues, as critical factors would be the extent of adoption and the amount of taxation discount provided. If the tax incentives were set at 10 per cent discount, and the system were adopted in plants covering 25 per cent of manufacturing industry, the result in any year could be expected to provide a very small decline in income tax receipts. According to the Australian Bureau of Statistics, the employed labour force, at 30 June 1986 was 5 634 300, and 983 300 of these, or 17.45 per cent were employed in manufacturing. About 85 per cent of that group, that is, 14.84 per cent was covered by awards, and this would constitute the proportion relevant to the contract system. If 25 per cent of the industry were to opt for the contract system, some 3.71 per cent of employed wage and salary earners would be involved. Assuming all employees contribute equally to taxation revenues, a 10 per cent reduction for this group would involve a reduction in gross income tax receipts, paid by the employed labour force, of 0.37 per cent. As it might be expected that

these employees would be at the lower end of the spectrum, even that figure would be an over-estimate, and the effect on receipts from all income taxpayers would be even smaller.

Consideration might be given to offering a greater tax concession to employees in those essential services where the right to strike is denied even in interest disputes, in recognition of their relative deprivation. Immediate application of this proposal in the public sector is not envisaged however (and most essential services are provided by the public sector) on account of the service-wide wage policies of the employers. However, if any of the Public Service Boards should wish to introduce plant-specific changes, it would be feasible and desirable to permit them to enter contracts. Presumably the decision would in practice be a matter for ministerial discretion, and ministers could expect to pay a political price for unwise use of the process. (For further discussion of distinctive features of the public sector see Appendix 2.)

It has to be emphasised that what is proposed is not a policy of compulsion, or benefit to one or other group in industry. It is a policy of offering inducement to do better, but to do it by self help and without government involvement. It should be policed against abuse, but be policed by an existing mechanism, the income tax office, which applies values familiar to all employers and employees.

Contractual agreements which would attract taxation benefits might be required to include certain desirable characteristics. That is not to suggest that there should be specific conditions and provisions granted, but rather that they should address themselves to particular issues and incorporate particular processes. As a contract binds the workers of a particular plant and their employer, it is desirable that the signatories on behalf of employees should include workplace delegates, not union officials alone, and the employers' signatories should similarly include local managers. In a climate of inflation, it may be wise to require that some form of wage escalator clause is incorporated to prevent the rise in prices alone from rendering the contract irrelevant.

Australia's long experience with arbitration suggests that it would be desirable that contracts should include some procedure for settling disputes which arise during the life of the contract. It is inevitable that these will occur, and, in the foreseeable future, it is likely that many groups will find it necessary to have recourse to a third party to arbitrate where other attempts at resolution fail, but it is by no means necessary that this arbitration should be provided by any of

the existing tribunals. Private arbitral arrangements are feasible and may have much to commend them. It would, of course, be essential that the agreements reached be concluded on terms which ensured they had contractual status.

Practice seems to suggest that it is important that contracts should provide managements with a wider range of disciplinary sanctions than those currently available, which often are the options of ignoring the issue or of dismissing the offender. The practice of short-term disciplinary suspensions, subject to review and appeal, is something which would make for better supervisory practice, and probably better industrial relations.

Whether an exemption from breach of contract should be made in the case of nationwide stoppages called by either unions or central labour organisations is a question that needs to be considered. These are infrequent, but as they do occur at times, and as the appeal of the unions for solidarity is likely to override any contractual obligation, it may be wise to attempt to provide for this in contracts.

It is emphasised that this proposal would not mean third party – in this instance the taxation office – involvement with the content of substantive rules. It would simply be necessary for the parties to point to the existence in the agreement of provisions dealing with certain issues such as those mentioned above. The determination of the mandatory issues to be included in an agreement would be a matter for the legislatures.

Labour contracts should seek to eliminate the 'common law' of industrial relations – the reliance on unwritten codes of custom and practice. Each contract should seek to cover all rights and duties, and should contain a general provision relating to disputes arising under uncovered areas (for example, such as disputes to be referred to an arbitrator, to be resolved without prejudice in favour of management until the contract expires, to be negotiated without reference to other contractual issues etc.). The resultant contract, specifying all rights and duties of employees, union and managers, should be simply expressed and distributed to all employees. A problem could exist with regard to the various State industrial tribunals. Under present circumstances, these would have the power to render contracts void if they were not registered with those tribunals. This impediment could be overcome by appropriate amendments to the State Acts, always a difficult course to pursue. The more feasible alternative would be to enact an appropriate federal statute empowering employers and unions to enter into contracts of employment. The

Hancock Committee recommended, (as discussed see page 16), that federal legislation permitting this should be established, but it found no favour in the Industrial Relations Bill.

An expected consequence of a general move to the use of contractual agreements would be alleviation of the force of the spillover effect, or flow-on, which is very pronounced in Australia as a consequence of the pre-eminence of centralised decisions. The fact that the salaries and conditions for award-free managerial employees move quite freely without major spillover effects gives some credence to this prediction.

It is not to be expected that any revision of industrial relations practice such as this will be achieved without hiccoughs. In early stages, there will be union resistance, but this must be overcome internally and managers interested in doing so can assist this process. It is likely that as this process becomes established and delivers preferred outcomes to both parties, the sanction of the suit for damages will recede in importance. In the early stages, it may be necessary to provide conciliation services to avoid too ready access to litigation.

There is no doubt that attempts will be made by some unions to have the best of both worlds: to obtain tax advantages from the contractual agreements, and to retain the freedom to breach agreements without incurring damage suits and without losing membership tax benefits. The resort to damage suits is a matter which the individual employer must determine, but the question of wrongful retention of taxation benefits is, on the other hand, a matter of public concern and should be policed by taxation office officials. This question is considered further in Chapter 3.

Alternative tribunal forms

The second proposal seeks to supplement the existing tribunals with alternative tribunal forms. What is advocated here is the antithesis of the proposal for rationalisation of existing federal tribunals contained in the Industrial Relations Bill 1987 (see page 23). The constitution does not require that the process of conciliation and arbitration should be the exclusive province of the Commission, something that has been recognised in the establishment of specialist tribunals, for example, the Coal Industry Tribunal. Similar situations obtain in the State jurisdictions, for example, specialist tribunals in Victoria include the Teaching Service Conciliation and Arbitration Commission and the Post-Secondary Education Remuneration Tribunal.

It was argued in Chapter 1 that for a number of reasons it is desirable that the Commission and the State tribunals be supplemented by other mechanisms. Clearly, the problems discussed there would be resolved by the dissolution of the Commission, a strategy which would destroy the basis of much trade union power and would probably eliminate many unions. Such an outcome is not supported here. Abolition however is also a strategy that carries an unacceptable degree of political risk. A longer run approach is to provide alternatives to the Commission and to State tribunals and to allow them to 'wither away' in the event that the voluntary alternatives gain widespread acceptance.

The proposal to induce reliance on contractual agreements is one step towards this. The second step may be provided by government initiatives in establishing tribunals of conciliation and arbitration to operate on an *ad hoc* basis; the Industrial Peace Act of 1920 may provide a model, or at least a precedent. Ideally the special tribunals might seek to break the apparent monolithic structure of wages and working conditions where this is appropriate. Ideally too, they may find ways to lead their clients to resort to contractual labour agreements. Arrangements of this kind can lead to flexibility of approaches to industrial relations problems and can allow inputs from a wider variety of independent personnel than can the Commission. The latter point is developed further below.

There are for example areas of industry which are *sui generis*. They include those which produce entirely for export markets and consequently experience economic conditions, most notably cyclical fluctuations, which are out of phase with the rest of the economy. It ought to be possible to evolve industrial relations practices which reflect these factors. Isolated workers – mainly these are miners – should have recourse to tribunals which may gear their findings quite exclusively to the industrial relations of the site in question.

It is important that alternative industrial tribunals should be appointed to deal only with specific disputes and that they should not have an existence beyond those disputes. Any permanent structure does develop institutional interests which are distinct from those of its designated task and from those of its clients. It is unnecessary to elaborate on the problems that the development of such interests can create.

If special tribunals were provided for by legislation the Conciliation and Arbitration Act should be modified to provide that an industrial dispute over which the Commission has jurisdiction should

not include any matter which the Minister has referred to a special tribunal. Similar modifications should be made in the State jurisdictions. In other words parties would have the opportunity of using only one tribunal forum – either existing permanent tribunals or special *ad hoc* tribunals. This would obviate the risk of either mechanism becoming a *de facto* appellate tribunal. A decision to seek access to a special tribunal would thus require a preparedness to forgo access to the existing permanent tribunals and the wage policies they currently operate. An incentive to seek access to a special tribunal would exist for parties who did not wish to be constrained by the macro-industrial relations orientation and the concern with economic policy of the permanent tribunals, but who nonetheless wished to have access to public arbitration. A pre-condition for the establishment of a special tribunal would be the joint support of the principal parties.

The alternative mechanisms provided by the state need not necessarily take the form of tribunals of course. They could, for example, consist of individual third parties available to assist as mediators or arbitrators in either disputes over the making of new terms and conditions of employment or disputes over the interpretation of existing terms and conditions of employment. It follows from the rationale for tax concessions discussed above that any services provided by the state to parties who have opted for contractual agreements would be on a fee-for-service basis.

The personnel to comprise tribunals may be drawn from a wide range of people; perhaps it would be an ideal, long term, solution to have each tribunal member selected by some bipartite means. The method of appointment and selection is less important than is the fact that the tribunal personnel should not hold full time and permanent government appointments as tribunal members. It is in the interests of neither labour, management nor governments that persons involved in the resolution of disputes should attain lofty community status on the basis of that involvement.

There have been a number of proposals for reform of the existing tribunal structure. Niland (1984:18) has advocated formalising the present 'pot-pourri' panels within the Commission and using them as a basis for developing industry tribunals. Niland's proposal is made in the context of seeking decentralism in third party involvement. It maintains the primacy of the existing tribunals, however, and provides, of course, no opportunity for the kind of bipartite influence favoured here. Such bipartite influence has been endorsed as a possible long-term alternative (the *status quo* being supported in the 'present difficult economic environment') by a current presidential member of the Commission: Mr Justice Ludeke has supported

the notion of representatives of the disputing parties sitting as members of a tribunal and participating in the search for solutions as members of that tribunal (Ludeke, 1984:262). Such a tribunal structure was a feature of the special tribunals established under the 1920 Industrial Peace Act and it survives also as one of the few distinguishing features of the conciliation and arbitration boards operating in Victoria following their substantial remake in the image of the national machinery in 1979. What distinguishes the proposal here, and indeed the tribunals provided for under the Industrial Peace Act, from the Ludeke proposal, is support for the creation of tribunals separate from the existing tribunals and tribunals which are *ad hoc* rather than permanent.

Niland and Turner (1985:226) have advocated that positions on existing tribunals (or at least a proportion of them) should be openly advertised and filled by cabinet on the recommendation of an expert committee. They also recommend that some appointments should be for short contract periods, say two to five years. This proposal complements their support for voluntary arbitration and bipartite selection of arbitrators or mediators. These latter developments are supported in principle here, however it is considered that the existence of only a percentage of short-term appointments would carry the risk of creating a group of second-class citizens within the membership of the existing tribunals. While it is argued here that the creation of alternative tribunal forms with their distinctive terms of appointment is the preferred path of reform, nonetheless the tenure of arbitral personnel on permanent tribunals may be a matter that needs examination. It seems undesirable that this area of industrial life can continue to be influenced directly by one who may have lost the confidence of labour, management and government, and the present arrangements provide no guarantee against that. This should not be read as an assertion that tribunal members have lost touch with the realities of on the job industrial relations. It merely suggests that one who spends a couple of decades in the environment of a dispute settling tribunal may no longer have a feel for the reality of disputes. Some, of course may never have had it.

Returning to the proposal for alternative tribunals, it should be recognised that while the Industrial Peace Act does provide an alternative model to the present Commission format, its value in this context is only that it does provide for an alternative form of state involvement. The proposition argued here is that it is desirable that there should also be provision for an absence of state involvement, that the state itself should encourage the development of industrial relations self-reliance. Obviously, labour and manage-

ment now have the option of working without the involvement of tribunals should they wish to do so, but they are given no encouragement in this. Australia has experimented for most of the twentieth century with varying degrees of compulsion in industrial relations, but there has been little offered in the way of inducements, and bipartitism has been eschewed.

While the merits of bipartite – even privatised – industrial relations are supported here, it is not intended to argue that government involvement in management is always or inevitably inept. If governments are, in fact, always involved in the management of unsuccessful enterprises, the fault may lie less in the managerial capacities of governments than in the fact that they are often asked to manage ventures that are already in difficulty for reasons that have no connection with the qualities of their managements.

It requires a far more complex explanation of human behaviour and experience to argue that all feasible government operations are bound to be inefficient than to argue the reverse. Similarly, it is a more complex task to manage satisfactorily the employer–employee relations of a very large number of workplaces than those of only one. It is very difficult for a third party to provide a set of substantive rules to satisfy the needs of two often-conflicting parties, each of whom may be reluctant to disclose their ultimate goals to a neutral, but mutual self-interest may make this feasible for the contesting parties in private. Putting these propositions together, it is suggested that if people can be given an inducement to try to settle their own affairs, they may be more successful than will be any third party required to settle their affairs for them, and to do this while simultaneously tending to the business of countless others.

Secondary reforms

Minimum living standards: Towards a national policy

The third proposal concerns minimum standards and is consequent upon the first two proposals. The long shadow of the Harvester Judgment ensures that any proposal to delete the influence of the Commission and its State satellites will attract widespread opposition unless the matter of protection of living standards is addressed simultaneously. In theory the issues are distinct but our practice has joined them. Ever since the Harvester Judgment, Australians have

seen the question of minimum living standards as being a matter which is provided by the wage, and Australia is one of the very few nations which operates on the assumption that this important issue of social welfare should be determined by unions and employers in the course of a dispute. Consequently any attempt to restrict the influence of the Commission can be presented as an attack on the living standards of the poor. It is therefore proposed that specific attention be given to the matter of minimum standards but in the context of social security rather than of wage determination.

In an ideal world in which the Commission could be prevented from determining a minimum wage, the Minister for Social Security might proclaim, at regular intervals, the minimal level of living prescribed for working people with specific numbers of dependents. Those whose labour provided an income in a normal working week which did not meet that standard should be eligible for some form of enhanced income through public assistance. The various forms of assistance available are not addressed here, but they do go beyond the area of monetary assistance alone; they could venture into such areas as family allowances, vouchers and debt maintenance.

The intermingling of social welfare with wages has a long history in Australia and it will require an extensive educational campaign to convince the public that an alternative proposal is not designed to damage living standards nor destined to inflate social security payments. (The standard example may be this: minimum living standard is $180 per week. An unemployed worker on the dole is given $120 per week. A small employer can afford a worker at $100 per week, so the person concerned moves from the dole to a wage of $100 per week plus an income supplement of some kind, valued at $80 per week, a net reduction of $40 per week in government support.) It is clear that schemes of this kind are vulnerable to fraud, but this possibility pervades most of life, and is not absent from current social security administration.

The matter will not be pursued here, but clearly a social welfare policy needs to be worked out which is consistent with industrial relations needs, and which provides appropriate safeguards against poverty.

Secondary boycotts

While the issue of secondary boycotts is in some ways a matter distinct from this proposal, it does have relevance. The fact is that it would be feasible for a union to agree to its members undertaking the

contractual obligations which would permit them to enjoy income tax concessions, but at the same time to induce other elements of its membership to exert coercive pressure against the employer. In such cases, the employees bound by the contract could defend themselves against suits for damages on the grounds that they had not violated the contract, others had applied pressure against the employer. While there would be some circumstances in which that defence would not prevail, there would be others in which it would. For these reasons, the prohibitions on secondary boycotts are desirable adjuncts to the bargaining system.

If there are problems with the existing secondary boycott prohibition, they seem to derive from a number of separate issues, some of which are addressable. One is the fact that the secondary boycott has long been a source of strength to Australian unions. It was removed from them in pre-emptory fashion, without any concession being granted in return. To justify retention of this element of the law, it seems desirable that counterbalancing concessions be granted to labour. A useful step may be for governments to legislate to identify unacceptable employer behaviour in industrial relations. No attempt is made here to identify that behaviour, and it is essentially a matter for the representatives of labour and management to determine.

A second matter is the defence available to the union accused of imposing a secondary boycott. Trade union liability under this provision, if its retention is to be feasible, probably requires some special treatment. There will be occasions on which the boycott constitutes the only available means of unions resisting exploitation of their members. A somewhat broader range of defences should be available. At present, only the unionists experiencing the treatment in contention may impose a boycott, and this constitutes the only defence.

Finally, there is some argument that if any restriction on the secondary boycott is to be applied to unions, it should be a restriction imposed under the industrial relations law. Whether this is more than a case of empire building by the Commission, its clients and the associated bureaucracies is difficult to determine. To the extent that the issue is one of trade practice, it is important that it meet the tests of the law in this field, and that it should not be vulnerable to the compromises that characterise the Commission's operations.

The Hawke government, in its Industrial Relations Bill of 1987 did not follow this principle. It sought to give the proposed Labour

Court jurisdiction to deal with trade union breaches of Sections 45D and 45E of the Trade Practices Act. The procedure envisaged was that the Industrial Relations Commission should satisfy itself first that it could not either resolve the dispute or end the boycott, and only when it had been so satisfied could the matter go to the court, where presently available remedies would be available.

In selecting this option, the government was, apparently, in search of a unitary frame of administration for industrial relations. It is contended here that it is critical that the still-evolving area of trade practice law should be applied by methods that are internally consistent so far as the various sections of the Trade Practices Act are concerned, and are externally consistent with other areas of statute law. It is reasonable to judge that the deliberations of the Labour Court may not have met these criteria. The members of the Labour Court were required to have skill and expertise in industrial relations and this, one may expect, was to require that the bench should understand how to achieve the compromises, accommodations and expedient solutions that are vital to securing and maintaining industrial peace. Vital as these are in the practice of industrial relations, they are the very antithesis of the qualities needed in the administration of the Trade Practices Act, or indeed any conventional field of law. It simply cannot be argued to make good sense that two sections of the Trade Practices Act should be administered through principles which differ from those which are relevant to the rest of the Act. Perhaps even more perverse is the outcome that if identical conduct in imposing secondary boycotts were undertaken by two parties, one of whom were a union and one not, legal action against these would be undertaken in different jurisdictions, and, presumably, different values would be applied by the bench in each case.

Essentially, a matter of judgement is involved here, for the alternatives are to treat secondary boycotts involving trade unions as either industrial relations or trade practices matters. The consequence of making that judgement is to disturb the unitary nature of the administration of either the industrial relations law or the trade practices law. It can be argued that the entire nature of industrial relations is such that there is a strong case for treating each episode as discrete and *sui generis*, but no such argument can be made in the case of trade practice law. There is much to lose and little to gain in distinguishing Sections 45D and 45E of the Trade Practices Act in this way.

Other matters

While four major issues – encouragement of contractual agreements, alternative tribunal forms, minimum living standards and secondary boycotts – have been identified here as critical areas for reform, certain other matters should be considered.

Public subsidies of private industrial relations costs

Currently, unionists are given taxation deductions in respect of union dues. If the public is to contribute in this way to the provision of representative agencies for employees, arguably the public might also contribute in some way to employer industrial relations costs. It is worth considering whether forms of managerial industrial training might not be established on a similar basis to the Trade Union Training Authority. No recommendations are offered here, beyond the comment that Australian educational institutions are unlikely to be flexible, resourceful or committed enough to undertake such a task.

Internalisaton of industrial relations

There are sound reasons in both theory and practice for seeking to localise industrial relations practices as closely as possible. While governments have a role to play in designing, maintaining and administering a legislative framework, industrial relations is very largely a practice of workplace rule making, and its proper focus is the workplace. Every effort, therefore, should be made to encourage employers and workplace employee groups to internalise the rule-making process, to draw up agreements that fit their needs and are shaped by their experience. Governments ought, therefore, to discourage such activities as National Wage Cases and to restrict their impact as far as possible (this would be one effect of modifying the definition of industrial dispute as described above).

Internalisation does, of course, hold some promise of restraining the spillover effect (flow on) of arbitral decisions. Elimination of that effect is probably impossible, but its containment is a feasible goal and should be pursued. Any restriction of the scope of arbitral awards would have this effect. An education campaign is relevant here, for much of the Commission's action is to spread like wages to unlike situations, a discriminatory process which is often presented as equitable.

Other matters which need to be considered are means by which the status of corporate industrial relations executives can be raised –

scarcely a matter for legislation, but one which governments can aid, and consideration of whether the narrow range of issues vulnerable to the Commission has led to disproportionate levels of wage demands. A qualification here is that the High Court's expansive interpretation (Social Welfare Case 1983, 47 ALR: 225) of the term 'industrial dispute' has created the potential for an expansion of the substantive rule territory occupied by this tribunal. Also the operation of the Prices and Incomes Accord has forced the Commission into dealing with the issue of superannuation. One would not recommend that the Commission's jurisdiction be widened – if that were possible – rather that the flexibility of other arrangements be emphasised.