PATTERNS IN AUSTRALIAN
INDUSTRIAL CONFLICT: 1973-1989

by
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A thesis submitted for the degree of
Doctor of Philosophy
at
The Australian National University
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Declaration

This thesis is my own work,
except as acknowledged.

06/21/92
Dedication

To my children
Rachel, Jason and Olivia,
who never once complained
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<td>RRIA</td>
<td>Robe River Iron Ore Associates</td>
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<td>SECEB</td>
<td>South-East Queensland Electricity Board</td>
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<td>SRA</td>
<td>State Rail Authority</td>
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<td>SUA</td>
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<td>TPA</td>
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<td>TWU</td>
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<td>UTA</td>
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<td>WAIC</td>
<td>Western Australia Industrial Commission</td>
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<td>WMC</td>
<td>Western Mining Corporation</td>
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<td>WWF</td>
<td>Waterside Workers' Federation</td>
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INTRODUCTION

This thesis originated from an observation I made in 1985 when writing a paper on the 1984-85 British miners' strike. At the time, a dispute was taking place in Queensland between the Electrical Trades Union (ETU) and the South-East Queensland Electricity Board (SEQEB). I was struck by some of the similarities between the two strikes. Foremost was the way in which the British Prime Minister, Margaret Thatcher was framing laws in the aftermath of the miners' strike to combat what she saw as excessive union power. In Queensland, the Premier Sir Joh Bjelke-Peterson was following suit with a range of legislation that was distinctly reminiscent of the British model.

Based on that original observation, I was led to question the ways and extent to which law is a factor in dealing with industrial conflict in Australia. With a centralised collective bargaining system based in law, the conduct of industrial relations in Australia has been regulated by industrial tribunals since the late nineteenth century.1 Embedded in the various federal and state acts have been processes and penalties for dealing with industrial disputation and non-conformism to the system.

Since the O'Shea case in 1969 the penal sanctions contained in the various industrial Acts, have remained in abeyance, while the earlier Boilermakers' case had found that it was unconstitutional to invest judicial functions to a body whose primary functions related to conciliation and arbitration.2 That being so what laws relevant to direct industrial action existed in the civil law, the criminal law and the common law? Were they used in the absence of effective penal sanctions and arbitral powers of enforcement in the Commonwealth and states?

There was ample evidence that such laws existed (and always had). Furthermore, even as I researched, the whole framework upon which industrial relations rested in Australia was changing, for what appeared to be a number of reasons. Not least amongst those was the way in which the law was beginning to be used.

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1 Statutory provisions for voluntary arbitration were made in Victoria in 1891 and New South Wales in 1892. The principles of compulsory submission of disputes and their resolution by binding awards were adopted in the South Australian Conciliation Act of 1894. Legislation to establish wage-fixing authorities had been enacted in all of the States by 1911. Commonwealth involvement in arbitration was foreshadowed by the insertion of the arbitration power in the draft Constitution at the 1898 federal convention. W B Creighton, W J Ford, R J Mitchell, Labour Law Materials and Commentary, Sydney, 1983, p.8.
Before proceeding further with the inquiry, I thought it would be prudent to ask another question: What are the causes of industrial conflict in Australia? No easy answer was forthcoming from the available data. The most comprehensive statistics on Australian industrial disputes are compiled by the Australian Bureau of Statistics (ABS). These I rejected because the seven categories of 'Causes' could not answer my question adequately. From media reports over the past few years, it was clear to me that job security had become a major cause of industrial disputation, and yet no category in the ABS statistics isolated such disputes. This gave rise to the hypothesis upon which I decided to compile my own set of data. Central to the hypothesis was the assertion that industrial relations in Australia is not static, and the question of what causes industrial conflict can only be answered by a flexible set of data that is comprehensive enough to portray the complexities and trends that exist in a dynamic situation.

When I embarked on this task, my only concern was for collecting data on the causes of strikes. Examination of the *Weekly Reports*[^3], a weekly documentation of industrial disputes compiled by the then Department of Industrial Relations (DEIR)[^4], awakened me to the prevalence of bans in industrial conflict. It was not that I had been unaware of alternate forms of industrial action; rather, I was surprised by the number of bans in proportion to strikes that were evident. Thus, the next question presented itself. What proportion of direct action is attributable to bans, and is there a relationship between their frequency and the trends in strike activity?

The enormous scope presented by both those questions, and the degree of research involved in arriving at the answers has, as it turns out, provided the underpinnings of this thesis. Whereas I had originally viewed these questions as peripheral to the central concern of the thesis, they became the axis upon which all other issues revolved.

To understand the causes of industrial disputation, we need to look much more closely at the information available in the *Weekly Reports*. The data collected by ABS is quite extensive. For example, the 'Trade Unionism', category covers "disputes concerning employment of non-unionists, inter-union and intra-union disputes, sympathy stoppages in support of employees in another industry, recognition of union activities, etc."[^5] ABS clearly recognises that demarcation disputes are qualitatively different from disputes over non-union labour, yet published material does not reflect such distinctions. The aggregated statistics are those upon which estimates, analysis and prediction are based. Some analysts have used the *Weekly Report* to reach a clearer

[^4]: Now Department of Industrial Relations.
understanding of industrial disputation and its causes. For example, P R Hay's comparison of two six-month periods consisted of thirteen categories, several of which had sub-categories.6 Such research is of great value. Unfortunately, detailed compilations of this kind have not been made over a sufficiently long period to enable analyses of a more complex nature. The other criticism is a reiteration of one of the central arguments of this thesis; that is, that the whole spectrum of industrial action is reduced to strike analysis.

The industrial officer of the Master Builders' Federation (MBF) in Canberra has said unequivocally that bans are the most disruptive and economically costly form of industrial activity in the building industry today.7 Three years into the Accord, the changes in the characteristics of industrial disputation had become evident in some quarters, even if those changes remained unacknowledged in others. The following statement was included in the Confederation of Australian Industry's (CAI) submission to the National Wage Case hearing in 1986.

Industrial disputation has changed its character over the last two years so that while the number of strikes has been on the way down, bans and limitations which do not cost a day's wage for most employees, and do not show up in the statistics, have been on the way up. This different sort of disputation is now the way that many trade unions operate so that they can get the maximum gain for the least cost of wages foregone. In a sense, industrial disputation has become more efficient.8

Unsupported by empirical evidence as the statement was at the time, it is perhaps not surprising that it received little attention in an industrial relations climate which was singing the praises of the Accord loudly and for the most part, uncritically.

A public relations officer with the CAI confirmed this view, and added, that representations had been made to the ABS in the past few years requesting the addition of bans in statistical data on industrial disputes. The ABS response was, predictably, that the data on bans is not susceptible to measurement in the same way as strike statistics.

Statistics undoubtedly contribute a great deal to our understanding of the events taking place in all areas of our social and political lives. What we do have to question is whether statistics are adequate to the task of describing those events merely on the basis of what is measurable. Bans are measurable in the simple sense that we can measure

7 MBF industrial officer, Interview, March 1987.
8 Confederation of Australian Industry, Submission to the National Wage Case, Melbourne, November 1986, p.89.
how many occur. Hopefully, this thesis will indicate that such a measure is of value. I can offer no suggestions as to how the severity of bans could be quantified. They are impossible to measure in terms of working days lost or impact on productivity. Some bans are more effective as an industrial lever than others; some bans operate for lengthy periods with very little or no impact at all. Notwithstanding these considerations, the non-inclusion of bans in dispute analysis on the grounds that they are measurable only to a limited extent may render the discussion of industrial disputes in a dynamic and complex industrial environment almost meaningless.

The notion that industrial conflict is 'bad' underpins much of the discussion which takes place on the subject. When there is an increase in strikes, for example, the focus for analysis not infrequently becomes one of measurement, such as the number of working days lost or declines in productivity. Industrial peace is therefore regarded as 'good'. Judged as it is by the same formulae, we have industrial peace when disputes are at a minimum and productivity is high. This simplistic notion was challenged as far back as 1927 by a conservative Attorney-General in the Bruce-Page Government. John Latham, who subsequently became Chief Justice of the High Court surmised:

> It is frequently said that the object of industrial legislation should be to promote peace in industry. A good deal depends on what is meant by that term. The absence of strikes and lock-outs is merely a negative ideal. It is a mistake to approach this subject merely from the point of view of endeavouring to avoid something, instead of trying to attain something. Industrial peace, if regarded merely as the absence of strikes and lock-outs, is but accidental and precarious. Viewed only from that angle, industrial peace is not sufficient....

It was from Latham's perspective that I conducted my research. While this thesis contains no broad theoretical analysis of the nature of industrial conflict, it does rest on two theoretical propositions. The first is that the law can be a two-edged sword in the prevention and resolution of industrial conflict. It both protects and penalises. It provides justifications to act, and remedies against action. The law is frequently used with the aim of maintaining 'law and order' while in practice producing the opposite effect. The second proposition is that industrial peace and the absence of industrial conflict are not necessarily contemporaneous. The absence of measurable or identifiable manifestations of industrial conflict may be due to a number of reasons, including the existence of laws which proscribe it as an activity. A further dimension is added when we consider the political and economic climate in which industrial relations is occurring. It is reasonable to assume that there are correlations between, for example,

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levels of unemployment, the political colour of the government of the day and the degree
and nature of industrial disputation. In the case of the latter, (the nature of industrial
disputation) there are a number of factors to consider, primarily:

- the form the disputation takes;
- the type of response from employers, eg resolution through the system or
  recourse to other avenues such as the common law; and
- the commitment of all parties, including government, to the maintenance of
  dispute resolution through the centralised bargaining system.

These factors and others contribute to the patterns of industrial relations. A strike on
its own is not such a remarkable thing, but if we consider that action in the light of how
it is responded to, in contrast to how it would probably have been responded to at a
different time, it is possible to come to some understanding of the climate in which the
strike is taking place. What is more difficult to ascertain is whether the industrial
climate has prevented a strike from taking place and an alternative form of industrial
action has been used.

Data on industrial disputes is collected only for collective direct action such as strikes,
bans, lockouts, secondary boycotts and work-to-rules. Individual acts, while also a
manifestation of industrial unrest, are not recorded. For example, absenteeism is
sometimes an individual expression of conflict, and it can on occasion be a form of
collective action. As these are difficult to identify as industrial conflict, they are not
included in the Weekly Reports, nor do they come to the attention of the industrial
tribunals. Their existence, however, is acknowledged as representing another dimension
to industrial disputation.

The impact of the Accord in the changing patterns of industrial relations since 1983
cannot be denied and its existence is integral to the analysis in this thesis. While the
focus in the latter part is on how the law has become a factor in the changing climate, it
must be acknowledged that to a large extent the Accord was creating the climate. For
example, the Government's and the Australian Council of Trade Union's (ACTU)
responses to action taken during the pilots' dispute in 1989 were driven by their
commitment to the Accord. The Prime Minister, Bob Hawke's advocacy of the use of
common law by the airlines early in the dispute reflected a marked change in personal
and stated Accord policies.

Chapter One presents a review of the literature used. It provides in the first part a
cursory overview of some of the literature from the United States (US), United Kingdom
(UK) and Australia on systems theory and collective bargaining. While comparative analysis has not been a factor in my research, from a theoretical viewpoint the international literature is illuminating and useful particularly in relation to attitudes, approaches and rule-making. The second part of the chapter looks at the analysis of industrial disputes, including some of the econometric models that have been constructed on a comparative basis, and the efficacy of using the *Weekly Reports* as a source of data. The third part on labour law looks first at the development of labour law in the US, UK and Australia followed by a review of attitudes towards industrial conflict. It is contended that attitudes are largely based on two principal themes: that industrial conflict is either a 'bad thing' or it is 'not a bad thing'. The final section overviews the legal literature that was used and includes a resume of the historical disputes that were looked at, particularly those which had relevance to law outside the range of Australian industrial relations law.

A theoretical framework for the analysis of industrial disputation is posited in Chapter two. While drawing on the basis for analysis established by J E T Dunlop and others, a simple model is devised for the analysis of industrial conflict in contrast to the larger subject of industrial relations. The framework consists of six elements: background, the climate, the legal framework, proximate parties, contingent parties; and dispute resolution.

In the first part of Chapter Three I explain the methodology used for researching and selecting the data, and look at some of the problems associated with the task. Included are definitions for some of the terms which appear frequently in the thesis including strike, ban and secondary boycott. As well, the eighteen categories of causes are listed with some examples of the disputes to which they are related in my analysis. The second part of the thesis focuses on the prevailing industrial climate, with particular emphasis on the legal situation which has developed during the Accord period. The final section of Chapter Three outlines the research methods I adopted for this analysis and some of the problems I encountered in the process.

The forms and levels of industrial disputation between 1973-87 are considered in Chapter Four, using the data from the *Weekly Reports*. Claims that levels of industrial disputation in Australia have declined since 1983 are tested on a state and industry basis to see whether such a general statement applies across-the-board. The graphs showing state trends have ABS data included for comparison. The relationship between strikes and bans is considered at length, once again through particularities. Both are represented numerically and as percentages of overall disputation.

Chapter Five tests the proposition that Pay disputes dictate the rise and fall of strike
activity. Allowances is included as a separate issue as well as Log of Claims (which will include to varying degrees both these issues). The inclusion of Allowances was precipitated by gossip. There have been many reports that the decline in claims for Pay increases brought about by the Accord had resulted in increased demands for Allowances as a means of obtaining increases in pay without breaching the national wage guidelines or overtly challenging the Accord. Anecdotal evidence confirmed this, although there has been little statistical evidence to substantiate the claims.

Chapter Six seeks to identify the dominant trends in issues that emerged in each state and territory during the survey period. In addition to Log of Claims, the two (or more) major issues in each year, in terms of their numerical dominance over other issues, are extracted.

Chapter Seven provides a composite picture from the results of the preceding three chapters. The trends in levels, forms and issues which have been identified over the survey period are summarised. Results from additional analysis of the data on an industry basis are also included, although not in any great detail. The results of the data in Chapters Four, Five and Six provide a background to the ensuing chapters on the political and industrial climate.

Having established that changes in the patterns of industrial relations have occurred, it is necessary to consider factors which have contributed to change. Certainly the Accord has played a significant part; however, to explain the change merely in terms of an agreed policy between the Government and ACTU is inadequate. The decline in industrial disputation and changes in the trends of forms that direct action takes, is evident. So too are other changes, and to some extent at least, they are causal.

The second part of this thesis looks at the changing industrial climate and concentrates on the Accord period since 1983. Chapter Eight looks at the political climate. The Prices and Incomes Accord provides the primary focus. The Accord represented more than an agreement on wages and prices. It also contained a number of supportive policies in the area of:

- Industrial Relations Legislation;
- Industrial Development and Technological Change;
- Immigration;
- Social Security;
• Occupational Health and Safety;

• Education;

• Health; and

• Australian Government Employment.

The agreement held that, "the objective of policy on industrial relations should be to improve industrial relations in Australia to the benefit of workers, employers and the public in general". A number of specific measures were spelt out as a matter of priority, the first of which stated:

The Government will endeavour to create a better industrial relations climate by itself adopting and encouraging other employers to adopt a rational and less confrontationist approach to industrial relations. The Government will encourage the settlement of disputes between employers and unions by conciliation and without recourse to legislative or common law penal sanctions.  

Greater emphasis is given to this period because it is the period when changes are most apparent, both from the survey data and the legal aspects of this thesis. As a force that has contributed to the upsurge in legal activity, the New Right is also considered in this chapter, with some assessment of their role in the changes that have taken place.

Chapter Nine looks at the industrial climate. The first section considers some of the reasons why Job Maintenance has become an increasingly prominent source of industrial conflict. A cursory examination of some disputes in the various industries is made, although space does not permit an Australia-wide perspective. The following sections outline how the law has been used during this period. With a dispute involving airline pilots making daily headlines as the chapter was being written, change was manifestly taking place. The notion that there is a fundamental 'right to strike' is now subject to challenge in a way that had previously been regarded as inconceivable. Managerial prerogative has become a crucial issue for many employers who see their perceived rights to make managerial decisions eroded by law and union power. The use of the common law, previously available but for the most part unused, has implications for the future conduct of industrial conflict.

Three case studies are the subject of the final three chapters. They are the SEQEB, the Mudginberri and the Robe River disputes. All have for various reasons been factors in the changes that have taken place. Each dispute features a number of common features

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10 Statement of Accord, reprinted in F Stillwell, The Accord...and Beyond, Sydney, 1988, p.166.
although their circumstances are quite different. There are two features of the disputes which are most important for the purposes of this thesis. The first is the way in which the law was used in each dispute, particularly in terms of the challenges made to the industrial relations system; and the consequences when either party decides to 'opt-out' of the system. Considered also are the roles of the New Right and the ACTU. The second is the issue which precipitated the disputes; that is, an overriding concern on the part of the unions involved to resist contract labour. It might appear that Robe River could be exempted from the above claim but, as the case study will reveal, contract labour was, (quite justifiably as it turned out) a major concern for the unions involved.

The two parts of the thesis are meant to complement each other and hopefully there is no "leap of faith" involved here. It is, in any case not a unique approach. For example, M Waters in his study of strikes and industrial conflict analysed strike trends along with their historical development and the societal structure. He observed that:

Thirty years of analysis of strike incidence have produced a bewildering battery of trends and counter-trends and an even more extensive range of explanatory variables to account for them. This bespeaks not only differences of discipline and ideology among those who seek to analyse strikes, but also the complexity of the phenomenon itself: industrial conflict is a central aspect of industrial society and a complete account of it would require a thorough analysis of societal structure.

The findings from the data analysis provide a strong indication that some of the assumptions on which discussions of industrial disputation are based are open to critical examination. The decline in strikes since the Accord is not questioned. Clearly, on all available evidence this has been the case. Why this has happened though has, in my opinion been oversimplified. Looking at the legal responses to industrial conflict in a changing political and industrial environment is only one aspect of change, but an important one. In a letter to Peter Costello, a barrister (and now a Liberal Party Member of Parliament) who was involved in some of the cases mentioned on behalf of employers, I asked: "have torts, in the absence of penal sanctions come to be regarded as an efficient remedy to industrial disputation? Have torts increased since 1983? He replied in the affirmative, adding:

The interesting feature is that after six years of Labor Government, when the Labor Government originally proposed to repeal Section 45D and later to modify common law rights, the use of these remedies is stronger than ever before, and, I believe, open to use with the tacit approval of the Government itself. To a degree this reflects the changing industrial environment and the success of those who advocated the use, in appropriate

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cases, of such remedies some four or five years ago.  

Chapman and Gruen point out that the marked decrease in strike activity since 1983 is not explainable by changes in measured economic variables. They also suggest caution in interpreting the underlying causal mechanism at work: "The increased commitment of the trade union movement to the maintenance of the ALP in government...may have decreased disputation to some extent independently of the consensual incomes policy". They further note that the greater willingness of employers to use legal actions against unions in times of conflict may also have had effects on strike activity.

My findings suggest that these two statements bear some relevance to the situation. The decline in strike activity and concomitant increase in bans, the increased concern over managerial prerogative and job security issues, the Accord and the developing legal climate are all inextricably linked. To understand the patterns of industrial relations which have developed, particularly since 1983, consideration must be given to all these factors (along with others), not as separate subjects, but as part of a whole picture.

Notes on style

There may appear to be some inconsistency in the way I have used capital letters when denoting causes. My rule has been to use all lower case in general discussion. When, however, the causes are being discussed within the context of the data analysis, capitals have been used: for example Contract Labour.

Finally, the terms used in the data analysis which designate issues as major or main are interchangeable. There is no qualitative distinction between them.

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14 Ibid., p.32.
15 Loc.cit.
Chapter One

THE LITERATURE

The international (including Australian) literature pertaining to industrial relations and the wide range of associated issues, is formidable. Because this thesis is solely concerned with the practice of industrial relations in Australia, I have made only a limited attempt to cover the literature from other countries, and in this endeavour have concentrated on the US and UK.

The first part of this chapter looks at some of the literature on industrial relations with the principal aim of developing a theoretical framework for analysis in the Australian environment. It covers systems theory and collective bargaining. It should be noted that while recognising the importance of these elements and others such as labour and organisations, their relevance to this thesis is contextual, not subject.

In the second part, the literature on industrial dispute data is considered. This is pertinent to the chapters in the thesis which focus on the original research undertaken on nine thousand industrial disputes in Australia over a ten year period.

The third part looks at the literature on labour law. It is not intended to be a comprehensive overview of law. As the chapters dealing with law in the thesis are mainly concerned with attitudes and how the use of law has been one of the factors in changing patterns in industrial relations in Australia, my interest is not so much in the 'black letter' analyses, as in the socio-political scenario.

1.1.1. Industrial relations theory

While it may be possible to arrive at generic non-legal definitions of industrial disputation that are applicable in countries other than Australia, the question begged is the extent to which the system is a factor in determining how conflict is managed?

In his review of attitudes and approaches to industrial relations which have been influential, M P Jackson considered three approaches to the analysis:

(i) Systems theory, an attempt to provide a general explanation of social behaviour;
(ii) the social action approach, which aims to show how a search for an explanation should be made (but does not try to provide that explanation); and

(iii) the attempt to distinguish different frames of reference, based on the belief that it is important to try to 'demystify' industrial relations.¹

Jackson's discussion of systems theory as applied to industrial relations centres on the work of its pioneer, J E T Dunlop who believed that the industrial relations system was held together by an ideology or a common set of ideas and beliefs. It held that while actors may have their own ideology, an industrial relations system requires that these ideologies may be sufficiently compatible and consistent so as to permit a common set of ideas which recognise an acceptable role for each actor.²

Dunlop's theory has attracted criticism from a number of sources who, while not rejecting it, advocate some modifications to it. Jackson, noting the criticisms, concludes that the reason why systems theory has remained so influential is because it appears to have held out the prospect of academic respectability.³

The origin of the Social Action Approach is attributed to Weberian sociology in which an 'actor' owns definitions of the situations in which they are engaged. This is taken as an initial basis for the explanation of their social behaviour and relationships. Jackson maintains that one of the most important features of the social action approach is the way in which it stresses that the individual retains at least some freedom of action and ability to influence events.⁴

A Fox, a chief proponent of the Frames of Reference Approach defines two frames, the unitary and the pluralistic. Those who subscribe to unitary ideology he says, will tend to define transgressors as aberrants:

The manager who firmly believes in the unitary ideology will find it difficult because of his conviction of the rightness of management rule, not only to acknowledge the legitimacy of challenges to it, but also to

² J E T Dunlop, Industrial Relations Systems, Southern Illinois UP, Carbondale, 1958, p.17, quoted by Jackson, Ibid., pp.8-9
⁴ Loc.cit.
grasp that such challenges may at least be grounded in legitimacy for those who mount them. 5

The pluralistic frame on the other hand accepts that an enterprise contains people with a variety of different interests, aims and aspirations. Clegg, an adherent of the pluralist frame of reference in industrial relations, considers conflict to be normal and expected. 6 Another adherent, Kelly argues that old human relations theories which assume that conflict is harmful should be avoided because they do not square with facts. He argues that, if it is handled properly, conflict:

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\text{can lead to more effective and appropriate arrangements...The way conflict is managed - rather than suppressed, ignored or avoided - contributes to a company's effectiveness. 7}
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The major source of criticism of pluralist ideology, says Jackson, is that while it recognises the inevitability of conflict, it also implies a degree of equality between the conflicting parties. 8

The first and last of these approaches are relevant to the practice of industrial relations in Australia. The system, which explicitly accepts the existence of conflict, operates on a consensus basis in that the parties (who may be in disagreement with each other) at least agree that the system provides a means of conciliation and arbitration with an ultimate remedy. There is therefore a common set of ideas or beliefs in the system although the ideologies of participants may differ greatly. It is when one or both of the parties opt out of the formal system that the difference in ideology will surface as a major factor in the conduct of a dispute and its outcome. Two of the case studies later in this thesis, the SEQEB and Robe River disputes serve to illustrate this point as does discussion on the pilots' dispute.

As for the Frames of Reference Approach, both unitary and pluralistic, I would contend that the two are not necessarily mutually exclusive. Again I refer to the disputes mentioned earlier where under normal circumstances a pluralism of views was tolerated, and conflict managed, within the system. At the same time, persons subscribing to a unitary ideology, for example, Charles Copeman in the Robe River dispute, may also operate within the pluralist framework, and once again, it is

7 Kelly, quoted by Fox in Child (Ed.) op.cit., p.215.
8 Jackson, op.cit., p.22.
usually at the time that they opt out of the system that the unitary ideology will become their *modus operandi*. Needless to say, a unitary ideology may well have been a major factor in their approach to management and staff relationships even while working within the system and accepting the tenets of pluralism.

Another dimension has been offered by M Shalev in his discussion of Ingham's Marxist approach whereby, "in order to explain variations in both institutional structures and levels of conflict institutionalisation, it is desirable to adopt a Marxist rather than a functionalist approach". 9 The question posed by Ingham is "under what conditions 'centralised institutions for the regulation of conflict' will develop - it being accepted that these are the proximate causes of low strike levels - and essentially, the answer is that such institutions will be found in societies where each sector of the economy is dominated by a small number of large-scale employers". 10 This approach is far too simplistic to apply to the Australian model of industrial relations despite the institutionalisation of conflict resolution that is a product of the system.

To what end then does comparative analysis serve the study of industrial relations? According to Dunlop's model, "the attention to rule-making in industrial relations systems provides a common denominator for the comparative analysis of different forms". Comparisons reveal the differences between systems which in many other respects are similar and vice versa. 11

A M Ross developed a model for analysing industrial relations systems for comparative purposes which has enduring value. Most of its features are also relevant to the analysis of individual systems:

**Principal Features of an Industrial Relations System Used For Comparison**

1. **Organisational Stability**
   (a) Age of labour movement
   (b) Stability of membership in recent years

2. **Leadership Conflicts in the Labour Movement**
   (a) Factionalism, rival unionism and rival federations
   (b) Strength of communism in labour unions

3. **States of Union-management Relations**

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10 Ibid., p.30.
(a) Degree of acceptance by employers
(b) Consolidation of bargaining structure

4. Labour Political Activity
(a) Existence of Labour Party as a leading political party
(b) Labour Party governments

5. Role of State
(a) Extent of government activity in defining terms of employment
(b) Dispute settlement policies and procedures

This leads inevitably to the comparison and analysis of collective bargaining and law between systems. Inevitably, because systemically it will be these two functional factors which will determine the interplay of the various actors, their roles, and at the most fundamental level, the day-to-day practice of industrial relations.

1.1.2. Collective bargaining

Various models of collective bargaining have been developed which seek to provide a theoretical framework for analysis. It should be noted that in all industrialised countries some legislation exists on wages and working conditions. There are, however, significant differences between countries on the scope of statutory regulations. As the International Labour Office noted:

Whereas the North American countries have generally adopted only a minimum of legislation on substantive working conditions, social legislation in many European countries covers a broad spectrum of issues which might also be subjects for collective bargaining.

Begin and Beal combine an open systems theory with Dunlop's theory to overcome the limitations they see in Dunlop's approach, namely:

(i) it did not articulate well between levels of the industrial relations system;

(ii) it did not articulate the dynamic behavioural processes by which rules are changed;

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(iii) it did not, with the exception of technology, give adequate attention to possible organisational-level influences, eg organisational size or personality variables; and

(iv) it did not adequately set out a taxonomy of outputs that was operationally useful.

Begin and Beal's analysis of industrial relations systems consists of three sets of participants and actors: managers and their hierarchy; workers and their hierarchy; and "regulators" - agents of government who play specific roles and non-governmental agents and agencies. While granting Dunlop's institutional framework, Begin and Beal also emphasise the role of the actors.14 They define collective bargaining as "interactions between unions and managers. It takes place within limits set by formal rules, accepted practices, laws, and conventions".15

This framework allows for substantial variations within the US industrial relations system despite factors which are mostly constant across the system, or at least subsets of the system. When the perspective is expanded to include other countries, Begin and Beal find even greater variations in the design and operation of industrial relations systems.16 Significantly, it is the factors which they identify as constant across the US system (the political system and the power distribution within that system; labour laws; and ideologies) which provide the greatest variations with other countries. Furthermore, their definition of collective bargaining could be construed as somewhat rigid. One British perspective for example is that from the union viewpoint, collective bargaining is, in addition to a means of defending and improving members' wages and conditions, a rule-making process. A Flanders argues that one of the principal purposes of trade unions in collective bargaining is regulation and control. In this scenario, the effect of rules is to establish rights along with corresponding obligations: Rules are seen to:

- limit the power and authority of employers and to lessen the dependence of employees on market fluctuations and the arbitrary will of management;
- these rules provide protection, a shield, for their members. And they protect not only their material standards of living, but equally their security, status and self-respect - in short their dignity as human beings.17

15 Ibid., p.7.
16 Ibid., p.523.
Herman, Kuhn and Seeber observe that most bargaining theories make two basic assumptions. The first, is that each side to the bargain has an incentive to deal with the other; and the second is that there is a disagreement over the level at which the exchange can take place.\textsuperscript{18}

According to Bacharach and Lawler, bargaining theory models have other common elements: (i) the existence of bilateral monopoly, that is, in order that the transaction takes place, the two parties must reach an agreement; (ii) that negotiations may take place over clearly defined issues noting that there is a general assumption amongst bargaining theorists that in each negotiation there is a winner and loser; and (iii) the existence of a contract zone which sets the outer limits for negotiation. Under the convergence model, parties through offers and counter-offers move closer toward each other gradually converging toward a point of potential agreement.\textsuperscript{19} This model, while identifying general aspects of collective bargaining fails to account for systemic factors. In collective bargaining in Australia for example, the role of the industrial tribunals and arbitration may negate some of these assumptions.

Herman \textit{et al} concentrate on two distinct theories for their analysis. The first is the Walton and McKersie model in which labour-management negotiations are not a single process, but four different sub-processes, each distinguished by its own function for the interacting parties, its own internal logics, and its own identifiable set of instrumental acts or tactics:

(i) \textit{Distributive bargaining} - where the parties bargain over division of a particular pie under which the gain by one party is a direct loss to the opponent.

(ii) \textit{Integrative bargaining} - where both sides search for solutions that would increase the size of the pie, and where the objectives of both parties need not necessarily be in conflict as is the case in distributive bargaining.

(iii) \textit{Attitudinal structuring} - which defines the quality and type of relationship between labour and management, and encompasses the efforts, intended and unintended by parties to shape their opponents' behaviour.

\textsuperscript{19} \textit{Ibid.}, pp.233-235.
(iv) Intraorganisational bargaining - which refers to the internal negotiations taking place within each party.\(^\text{20}\)

Herman et al believe that Walton and McKersie's theoretical and tactical framework represents an important contribution to the literature of bargaining theory.\(^\text{21}\) I am inclined to agree with them notwithstanding their failure to include a contextual framework which allows for institutional arrangements. Of particular interest is their assertion that, under the attitudinal structuring subprocess, the history and past behaviour of negotiators can influence the success of current bargaining. As Herman et al point out, "a conflict-prone relationship may embody a set of attitudes which would make it difficult for the parties to move to a more cooperative relationship".\(^\text{22}\) This is relevant to the case studies presented later on in this thesis where the history, past relationships and personalities of the main actors are crucial factors in the conduct of the disputes. Although this may have been an important factor in the conduct and character of the disputes, it is clear that in terms of the outcomes, institutional factors - the industrial relations system and law - were ultimately the chief determinants.

The second model outlined by Herman et al is the Kuhn model which concentrates on the basics of transactions and of power. By way of introduction they explain that the study of power is not the same as the study of negotiations. Power deals with the basic capacity to achieve desired results while negotiations deals with the actual use of that capacity in a given situation.\(^\text{23}\)

Kuhn's model maintains that the things people affirmatively want are goods and, the things they wish to avoid or get rid of are bads. Power is concerned with the kinds and quantities of goods and bads involved in interactions between parties. It resides in the ability to grant or withhold things wanted by others. Herman et al believe this statement holds for power based on bads, like strikes, threats or violence.\(^\text{24}\)

By way of summary, Herman et al argue that a union as an agent of protest and not of management, is a sort of permanent opposition party that never comes to power. Although it may have a peripheral influence on matters affecting employees, it will not normally participate in management decisions. A union has no means of

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\(^{20}\) Ibid., pp.235-236.  
\(^{21}\) Ibid., p.236.  
\(^{22}\) Loc.cit.  
\(^{23}\) Ibid., p.237. For further discussion on the interconnections between power, strike behaviour and wages, see L. Perrone, 'Positional Power, Strikes and Wages, in American Sociological Review, 49, June 1984, pp.412-421.  
\(^{24}\) Ibid., p.238.
exercising power on an employer except by being dramatically unpleasant and it will achieve this mainly by the strategic bad of a strike. Accordingly, management behaviours towards unions take two distinct forms:

(i) to try to prevent or eliminate the existence of the union; and

(ii) to raise management's bargaining power in dealing with unions, but without challenging its existence.

They conclude that "in analysing the devices used by employers, it is therefore crucial to understand whether they are directed against the existence of the union or merely against its bargaining power". Like the previous model described by Herman et al, the Kuhn model pays no heed to the system. It does not provide a useful model for the analysis of industrial relations in Australia where the power to determine the outcome of a dispute may reside, not with the parties, but with an industrial tribunal. It does not recognise the commitment that both parties may have to the system, and by implication, a union's place within that system. Nor does the use of language such as *goods* and *bads* enable more than a perfunctory explanation of behaviour. While I would not discount the use of such language just because it is value-laden, in its simplicity it ignores other values which may have good or bad labels attributed to them such as freedom, collective rights or exploitation and repression.

P L Quaglieri points out that the overwhelming majority of labour-management agreements negotiated in the US are routinely settled with strikes being an uncommon phenomena. It has been estimated that strikes account for far less (one-tenth) of the time lost in the workplace than that resulting from industrial accidents.

Another factor which distinguishes collective bargaining in the US from that of Australia is the prevalence of single-employer bargaining in the US. Along with employers and the unions, an additional influence favouring single-employer bargaining structures in the US has been the provision of government support for collective bargaining. While there is a movement towards enterprise bargaining

in the Australian system, because it still works within the framework of a centralised bargaining system it is does not in this respect parallel the American single-employer bargaining structures.

Collective bargaining in the UK has been traditionally the principle means by which unions and employers negotiate issues. In an article on the relationship between unemployment and industrial relations in Britain, L Hunter argues that collective bargaining is a process which both reflects relative power between an employer and the workforce and determines how power is exercised in the conduct of work. He is critical of standard economic literature which fails to appreciate the wide range of issues apart from wages that are covered, including procedural matters. As such the predictive and explanatory power of simplified models must give grounds for concern. Hunter's argument raises an important point about the analysis of industrial disputation in Australia where, like the UK, economic literature on industrial relations tends to concentrate on wage issues.

Hunter further points out another element which is also missed, in that much bargaining is about mutual concession:

To get improved pay, unions may relax rules about working practice: to introduce change in organisation, employers will be willing to improve pay and conditions. Particularly in the last two decades, a great deal of collective bargaining has been in part a productivity bargain of some description, in the course of which changes have been wrought in manning levels, job structures and work organisation, etc. In short, the production function or production relationship of the enterprise or plant will be conditioned in part by the bargaining process, which may in itself be a dynamic factor in the behaviour of output and costs.29

The above reflects the Australian experience over the Accord years, however such outcomes usually occur on a more formal basis, that is, within the centralised system. Productivity gains have become linked to pay rises that are handed down by the Industrial Relations Commission in its National Wage Case decisions. As such, unlike Britain, they are subject to scrutiny on a number of levels, including the economic. Award restructuring in Australia has also seen unions and management involved in collective bargaining over non-pay issues such as classifications and manning levels. Indeed, as my data reveals, the widening scope of issues has led to a change in the major causes of industrial disputation over the research period.

From a comparative viewpoint, Chapman and Gruen point out that there are at least two conceptual problems in relating macroeconomic outcomes to government policy

changes. The first is that judgements concerning policy effectiveness are necessarily relative and counter-factual assessments. Collective bargaining under the existing Australian institutional framework serves as an example where definitive data are not available to undertake a fair evaluation and postulate outcomes associated with alternative scenarios. The second is that economic variables change continually so that in no two periods of time are enough factors sufficiently similar to allow confident judgements through aggregated comparisons.30

1.2.1. Analysing industrial disputes

The interests of the researcher will of course determine the type of inquiry he or she will pursue. Where mine, initially at least, has been concerned with causes, others have investigated industry, the conciliation and arbitration system, dispute settlement procedures or longevity, to name but a few. The problems associated with analysis will therefore depend largely on the interests of the individual researcher and the adequacy of available data. That problems exist with official statistics was recognised many years ago by D W Oxnam, whose study of industrial disputes on an industry basis led him to conclude that the statistical convenience in classifying certain industries led to inappropriate units for the analysis of industrial strife.31 Oxnam was critical of the exclusion of industrial disputes involving work stoppages of less than ten man days (sic) from official collections, as well as the reliability of the statistics themselves. There is, he says, an element of personal judgement that enters into the collection of strike statistics which can produce quite different results from different agencies. He cites as an example the strike statistics compiled by the Commonwealth Bureau of Census and Statistics (now ABS) and the State Statistical Office in Sydney. "In none of the fifty years since their commencement in 1913 do these estimates coincide, and in some years the divergence between them is substantial".32

The need for caution in the use of official data has also been expressed by Dabscheck and Niland. Their research, which sought an explanation of why Australia has so many "short sharp" strikes and what are the causes of industrial disputes, was based chiefly on ABS statistics. Although the data may be a reliable indication of trends over time, Dabscheck and Niland are wary of setting too much store on data that purport to group strikes into discrete categories of stated cause. Where a dispute can

32 Ibid., p.20.
be traced primarily to a particular issue, they say, "analysis would require more than just the seven categories used by the Australian Bureau of Statistics". As Dabscheck and Niland point out, the decline in one category of stated cause as a problem area leads to an automatic increase in other categories, even when there may have been little or no increases in disputes in those areas.

Several limitations in the use of ABS statistics have also been noted by Plowman, Deery and Fisher. They itemise their reservations thus: the limit of ten working days lost may well understate the incidence of strikes because those of short duration involving small establishments are not included; statistics relate only to establishments where stoppages actually occur; effects such as unemployment and production lost in other associated places are not recorded; the industry classifications are not detailed enough; strike statistics include lockouts which could give a distorted view of worker militancy or intransigence; subjectivity enters into the collection and classification of data so that marked variations occur, (for example ABS and NSW Department of Labour Statistics); and, strikes may be multi-causal yet are recorded as having only one cause. The last two criticisms were noted earlier by Oxnam.

Problems can also arise from competing sections within the one recording agency. Don Rawson in his study on trade union membership outlines the discrepancies which exist between the annual series of 'Trade Union Statistics' and another ABS series called 'Trade Union Members' which were produced in 1976, 1982, 1986 and 1988. Although the second series provides valuable information about the composition of unions since 1976, Rawson points out that they also give a different impression on union density from the first series. The older 'Trade Union Statistics' suggest that union membership has remained fairly static at around 55-56 per cent, while those from the 'Trade Union Members' series point to a decline in union density over the same period. Rawson concludes it is legitimate to say that both series have value, however, "one cannot escape an uneasy feeling that each casts some doubt on the validity of the other".

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34 *Loc.cit.*
36 ABS Catalogue Nos. 6230.0 and 6325.0.
38 *Loc.cit.*
Ironically perhaps, no criticism of ABS figures is registered in the Report of the Committee of Review into Australian Industrial Relations Law and Systems (hereinafter called The Hancock Report). The aim and purpose of the Committee was to develop a more effective and practical industrial relations system. To this end the Committee was given broad terms of reference, which included specifically the direction to examine, report and make recommendations on "all aspects of Commonwealth law relating to the prevention and settlement of industrial disputes". A review of the available evidence about industrial disputes in Australia was undertaken in regard to strikes and lockouts. "Because of their comprehensiveness and their availability for a long period of time", the Committee reported, "the ABS data are the most suited to our needs and we rely on them below". The tables of statistics which follow are accepted uncritically as the basis for the Committee's inquiry. There is no mention of bans as a feature of industrial disputation in Australia. This aspect of the Hancock Report will be discussed later within the context of the Report itself.

Beggs and Chapman tested the proposition that the Accord has had no independent effect on Australian strike activity. Using working days lost per unionist from strikes over the period 1959 to 1983, econometric models using a range of variables were used such as price inflation, profits, inventories and measures of labour demand. They concluded that the variables influencing strikes were changes in the Consumer Price Index, overtime, inventories and profits as a proportion of Gross Domestic Product, the job vacancy rate, and a number of political and institutional factors.

An identical exercise was carried out by Chapman and Gruen for the period 1986 to 1989. Working days lost per unionist from strikes were predicted from the parameters of the earlier equations with the outcomes being compared with actual working days lost. The results showed that strike activity had decreased markedly from the beginning of 1983 in Australia in a way not explainable by changes in measured economic variables. Chapman and Gruen held that the difference between the projected and actual working days lost "can be interpreted reasonably as the

40 Ibid., p.125.
41 Beggs and Chapman, cited by Chapman and Gruen, (b)op.cit., p.28. See also J W Duncan & W E J McCarthy, "What is Happening to Strikes?", in New Society, 22, 526, Nov.2., 1972, pp.267-269.
effect of changes in the industrial relations environment, holding constant the influence of macroeconomic variables on strike activity”.42

Beggs and Chapman in their earlier study had also examined the proposition that decreases in Australian strike activity were part of an international phenomenon and, by implication, unrelated to changes in the Australian institutional environment. Using a model in which annual strike data from thirteen OECD countries over the period 1964 to 1985 were used, Beggs and Chapman found the Australian experience of decreases in strike activity to be unique in an international context at that time.43 Chapman and Gruen further tested the model and results using data from 1964 to 1987. In brief they concluded that:

• decreases in Australian strike activity after the beginning of 1983 are most unusual; and

• that while decreases in strike activity are a world-wide phenomenon for the 1983-87 period, the fall for the rest of the world is about 40 per cent while the Australian diminution is around 70 per cent.44

Aside from the conclusions that can be drawn on the uniqueness of the Australian experience over the Accord years, these results have considerable relevance to this thesis. They show that the inclusion of data on working days lost from strikes may not have made any significant change to the research results. It is clear that both sets of data, that is on working days lost and on the incidence of industrial disputation, show a marked change in the pattern of activity during the Accord years. In this context it is worth mentioning the three caveats that Chapman and Gruen note in relation to their conclusions.

The first is that the models provide a very simple representation of influences on strike activity. The results therefore are indicative only.

The second is that conflicts between employers and employees can manifest themselves in less covert activity than work stoppages and that bans, go-slow and work to rules may have become different since the beginning of the Accord. They cite empirical evidence that there has been a change since the early 1980s in the form of industrial disputation towards the use of bans.45

42 Ibid., p.29.
43 Ibid., p.30.
44 Ibid., p.32.
45 Loc.cit. They are referring here to the research that was undertaken for this thesis and make the point that the bans data have not yet been subjected to econometric analysis.
The third counsels caution on interpreting the underlying causal mechanisms at work:

The increased commitment of the trade union movement to the maintenance of the ALP in government...may have decreased disputation to some extent independently of the consensual incomes policy. Further, the apparent greater willingness in recent times of employers to use legal action against unions in times of conflict may also have had effects on strike activity....

The latter point is one that is taken up in the second part of this thesis. Having made these qualifications, Chapman and Gruen nevertheless maintain that the Accord has gone an important way to achieving its objective of a diminution in industrial disputation, at least measured by strike activity. As a result, they say, the incomes policy has contributed to greater industrial harmony.

M P Jackson, in discussing the similarities between strike trends in the US, UK and Australia points to the rise in the number of strikes recorded during post World War Two years which reached a height in the 1960s and early 1970s. Each country also saw a rise in the number of working days lost through disputes in the 1970s. Such similarities, however, need to be tempered by a recognition of significant differences in experience between the three countries. Jackson believes the most important difference is probably in the area of duration. In the UK and Australia, the average duration of strikes declined after World War II while no such trend is evident in the US.

Another difference noted by Jackson is that in the US and UK, wages have dominated the causes of strikes while in Australia, working conditions and managerial policy have been the most important causes as far as the number of stoppages, and in a number of periods the same has been true as far as the number of days lost is concerned.

While noting Jackson's work in this area, I would add that although all three countries operate under collective bargaining procedures, there are systemic differences which are important. Ross and Hartman argue that distinctive strike patterns identified in their comparative study were associated with particular kinds of industrial relations systems and with firm and stable union memberships.

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46 Loc.cit.
47 Ibid., p.33
48 M P Jackson, (b) Strikes, Sussex, 1987, p.94.
49 Ibid., pp.94-94
50 Ibid., pp.100-101
Further, the explanation for differences in duration of strike trends may also lie in the level of trade union membership. In the US for example during the 1970s, membership of trade unions was proportionately far below that of the other two countries, a situation which continues to this day.

I have found that for the purposes of my analysis it was necessary to develop yet another framework, one which contains significant elements of other models, but has a different focus - industrial conflict. A model devised by Kohan, Katz & McKersie proved useful. They developed a revised theoretical framework which seeks to address some of the anomalies they perceive in industrial relations theory and practice. Their framework derives from the integration of traditional theories of industrial relations systems and the literature on corporate strategy, structure and decision making. The model incorporates the roles of the environment, values, business strategies, institutional structures and history in the analysis of industrial relations processes and outcomes. Kochan et al explain that just as "management strategies and values play a more important role in explaining industrial relations outcomes than received theory has recognized, so too do the values and strategies that influence the behavior (sic) and policies of unions and government policy". I will be taking up this theme in the next chapter which outlines the theoretical framework I have used for analysis in this thesis.

1.2.2. The Weekly Reports

The Weekly Report is a weekly documentation compiled by DEIR of industrial disputes reported during the previous week. The name Weekly Report is something of a misnomer. Within the department it is referred to as the 'strike report', although the word 'strike' never appears in the report itself. Officers at DEIR varied in their opinions as to the accuracy of the Report. One claimed that it was 80 per cent accurate while another said that 65 per cent was a more likely figure. There was general agreement that accuracy had increased over the "past few years" in line with more stringent procedures for collecting information.

The methods used by DEIR in obtaining information are varied. Reports may be lodged by employers, unions or, in some cases, the media. Within the department, officers with a network of contacts seek out information on the basis that it will remain confidential in detail. These reports are finally contained within the Weekly Report in adherence to a formula that in its minimum form requires the following

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52 Ibid., p.12.
details: the industry and state; workers involved and the union if known; the name of the employer; the stated issue; when the dispute began; and type (stoppage, lockout or ban). The numbers involved are included if known, together with whether the dispute had ended or was continuing. It is not unusual for notification of a dispute to an industrial tribunal also to be included, although its omission in the report does not necessarily mean that the dispute has not been notified. There is quite often much more detailed information included than has been outlined above. Also, where a dispute is widespread and involves a large number of employees, a single report will sometimes cover the lot.

Valuable though the Weekly Report is as a source, there are some problems which should be noted. Alice Coolican in her appraisal of the Weekly Reports draws attention to some of the criticisms that have been raised about the use of official statistics. She points out that their relevance and usefulness have been queried by some sociologists, while phenomenologists have argued that they measure the activities of the recording agencies and not the subject under scrutiny. Such views are in turn criticised by Barry Hindess who maintains that such arguments ultimately lead to "the denial of the possibility of rational knowledge".

Problems arising from definitions, reporting and measurement which affect the validity and reliability of statistics can also occur. As a result, says Coolican, it is necessary to be aware of the imperfections in methods of collecting and constructing statistics so that corrective measures can be taken. Nevertheless, there are limitations on the uses of quantitative data. Coolican agrees with Hyman's assertion that the qualitative attributes of strikes, for example the meaning of the action for the participants, cannot be gauged from dispute statistics, and should not be attempted. She concludes that research into the qualitative aspects of industrial relations does not negate the need for quantitative analysis; the two can co-exist.

There are three major advantages identified by Coolican in the use of the Weekly Reports: First, they provide some information in greater detail than the ABS Industrial Disputes publication; second, the additional data enables the construction of statistics using different classifications from the ABS; and third, the detailed nature of the Weekly Reports permits the exploration of hypotheses which cannot be tested using published Bureau data.

54 B Hindess quoted, loc.cit.
55 R Hyman quoted, loc.cit.
56 Ibid., p.227.
Although the usual source for data on industrial disputes is ABS, some analysts (including Niland, whose criticisms have been noted earlier), have used the *Weekly Reports* for various reasons. "In evaluating the relative merits of arbitration and bargaining" Niland maintains that "the nature of strikes typical of each process is of greater relevance than the level of time lost through them".57 To this end, Niland is critical of the data published by ABS because it does not permit a very precise analysis of causes and other characteristics of strikes. Using the *Weekly Reports* as an alternative source, Niland’s study of the first six-month periods of 1975 and 1976 provides a detailed breakdown of cited causes and the various negotiation procedures followed. The *Weekly Reports* permitted a close analysis of the relationship between certain types of strikes in regard to their cause and duration, and the characteristic form of negotiation that was likely to take place. Niland’s data includes Black bans but not other types of bans where normal work was carried out. His study also includes stoppages taken to consider further action.

The *Weekly Report* provided the data for Hay’s article on the prevalence of political strikes. Comparisons were made for the periods January-June 1975 and March-August 1976 of the incidence and causes of industrial disputes. Hay followed Niland’s procedure in *Collective Bargaining and Compulsory Arbitration* by including Black bans. Unlike Niland, Hay did not include stoppages taken to consider further action, hear reports on negotiations or attend quarterly meetings. Brief stoppages were only included in Hay’s study if they were an end in themeselves; that is, they were actually in protest at something.58 Hay shares with Niland some reservations about the use of the *Weekly Reports*. First, there is the subjective nature of the allocation of disputes to various categories. "Certainly, no two researchers", says Niland, ".....would produce identical tables. Indeed, a single researcher, repeating his effort would not necessarily produce identical tables".59 Second, there is the reliability of the *Weekly Reports* which are acknowledged by the DEIR itself to be incomplete. Notwithstanding these inadequacies, Hay upholds the basic reliability of the total picture obtained from his and Niland’s researches. Hay mistakenly concludes that the figures of the Bureau are more inclusive than his or Niland’s because they also include overtime bans and go-slows.60 This is not the case. Bans are entirely disregarded by ABS unless a stoppage also occurs: "The statistics relate only to

59 Niland, quoted by Hay, *loc.cit.*
60 *Loc.cit.*
disputes involving stoppages of work of ten working days or more at the establishments where the stoppages occurred.  

Two chapters in *Industrial Action*, edited by Stephen Frenkel, contain research based on the *Weekly Reports*. These industry based studies also consider bans as a factor in industrial disputation although no detailed statistical analysis is undertaken.

While the Report is compiled to a formula, a number of inconsistencies occur in the documentation. I mentioned earlier, the possibility that when a large number of disputes occur, only one report may be included to cover the lot. The disputes may be for example industry based, and described as one dispute involving various workers and employers. On other occasions, co-ordinated widespread disputation may be reported on an individual basis. This creates some difficulties in accurately assessing levels of disputation. ABS acknowledge that this is also a problem for them in calculating working days lost. When follow-up procedures are unproductive, guess-work is the final resort.

It is in the area of causes that the main problems arise. Bias in recording and analysing industrial disputation is unavoidable. The subjective nature of these activities make it very difficult to arrive at totally objective findings.

1.3.1. Labour law

The development of labour law in the US and UK has not been without influence in the development of labour law in Australia. Some analysts of the American system look to the legislative history as a basis for discussion. Quaglieri believes that the significant force in the shaping of the labour movement in the US has been the direction of the courts, legislative bodies and the National Labor Relations Board.

According to Wilson, the vast array of law governing industrial relations in the US has not worked consistently to the advantage of either unions or employers, although as he points out, the earliest *National Labor Relations Acts* in the 1930s were clearly designed to help unions, for example, the *Wagner Act*. Given their parallel to some of

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61 ABS, *Explanatory Notes*. I verified this with an officer at the Bureau who confirmed that bans are never included in any statistics.


63 Quaglieri, *op.cit.*, p.12.
the developments in Australian law (for example section 45D of the *Trade Practices Act*), it is worth noting briefly some of the later amendments to the National Labor Relations Act which were clearly designed to weaken the unions. The *Taft-Hartley Act 1947* extended the concept of an unfair labour practice to the unions. Features of the Act were prohibition of secondary boycotts, an 80-day cooling-off period, restriction on picketing and unionising supervisory staff, and section 14(b) which provided for the states to adopt legislation prohibiting the closed shop.64

By 1979, 19 states had availed themselves of section 14(b), all in the South rural midwest with some industries moving South to escape union shops common in the North. Section 14(b) is regarded as an important restraint on the development and position of unions in the US. Attempts to repeal it have been unsuccessful even with a clear Democratic majority in Congress. The *Landrum-Griffin Act 1959* further weaken the positions of unions.65

The State has an historical involvement in industrial matters in the UK where industrial relations has been to some extent controlled by statute since the fourteenth century. The *Ordinance of Labourers* 1349 directed against combinations of workers to raise or alter wages in a system where wages were fixed by justices of the peace. This was continued by the *Statute of Labourers 1351* and consummated by the *Statute of Artifices 1562*. These laws which set maximum, but not minimum rates of pay, remained in force until the eighteenth century. In the meantime further statutes were enacted which reinforced prohibitions on strike action and all associations directed to altering working conditions. Thus, the existence of trade unions was rendered legally impossible while it appears, that there was no general prohibition of employer combinations until the *Combination Acts 1799 and 1800*. It was under the latter of these two statutes that prosecutions became frequent. The *Combination Acts* were repealed in 1824 and 1825 by Acts66 which removed from the purview of the criminal law all combinations to alter wages, hours, quantity or conditions of work or to induce persons to depart from work or to refuse to enter into work.67

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66 5 Geo IV 1824 and 6 Geo IV 1825.
Following a Royal Commission in 1874 which considered the whole doctrine of criminal conspiracy, the *Conspiracy and Protection of Property Act 1875* was passed. Its introduction along with the *Trade Disputes Act 1906* paved the way for collective bargaining, and to a recognition by governments of all political complexions of the role of the trade unions as an "estate of the realm".68

Legal support for collective bargaining continued up to the election of the Thatcher Government in 1979 following which, there has been an erosion of the power and influence of trade unions. While there have been a number of reasons for this, Creighton and Stewart note that it can be attributed to economic factors; deliberate government policy of by-passing unions; and to a series of major legislative changes, the most significant being:69

- the severe curtailment of statutory wage-fixation;70

- the removal of a substantial part of the protection provided by "truck" legislation;71

- the erosion of many of the standards embodied in the so-called "floor of rights" legislation;72

- the narrowing of statutory protection against legal liability for industrial action;73

- greatly increased legal regulation of the internal affairs of trade unions;74

- legislative erosion of union security arrangements, notably the "closed shop";75 and

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69 Ibid., p.21.

70 See *Employment Act 1980* and *Wages Act 1986*.

71 See *Wages Act 1986*.

72 See for example *Unfair Dismissal (Variation of qualifying Period) Order 1985*.


74 See *Trade Union Act 1984*; *Employment Act 1988*.

75 See *Employment Act 1988*.
minimalist legislation to honour European Economic Community obligations.\textsuperscript{76}

As will be seen later in the discussion on the New Right and case studies, many of these innovations have provided the inspiration and models for conservative thinking in Australia. This has been overtly the case. The Thatcher Government's handling of the miners' strike in 1984-1985 and the Wapping dispute in 1985-1986 have been lauded by prominent actors in the industrial relations arena. Legislation passed in Queensland during the SEQEB dispute was acknowledged to be the inspiration of the British line.

English common law and statutory law accompanied European settlement of Australia. Early attempts at combination in Australia were potentially subject to the same range of common law and statutory liabilities as their British counterparts.\textsuperscript{77}

The colonial Master & Servants Acts were passed in 1747, 1765, 1823 and 1828.\textsuperscript{78} These were Acts for the better regulation of servants, labourers and work people and it would seem that the earliest ones were passed without displacing British legislation.\textsuperscript{79} In a desire to keep in touch with developments in Britain, colonial legislatures adopted their own version of the \textit{British Trade Union Act 1871} and the \textit{Conspiracy and Protection of Property Act 1875}. The result was that at the time of federation, Australian unions were in very much the same legal position as their counterparts in the United kingdom.

There are two aspects of the law which are central to this thesis.

\subsection*{1.3.2. Attitudes}

The first aspect and in some ways the most important, is about the attitudes held by actors in the industrial relations community towards law in the context of industrial disputation.

The sheer volume of material on attitudes towards conflict precludes anything but the most cursory exposition of the subject here. Some of the attitudes have already been canvassed in the earlier section on theories of collective bargaining.\textsuperscript{80} What follows


\textsuperscript{77} Creighton & Stewart, \textit{op.cit.}, p.22.

\textsuperscript{78} 20 Geo. 11 c19 1974; 6 Geo. Ill c25 1765; 4 Geo. IV c34 1823; 9 Geo. IV 9, 1828.


\textsuperscript{80} See, for example, earlier discussion on unitary and pluralistic approaches.
is not so much a review of the literature as an overview of some of the attitudes that exist, bearing in mind that all are but subtle variations of two principal themes - that is, industrial conflict is either a 'bad thing' or it is 'not a bad thing'. This is distinct from the civil libertarian notion that the freedom to strike is a good thing. It should be noted also that within these schema lie varying propositions on the nature of the relationship between employers and employees as to whether it is intrinsically and inherently one of conflict. Of course not all theorists and commentators place a value on industrial conflict, (although I would argue that even the most deliberately objective observations are rarely value-free).

Views supporting the first category that industrial conflict is a 'bad thing' are supported from a number of perspectives. A good starting point is the statement made by H B Higgins in *A New Province for Law and Order* in 1915:

> ...the process of conciliation, with arbitration in the background, is substituted for the rude and barbarous processes of strike and lockout. Reason is to displace force; the might of the State is to enforce peace between industrial combatants as well as between other combatants; and all in the interest of the public.

It is apparent, as Dabscheck and Niland observe, that, Higgins' refusal in his role as President of the Commonwealth Court of Conciliation and Arbitration to arbitrate in the face of strike action, meant that he saw a direct connection between enforcement of the arbitration system and the prohibition of strikes and lockouts. This historical view of the role of a conciliation and arbitration system is still prevalent today. As some of the case studies will show, an employer's commitment to the system may reside in the capacity of the system to forestall or control conflict.

Industrial conflict is also regarded by many employers as a bad thing because it is perceived to be an attack on managerial prerogative. N W Chamberlain, writing in 1948 said:

> The determination of the appropriate subjects for collective bargaining, and the definition of the spheres of company policy-formation which are of sole concern to management is one of the burning problems of industrial relations.

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81 I readily acknowledge that there are some, who for mainly ideological reasons argue that industrial conflict is a 'good thing', and that view is different to the attitude that while industrial conflict is 'not a bad thing', it is not a 'good thing' either. Generally, I believe that attitudes fall within the scope of the two mentioned above.

82 29 H.L.R., 1915, 13 at 14.


These words remain relevant today and transgress national boundaries and systems. In Australia, issues of managerial prerogative have been generally regarded in law as being outside the ambit of "industrial matters" as defined in federal and state laws. This position has been eroded in recent years somewhat, most notably by the decision in *Re Cram; Ex parte NSW Colliery Proprietors' Association Ltd.*\(^85\) The High Court's refusal to accept the Association's argument that "managerial decisions stand wholly outside the area of industrial disputes"\(^86\) specifically rejected a dictum to that effect by Barwick C J in *R v Commonwealth Conciliation and Arbitration Commission; Ex parte Melbourne and Metropolitan Tramways Board*\(^87\). The Court's view on the danger of the arbitration tribunals' power "being extended to the regulation and control of business and industries in every part", merits close attention:

That statement probably echoes in some respects what was received doctrine at an earlier time - that it was the prerogative of management to decide how a business enterprise should operate and whom it should employ, without the workforce having any stake in the making of such decisions. In that climate of opinion, disputes about the making of such decisions, despite their impact on working conditions and work to be done, might not necessarily be regarded as industrial matters susceptible of resolution by industrial arbitration. Over the years that climate of opinion has changed quite radically....No doubt our traditional system of industrial conciliation and arbitration has itself contributed to a growing recognition that management and labour have a mutual interest in many aspects of the operation of a business enterprise. Many management decisions once viewed as the sole prerogative of management, are now correctly seen as directly affecting the relationship of employer and employee and constituting an "industrial matter"\(^88\).

It is difficult to estimate the impact that the changes referred to by the High Court have had to the nature of industrial disputation. Certainly, issues which would not previously have been considered "industrial matters" are now considered by industrial tribunals. But, my research indicates that generally, Managerial Policy has been a consistent cause of industrial disputation since the mid-1970s. In this respect, the High Court's decision may only have legitimised an entrenched issue and paved the way for it to be conciliated and arbitrated upon. The decision, I believe, has had greater impact on the philosophies and practices of employers, with different reactions producing different results. For example, some have initiated industrial

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\(^{85}\) (1987) 72 ALR 161; 61 ALJR 401.
\(^{86}\) (1987) 72 ALR 161 at 170; 61 ALJR 401 at 406.
\(^{87}\) (1966) 115 CLR 443 at 451-2.
democracy programs with consultative mechanisms between themselves and unions; others have devolved responsibilities and created more flexible workplaces; and many employers have invested greater financial and human resources into examining better management practices. These would all be regarded as positive developments in avoiding industrial conflict. It would be too simplistic to attribute all these changes to the Cram decision, however, the decision as a factor in the changing industrial climate cannot be ignored. One last employer reaction that needs mentioning is that of, a hardening of views against the system, and thus, against unions and militant union members. Managerial prerogative provided the basis for many of the exponents of New Right philosophy.

As will be discussed later in the thesis, another view of industrial conflict as a 'bad thing' derives from the notion that unions have too much power, and industrial action is a weapon used unfairly against employers to gain demands. Another view, and one that is supported by the law, is that industrial action in some forms, namely strikes, secondary boycotts and in some cases, picketing are illegal. The 1989 Brooking judgement in the pilots' dispute reaffirmed this legal fact.

Mitchell and Rosewarne argue that recent political responses to trade unionism reflect a changed economic and social environment - one that has revived an ideology which challenges the compatibility of strong trade unionism and the free-enterprise economy. They cite the Liberal-National Country Party's industrial relations policy of 1975 which was premised upon the assumption that there are no irreconcilable conflicts between capital and labour at the place of work. The policy defined the processes of industrial relations as possible within the framework of a partnership between employers and employees.89

Views supporting the latter category (that industrial conflict is 'not a bad thing') generally see a strike, or the threat of a strike as part of the bargaining process. For example, collective bargaining "is a process of reaching agreement, and strikes are an integral and frequently necessary part of that process".90 Waters, in his analysis of strikes in Australia approached the subject from the stance that strikes are viewed as located in the structure. His analysis, which he unashamedly remarked was one-eyed, avoided "personality, anarchy, immediacy, intention, uniqueness, meaning and blame".91

90 Labour Relations and the Law, Mathews (Ed.), quoted by E I Sykes, op.cit., p.5.
91 Waters, op.cit., p.xii.
industrial conflict occurs, Waters further asserted that "there is a relatively high commitment among the Australian population to engaging in industrial action".92

Underpinning these views is the notion that industrial conflict is an inevitability. Creighton makes two basic assumptions:

(i) that conflict between the forces of capital and labour is an inevitable incident of the capitalist mode of production; and

(ii) that conflict has the potential seriously to impair the efficient functioning of the system and perhaps even to destroy it.

He maintains therefore that the real objective of devising mechanisms for the regulation and institutionalisation of conflict "is to try to confine the outward and visible signs of the underlying conflict, such as strikes, work-to-rules, picketing and go-slows to 'acceptable' levels and to minimise the disruptive effects of such activity as and when it does arise".93

Mitchell and Rosewarne's approach to the Liberal-National Party Government's Conciliation and Arbitration Amendment Bill 1977, is worth noting. They conclude that there cannot be an eventual harmonisation between capital and labour within the social relations of capitalist production. One of their criticisms of the Bill was that, "if the government's (sic) policy is to reduce the level of industrial conflict, it is inconsistent with this objective to introduce provisions protecting individual rights when it is obvious that those provisions will themselves generate industrial conflict".94

Returning to Cram momentarily, Stewart remarks that "if there is a bombshell in Cram, this is it":

We should also express a caveat at the suggestion made in argument that a dispute between an employer and employee about a matter which lies outside the concept of "industrial matters" as defined can never develop into an industrial dispute. If such a dispute escalates to a point that there is a threatened, impeding or probable dispute involving a withdrawal of


94 R Mitchell & R Rosewarne, op.cit., p.208.
labour it is possible that a dispute about an industrial matter may come into existence, notwithstanding its origins.95

Stewart ponders what can be made of this. Is it merely a reiteration of the dynamic nature of the subject matter of industrial relations, or, in its widest interpretation, is any matter capable of being "industrial" so long as it excites a strike?96

1.3.3. Application

The second aspect is the way in which law is used, by whom, and to what purposes. As the earlier sections in this chapter indicate, the systemic and institutional features of industrial relations in Australia are critical factors in academic analysis. Australia has a history of regulation and arbitration dating back to the nineteenth century. Other factors are also important, notably the evolvement of labour law from the UK, both statutory (dating from the Ordinance of Labourers 1394) and the common law tradition; and developments in labour law in the US. Nevertheless, while the more recent laws (that is, twentieth century) of the UK and US may well have provided the inspiration or model for laws that have been enacted in Australia, it is the practice of law within the context of the Australian system that is the focus of attention here.

My initial approach to this subject was to examine some of the historical information on industrial disputes with particular reference to disputes where the law had been a critical factor. I was particularly interested in cases where picketing had specifically been mentioned as an offence.97 I looked also at disputes where prosecutions had taken place for intimidation under the Commonwealth and State Criminal Law codes. For picketing and arrests, see D Coward on the Great Strike of 1917;98 T Cutler on the Townsville Meatworkers Strike 1918-1919;99 M Dixon on the Northern NSW Miners' Lockout 1929-30;100 M Cribb on the Queensland Railway Strike 1949;101 G Sheldon on the Mt Isa Mines Dispute 1964-1965;102 T

95 (1987) 72 ALR 161 at 171; 61 ALJR 401 at 406.
96 A Stewart, op.cit., p.74.
97 Examples of cases in Australia where picketing is specifically mentioned include Lyons v William (1896) 1 CH.811 at 834; Ward, Lock & Co. v Operative Printers (1906); City of Melbourne v Barry (1922) 31 CLR at 196, 206-7; Ex parte Farrell, re Fongold (1936) 36 SR (NSW), 386 and (1937) ALR 91; Re Van der Lubbe (1949) NSW 309; ans Williams and Anor v Hursey (1959) 103 CLR 30.
99 T Cutler, 'Sunday, Bloody Sunday', Ibid., pp.91, 93-96.
Sheridan on the Steel Strike 1945;103 and P Deery on the Coal Strike 1949;104 On dismissal and reinstatement, see G Osborne on the Broken Hill dispute 1908-1909;105 J Templeton on the Melbourne Police Strike 1923;106 J Hagan on the Sydney Newspaper Strike and Lockout 1944;107 T Sheridan on the Victorian Metal Trades Dispute 1946-1947 and the Steel Strike 1945;108 R Clarke on the EZ Industries Rosebery Mine dispute 1983;109 and G Sheldon on the Mount Isa Mines Dispute.110 These and other histories provided a background to, not only industrial conflict and the law, but also the evolvement of industrial relations. They provided some insight into how disputes are dramatically affected by the political and economic climate which prevails at a given time.

In respect of the application of law during the period of my research, my main legal references were Creighton, Sykes, Stewart, and Sykes and Yerbury.111 As the legal situation in relation to industrial disputes was subject to so much change over this period, additional sources were also necessary. In addition, legal theorists and commentators on law were used112 Trade union and ACTU publications were consulted along with published and unpublished material from employer organisations. Commentaries from the The Australian Industrial Law Review and the various statutes were consulted, particularly in the cases of those disputes which occurred during the time when the thesis was being written. When Justice Brooking delivered his ruling in the Victorian Supreme Court in the pilots' dispute I obtained the full judgement. In addition a number of articles were used, however, one of the problems I encountered was that with such recent disputes there was a scarcity of literature on the subjects in question. There is in any case only a limited amount of research undertaken in Australia on industrial conflict. R Mitchell's survey of

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103 T Sheridan, Mindful Militants, Melbourne, 1975, p.89.
labour law research revealed that for the survey period 1975-1985, only 5.4 per cent of articles in industrial relations journals were concerned with industrial conflict. Articles on structures and systems predominated accounting for 71.3 per cent.\textsuperscript{113} For this reason, personal interviews, newspapers and to some extent the electronic media were principal sources for researching the case studies. The same was true for discussion of the New Right which, although having an ideological presence prior to the Accord period, did not become a force until the mid 1980s.

Given the number of analytical frameworks that exist for the analysis of industrial relations, and just a few of these were covered in the previous chapter, a further model for analysis might appear superfluous.

It appears that most theorists approach conflict from within parameters set by frameworks that have been constructed for the analysis of either industrial relations in general or industrial relations systems in particular. Although these have great value they ultimately lack specificity in some key areas which are characteristic of conflict situations. The framework I have developed seeks to incorporate those aspects from other models which are intrinsic to all studies in industrial relations, while also providing a structure for examining industrial conflict. Set out below are five key components.

Theoretical Framework for the Analysis of Industrial Disputes

(1) Background

(2) The climate
   - political
   - industrial

(3) The legal environment
   - industrial relations law
   - other law, ie civil, criminal and common law

(4) Proximate parties
   - employers
   - unions
   - rank and file

(5) Contingent parties
   - Executive Government
   - industrial tribunals
   - peak union and employer bodies

(6) Dispute resolution
   - by determination or decision
   - by capitulation
   - by agreement
2.1.1. Background

This first element in the framework is orientated towards the analysis of individual disputes although it is adaptable for general analysis. Every dispute, particularly major disputes, will have a history. Conflict does not erupt out of a vacuum. Even in instances which appear to be spontaneous, there will be a history; maybe of only five minutes, but there is always a catalyst to direct action.

It may be that there has been a period of frustration on the part of one or both parties. This frustration can take many forms. For example:

- a long-standing inability to resolve differences through regular dispute settling procedures within the workplace;
- a sense of 'always losing' at the hands of the industrial tribunals;
- prolonged disagreement over particular issues upon which the parties have unalterable views; or
- an inability on the part of either party to understand or accommodate opposing views.

Needless to say, the background to a dispute will be a critical factor in its conduct and ultimate resolution. In instances where, for example, there is a high degree of personal animosity between the protagonists, the road to dispute resolution may be hindered by factors which have more to do with their relationship than with the issue under dispute. Alternatively, where there is a relationship which is based on mutual respect and an ability to see the other side, the road to agreement may be shorter and less encumbered by hostility and other extraneous factors. Hence it is not merely the fact of the dialogue that is important, but its quality.

Another historical feature of industrial disputation which belies analysis on systemic or statistical grounds is the 'straw that broke the camel's back' syndrome. This will most often occur following a period of frustration over one or a number of issues, when a dispute occurs over an issue which otherwise would not necessarily have provoked conflict. To all intents and purposes though, the reported issue is the one which will be listed as the cause in the Weekly Report. That is not to say that the other issues which precipitated the conflict will not arise in a log of claims and provide the focus for negotiation. Disputes which occur for this reason can begin in a variety of ways. Some examples are:

- the rank and file or union leaders may call a precipitous strike over an issue
(usually working conditions) which has arisen in the workplace and is outside the immediate capacity of the employer to accommodate;

- the employer following a period of unsuccessful negotiations with the union(s) over, for example, work practices will impose a new working condition which he/she knows will be unacceptable to the union and initiate a dispute, thereby bringing the issue to the industrial tribunal for conciliation and possible determination.

Disputes of this nature are characterised by long periods of discontent on the side of at least one of the parties. The catalyst issue may be quite minor and even deliberately mischievous.

Another historical factor which figures in some major disputes, is when there is a history of success; an historical imbalance in bargaining power. This situation emerged during the pilots' dispute and the SEQEB dispute. Both unions involved had a long history of winning disputes which had created the expectation of continuing to win, especially by using the same tactics. It is particularly important to identify when this has been the case because it is likely to seriously affect the conduct of the dispute, for two reasons:

(i) the party with the winning history may not recognise signs which indicate that their demands will not be met and negotiations should be entered into at a different level; for example, striking workers may miss the point at which they should return to work with minimal damage to themselves; and

(ii) the party with the losing history, may be more determined and recalcitrant in pursuing their ends and refuse to compromise or enter into genuine negotiations.

There are also disputes, where, although direct action has been taken, there is a history of successful conciliation and arbitration within the industrial relations system and few, if any of the above-mentioned characteristics are evident.

Whatever the situation, and I have mentioned only a few, traditional methods of industrial relations analysis frequently ignore the relevance of the background to disputation. As the discussion and case studies later in this thesis will reveal, the key to understanding any of these disputes lies in an understanding of their background.

Although this element has an individual orientation, the provision of general
background material on any period is of course, useful. Industrial disputation in a particular state or industry, for example, may have a history that explains a surge of activity. There are periods when unions or employers appear more successful in obtaining their demands than others. There are also events which explain widespread industrial action, an example of which would be the resurgence of strike activity associated with the _de facto_ removal of the penal provisions in the arbitration system in 1969.¹

2.1.2. The climate

Industrial conflict has many shades. Industry sectors may behave quite differently according to external political and economic factors. The mining industry unions for example may believe that their position is quite strong due to Australia's balance of payments situation. Consequently, there may be a confidence in pressing demands which is lacking in other industry sectors at that time. All conflict occurs within prevailing political and industrial climates.

The _political climate_ includes the full spectrum of social life, including the economic. For the purpose of analysing industrial conflict it will be characterised by a number of factors, including:

- the political colour of the government in power, both federal and state;
- the government's relationships with the peak trade union and employer bodies;
- the government's ideology and policy on industrial relations, and in particular industrial conflict;
- economic variables such as unemployment and inflation;
- community attitudes towards, and tolerance of, industrial conflict; and
- the social welfare apparatus.

All these factors will vary from one period of time to another and will affect, not only the attitudes of the parties in dispute, but also the decisions that they make, the type of actions they will undertake, and the way they will respond to actions made by other parties in the dispute.

The research period covered in this thesis extends from the Whitlam Labor

¹ Plowman et al, _op.cit_, p.50.
Government in 1973 to the Hawke Labor Government in 1979; and, between 1975 and early 1983, the Fraser Liberal/National Party Government. All three governments had quite different political complexions, notwithstanding that the Whitlam and Hawke Governments were both Labor. Whitlam's Government was reformist, Fraser's conservative and Hawke's consensual. Prices and incomes policies changed dramatically over the period for ideological and economic reasons. The government's relationships with the peak trade union and employer bodies were all different, with the Accord reached between the Labor Party and the ACTU in 1983 providing one of the pivotal points of departure. The industrial relations policies of all three governments have been different and, in the case of the Fraser Government, diametrically opposed to those of Whitlam and Hawke. Unemployment and inflation have 'waxed and waned' over the period and have been responded to in different ways by government, unions and employers. Policies on tariffs and trade have changed, resulting in sectoral change.

Community attitudes are perhaps the most difficult to assess, particularly as very little in the way of longitudinal research exists. During the course of individual disputes, surveys are often conducted to gauge reactions from the community, but these serve little analytical purpose, especially in the wider context. This is an area which calls for greater methodological research and analysis.

The ingredients that go to making up the political climate are too numerous to relate, and they change from period to period in their relative importance. In the discussion and case studies, the emergence of the New Right and its philosophy will be discussed within this context.

The industrial climate. Factors which characterise the industrial relations climate are:

- the industrial relations policies of executive government; some factors which figure in the current political climate are:
  - industry reform and restructuring;
  - the national training reform agenda;
  - the structural efficiency principle and productivity bargaining;

2 I note that there were a number of questions asked in the National Social Science Surveys on attitudes to trade unions, trade union membership and a variety of related subjects. As far as I am aware this data has not been published as yet.
enterprise bargaining; and

industry-based unionism.

The drive by the present Government to make Australia a more efficient and competitive player in international markets has wrought many changes in the workplace. Industry reform and rationalisation have been supported across the industrial spectrum, but not without cost. As the data indicates, Industrial conflict over the above issues has been largely concerned with job security, retrenchment packages and redundancy pay. During this period restrictive work practices have provided a focus for workplace reform. Another Government in another period would undoubtedly be characterised differently. Such differences may include:

- the relationship between executive government and peak union and employer bodies, particularly in respect of:
  - their commitment to the industrial relations system;
  - prices and incomes policies; and
  - political and ideological differences.

The agreement between the Hawke Government and the ACTU (representing other peak labour bodies such as Trades and Labour Councils) to the Accord embodies their commitment to the industrial relations system. The ACTU is viewed in many quarters as a policy-making arm of Government; though some allege the reverse! Thus far, most peak employer bodies have tacitly supported the Accord and maintained their commitment to the industrial relations system. Given this tacit support of an incomes policy which acts as a restraint on wages, the employer bodies have a vested interest in maintaining their commitment. Historically, however, the relationship between these organisations has been at times fragile. The nexus between a Labor Government and the ACTU may be contrasted with that between a Liberal/National Party Government and the Confederation of Australian Industry. At other times, political and ideological differences have created confrontation between the parties which have tested the forebearance of industrial tribunals.

- the relationship between the peak trade union and employer bodies and their constituents, especially:
  - within the constraints imposed under corporatist models;
  - where interests and loyalties diverge; and
where political interests and affiliations come into conflict.

The success of the Accord rests on the ability of the ACTU to control its constituent unions, and, on the ability of those unions to satisfy their rank and file that their interests are being protected. Peak employer bodies are faced with a similar problem in that not all employers are convinced that the industrial relations system best serves their interests. This is evidenced by support, particularly from small business, for the Opposition Liberal/National Party’s policies which are geared towards deregulation. The peak trade union and employer bodies must maintain the confidence of their constituents at a time when political interests and affiliations are sometimes confused. (There was a joke going around for a while that Hawke was the best conservative prime minister there has been.)

• the pattern of industrial disputation in the workforce.

This will encompass a number of areas. The major causes of disputation will reflect to a large extent the principal concerns in the workplace; the level of disputation will provide an indication of the degree of conflict that exists in overt expressions of direct action; and the forms of disputation will show if there are any trends towards a favoured type of collective action in the workplace at a given time. These will vary from state to state and from industry to industry so that Australia wide trends may be distinguished from more discrete trends. Trends identified in data analysis will also provide some indication of the attitudes of the proximate parties to the political agenda. For example, an increase in job security issues as a proportion of industrial conflict may be viewed not only as a concern over job losses, but also as an industrial response to microeconomic reform.

Other factors which feature as part of the industrial relations climate include the industrial relations system; labour law; the influence of ideological forces from within and outside the industrial relations arena, (for example, the New Right); and the industrial relations policies of opposition parties (alternative governments).

2.1.3. The legal environment

Analysis of the legal environment will reflect attitudes to law, its application and its role in the political and industrial climate. These will be determinants of how labour law will be used in a given area of dispute analysis and provide contrasts with its use in other periods.

Industrial relations law consists of the body of law that exists for the specific
purpose of regulating labour, including the various federal and state Industrial Relations Acts for the conciliation and arbitration of industrial disputes, essential services legislation and other acts which are specific to employment conditions.

Other law consists of any law whether civil, criminal or common law which has provisions which may be used in the industrial relations arena, for example, section 45D of the Trade Practices Act 1977 which sets out restrictions on secondary boycotts; and provisions within the various federal and state Crimes Acts.

2.1.4. Proximate parties

In their modified version of the Kochan et al model, Niland and Spooner have devised a framework which allocates the players in industrial relations into the activities of four tiers. Their analysis was concerned with pressures for reform toward greater flexibility in Australia's industrial relations. The top tier consisted of peak employer and union bodies, government and central government authorities; the upper middle tier consisted of corporate and union leadership; the lower middle tier consisted of management and union officials; and the bottom tier concerned the workplace and its relationships.

Niland and Spooner's model provides a realistic framework for analysing the actors in the industrial relations arena which is cognisant of the system and other factors. For my purposes, I have further adapted the model for analysing industrial conflict into two sets of parties.

As the instigators of industrial conflict, it will be the proximate parties who determine what the causes are and why they cannot be resolved without conflict. The proximate parties are those for whom industrial conflict has the most direct meaning. They are the parties who have initial involvement in industrial conflict and will bear the benefits or otherwise of the dispute's denouement:

- the employers;
- the unions as corporate bodies; and
- the rank and file.

2.1.5. The contingent parties

The contingent parties are those who have a secondary interest and who may or may

4 Loc.cit.
not be drawn into a dispute:

- executive government;
- the industrial tribunals; and
- peak union and employer bodies.

In the case of the industrial tribunals, their involvement is regulated by law and prescribed. The interest and involvement of government and peak union and employer bodies in conflict may be for reasons outside the concerns of the workplace in question, and will be strongly influenced by the political and industrial climate. Matters of corporate policy, intra-organisational relationships and ideology are some of the reasons why the contingent parties become involved. Their involvement may also be at the request of the proximate parties - in the case of the industrial tribunals to conciliate and arbitrate, and in the case of the union and employer peak bodies to lend support and provide intermediary roles. It is not unusual, however, for the parties to be at 'loggerheads'. For example, the ACTU is reluctant to lend support to unions which seek pay rises outside the wage fixing principles set down in the Accord; likewise, the Confederation of Australian Industry frowns upon agreements reached between individual employers and unions for the same reason. One of the aspects considered in the context of the political climate is the policy of members of the New Right towards deregulation of the industrial relations system.

Once the contingent parties become involved in disputation (in the case of executive government and the peak union and employer bodies), their interests and relationships may assume prominence over the original causes. This is also the case for different reasons for the industrial tribunals whose interests are reflected chiefly in the law they administer and to some extent government policy. Like all other institutions, their members have an interest in their preservation and, in demonstrating their 'success' to those on whom this depends, who may include governments, some or all of the parties and electoral opinion more generally.

2.1.6. Dispute resolution

Broadly speaking, the resolution of industrial conflict will come within three categories:

(i) by determination or decision, whereby a matter is decided by an industrial tribunal or judicial body;

(ii) by capitulation, whereby a party to the dispute withdraws from their
position; and

(iii) by agreement, whereby negotiations between parties arrive at a resolution which is acceptable to the disputing parties.

2.1.7. Conclusion

As will be evident from the outline, the components in the framework overlap. Clearly, the legal environment and the relationships between the proximate and contingent parties will be major factors and determinants in the political and industrial climate. The importance of the background in the analysis of either individual acts or periods of industrial conflict is difficult to estimate. Where for example the data analysis reveals a change in the trends (be it levels, causes or forms) of industrial disputation, some explanation will be provided by the situation leading into the change. Of course trends in the level and forms of industrial disputation are only identifiable against an historical background of comparable data. The same is true for identifying other changes in the pattern of industrial conflict. The use of the common law, for example, only becomes a new trend if it is a departure from previous practice.

The relationships that exist between the proximate and contingent parties are key elements in industrial conflict in Australia. Their points of departure in policy and ideology will be critical to the dominant and emerging patterns in industrial relations. While there may be many areas in which disagreement between parties is tolerated and managed, situations in which this does not apply are of vital importance. One example which is illustrated in the case studies in Chapters Ten, Eleven and Twelve, is the commitment of the various actors in the arena to the industrial relations system.

By drawing all of these components into my analysis, the patterns of industrial conflict in Australia become more evident. They are discernible in the statistical data which is presented on levels, causes and forms of recorded industrial disputation; in the political and industrial climate which has undergone significant changes during the research period; in the relationship of the parties both to each other and in the case of the contingent parties, their constituents.

Finally, all disputation comes to an end at some stage. All the parties may not be happy. There may be festering issues which will erupt again at a later time and with renewed vigour and determination. But how the dispute ends will to a large extent be determined by its character and conduct. These are discernible in the first five components of this framework.
Chapter Three

THE METHODOLOGY

As two distinct areas of research are covered in this thesis, it has entailed the accumulation of data by the use of two quite different methodologies. The first section, which deals with statistical data on the forms and causes of industrial disputation, was taken from the *Weekly Reports* compiled by DEIR. The first part of this chapter explains the basis on which data was selected for inclusion in the study, the criteria for categorisations and definitions.

The second section relates to the legal and political responses to industrial disputation, including its prevention. Research was conducted through books, articles, newspapers and personal interviews.

2.1. THE DATA

2.1.1. Aims

The aim of the study has been to identify trends in the causes of industrial disputes as a prerequisite to analysing the various attitudes and responses to industrial conflict. For these purposes the seven categories of 'Causes' provided by ABS figures (Wages; Hours of work; Managerial Policy; Physical working conditions; Trade unionism; Other) proved inadequate, being of a too general nature and therefore lacking the detail required. The survey covers the years 1973-1987, representing an equal number in years of Labor and non-Labor governments. Details on some nine thousand industrial disputes over the survey period were recorded.

2.1.2. Methodology

The methodology differed from the ABS compilation in two ways, although the source material (the Weekly Reports) was the same. The first difference arose out of accepted data. Where ABS includes only stoppages (those involving the loss of ten working days or more), my survey included disputes where bans were a part or all of the action taken. The second difference involved the criterion for identifying whether a dispute had actually occurred. A stoppage lasting ten working days or more is automatically included in ABS figures. This is the case even where there is no dispute involved. For example, an unauthorised stop work meeting lasting two hours and attended by forty people would
be included by ABS on the basis that the stoppage had resulted in ten working days lost. The question of whether there is a dispute between an employer and employees is not a criterion for ABS inclusion. Workers who are uninvolved but have been stood down at the establishments where the stoppage occurred are also included by ABS. For ABS the fact of a stoppage, numbers involved and duration are the critical factors. Because my interest was more inclined towards the issues, my survey included occasions where stoppages have resulted in a loss of one day's work (or one full shift) regardless of the numbers of employees involved; and also the imposition of bans. It does not include stop work meetings of short duration unless they resulted in a strike or bans being applied. To make the task practicable, I have examined only every eighth week.

By adopting this method, a more comprehensive picture of the issues surrounding industrial disputation emerges. Instead of the seven categories used by ABS, I have used eighteen. They are: Pay; Allowances; Superannuation; Conditions; Hours; Health and Safety; Job Maintenance; Manning/Staffing; Contract Labour; Union; Demarcation; Managerial Policy; Classifications; Dismissals; Work Practices; Political/Social/Environmental; Log of Claims/Awards; and Other.

Another difference in compilation of the data was the allowance that I made for repetition. Where ABS would include a strike as a once only figure and derive from that details of working days lost and duration, my survey included a dispute on each occasion that it was mentioned. As my study looked at one week in eight, a dispute which was included more than once would have to be at least eight weeks in duration, and involve continued activity (whether a strike, lockout or bans). It is most unusual for a strike to be of eight weeks duration. Once again, bans are likely to be included more than once, these, being the activity which will most likely be repeated from one report to the other.

2.1.3. Limitations

My research technique has precluded the inclusion of dispute duration in the survey, although commencement date is recorded. Where the dispute ended during the week of the report, both dates are included. While this has no consequence in determining the types and causes of industrial disputes, it places some limitations on the types of analysis that can be achieved. It is usual for statistics on causes to be compared with statistics on working days lost. For example, the "major cause of disputes which ended in 1985 were managerial policy and wages which accounted for 24.6 per cent and 23 per cent

1There appears to be some divergence of opinion here between ABS and DEIR. Authorised stoppages, i.e. paid stoppages are not included in ABS statistics whereas the department's attitude (according to an officer I spoke to), is that a stoppage whether authorised or unauthorised is regarded as a dispute.
respectively of total working days lost".²

Working days lost are not counted at all in the survey for three reasons: First, the number of workers involved is not always shown on the Weekly Report. When this occurs the Bureau sends out follow-up forms to state branches, and if this is unsuccessful, to the unions and employers involved.³ While the response is not 100 per cent, the Bureau nevertheless has the resources to compensate for some of the inadequacies of the Weekly Report. Further, statistics on the number of workers involved would be of little use if they could not be cross-referenced to days lost. Second, because the survey is concerned with why industrial disputes occur, bans are included, and these cannot be measured in terms of working days lost. Third, while there is a variation in data selection between my survey and ABS, the ABS statistics on working days lost are accurate enough to serve as a guide to the numbers involved. Chapman and Gruen have noted that the working days lost per employee from strike activity diminished considerably after the beginning of 1983, from .605 to .235 per annum.⁴ A graph showing working days lost by industry between 1973-1987 is at Appendix 1.

The absence of working days lost as a variable in the data means that all disputes have an equal value each time they are counted. This does present some problems. For example, a strike involving a large number of miners over a pay issue would be equal to a strike involving a small metal workshop over conditions as an issue. The results therefore cannot reflect the intensity of action taken over various issues in terms of time or productivity losses. This problem is partially countered by being able to cross-reference by industry, state or union those issues which require analysis either because they are prominent or represent a change in pattern. It is further countered by comparison with ABS statistics on working days lost and industry statistics.

As noted in the Introduction (see above, p.5), data consists of disputes recorded in the Weekly Reports so does not cover direct action by individuals or instances of concerted action in the form of go-slows or organised absenteeism.

2.1.4. Definitions

Perhaps the logical starting point is the International Labour Organisation (ILO) definition of industrial dispute as a "temporary stoppage of work wilfully effected by a group of workers or by one or more employers with a view to enforcing a demand.....".

²ABS, Industrial Disputes, Australia, 1985, Catalogue No. 6322.0, Canberra, September, 1986.
³Interview with ABS officer.
⁴Chapman and Gruen, op.cit., p.18.
For the purpose of my analysis, this definition is inadequate as it fails to acknowledge the range of activities that industrial disputation embraces.

In his discussion of strikes in Europe and the United States, K Walsh argues against defining the term crudely for the sake of clarity. In his view, dispute could arise because of friction between two trade unions and in a situation where management has only a peripheral involvement; or from some wider cause beyond the employer-employee relationship such as a political protest issue. 5

Wallace Rubin & Smith's definition of working class militancy encompasses a broad range of activities from individual acts of insubordination and sabotage to work slowdowns and mass violence against employers or their property. They note however, that strike frequency measures "serve as barometers of working-class militancy since they display reasonable validity as indices of the ebb and flow of conflict in the industrial sphere and are presumed to approximate movements in other, less quantifiable expressions of militancy".6

While agreeing with the notion that industrial disputation includes a broad range of activities, my research indicates that strike activity does not necessarily serve as a barometer of conflict, and in fact, quite the reverse is true, at least part of the time. This would appear to be true for places other than Australia.

Walsh discusses research in the United Kindom which has provided some idea of interchangeability between different forms of industrial action. The results of two separate studies undertaken between 1977-78 and 1972-79 indicate that the relationship between strikes and other forms of industrial action, including bans, is complementary rather than one of substitutability (sic). Walsh believes there is a problem with these conclusions because, though other forms of action are acknowledged, apart from the occasional workplace survey, only a small number of those types of action are systematically measured. This is "partly a reflection of the difficulties of, firstly, defining and, secondly, measuring such apparently obscure forms of action as a work-to-rule for example". 7 He concludes therefore that of the most common types of action taken, only three are measured regularly - strikes, lockouts and absenteeism.

7 Walsh, *op.cit.*, pp.3-4.
At least for definition purposes, an industrial dispute can be described in much the same way whether it is in the United Kingdom, the United States, Australia or elsewhere. This may be the case only as far as description is concerned. In Australia, for example, where industrial relations is operated through a centralised bargaining system, the point at which an industrial dispute reaches one of the industrial tribunals may call for a more rigid definition, given that industrial dispute has statutory definitions.

Described as the most dramatic and most effective form of industrial action, a strike is a "temporary stoppage of work by a group of employees in order to express a grievance or enforce a demand". It has five key elements: (i) a stoppage of work; (ii) by employees; (iii) acting in concert; (iv) with the purpose of promoting some perceived interest of the strikers, and (v) which is intended to be temporary in character. Creighton et al distinguish between two types of strikes: The first and most usual is when "the 'interests' sought to be protected relate to the terms and conditions of employment of the strikers themselves, or of fellow workers employed by the same, or a different employer". The other, less frequent variety occur when the 'interests' relate to broader political, social or environmental issues. Industrial disputes which satisfied the above definition were placed in the 'Strike' column for the purposes of the survey.

Bans are difficult to quantify or even define. For the most part, a ban or limitation is applied to a work function, while elsewhere in the workplace normal procedures are followed. This type, the most common and straightforward, were consigned to the 'Bans' column. Others were not so easy. Bans for example which were placed on a function (or piece of machinery) that had the effect of stopping production altogether, and as a consequence closing the workplace, were consigned to the 'Strikes' column. Those 'Black bans' which had the same effect, were also counted as strikes. In other words, when a ban was imposed on a workplace that would normally be operative, but was rendered inoperative because of the ban, then, for the purposes of my survey, it was a strike.

Another variety was the environmental or 'Green bans'. Unlike other forms of direct action, the closure of the workplace or project is, in itself, the objective of the ban. Generally speaking, environmental bans are aimed at preserving something, such as an historic building or an area where development would be hazardous to the ecosystem. In this sense they differ from other forms of industrial action because they are temporary to the extent that they are only lifted once their objective has been permanently achieved.

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9 Loc.cit.
I have distinguished these types of environmental bans according to whether the ban affected a project that was already in existence, with infrastructure in place, including employees. If that was the case and the project ceased altogether as a result of the ban, it was placed in the 'Strikes' column. When environmental bans were placed prior to the beginning of a project, with no infrastructure in place, then it was placed in the 'Bans' column.

Distinctions also need to be made for boycotts. This was also necessary for later in the thesis, when legal prohibitions in relation to boycotts was considered. The first type is a primary boycott, and normally entails the picketing of a workplace by employees of that same workplace. Picketing is defined as "the attendance near the place of work with the object of disseminating information regarding an industrial dispute or persuading employees who desire to work or to remain working not to undertake work or to cease from working as the case may be, or to induce people not to have commercial or other dealings with the offending employer".10 Clearly, a number of situations are covered by the term 'boycott'. My criterion for allocation was whether those who were in attendance at a boycott or picket would normally be working in the target workplace. If so, the dispute was entered into the 'Strikes' column.

The second type is a secondary boycott which is defined as "a combination by which certain persons in combination seeks to induce third persons not to deal with a person who is the real person with whom the economic quarrel exists and whom the boycotters intend to injure unless he agrees to grant their demands." 11 I have applied the same criterion here as elsewhere; that is, if the target workplace was closed as a result of the boycott it was allocated to the 'Strikes' column. Under normal circumstances however, this was not the case. Usually secondary boycotts occur when the normal workforce continues to work while pressure from outside interests is exerted to persuade them otherwise. In this case, the dispute is consigned to the 'Bans' column. It must also be pointed out that while secondary boycotts appeared infrequently in the Weekly Reports, each one had to be considered and assessed solely on the available information. Statistically, they were insignificant.

2.1.5. Recording Disputes.

As I have outlined earlier, the DEIR obtains its information from a number of sources and it is stating the obvious to say that a report from an employer may vary markedly from that of a union. So while there may not be a departmental bias at the accumulation


stage of the process (although a choice by the department as to which information to record might indicate otherwise), there may be a quite distinct bias in the material supplied.

It is not unusual to find in the *Weekly Report* a stated cause in the heading with details below that are contradictory. The researcher then has the problem of deciding which information to use. Even when the material is not contradictory, deliberate misinformation may be given. An officer in the department made the point that it is not unusual for the causes given by an employer or union to be knowingly wrong. He cited the example of a long-running dispute over various stated demands made to an employer, which was actually about a power struggle within the union. Another more typical case is that, after a period of dissatisfaction and unrest over a number of issues, industrial action might be taken over an issue that is merely the culmination of a great many things. In cases where 'a straw has broken the camel's back', the stated cause will not reflect the real nature of the problems.

Although the *Weekly Reports* are a rather clinical documentation of industrial disputes, occasional slips are made which could possibly be attributed to bias on the part of the recorder. An example in one of the reports I worked on was the stated cause of a dispute as a "petty grievance". The bias need not be deliberate; rather it is likely to be quite unconscious. Also the staff at the various offices where the data is collected vary considerably in expertise and experience.

2.1.6. The Categories

Trying to place disputes into categories is a very subjective process. For example a Manning dispute may be considered a Safety or Job Maintenance issue by unions, and a Restrictive Work Practices issue by employers. ABS designates Manning as Managerial Policy. A number of entries in the *Weekly Reports* have Log of Claims as a stated cause. These are allocated to the Wages category by ABS unless the Report has specifically stated that another cause is considered more important. Because ABS only lists one cause per dispute, this means that the statistics on wages are higher percentage wise than they are in reality. It also involves a value judgement on the part of ABS in regard to the automatic selection of wages as the most important claim. My research reveals this to be a misleading assumption.

Even with a larger number of categories, placement of a particular dispute into one, was sometimes difficult. The cause may either have fitted into more than one or did not properly fit into any. In the former case, which thankfully did not occur with great frequency, I placed it into the one I thought most likely to be correct. This occasionally
involved an unavoidable value judgement on my part. When the latter occurred, the Other category was used. Space does not permit a full expose of all the causes of disputes over a fourteen-year period, but the following provides some indication by actual examples of what each category comprises.

**Pay**: Disputes where the cause was stated as: pay, award rates or bonuses. Basically, Pay encompassed anything that could be regarded as part of a normal pay entitlement.

**Allowances**: Included dirt money, industry allowance, unavoidable risks allowance, callout payments, overtime/shift allowance, redundancy package, site allowance, injury insurance and penalty rates. This category generally contained a number of causes which would normally be included in the Pay category, but have been kept separate so that disputes which were purely over Pay could be isolated.

**Superannuation**: Self-explanatory

**Conditions**: Any issue which affected working conditions was included except for Health and Safety. Amenities, relocation of work area, invasion of privacy, waiting time, work pressure, and call backs are just a few of the causes of disputes in this category.

**Hours**: Disputes where Hours of work was the cause, fall into this category. It should be noted that not all disputes over Hours were concerned with reduced working hours; sometimes the reverse was the case.

**Health and Safety**: All disputes where Health or Safety issues were involved, including negotiations over Occupational Health and Safety.

**Job Maintenance**: Those disputes which were primarily concerned with job losses whether on an individual, collective or industry basis. For example, redundancy (not negotiations for payments but protests), retrenchments, new technology, manning/staffing levels (but not disputes over Manning).

**Manning**: Disputes over Manning were generally concerned with an employer's decision to reduce the manpower on, for example a work-gang or the operation of a piece of machinery. When information supplied indicated that the dispute over Manning was concerned with a reduction in safety, then it was included in the Health and Safety category. Some employers regard Manning as a Work Practice issue.

**Contract Labour**: Where the introduction of labour on a contract basis was involved, or independent contractors to take the place of the regular workforce, disputes were placed in this category.
Union: This category contained any issues which were specifically related to unions, such as membership, payment for delegates, payment during industrial disputes, or support actions in solidarity with other unions. In the last instance, the unions who were being supported may well be in dispute about any of the other issues. Included also in this category were disputes over staff labour which usually involved the use of white collar workers to perform the duties of striking unionists. Internecine disputes involving union members/officials are also included here.

Demarcation: Disputes between unions, usually on a common work-site.

Managerial Policy: A wide variety of issues are included in Managerial Policy. As a rule, I have assigned all issues which involved decisions by management which did not fall into one of the other categories. Some examples are, rostering arrangements, authority to give orders, overtime (not entitlements), use of imported materials, protest at standdowns, management attitudes and changes to organisational and operational arrangements. Whether some of the issues were included in Managerial Policy or elsewhere would often depend on the circumstances of the dispute.

Classifications: I included this category on the advice of a First Assistant Secretary of DEIR. He suggested that it would increase in importance over the next few years. Issues such as re-classification of job, career structure and seniority were relevant.

Dismissals: Issues in this category were quite distinct from Job Maintenance. Disputes over Dismissals usually involved a decision taken by management to dismiss a worker for some aspect of his/her behaviour. Not included are dismissals which occurred due to a reduction in productivity (they would be regarded as retrenchments).

Work Practices: Not a popular term with trade unions, Work Practices would normally be quoted as the cause of a dispute from an employer's report. I have only included those disputes which were so designated in the Weekly Report.

Political: This category contained not only Political, but Social and Environmental issues as well. Some of the causes were Employer support for BLF de-registration, Green bans, protest at Trade Practices legislation (S 45D), support for country students' accommodation and privatisation of health care.

Log of Claims: If Log of Claims was stated as the cause of a dispute and the issues of concern were not itemised, it would be included in this category. The same applied for Award matters.

Other: This was a 'last resort' category for causes which could not be placed in any of
the above; for example, jurisdiction. The most frequent use of this category was for disputes which did not contain enough information, such as 'various unspecified claims'.

2.1.7. The Forms

Research into industrial disputes generally falls within the ambit of those definitions which enable the utilisation of ABS statistics or similar data. That is, the wider interpretation given, for example in the Industrial Relations Act 1988 is ignored in favour of particularities. It is not that the existence of other forms of action are not acknowledged. Plowman et al for example, state: "Though strikes are only one manifestation of industrial conflict their amenability to measurement and their public interest make them the most used index of industrial conflict".\textsuperscript{12} Analysis therefore, appears to be limited to what is measurable. Strikes are measurable in terms of working days lost and duration, while the extent and effects of bans are considerably more difficult.

Before discussing bans further in this regard, it is worth looking at the measurability of strikes as a means of determining the effects of industrial disputation. Loss of productivity, giving rise to loss of contracts, dimunition of profits, lack of competitiveness and stand downs are some of the frequently stated consequences of strike action. There is no argument here at the general level that this is often the case. It is the general nature of the argument itself which is at issue. For example, working days lost can at times be quite easily made up through increased overtime or additional shifts after the strike has ended. Sometimes it is the case that only a section of the workforce takes strike action and the work is re-arranged so that a minimal impact on production levels occurs. Some manufacturers use the time for overdue maintenance work. The above instances are particular to strikes of short duration and of course depend on the industry involved as to whether such management action will work. The point is, loss of productivity is not \textit{per se} an automatic outcome; it is contingent upon a number of factors.

Strike statistics do not measure loss of productivity. There is however an underlying assumption that loss of productivity will be the result of strike action. When we look at strike statistics, therefore, we are assuming that working days lost are an indication or prediction of the effects of disputation in terms of loss of production. The obvious conclusion to be drawn here is that fewer strikes will result in increased productivity. Is this the case in reality? Turner et al cite the case of a major motor company which

\textsuperscript{12} Plowman et al, op.cit., p.45.
dismissed a number of shop stewards as 'trouble makers'. The result was a temporary fall in strike figures, but absenteeism, accidents and turnover all rose sharply.\textsuperscript{13} The economic situation and levels of unemployment may produce a change in preferred forms of industrial action. An industry which normally has a high labour turnover rate, for example, may be subject to an increase in strikes where unemployment has induced disgruntled employees to remain in uncongenial jobs.\textsuperscript{14} The economic situation may also influence the type of organised conflict that is used. An increase in the use of "cut price" industrial action such as overtime bans, working to rule or going slow may be a reflection of the economic situation "in which workers have been stimulated to growing self-assertiveness, but because of mortgage and HP commitments are perhaps less willing than previously to lose earnings through strike action".\textsuperscript{15} A study into the American rubber industry, where severe disciplinary penalties for unofficial strikes were introduced, found that workers turned from stoppages to go-slows with considerable success: "management has found go-slows more difficult to combat...Moreover, they do not carry the opprobium of walkouts in the eyes of the public".\textsuperscript{16} Other American studies have drawn the same conclusions. Hyman has this to say about the British experience:\textsuperscript{17}

\begin{quote}
The predominant view of those British managers who have had experience of both is also that other sanctions are more effective than strikes. It may be predicted that if anti-strike legislation in Britain does reduce the number of stoppages, this is likely to accelerate the growth of alternative forms of collective action...the very structure of work in industry generates conflict...the strike is only its most manifest form of expression.
\end{quote}

The situation in Australia is not markedly different to overseas experience. Creighton \textit{et al} in reference to the Australian context, nominate as alternatives to strike action partial work-to-rule campaigns, go-slows, 'withdrawals of co-operation', work-ins and co-ordinated acts of industrial sabotage as prominent means of expressing grievances or enforcing demands, the most highly effective of these being partial work-bans and secondary boycotts.\textsuperscript{18} According to an officer at DEIR, a number of alternative forms of industrial action to strikes and bans exist and are quite prevalent. He mentioned one dispute in Queensland where police had a co-ordinated campaign of sick leave. They also issued parking and traffic tickets to excess so that accounting in the

\begin{thebibliography}{9}
\bibitem{14} \textit{Loc.cit.}
\bibitem{15} \textit{Ibid.}, p.59.
\bibitem{16} J W Kuhn, quoted, \textit{loc.cit.}
\bibitem{17} \textit{Loc.cit.}
\bibitem{18} Creighton \textit{et al}, \textit{op.cit.}, p.710.
\end{thebibliography}
department became completely overloaded. Of course actions like these do not find their way into any official statistics.

One of the central arguments of this thesis is that bans have become an important feature in the Australian industrial relations scenario. A study conducted by Muller into Telecom Australia revealed that bans have been the predominant industrial weapon used by unions for a number of years. On strike statistics, Telecom (Queensland) appears to be a relatively dispute-free organisation. When bans are taken into account the picture is reversed. Indeed, by 1973 bans had become sufficiently important for Telecom to begin collecting data on the activity. Tables 1 and 2 are Muller's findings based on Telecom's internal records.

Table 1

<table>
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<tr>
<th>Cited Issue</th>
<th>Stoppages</th>
<th>Bans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Hours of work</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Leave, pensions, compensation</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>provisions etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Managerial policy and behaviour</td>
<td>5</td>
<td>44</td>
</tr>
<tr>
<td>Physical working conditions</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Trade unionism</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Political</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
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</tr>
<tr>
<td>Total</td>
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<td>63</td>
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</tbody>
</table>

Table 2

<table>
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<th>Stoppages</th>
<th>Bans</th>
<th>Employees in respective skill groups</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>ATEA</td>
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<td>54</td>
<td>31</td>
</tr>
<tr>
<td>Others</td>
<td>58</td>
<td>46</td>
<td>69</td>
</tr>
<tr>
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<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Total number of disputes and employees</td>
<td>19</td>
<td>63</td>
<td>12,189</td>
</tr>
</tbody>
</table>

19 T Michener, DEIR Officer, Interview, 1.6.87.
These figures suggest that among Telecom employees the members of the Australian Telecommunications Employees' Association (ATEA), the technicians, are disproportionately likely to be involved in industrial action; and more particularly, in the use of bans.

2.1.8. The Hancock Report

It would seem appropriate for any inquiry into industrial relations in Australia to consider the variety of activities that exist. As Creighton et al point out, "the increasing use of these more sophisticated forms of industrial action in recent years has some important implications for the role of the law in relation to industrial conflict".21 The history of industrial relations law as outlined in the Hancock Report acknowledges the place of bans in the development of awards and legislation, particularly in regard to sanctions. The section of the Report which outlines the history of conciliation and arbitration traces the origins of awards where bans and limitations became subject to orders. Starting with the 1947 40-hour week case, the Conciliation and Arbitration Court in granting the award specified:

No organization party to this award shall in any way whether directly or indirectly be a party to or concerned in any ban limitation or restriction upon the working of overtime in accordance with the requirement of this sub-clause.22

Yet in Chapter 3, Part III, the section of the Report dealing with industrial disputation, there is not a single mention of bans or limitations. "In this Part", the Report states, "we review the available evidence about industrial disputes in Australia. This evidence refers to strikes and lockouts".23 Given the ample evidence that industrial disputation is not confined to strikes and lockouts this is an omission of some note. The determination by the Hancock Committee to rely entirely on ABS statistics on industrial disputes must be seriously questioned in this regard. Certainly, the Telecom (Queensland) data provided in Tables 1 and 2 are too specific and not comprehensive enough to be used in the same way as ABS statistics. Nevertheless, it is questionable whether a lack of statistical evidence justifies ignoring the fact that alternative forms of industrial disputation exist. The failure of the Committee to come to terms with industrial disputation as it exists in its entirety is reflected in the Report's Recommendations. For example R.109 which deals with grievance procedures suggests:

21 Creighton et al., ibid., p.710
22 Hancock Report, op.cit., p.59.
23 Ibid., p.123.
that normal work be continued throughout the steps in the process (except for bona fide safety issues) and that the status quo at the point at which the grievance was lodged prevail until the process is completed.24

Apart from the fact that some difficulty will probably arise between the parties in agreeing on what is a "bona fide safety issue", it may well be the case that the status quo at the time of lodgement is one where bans are in force. What then constitutes normal work?

Important changes are taking place in industrial relations. Explanations for those changes require analysis of a broad range of political, social, economic and legal issues. The Accord, industrial democracy, unemployment, the New Right and high interest rates are only a few of the factors that need to be considered. My purpose is to show that current statistics do not adequately reflect the changes which are taking place.

2.2. THE LEGAL FRAMEWORK
Where the first part of this thesis is concerned with the causes of industrial disputation and its forms, the second part looks at some of the legal responses to disputation. As I have already suggested, in a dynamic environment fluctuations in the forms and levels of disputation are attributable to a number of reasons. The same applies to the legal responses.

2.2.1. Aims
My inquiry is concerned with two fundamental and related questions. The first, what changes have been evident in the use of law as a preventative of or antidote to disputation over the survey period? The second, to what extent has the law been a factor in a changing industrial climate?

2.2.2. Methodology
For the purposes of the first question there are sufficient law books of quality to draw upon in terms of most of the existing laws.

Answering the second question met with the last-mentioned problem. Existing literature referred mainly to the situation that existed prior to the changed climate in industrial relations. Although quite a lot of printed material was available on the SEQEB dispute, there was very little on the other landmark disputes which occurred. Indeed, the pilots' dispute in some respects remains unresolved. The chief sources for material were the

24 Hancock Report, op.cit., Vol.1, p.34.
media, mostly newspapers and personal interviews. Wherever possible in using newspapers, I double-sourced the information; that is, rather than accepting something as factual, I looked elsewhere for confirmation. The attitudes of the media, although important are not included in the analysis and for the most part are used because they imply factual information. Where an opinion is used, I note the editorialisation of the comment.

2.2.3. Access and Interviews

With a topic concerning industrial relations, obtaining interviews or even getting replies to letters was frequently difficult and sometimes impossible. A number of problems arose for me after I presented a seminar paper in April 1987 at the Australian National University which outlined some of my preliminary findings in relation to strikes and bans. Following an unauthorised article in *Australian Business*, and a mention of my findings in *The Age*, the Liberal Party requested a copy of the paper which I supplied on the condition that it was "for information only", and not to be cited or quoted. One outcome of my 1987 paper has been the recognition that bans, as a direct form of industrial action, need to be taken into account when discussing industrial disputation. When in 1988, the then Leader of the National Party, Ian Sinclair, used my preliminary data in parliament, the Department of Industrial Relations (DIR) undertook its own research on the subject (using the same data but a different method of counting to mine). Since then, statistics on bans have been kept regularly by the department although the ABS still confines itself to strike data. In the first place, the department's research was reactive as evidenced by the *Ministerial Minute*, dated 16 December 1987, accompanied by my 1987 seminar paper.25 While it disputed my findings, I have no doubt that the current collection of bans data is a clear recognition that information on industrial disputation is incomplete without the inclusion of bans and limitations, however difficult they are to measure and compare.

Prior to the 1987 federal election, a request was also made by the Queensland National Party for the paper. This I refused. (Industrial relations and union power were election issues, particularly in Queensland.) A consequence of my refusal became apparent the next year when I visited Brisbane with the purpose of conducting interviews and doing research on the SEQEB dispute. I was refused any access to the Department of Employment and Industrial Affairs (DEIA) by an apologetic officer who, without

25 At the time I was working in the Department gathering data for my research from the *Weekly Reports*. I was vaguely flattered that a number of people had been assigned the task of disproving my findings and was not surprised when they ultimately did so. It was a salutary lesson in how research can be 'rewarding' when you supply the required answers at the outset.
explanation, informed me that I was "black-listed". Several attempts to speak to someone in the Minister's office were also unsuccessful. I was, however, granted an interview at SEQEB by an Industrial Officer, who on hearing my request set aside ninety minutes for the purpose. The interview was terminated after fifteen minutes by the Chief Industrial Officer who had been listening without comment to my questions and the answers. He told me to return in two days which I did, only to find that the Industrial Officer was unavailable. John Wilkinson, another Industrial Officer who saw me instead, was guarded in his responses although he was very open in his opposition to unions, and was unqualified in his admiration and support for the "GM" (Wayne Gilbert).

While the two unions in Queensland, the ETU and Municipal Officers' Association (MOA) were very generous with their time and resources, their attitudes were not necessarily representative of other unions I attempted to see. The Miners' Federation were very cooperative with their time, resources and people. (I interviewed four research officers at the Federation). The Australasian Meat Industry Employees' Union (AMIEU) were frank and helpful. The Building Workers Industrial Union (BWIU) and Federated Ironworkers Association (FIA) declined to return my calls, and apparently no-one was ever 'in' who could speak to me on the phone. This was also my experience with the Victorian Trades Hall Council, despite repeated phone calls and the promise of return calls when the 'appropriate' person was available.

On another level unions were more forthcoming. A survey I conducted during 1986 seeking details of any legal actions which involved criminal proceedings, obtained a good response. Some unions provided me with detailed accounts that went back several years in the union's history.

Perhaps my most memorable experience was in an encounter with a research officer at the ACTU in December 1989, who did little to disguise his apprehension on the basis of my 1987 paper. Although he became more relaxed as the interview proceeded, it was made quite clear to me that the type of research I was doing was not welcomed by the union movement and could only do it harm. He was referring not only to the research I was doing on bans and limitations, but also the proposition that a spate of legal actions over the past few years bear some responsibility for the changing industrial climate and the concomitant decline in industrial disputation. The official ACTU and Hawke Government position is that the decline in industrial disputation is due entirely to the success of the Accord. Therefore, the introduction of other possibilities undermines the Accord, the central plank in the Government's industrial and economic policy. While I would not describe the ACTU research officer as unco-operative, he was not very forthcoming in answering my questions; mainly, I think, because they were questions he
regarded as better left unasked. (He would probably argue that the questions were irrelevant and inappropriate to the subject of industrial relations during the enlightened Accord period.)

Employer groups were generally willing to provide documents such as National Wage Case submissions and independent reports, which would in any case have been available through other sources. They were not so co-operative when it came to responding to letters which sought answers to questions on specific, and sometimes controversial issues. This was especially the case where a particular dispute was in question but applied also to questions of a more general nature. For example, having regard to my research findings on pay and allowances (see Chapter Four), I wrote to a number of the larger employer groups and asked whether they had any findings based on their research, which indicated that there had been an increase in claims for allowances and bonuses during the Accord period. Not one of them responded.

From the legal fraternity, I canvassed the opinions of Keith Marks and Jim Staples, both former deputy presidents of the Conciliation and Arbitration Commission who provided invaluable insights into the Commission's workings. I questioned Breen Creighton on the ACTU's attitude towards the Hancock Committee's findings on independent contractors (at the time he was the ACTU legal officer). Peter Costello who was a lawyer in the Dollar Sweets case and an adviser to the company during the Robe River dispute, provided a detailed written response to a series of questions about the influence of the New Right (whose existence he denied) and the role of the common law in industrial disputation. The solicitors acting for the ETU also provided material relevant to their defence of arrested demonstrators. In addition, I sought advice on complex legal questions from Phillipa Weeks, a lecturer in the Faculty of Law at the Australian National University.

It is perhaps understandable that I should encounter problems. For many of the people I spoke to, the subject in question was still very sensitive. On occasions candor was forthcoming only with guarantees of anonymity and that certain information would not be revealed.

2.3 CONCLUSION
Separate though the two parts of the thesis are in research and methodology, the findings are relevant, one to the other. I mentioned in the Introduction that one of the first hypotheses that I considered was that Job Maintenance had become one of the most important issues in contemporary industrial relations. It is no coincidence that the landmark legal disputes which have been responsible for the radical changes in the industrial arena, have all to some extent been concerned with that very issue, and more
specifically, Contract Labour. Bans have also been a factor in some of the disputes and have attracted legal consequences. The two parts of this thesis therefore, despite their technical differences, are not discrete entities but complementary bodies of research which aim to inform each other.
FORMS OF INDUSTRIAL DISPUTATION

My research has concentrated on two aspects of industrial disputation. The first is concerned with the preferred forms and levels of industrial action. My analysis will be chiefly concerned with strikes and bans; their incidence and relationship to external factors. As Figures 1A-1H indicate each state is different, some differing more than others from the overall pattern. The second is concerned with the issues that precipitate or discourage industrial action, how they relate to the forms and to what extent they reflect contemporary political conditions.

Because each state appears to be different in all these aspects, they will be analysed separately. It may be possible from this to draw some conclusions as to why they are different, and what the differences mean. Ultimately, the research seeks to provide an explanation of what causes industrial conflict and to identify factors which bring about change. The following section is concerned only with identifying the immediate results of the research.

4.1. THE FORMS

A number of cogent arguments can be put forward against the inclusion of bans in dispute data, none of which I would disagree with if my aims were more ambitious than they are in fact. In regard to my particular methodology it could be argued for instance, that quite different numbers may have resulted if, instead of counting one week in eight, I had counted one week in six (or any number from one to fifty). On a more general basis, bans present a problem because of the difficulty of assessing their impact on productivity. Some bans have little effect and may not even be noticed in the workplace. The latter problem I have dealt with elsewhere. As to the former argument, it is acknowledged that the choice of one week in eight plus the decision to count a ban on each occasion it is mentioned means that the results cannot be considered an accurate measurement of the number of discrete bans. Any attempt to use them in that way would be invalid.

The measurement of bans is justifiable from a comparative standpoint. Because they have been measured one week in eight consistently throughout the survey, the increases and decreases shown are genuine reflections of the altering trends in preferred forms of
industrial action. While counting, for example, one week in six, may have produced different results numerically, the results indicating changes in forms is unlikely to have been substantially different. The trends would be evident despite the unit of measurement.

Figures 2A-2H indicate the percentages of industrial action that involved strikes and/or bans. Because some disputes involved both forms, and some neither (for example lockouts and secondary boycotts), the yearly columns do not necessarily add up to 100 per cent. It is immediately apparent from looking at these graphs together that each state and territory is different except for one important feature. With the exceptions of South Australia, the Australian Capital Territory (ACT) and the Northern Territory (NT), from 1984 onwards the incidence of bans increased, in most cases to unprecedented levels proportionate to strike activity. In South Australia and the ACT, bans have been the favoured form of industrial action in most years. Although they were also high after 1984, no change in trend is reflected.

While Figures 2A-2H provide an indication of what percentage of the industrial action, involved strikes or bans, Figures 1A-1I show the actual levels of industrial action. The ABS figures are included on this graph for comparison. As Figure 1I demonstrates my data shows strikes as being higher than ABS on a national level, although the trends are almost identical.
Victoria Industrial Disputes - 1973-87

Queensland Industrial Disputes - 1973-87

South Australia Industrial Disputes - 1973-87
The numerical difference is grounded in the methodology. At periods when strikes have tended to be more prolonged, (that is lasting for eight weeks or more), they have been counted more than once in my data. The effect of multiple counting in the case of strikes is minimal, since very few last so long. The main reason for the difference is the selection criterion. In my survey a strike was included if it involved the loss of one working day, regardless of the number of working days lost. ABS figures only include disputes where ten working days or more were lost. I have discussed the reasons why I did this in Chapter One. As for the results, they will be discussed separately, so that the variations that occur between states, and the divergences that occur within states, can be explained.

The application of bans will also be looked at in context. While distinctions are not always clear, I have attempted to define bans in three categories.

Additional bans: Those that are applied at a period when strike activity is the preferred form of industrial action and the imposition of bans is purely supplementary.
**Alternative bans:** When bans do not reach the level of strike activity but represent a significant percentage of industrial action. In these instances a choice is likely to have been made as to whether strike or bans are preferable.

**Preferred bans:** Occasions when bans were either the main form of industrial activity or equal to strikes, meaning that out of the forms of direct action considered here, bans were chosen most often. (I do not mean necessarily to infer a positive enthusiasm for bans or, indeed for any form of direct action.)

4.1.1. **New South Wales**

As Figure 2A demonstrates, strikes were the predominant form of industrial action during the survey period except for 1986 where there was a preference for bans.

![NSW Strikes & Bans - 1973-87: Percentages](image)

From 1983 onwards there was an increase in the percentage of bans and a slight decrease in strike percentages. In 1981, the year when strikes are at the highest percentage as a preferred form, the number of strikes is also at its highest level for the period as indicated in Figure 1A. After 1981, there is a marked decline in the strike numbers, while from 1982 until 1986 the number of bans increased steadily.

The above provides an overall picture of what was happening in NSW during the survey period. In order to grasp the similarities and differences that may have generic significance, I compare the data broken down into five industries. They are Mining, Manufacturing, Construction, Transport and Storage and Other Industries.¹

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¹ Other Industries largely consists of the Public Service and government authorities. The only way of making some kind of identification is by looking at union frequencies. They have been included in the analysis because of the high number of disputes they represent and significant differences in forms and levels of disputation.
As far as the rise and fall of strikes and bans are concerned, while there appear to be overall trends in strike activity such as a decline after 1981 (Other Industries is an exception here) the relationship between strikes and bans varies considerably from industry to industry.

In the Mining and Manufacturing industries, bans occur at a steady rate over the period while strike rates fluctuate sometimes quite dramatically. (See Figures 3A and 3B)

In both Mining and Manufacturing, bans as a percentage of industrial action increased after 1983 mainly due to a decline in strike numbers. In Mining, strikes are clearly the preferred form of industrial action, even allowing for the narrowing of the gap between strikes and bans that occurred from 1983. The situation in Manufacturing is not so clear. Although strikes are the preferred form of industrial action for the entire period, bans appear to be an alternative rather than an additional form of industrial action from 1985 onwards.
Strikes and bans in the Construction industry between 1975 and 1982 are almost identical. (See Figure 3C) From 1983 onwards, bans easily predominate until parity is achieved again in 1987.

It seems from the Construction industry graph that there is no dominant form of industrial action. The changes can probably be attributed to specific events in a number of cases. The situation is similar in the Transport and Storage and Other industries (see Figures 3D and 3E). Unlike Construction, bans do not increase at a marked rate from 1983. Like Construction, bans and strikes in Transport and Storage appear to be interchangeable, with no clearly, preferred form.
Peak activity also varies from industry to industry. In the Mining, Manufacturing and Construction industries, 1981 was a year when strikes were at their highest, followed by declines. In the Mining and Manufacturing industries, the decline was very marked. In Transport and Storage and Other Industries, the decline had begun earlier, in 1980 and 1979 respectively. As neither the wage freeze nor the Accord could be responsible for these early declines, factors unique to the industries may be responsible. Because the number of disputes involving the Mining, Manufacturing and Construction industries are greater than Transport and Storage and Other Industries, the advent of the declines could be easily overlooked.

4.1.2. Victoria

Between 1973 and 1983, strikes were clearly the preferred form of industrial action in Victoria, although strikes and bans were very close in 1975 and 1976. (See Figure 2B) From 1984-1986 the number of bans as a percentage of industrial action increased quite dramatically and were the preferred form of industrial action. In 1987, strikes and bans were equal.
As Figure 1B demonstrates, the increase in bans as a percentage also reflects a marked increase in actual numbers of bans. A gradual decline in strike numbers according to my data began in 1980, with a sharp decrease in 1982.²

Four industries have been chosen in Victoria to identify similarities and differences that may have generic significance. They are Manufacturing, Construction, Transport and Storage and Other. As far as the rise and fall of strikes and bans are concerned, unlike NSW there does not appear to be an overall trend in strike activity, and like NSW the relationship between strikes and bans varies considerably from industry to industry. (See Figures 4A-4D) Bans in Manufacturing and in Construction increased during the period although only slightly in the latter. In the Transport and Storage and Other Industries, bans remained almost level.

In the Manufacturing industry, after a sharp increase in bans in 1975, there was a steady decline until 1985 when bans began to increase. They do not appear to be an alternate form of industrial action. At their highest point in 1975, strikes are also at their highest point, so the increase in bans would seem to indicate an acceleration in overall industrial disputation. In 1986, the only year when bans overtook strikes, the difference is only slight. It appears to be the case that from 1984 onwards, the relationship between strikes and bans changed. While bans did not become a preferred form of industrial action (with the questionable exception of 1986), they could by this time be considered an alternate form.

![Graph](image)

A different picture emerges for the Construction industry where the incidence of strikes also declined at fluctuating levels during the period, with some significant differences. (See Figure 4B) The first difference can be seen in the year of peak activity. Where

²The ABS curve shows the decline starting in 1982 after a slight increase in 1981. My data and ABS are in agreement about the lowest point.
1975 had been the peak for Manufacturing, in the Construction industry strikes declined. The second and more important difference is seen in strike levels from 1984. Although they increase slightly in 1986, strike numbers drop very markedly in 1987. This is counter to state and national trends. It is also contrary to the Construction industry trend in other states except for South Australia and the Northern Territory where strike levels have never been particularly high. (See Figures 6C and 9C)

The Transport and Storage industry graph (Figure 4C) suggests that industrial activity in this industry is subject to influences that have immediate and short-term impact on levels of disputation. There were marked fluctuations during the survey period in levels and preferred forms that are characteristic of the industry in other states and uncharacteristic of state and national trends.

Between 1973 and 1979 bans were generally the preferred form of industrial action. This was most noticeably the case when strike activity was at its highest. In 1980 there was a change. With strike activity at its very highest for the survey period, bans decreased markedly. They rose sharply again in 1982 after a decline in strike numbers,
fell again between 1983 and 1984 and overtook strikes again in 1985 and 1987. The fluctuations in strike and ban numbers provide a contrast to fluctuations in bans as an additional, preferred or alternative form of industrial action.

In Other Industries (See Figure 4D), strike activity over the period was, comparatively steady. Strikes were generally the preferred form of industrial action. However in 1975, when strike activity was at its highest level for the period, bans increased to an unusually high level, overtaking strikes and then declining from 1976 until 1982.

In the years 1973-75 and 1976-77, bans appear to have been an alternate form of industrial action. Between 1978 and 1984, they were an additional form and from 1984 onwards an alternate form again. 1975 is an exception, when bans rose sharply, this time during a period of low strike activity, and became the preferred form.

4.1.3. Queensland

Until 1981 strikes were clearly the favoured form of industrial action in Queensland. (See Figure 2C) From then until 1986, bans increased to the extent that they were either the outright preferred form of industrial action (1982-83), the equally preferred form (1985-86) or the alternate form (1981 and 1984). The change is even more marked than that in Victoria. In 1987 strikes reverted to being the outright preferred form.
As Figure 2C indicates, Queensland peak strike activity is contrary to most other states and the national trend. Disputes in the Mining and Transport and Storage industries over a variety of issues account for the high number but do not explain why, at a period when activity in most states was at relatively low levels, Queensland should be so high. The high incidence of bans in the Mining, Construction and Other Industries in 1984 is attributable to the dispute between electricity workers and the SEQEB which will be the subject of a later case study. Strike activity in the aforementioned industries will also be considered in that context.

Five industries are used to identify the similarities and differences that may have generic significance in Queensland. They are: Mining, Manufacturing, Construction, Transport and Storage and Other Industries.

Bans in the Mining industry appear to be an unusual occurrence. 1975 and 1984 are very notable exceptions accounting for 40 per cent and 46.2 per cent of industrial action in those years respectively. 1984 is of particular interest because of the high level of strike activity. (See Figure 5A) In all other years, bans are negligible or non-existent.
With the exceptions of 1982 and 1985-1987, bans in the Manufacturing industry were an additional form of industrial activity. (See Figure 5B) It should be noted that the level of bans in 1982 is in marked contrast to an abnormally low degree of strike activity and represents only a small rise in actual numbers. In 1985 bans and strikes were equally the preferred form; in 1986 bans were clearly the preferred form by a small number at a time when strikes were on the increase; and in 1987, bans seem to have emerged as an alternative form of industrial action. Whether this is aberrational or reflects a change in the pattern of industrial action is difficult to assess. While strike numbers over the period declined, bans, while fluctuating moderately, remained relatively even in numbers overall.

The Queensland Construction industry was subject to changes in levels and patterns of industrial conflict. From 1973-1980 bans were only small in number while during the same period strike activity as the preferred form varied considerably. (See Figure 5C) Although in 1979, the numbers of bans and strikes were equal, strikes were unusually low at the time, while bans were about average in number. From 1981 there was a quite dramatic change when bans by a narrow margin became the preferred form of industrial activity, and continued to increase in number until 1984 declining rapidly thereafter. Between 1982 and 1986 the number of strikes was also high, and counter to the national trend.
Strike activity was predominant in the Transport and Storage Industry from 1973 until 1981 with bans playing only an additional role. (See Figure 5D) In 1982 there was a sharp increase in the number of bans to the extent that they became the preferred form. At the same time strikes were on the increase and reached an unprecedented high in the years 1983-1984. In 1984, bans also reached an unprecedented high, followed by a gradual decline. Strikes however decreased very rapidly over 1985 and 1986. Although in 1987 they increased, it was only to the 1985 level; alternatively bans in 1985 were by far the preferred form of industrial action and in 1987, an alternative.

In Other Industries in Queensland, strikes and bans were very close in numbers from 1975 until 1981. (See Figure 5E) While strikes occurred on a fairly even level throughout the survey period, from 1981 until 1983, bans increased to exceptional levels. Manufacturing is the only other Queensland industry which saw a decrease in the number of bans in 1984. From that time, industrial disputation in Other Industries appears to have settled back to the pre-1981 situation, with bans between 1981 and 1983, the only alteration in trend.
4.1.4. South Australia

Bans in South Australia have been the predominant form of industrial action since 1976. Prior to that (1973-1975) they had accounted for high percentages of disputation. (See Figure 2D) Only the ACT can make a similar claim, placing both outside the norm as far as preferred forms are concerned.

The Four industries chosen for comparison in South Australia are: Manufacturing, Construction, Transport & Storage and Other Industries. Unlike all the other states, bans are the major form of industrial action in each of these industries despite sharp fluctuations in the levels of both strikes and bans.

From 1976, bans in the Manufacturing industry, with the exception of 1979, are clearly the preferred form of industrial action. (See Figure 6A) In 1982, following a year of high disputation involving strikes and bans there was a very sharp decline in both forms. An increase in strikes and bans from 1983 onwards led to parity in 1987.
From 1974, bans in the Construction Industry are clearly the preferred form of industrial action with the exception of 1983 where there are slightly less in number. (See Figure 6B) Although the number of bans had decreased from 1982, this does not presage any radical shift in trend. Strike numbers did not increase greatly, which signifies an overall decline in industrial disputation that is consistent with the national trend. From 1985 until 1987, bans increased to pre-1982 levels and are inordinately high in comparison to all other years.

With the exceptions of 1973, 1975 and 1978, bans were the preferred form of industrial action in the Transport and Storage industry. (See Figure 6C) In 1982, at a time when strikes were relatively low, bans soared to an unprecedented level, declined sharply in 1983 and increased again in 1984. These fluctuations were matched in pattern by strikes. Both fell, bans dramatically, in 1985.
In keeping with the Manufacturing, Construction and Transport and Storage industries, bans in Other Industries predominated. Unlike the preceding industries however, strike patterns in Other Industries remained fairly level. (see Figure 6D) Bans, on the other hand are subject to fluctuation, with 1979 representing the greatest number. Other Industries exceeded all three previously mentioned industries in levels of disputation from 1979 onwards notwithstanding a constancy in strikes from 1979-1985.

4.1.5. Western Australia

Until 1984, strikes were clearly the preferred form of industrial action in Western Australia, with bans featuring mainly as an additional form. In 1977 however there was a distinct change: While strikes remained the predominant form accounting, for 54.3 per cent of all industrial action, 51.4 per cent of industrial disputes also involved bans. From 1984 onwards, the number of bans had increased to unprecedented levels. (See Figure 1E) This also represented a marked increase in bans as a percentage of industrial action. (See Figure 2E) In the years 1984-1986, bans were involved in over 50 per
cent of industrial disputes. By 1987, bans had overtaken strikes by a ratio of 65.5 per cent to 43.1 per cent.

Mining, Manufacturing, Construction, Transport and Storage and Other Industries are used to compare the generic similarities and differences in Western Australia.

Strikes have always been the major form of industrial disputation in the Mining industry. Bans have been negligible both in terms of numbers and as a percentage of direct action. (See Figure 7A). During the survey period, strike activity was at its highest between 1978 and 1981, having peaked in 1980. A decline between 1982 and 1984 was followed by a steady increase in numbers. As Figure 7A demonstrates, there is an almost symmetrical pattern to industrial disputation in Mining over the survey period.

Strikes were also the predominant form of industrial action in the Manufacturing industry, although in the period 1973-1977, bans had represented a significant share, and were equally preferred in 1973 and 1977. (See Figure 7B) From that time on, the
use of bans was sparse. In 1978 strike activity peaked, and was followed by a very sharp decline with numbers only once, in 1986, regaining pre-1977 volume.

Between 1973 and 1986, strikes in the Western Australia Construction industry were mostly the preferred form. (See Figure 7C) Bans occurred irregularly over the period, and were either equal or only slightly fewer in number than strikes when they did. In 1987 strike and ban numbers peaked for the period, with bans having soared to a remarkable height in comparison to the preceding years.

Strikes and bans in the Transport and Storage industry appear to have been virtually interchangeable between the years 1973 and 1984. (See Figure 7D) During those years, strike activity peaked in 1974, 1976 and 1980; bans peaked in 1977 and 1979. The peaks do not coincide. After 1984, there was a definite change in trend. While both bans and strikes increased steadily, bans clearly predominated, removing the element of interchangeability from direct action in the Transport and Storage Industry.
There is also a suggestion of interchangeability in Other Industries between the years 1974 and 1984. Strike activity peaked in 1978 and 1979, while bans peaked in 1977 and 1980. (See Figure 7E) Unlike Transport and Storage, years when one activity was high were not necessarily complemented by relatively high (even though a decline may have occurred) activity in the other. After 1984, however, the increase in bans to become the preferred form of industrial disputation, mirrors the trend identified in Transport and Storage, and to some degree in Construction.

4.1.6. Tasmania

1986 was the only year when bans were the preferred form of industrial action in Tasmania. Counter to the national trend, strikes peaked in 1982 and 1984, (See Figure 1F) Bans steadily increased in number and as a percentage of disputation from 1984. (See Figure 2F) The only comparable, earlier year was 1975, when bans were involved in 50 per cent of disputes, and strikes, 62.5 per cent. The number of disputes however was not as high as during the later period.
The five industries chosen for comparison in Tasmania are: Mining, Manufacturing, Construction, Transport and Storage and Other Industries.

Bans in the Mining industry in Tasmania, as in all the other states, were mostly an additional form of industrial action, although in 1974 and 1975 when strikes were very low in number, bans were preferred equally and outright respectively. (See Figure 8A) From that time, bans were negligible in numbers. Strikes peaked in 1979-1980 and 1983-1984. Both periods were followed by steep declines.

Strikes were also predominant in the Manufacturing industry from 1973-1986. (See Figure 8B) Bans occurred intermittently over the period 1975-1987, and were varied in their degrees of prominence. In 1978 when strikes were comparatively low, bans were equal in number; again in 1980 following a decline in the number of strikes, bans were the preferred form of industrial action; in 1987 where no strikes have been recorded, bans are the only form. During the years when strikes were at their highest, (1979, 1982 and 1984) bans were either very low in number or non-existent.
Up until 1985, bans were not a feature in Construction industry disputes, with the exception of 1979. (See Figure 8C) Strike activity between 1973 and 1975 was intermittent and varied in number, followed by an increase in 1986 and 1987 when they reached unprecedented levels. During the period 1985-1987, bans appear to have become a feature of the Tasmanian Construction industry, especially in 1986 when they rose sharply.

Between 1976 and 1984, strikes in the Transport and Storage industry were generally predominant, (See Figure 8D) Bans were not a feature until 1979, a year when no strikes were recorded. From 1985-1987 however, bans became the preferred form of industrial action in Transport and Storage being either equal (1985, 1987) or preferred outright (1986).
Industrial disputation in Other Industries was also irregular, and consisted chiefly of strikes until 1985. (See Figure 8E) In the peak strike years, 1980 and 1984, bans are also recorded. In 1985 following a decline in strike numbers, bans were equal to strikes, and in 1987, a year when no strikes have been recorded, bans increased to an unprecedented level.

4.1.7. Northern Territory

A reversal of the national trend in strike and ban patterns is evident in the Northern Territory, as Figure 2G demonstrates. Bans in the earlier years of the survey were more prevalent as a percentage of industrial action than in the later years. The post-1984 period in particular, runs counter to the other states, where bans as a percentage of direct action increased. (The ACT is a nominal exception) Strike activity was also anomalous in the Northern Territory, comparable only to Queensland. Strikes were at their lowest number between 1978 and 1979, and reached their peak in 1984. (See Figure 1G) Tasmania and Queensland were the only other states to have shared this experience.
The five industries chosen for comparison in the Northern Territory are Mining, Manufacturing, Construction, Transport and Storage and Other Industries.

Between 1973 and 1980 strikes in the Mining industry were few and intermittent. (See Figure 9A) From 1981 until 1986 strike activity increased and was constant, if not consistent in degree. There were very few bans recorded over the period, and those, during 1981 and 1983, when strike activity was relatively high.

Very little industrial disputation was recorded for the Manufacturing industry, and none at all for the period 1981-1984. (See Figure 9B) Bans do not feature in any year.
The Construction industry in the Northern Territory shows no clear patterns of industrial disputation. Between 1973 and 1979, strikes and bans were either low or non-existent. (See Figure 9C) In 1981, the number of strikes rose, then fell again the following year to pre-existing levels. In 1984, there was a very steep increase in strikes, accompanied by a small number of bans which had not figured in disputation in the Construction industry since 1975.

As Figure 9D suggests there was an element of interchangeability in the Transport and Storage industry. After the 1973-1975 period when strike numbers were small but regular, there were no further strikes recorded until 1981. In the intervening years, industrial disputation when it occurred, took the form of bans. Strike activity peaked in 1984, then dropped to the levels of early seventies. Bans, after 1984, ceased to feature.
Strike activity was the predominant form of industrial action in Other Industries from 1976 onwards. 1977 was an exception when bans having increased, were the only form. (See Figure 9E) Prior to 1976, bans had either been preferred equally or outright. Following a marked decrease in strike numbers in 1981 and 1982, pre-existing levels were reached in 1983. Peak activity for the survey period occurred in 1987.

4.1.8. Australian Capital Territory

Since 1974, bans have generally been the major form of industrial action in the ACT. 1978 and 1977 were exceptions when the ratios were 75 per cent strikes to 25 per cent bans and 61.5 per cent strikes to 46.2 per cent bans respectively. (See Figure 2H) While strike numbers have remained relatively even over the period, the number of bans have fluctuated. From 1978, at their lowest point since 1974 (none were recorded in 1973), bans rose steadily to peak in 1981 and 1983. (See Figure 1H) Although bans were the dominant factor in industrial disputation in the ACT, from 1984 they were contrary to the national trend insofar as they declined as a percentage of involvement against strikes which increased.
Three industries have been selected for comparison in the ACT. They are: Construction, Transport and Storage and other Industries.

Bans were clearly the preferred form of industrial action in the Construction industry up until 1986. Even when they were at their lowest levels (1976 and 1979), strikes numbers were also very low and did not replace them. (See Figure 10A) Following a peak in 1983, bans declined sharply until 1986. During this period, strikes remained static then increased to an unprecedented level in 1987, a year in which no bans were recorded. This may well augment a change in the pattern of industrial activity in the Construction industry.

Probably because the Transport and Storage industry is small in the ACT in comparison to other states, there is very little industrial disputation recorded for the period. It has been included however because of the unusual degree of strike activity in 1978. (See Figure 10B) Bans would appear to be the major, if slight, form of industrial action in Transport and Storage.
Bans have dominated the industrial scene in Other Industries in the ACT. Strike numbers were generally low and relatively even. (See Figure 10C) In 1981 when they rose sharply, they did so as an adjunct to bans which had also increased to a record level. In 1978, 1982 and 1986 when strikes were the preferred form, the marginal difference was very slight. This suggests that the pattern of industrial activity in the ACT had not changed. Bans, between 1974 and 1987 have tended to rise and fall over two to three year periods, with peaks in 1981 and 1987.

4.2. CONCLUSION

To summarise, the national trends as depicted in Figure 11 are not indicative of the situations, state by state. While 1975 and 1981 were the years that recorded the highest number of strikes nationally, only NSW and South Australia actually experienced both these years as peaks. In each case the Manufacturing industry accounted for the high numbers, aided in NSW by Mining in 1981. In Victoria and Queensland, 1975 was also a peak year, with Manufacturing once again responsible. Mining industry strikes created peak activity in the Northern Territory in 1981.
Peak strike activity in the other states varied considerably: In Queensland 1973 and 1984 were peak years with Mining and Transport & Storage industry strikes added to Manufacturing in 1984. Western Australia experienced peak activity in 1978 and 1980. Added to Manufacturing was Other Industries in 1978 and Mining in 1980. In Tasmania, Manufacturing was again the prime determinant in peak years, 1982 and 1984, with Mining a factor in 1984. The Northern Territory also saw peak activity in 1984 with Transport and Storage and Mining, the responsible industries. Strike activity in the ACT peaked in 1980 and 1987 with Construction industry disputes.

Where Manufacturing was the industry responsible for the most number of strikes, Other Industries was responsible for the majority of bans. Once again, the national trend towards peak activity in 1986 as shown in Figure 11 is not representative of all states. NSW and the Tasmania were the only states where this was the case. 1979 was also a peak year in NSW. In Victoria, bans were at their highest in 1975 (also a peak strike year) and 1985; in Queensland, 1983; in South Australia 1979 and 1981 (also a peak strike year); in Western Australia, 1987; in the NT, 1974; and in the ACT, 1981 and 1983. Added to Other Industries, the Transport & Storage Industry accounted for peak activity in NSW, Victoria, Western Australia, and Tasmania. The Construction industry was also a factor in Western Australia, Tasmania, the Northern Territory and ACT.

A number of conclusions may be drawn from the above. First, it is unusual in periods of the highest disputation for both strikes and bans to feature. Victoria in 1975 and South Australia in 1981 were the only instances of coinciding peak activity. Nor does it appear to be the case that when strikes are at their highest, bans are necessarily at their lowest despite the national trend suggested by Figure 11, Queensland in 1973 provided the only such occurrence.

Secondly, although figures on industrial disputes point to an overall decline in strike numbers since 1984, Queensland, Tasmania the Northern Territory and ACT have all experienced periods of peak activity while NSW, Victoria, Western Australia and Tasmania have reached peak ban activity.

Thirdly, the number of disputes involving bans as a percentage of industrial action increased in most states over the latter stages of the survey period. This indicates a changed trend in the pattern of industrial disputation. In Queensland, from 1981; in NSW from 1983; and in Victoria, Western Australia and Tasmania, from 1984. Bans in South Australia and the ACT have been predominant throughout most of the survey period. The Northern Territory was the only exception, where bans having been prevalent in the early period, account for minimal involvement in the eighties.
This chapter will examine the proposition that trends in levels of direct action are reflected primarily in the rise and fall of disputes over Pay and Allowances. It further raises the question of whether a decline in Pay issues coincides with an increase in Allowances issues. There has been no empirical evidence to suggest that this is the case due to the issues being treated as one in ABS statistics. Anecdotal evidence suggests that, particularly during the Accord period, one way that unions and employers managed to avoid the strictures of the Accord was to reach agreements at the enterprise level over increased Allowances. The extent to which this has occurred is impossible to estimate. Many Allowances are included in industrial awards and agreements that are ratified by the industrial tribunals, and it is assumed that these would have to be determined within the national wage guidelines. The anecdotal evidence to which I refer suggests that a number of agreements have been reached on an extracurricular basis.

Three issues are included in the analysis: Pay, Allowances and Log of Claims. These will be shown separately and also in aggregated form. Log of Claims has been included because it is reasonable to assume that a number of items in the category included Pay or Allowances claims. It is not possible to indicate how many, particularly as Log of Claims included award variations that would also have related to other categories of issues. An assumption can also be made that the intensity of disputation over most of the issues will to some extent be reflected in Log of Claims. Unless otherwise specified, the analysis will consist of results taken from strike data. Once again, each state and territory will be examined discretely.

The data is presented in two ways. For each state, the number of strikes over the three issues is shown in the graph series A. In this way the level of strike activity can be ascertained. In the graph series B, the data are shown as a percentage of overall strike activity so that, for example, we can see that the three issues accounted for 50 per cent of the number of strikes in 1973 in contrast to less than 20 per cent in 1986.

1 Disputes that involved political, social or environmental issues are unlikely to be included in Log of Claims.
5.1.1. New South Wales

As Figure 11A shows, until 1983, Pay accounted for more disputes than the other two by substantial amounts.

In the data presented in Chapter Four, the rise and fall of strikes over the survey period in each state was shown. When the curve for NSW shown in Figure 1A is compared with the curve for strikes over Pay in Figure 11A, they appear almost identical. This is true when pay is viewed separately or in aggregation. While this would tend to support the theory that pay demands dictate levels of disputation, Figure 11B indicates that even when Pay is combined with Allowances and Log of Claims, they only once amounted to 50 per cent of all strike action.

There are two variations in the curve which should be noted. The first, in 1978 shows overall strike activity to be almost level with the previous year, while strikes over Pay, Allowances and Log of Claims increased from 30.1 per cent in 1977 to 44 per cent in 1978. The second is 1987, when a very slight increase in the number of strikes over the three issues corresponded with a slight decrease in the number of strikes overall.

In 1981, when strikes overall were at their highest (see Figure 1A), Pay, Allowances and Log of Claims accounted for only 39.4 per cent, of which 21.8 per cent were over Pay issues. By way of contrast, in 1987 when strikes overall were at their lowest point, the three issues accounted for 33.4 per cent, a difference of only 6 per cent between the periods of highest and lowest strike activity.

After 1983, the number of strikes over Pay remained low, while the number of strikes over Allowances, was only slightly lower. This represented a change in the relationship between Pay and Allowances. As Figure 11B shows, while it had not been unusual in the
earlier period for Allowances to represent roughly the same percentages of overall disputation, the surpass of Pay was unprecedented.

Between 1973-82 when overall strike numbers were high, the three issues accounted for 30 per cent or more of all strikes. From 1982-86, the decline in overall strike numbers also saw a decrease in Pay, Allowances and Log of Claims as a percentage of strikes. The figure cited above for 1987 was a reversal of this trend.

Notwithstanding the observation that, in aggregation, the three issues only once represented more than 50 per cent of overall strike activity, the decline in numbers of strikes over Pay, Allowances and Log of Claims, corresponded with an overall decline in strikes from 1983.

5.1.2. Victoria

Except for 1985, Pay represented the highest number of disputes out of the three issues, throughout the survey period. (See Figure 12A)

In terms of rise and fall, the curve for the period 1975-87 is almost the same as for all industrial disputes, when the three are aggregated. (See Figure 1B) As a percentage of involvement in industrial action, Pay, Allowances and Log of Claims represented higher proportions of all activity than in NSW. Between 1973 and 1977, the three issues in combination, accounted for well over 50 per cent of disputation, with Pay being the predominant issue. (See Figure 12B) While there was an overall decline in the number of strikes after 1977, Pay, Allowances and Log of Claims accounted for between 30 and 50 per cent of disputation.
Two variations in the curve occurred: In 1974, my data points to a small decline in overall strike numbers and an increase in disputes over Pay, Allowances and Log of Claims. This difference is explained by the change in intensity of the three issues. Whereas in 1973, they had accounted for 60.3 per cent of all strike action, in 1974 they were involved in 84 per cent of strikes. The same is true for 1981 where overall strike activity declined slightly, while Pay, Allowances and Log of Claims increased from 41.3 per cent in 1980 to 52.9 per cent in 1981.

Between 1983 and 1986, the proportion of Pay disputes declined. Allowances, while remaining relatively consistent numerically, increased as a percentage. This indicates that, as in NSW, Pay demands declined but claims for Allowances were unimpeded.

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2 Here, as elsewhere I am using my data unless otherwise specified. For these years, 1974 and 1981, it should be noted that the ABS curve is consistent with the three issues.
The overall decline in strike activity in Victoria from 1983 included a decline in Pay and Log of Claims disputes. Allowances, on the other hand, remained static and even increased marginally in some years.

5.1.3. Queensland

In Queensland, Pay disputes exceeded Allowances and Log of Claims in most years. (See Figure 13A) Log of Claims represented a greater number in the years: 1977 (Pay, 15.1 per cent and Log of Claims, 24.5 per cent); 1980 (10.4 per cent and 25.0 per cent); 1981 (both 18.8 per cent); 1982 (4.9 per cent and 19.5 per cent) and 1984 (2.9 per cent and 10.1 per cent).

The rise and fall curve between the years 1974 and 1982 follows that for all strikes with the exception of 1983. (See Figure 1C). Unlike NSW and Victoria, the curve would diverge without the inclusion of Log of Claims. Even though the curves for these years are consistent, the number of disputes that were concerned with the three issues is not very high. Only in 1974 and 1975 did they exceed 50 per cent of all disputation.

The variation in 1983 shows overall strike activity on the increase, while Pay, Allowances and Log of Claims declined, from 29.3 per cent in 1982 to 10.5 per cent in 1983.

From 1982, the number of strikes over Pay declined markedly, and remained low until 1987 when there was a sharp increase. In 1983 there was an overall increase in strikes, which peaked in 1984. Both Pay and Allowances remained low. It was not until 1987 that Pay again reflected the curve for all industrial disputes in Queensland.
Queensland appears to differ significantly from NSW and Victoria as far as trends in strike activity are concerned. From 1983-84, strike activity overall increased in contrast to a definite decline in disputes over Pay, Allowances and Log of Claims. Queensland was in keeping with the other states insofar as the three issues declined as a percentage of direct action, but it was inconsistent insofar as (i) there was increased strike activity during a period of decline elsewhere, and (ii) there was a decline in Pay, Allowances and Log of Claims during the same period.

5.1.4. South Australia

Allowances were equal to Pay in numbers in 1977; and in 1982 and 1986 Log of Claims was the only issue of the three recorded. Otherwise, Pay issues were greater than the other two during the period. (See Figure 14A)
Between 1973 and 1982 the curve for all disputes is much the same as for Pay, Allowances and Log of Claims. (See Figure 1D) This is also true for Pay in isolation. During that period, the aggregated issues accounted for a higher percentage of strike action than was evident in the other states looked at so far. Only 1976-77 and 1980 fell below the 50 per cent level. (See Figure 14B) While a slight increase in overall strike numbers is recorded in 1983, the opposite was recorded for Pay, Allowances and Log of Claims. The curves however, do not diverge dramatically during the latter period, 1983-87. One other noticeable difference between South Australia and the previous states lies in the falling off of Allowances as an issue from 1983-87. The only year in which Allowances featured is 1985, when Pay and Log of Claims disputes had also increased.

It should also be remembered that bans over most of the survey period, were considerably more frequent than strikes. From 1976 onwards they were the major form of industrial activity. There were more bans than strikes on Pay and Allowance issues from 1980, although as Table 3 illustrates, the higher number of bans did not necessarily represent a higher percentage of disputes over one or all of the issues.

As Figure 1D and Table 3 also indicates, the level of bans was not a factor in the percentage of Pay, Allowance and Log of Claims. In 1973-75, for example, when Pay alone accounted for a high proportion of bans, the level of bans was at its lowest for the entire survey period, and less than strikes. In contrast, strikes during these years were at their highest for the survey period, and Pay alone, again constituted high proportions of activity.
### Table 3

**South Australia Strikes and Bans - 1973-87**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>STRIKE ACTIVITY</th>
<th>BAN ACTIVITY</th>
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<tr>
<td>1987</td>
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</table>

*LOC = Log of Claims

Strikes over Pay, Allowances and Log of Claims, notwithstanding the number of bans, show the same change in trend as NSW and Victoria from 1983. At a time when strikes overall were low, the issues either singly or in aggregation, accounted for a reduced number and percentage of total strike action.

5.1.5. Western Australia

Out of the three categories, Log of Claims represented the highest number of disputes in 1979-81, and Allowances in 1986. In all other years Pay was clearly the major issue of the three. (See Figure 15A)
The rise and fall curve varies in some years to that for all strikes. The issues either singly or in aggregation do not represent very high proportions of all strikes; At no time during the survey period did the combined issues exceed 50 per cent of the total and in most years they were below 30 per cent. Overall peak strike activity in Western Australia occurred in 1980 of which Pay, Allowances and Log of Claims accounted for only 13 per cent. Alternatively, the issues in aggregation were at their highest levels in 1974 and 1978, which were also periods of high strike activity. The period of lowest strike activity (1984-85) also experienced the fewest disputes over Pay, and Log of Claims (no Allowances). That small number represented a very small percentage of overall strikes.

While Pay and Log of Claims fluctuated, the level of Allowances remained fairly static numerically. As a percentage, Allowances were higher in 1982, 1983, 1986 and 1987 than they had been at any time in the preceding period. In 1984 and 1985 there were no disputes over Allowances recorded and very few for the other two issues.

As Figure 1E reveals, there are some difficulties in drawing conclusions from the Western Australia data set. When my data is used, it appears that West Australia followed the same trend as NSW, Victoria and South Australia, with a reduction in strikes from 1984-85 over Pay, Allowances and Log of Claims. This corresponded to a decrease in the overall number of strikes, according to my data. If the ABS data is used, the same conclusions would be drawn as those for Queensland.

3. The ABS curve is closer in Figure 1E than the curve in my data for some of the period. This is particularly noticeable because of the divergence that occurs between the two sets of data for West Australia.

4. The trend was evident earlier, in 1983, in the other States.
5.1.6. Tasmania

While Pay was the predominant issue of the three, Allowances and Log of Claims accounted for a comparatively greater number of strikes in Tasmania than in the other states looked at to date. (See Figure 16A) From 1985 onwards, Allowances was the outstanding issue.

The curve for the period in terms of rise and fall is almost the same as for all strikes in Tasmania. (See Figure 1F) Peak strike activity for the issues in aggregation occurred in 1984, and represented 77.3 per cent of strike involvement. (See Figure 16B) This situation was unique to Tasmania. Over the entire survey period, Pay, Allowances or Log of Claims were often responsible for high percentages of strike activity. Their involvement however, was somewhat erratic on a year to year basis.

The above largely explains the variations in curves: For example, in 1975, strikes declined overall, followed by an increase in 1976. The curve for the three issues shows the reverse. In 1975, in aggregation they accounted for 100 per cent of all strikes, an increase from 57.2 per cent the previous year. In 1976, they fell from 100 per cent to only 12.5 per cent. The same reason applied for the variations that occurred in 1981-82 and 1987.

A decline in the number of strikes due to Pay and Log of Claims from 1985-87 was accompanied by unprecedented numbers of disputes where Allowances was the issue. Apart from 1975, this also represented an increase in Allowances as a percentage of all strikes. In doing so, Allowances either alone or in aggregation maintained, (and even increased in some years), pre-1984 proportions.
Tasmania reproduced the Queensland trend in the latter period. Strikes overall were high in 1984 and despite a decline thereafter, remained higher than in the 1973-78 period. Unlike the other states, Pay, Allowances and Log of Claims continued to represent substantial proportions of overall activity from 1984, particularly Allowances.

5.1.7. Northern Territory

In the Northern Territory, Pay disputes were marginally higher overall than Allowances and Log of Claims. (See Figure 17A)

The rise and fall curve is the same with the exceptions of 1980 and 1983. (See Figure 1H) In both years, the number of strikes overall increased. While in 1980 Pay, Allowances and Log of Claims remained static in numbers, as a percentage of overall strikes they declined from 50 per cent to 20 per cent. In 1983, no strikes involving
the three issues were recorded. The rise and fall of one or more of the issues appears to roughly reflect the rise and fall of percentage shares. (See Figure 17B)

 Strikes which were attributed to the three issues, either singly or in combination, accounted for 50 per cent or more of overall strikes in only three years: in 1976 and 1979, (50 per cent); and in 1981, (54.6 per cent). The Northern Territory reflects the situation in Queensland. Contrary to the national trend, peak strike activity occurred in 1984, with Allowances and Log of Claims accounting for only 16.7 per cent of all strikes.

The trend in other states towards a decline in overall strike activity did not occur in the Northern Territory, although the decline in the aggregated three issues as a percentage of overall strike activity was consistent with elsewhere. Nor was the trend towards a decline in the number of strikes involving one or more of the issues evident after 1984. As Figure 17A indicates, apart from 1981 where there was a sharp increase in Log of Claims disputes, the numbers for the period 1984-87 were not significantly different to 1973-82.

5.1.8. Australian Capital Territory

Strikes over Pay were the major issue of the three in the ACT between 1975 and 1985. No strikes that were due to Pay, Allowances or Log of Claims were recorded in 1973-74 and 1986. Pay and Allowances in 1980 and 1981 provided the only examples of more than one issue occurring simultaneously. (See Figure 18A)
As Figure 1H indicates, the rise and fall curve for all strikes in the ACT is not in overall agreement with Figure 18A. While overall strike activity was quite moderate in its fluctuations, strikes recorded over Pay and Allowances tended to rise and fall dramatically. (Log of Claims were recorded only once, in 1985.) In 1978, when overall strike activity had declined slightly, there was an increase in the number of strikes over Pay. This also represented a marked rise in the percentage of strikes over Pay, from 28.6 per cent in 1977 to 66.7 per cent in 1978. (See Figure 18B)

In 1981 when strikes over Pay and Allowances were at their highest, for the survey period, they also accounted for 66.7 per cent of all strikes. An increase from 45.5 per cent in the previous year. Alternatively, in 1976 when the number of strikes overall were low, Pay, represented 50 per cent of their number.

As in South Australia, bans were the major form of industrial disputation in the ACT. Except in 1973, 1978 and 1987, bans exceeded strikes. As Table 4 demonstrates,
strike activity appears to have been supported by bans every year that Pay was an issue. From 1981-86, bans in relation to Allowances became a regular, (if not significant in terms of percentages) issue; in contrast there was an absence of strikes over Allowances between 1982-86.

Table 4

<table>
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<th>YEAR</th>
<th>STRIKE ACTIVITY</th>
<th>BAN ACTIVITY</th>
</tr>
</thead>
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<td>Allowances</td>
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</tbody>
</table>

LOC = Log of claims

The two peak years in terms of ban activity make for interesting comparison: In 1981, Pay and Allowances accounted for 66.7 per cent of all strikes which at the time were relatively high in number; bans over Pay, Allowances and Log of Claims accounted for 44.0 per cent in the same year. Just two years later in 1983, strike numbers fell and none were recorded that involved any of the three issues. Despite the marked increase in bans that year, there was still a drop in the number that were concerned with Pay and Allowances. They accounted for a mere 15.3 per cent of all bans.

The trend as regards strikes which has been identified in most of the other states, generally manifested itself in the ACT. Between 1983-86 a change can be seen in terms of the numbers of strikes over the three issues, although there was an increase in 1984, with Pay accounting for 50 per cent of all strikes.

The use of bans on the other hand, tended to compensate for the reduced use of strikes as far as Allowances were concerned, and to a lesser extent, Pay. Nevertheless, despite the

5 The extent to which bans were supportive cannot be determined from the Table. On some occasions it can be assumed that strikes and bans were discrete activities.
clear preference for bans, Pay, Allowances and Log of Claims represented only a small proportion of overall activity, so that they too, followed the trend identified elsewhere.

5.2. CONCLUSION

The trend towards a decline in industrial disputation after 1981-82 and a coinciding decrease in the number of strikes over Pay, Allowances and Log of Claims was common to most states. There was not however a common pattern to that decline: In NSW, South Australia and West Australia, the decline for both had started in 1982; when the three issues started to decline in Victoria, overall strike numbers were already on the decrease from the previous year; and in the ACT, there was a coinciding decline from 1983 with strikes over Pay, Allowances and Log of Claims increasing in 1984. In Victoria, Western Australia and the ACT, the trend was reversed in 1987, when strikes overall began to increase with a concomitant increase in disputes involving the three issues.

In keeping with the other states, disputes involving Pay, Allowances and Log of Claims declined in Queensland in 1982. The number of strikes overall however, increased in 1983. Queensland also experienced an increase in strikes and the three issues in 1987. In the Northern Territory, both were subject to fluctuations from 1981 with generally, a comparatively high level of strikes overall. The three issues did not necessarily coincide with the overall trend.

It is to be expected that an overall decline in the number of strikes would result also in a decline in the number of disputes over a given issue. Nevertheless, the survey revealed that the downward trend in most states from 1981-82, also resulted in a reduction in Pay, Allowances and Log of Claims as a percentage of strikes.

Without exception, the percentage share of the three issues was higher in the period 1973-81 and in some states, it was still high in 1982. The variations between states was quite considerable. For the period 1973-81, strikes involving Pay, Allowances and Log of Claims in NSW ranged between 30-50 per cent and in 1982, 21.6 per cent; in Victoria, 41.3-84 per cent and 50 per cent; in Queensland, 30-61 per cent and 29.3 per cent; in South Australia, 38.5-80 per cent and 77 per cent (bans were 38.5-80 per cent and 52.6 per cent); in Western Australia, 13-42.1 per cent and 48.1 per cent; in Tasmania 12.5-100 per cent and 25 per cent; in the Northern Territory, 0-54.6 per cent and 20 per cent; and in the ACT, 0-66.7 per cent and 33.3 per cent (bans were 13.4-44 per cent and 16.7 per cent).

From 1983-86, notwithstanding the variations in the trend as outlined earlier, every state experienced a decline in these percentages. As was the case during the earlier
period, the variations were considerable. In NSW, the three issues were involved between 17.3-20.7 per cent and in 1987, 33.4 per cent; in Victoria, 30-43.2 per cent and 47.3 per cent; in Queensland, 10.5-15.9 per cent and 43.4 per cent; in South Australia, 10-38.9 per cent and 10 per cent (bans were 11.3-77.8 per cent and 35.3 per cent); in Western Australia, 5-25 per cent and 40 per cent; in Tasmania, 14.3-55.5 per cent and 50 per cent; in the Northern Territory, 0-30 per cent and 20 per cent; and in the ACT, 0-50 per cent and 25 per cent (bans were 11.8-28.6 per cent and 15.7 per cent).

The percentage increases in Victoria, Queensland and Western Australia in 1987 coincided with the increase in overall strike levels. NSW was the only state where the increase occurred in contrast to a continued decline in overall strike numbers. Although there is no instance of the maximum percentage from the earlier period being achieved, the increases indicate that a reversal to the earlier trend may have begun, at least in these states.

Bearing in mind that Log of Claims will include some issues unrelated to Pay and Allowances, it is reasonable to assume that, as the two issues declined in relative importance to other issues from 1982 and 1983, the percentage of Log of Claims that included either, would also decline. It remains to be seen then, whether the relationship between Pay and Allowances changed with the overall downturn in strike activity.

In NSW and Victoria, while Pay declined in numbers and as a percentage from 1983-1986, Allowances maintained pre-existing levels and percentages. In both states, there was an increase in Pay disputes in 1987. In Queensland, where peak strike activity occurred during the latter period, Pay and Allowances remained low. There was however a difference proportionately given the former relationship. Allowances, between 1982-86 were much the same as a percentage as they had been earlier, while Pay showed a marked decline. Strikes over Pay and Allowances fell in South Australia between 1983-87, with Allowances featuring only once. Conversely, bans over both issues remained, more consistently in the case of bans and somewhat reduced as a percentage in each case. In Western Australia, Pay declined in number and as a percentage between 1982-87, while Allowances increased to a higher level and proportion than they had ever been. Between 1983-87, in Tasmania, Allowances attained higher levels than in any year during the earlier period, and generally higher percentages. Pay on the other hand, declined, with the exception of 1984 when, like Queensland, peak activity occurred. The Northern Territory experienced a decline in Pay and Allowances as far as numbers and percentages were concerned. Even so, there was a change in the relationship. From 1982-87 (with no strikes for either issue recorded in 1983),
Allowances were generally higher than bans both in number and as a percentage of strikes. There were no strikes recorded for Allowances between 1982-86 in the ACT, while Pay featured in 1982 and 1984. Alternatively, bans were applied consistently from 1981-86 although they represented only small percentages. In contrast, bans over Pay were applied only once, in 1984, the same year that strikes were recorded. In 1987, strikes were recorded over Allowances, but not over Pay.

It can therefore be concluded that while both Pay and Allowances suffered a decline from 1982, Allowances retained a greater percentage of overall strike action. There was a decided change in the relationship between the two from 1982 onwards that extended to 1986 in some states and 1987 in others.

The variations in the degree to which Pay, Allowances and Log of Claims changed in relation to overall trends has been outlined above. In the following section, I will analyse a wider range of issues with a view to identifying the extent of change that occurred in other areas, and the concerns they expressed.

When I spoke to the research officer at the ACTU, I indicated to him that my research based on both data and anecdotal evidence suggested that in some industries there had been an increase in disputes over Allowances. He was reluctant to comment, although he acknowledged that the ACTU was aware of such claims. He further added that the resort to income maintenance through increased Allowances was discouraged by the ACTU as being outsided the Accord guidelines.
MAJOR CAUSES OF DISPUTATION

To ascertain the dominant trends in issues and their divergences, the following data is comprised of the two most prominent issues that precipitated industrial action during each year. Log of Claims has been an added where it was not itself one of the two major issues. The analysis will, like the previous section, concentrate on strike data unless otherwise specified.

From the outset it is clear that 'two issues' is something of a misnomer. Indeed it is most frequently the case that even where there is a clear first issue, a number of other second issues may combine to equal or surpass the first issue. So although one issue may represent a greater percentage than any other single issue, in terms of overall disputation it may not amount to a significant proportion.

6.1.1. New South Wales

For the period 1973-82, Pay, Dismissals and Managerial Policy were the issues at the forefront of industrial action in NSW. The only year that Pay was not one of the first two issues was 1980. As figure 11C indicates, notwithstanding the primacy of these issues over that period, in only one of the years, 1973, did they account for over 50 per cent of all strikes.¹ From 1983, there was a distinct change in the issues. At a time when strike activity was at its lowest in NSW (See Figure 1A), Managerial Policy dominated. Until 1987, Pay was not one of the two major issues, although Allowances featured in 1984.

Along with Managerial Policy, issues associated with security of employment, appeared as first or second issues: in 1983, Job Maintenance and Manning; and in 1985, Dismissals. Health and Safety featured in 1986 and 1987 for the first time.

¹ Not including Log of Claims which, with the exception of 1975, did not represent first or second issues.
The curve for strikes overall (see Figure 1A), generally reflects the curve for the main issues. (See Figure 11D) While this would seem to be a predictable result of combining the two or more major issues, this was not necessarily the case as analysis of other states and Territories will show.

The number of strikes overall did not necessarily reflect the primacy of the major issues. In 1981, when strikes peaked for the period, Pay, Allowances and Hours represented only 47 per cent of all strikes although as Figure 11D shows there was a marked increase in the number of disputes over major issues. Even so, the numbers were not as high as they were in 1973 when strikes overall were almost as high as 1981, and the major issues accounted for 60.5 per cent. In both instances it should be noted that there were two second issues rather than one, which was the norm.

By way of contrast, in 1987 when strikes overall were at their lowest, the major issues accounted for 69 per cent of all strikes. With Pay, Allowances and Union equally the
first issues, and Health and Safety and Managerial Policy the second issues, it appears at first glance that a greater diversity of issues had emerged. In fact, these issues had always been features of industrial disputation in NSW. What had changed was the proportions.

6.1.2. Victoria

As in NSW, strikes in Victoria were dominated by three issues between 1973-1982. They were Pay, Conditions and Log of Claims. The only exceptions were 1973, when Union replaced Conditions and 1981, when Hours was equal to Log of Claims and Conditions as second issues. Unlike NSW, these issues in aggregation accounted for high percentages of overall strikes. In these years, only 1978 and 1980 did not amount to more than 50 per cent. (See Figure 12C) From 1983, Allowances, Job Maintenance and Managerial Policy started to feature with a decline in Log of Claims.

The only year throughout the entire survey period when Pay did not feature was 1985. In every other year Pay was the first issue, and only once, in 1983 was that position shared (with Job Maintenance).

The curve for strikes overall (See Figure 1B), varies between 1977-81. Otherwise it is roughly similar to the curve of the main issues. (See Figure 12D)

As was the case in NSW, the number of strikes overall did not necessarily reflect the primacy of the major issues. For example, in 1978 and 1980 when strike activity was high, Pay and Log of Claims accounted for 42.3 per cent and 29.3 per cent respectively. Alternatively, in 1986 when overall strike activity was relatively low, Pay, Superannuation and Conditions, accounted for 50 per cent of strikes.
Both NSW and Victoria display distinct trends in their patterns of industrial action: There was a concentration of issues between 1973-82, followed by a decrease in levels of disputation and a corresponding introduction of a range of other issues that had not hitherto featured in first or second place. Although Pay was a major issue in both states between 1973-82, only in Victoria did it persist, while in NSW, its place was taken until 1987 by other issues.

6.1.3. Queensland

Pay, Conditions, Dismissals, Managerial Policy and Log of Claims were the issues at the forefront of industrial action in Queensland between 1973-82. From 1973 until 1978, and in 1981, various combinations of these issues accounted for 50 per cent or more of all strike activity. (See Figure 13C) In each of those years Pay was a major issue.

Pay ceased to feature as a main issue from 1982-1986, and Log of Claims from 1983.
Conditions, Managerial Policy and Dismissals remained. In addition, there were Hours in 1983-84, Contract Labour in 1985 and Health and Safety in 1986.

Comparison of the curves in Figures 1C and 13D shows that they are almost identical in terms of rise and fall (but not peaks). Over the early part of the period, between 1973-81, the number of strikes tended to reflect the primacy of issues. From 1982 until 1986, (years incidentally when Pay had ceased to feature), the major issues accounted for less than 50 per cent of all strike action. This was the case even in 1984, when strike activity overall was at its highest since 1973.

Although the pattern of strike activity in Queensland is similar to NSW and Victoria in showing a distinct change in the pattern of industrial action from 1982, it differs significantly otherwise. Where overall disputation had decreased over that period in the other two states, in Queensland, it remained high until 1985. In addition, Queensland appears to have had a more dynamic situation as far as second issues were concerned particularly over the earlier period.

Over the latter period, there was a change in trend insofar as, when strike activity was high, the major issues were not responsible for the majority of disputation as they had been during the earlier period.

6.1.4. South Australia

Between 1973-82, Pay was the first issue in South Australia with Allowances and Conditions as the predominant second issues. There were however a number of other issues which assumed secondary importance in some years, in particular 1977, where Pay, Allowances and Dismissals were equally first with a range of other issues equally second. As Figure 14C indicates, the major issues during each year of the survey.
accounted for at least 50 per cent of all strikes, and usually considerably more.

In keeping with the other states, a change in trend is evident from 1983. Job Maintenance became the major issue in 1983 and 1984. Security of employment was again prominent in 1986 with Contract Labour and Manning disputes accounting for first issues and Job Maintenance as a second issue. 1986 also saw the emergence of Superannuation as a first issue. By 1987 it had become the outstanding issue.

The curve for the number of strikes overall between 1973-82 (see Figure 1D) reflects the rise and fall of first and second issues in Figure 14D. For the period 1983-86, the curves are almost opposite, although the degree of rise and fall is minimal.

During the years of peak strike activity (1973, 1975 and 1981) there were clear cut first and second issues. Pay was first in each case with Allowances and Manning as second in 1973, Dismissals in 1975 and Demarcation in 1981. While this was also
true for non-peak years as well, it was by no means the rule. In 1977, 1984, 1986 and 1987 when overall strike numbers were low, a large number of second issues reveal wide-ranging concerns.

Between 1973-75, strikes were the major form of industrial disputation in South Australia. From 1977, bans became the major form, and as such, the discussion of issues would be incomplete without some appraisal of their role.

As Figure 14E(i) indicates, in the years 1973-78, bans generally reflected the concerns of strike activity. Strikes over Pay were accompanied by bans, and Union as a second issue was prominent.

In 1979, bans reached an unprecedented high level for the 1970s, in contrast to a low level of strikes. Health and Safety as first issue and Demarcation as second, accounted for 59.7 per cent of all bans, whereas strikes had been concerned with Pay and Conditions. In that year at least, the nexus between strikes and bans appears to have broken with two quite distinctive sets of concerns operating.2

In only one year, 1977, did the two major issues fail to account for at least 50 per cent of all bans (34.1 per cent). An interesting corollary to this lies in the multitude of second issues that 1977 saw in strikes.

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2 This is borne out by the complete data. Pay and Conditions in 1979 accounted for only 5.8 per cent and 1.9 per cent respectively, of bans. There were no strikes recorded over Health and Safety, and Demarcation accounted for 7.7 per cent.
From 1980-82, Pay continued to dominate as first or second issue, with a marked increase in the number of disputes over allowances. As Figure 14E(ii) indicates, in 1982 there was a decline in the number of strikes and bans, the same year in which Pay and Allowances ceased to simultaneously be responsible for the majority of disputes. While strikes from 1983, became increasingly concerned with security of employment and conditions, bans continued to be applied over Pay as well as issues for which strike action had been taken. Although strike activity was low between 1983-87, bans remained relatively high. In 1987, when Superannuation was an outstanding first issue for strikes, an equal number of bans placed Superannuation second to Pay.

Between 1973-79, the first and second issues accounted for the majority of bans, with the exception of 1977, when they accounted for only 34.1 per cent. From 1980, there was a definite change. Notwithstanding the high number of bans, the major issues ceased to occupy more than half in each year, with the exception of 1982 (50 per cent), 1985 (55.3 per cent) and 1986 (52.4 per cent). An interesting aspect to these exceptions is that in each of those years, Pay disputes were a major issue (in 1982 and 1985 Allowances also), while in 1977, Pay had not been an issue. It should be noted however that in 1979, Pay was not an issue, and in the latter period, Pay was an issue in 1987.

Since 1976, the pattern of strike action in South Australia has tended towards a diversity of issues. No change in respect of that pattern is evident during the survey period. In keeping with the other states, there was however a change from 1983 onwards as far as the issues were concerned. Bans were generally more numerous, and
more concentrated. In the period 1973-78 they reflected the concerns of strikes while in most of the following years (1981-82 and 1987 being notable exceptions) there appears to be little relationship between the two activities.

6.1.5. Western Australia

Between 1973-85, Managerial Policy was the issue at the forefront of industrial disputation in Western Australia, with Pay, Conditions and Union most frequently, the additional issues. Western Australia differs from the other states looked at so far in two respects: First, between 1978-81, Pay is not either the first or the second issue. Secondly, it was not until 1984 that an alteration in trend as far as issues are concerned, is identifiable.

In only three years, 1978, 1981 and 1986 did the major issues not account for at least 50 per cent of all strike activity. These were also years incidentally, which did not see Pay as a major issue. There does not appear to be any pattern to the relationship between strike levels and issue intensity. As was the case elsewhere, periods of high disputation did not necessarily reveal a prominent issue. In 1978 when overall strike activity was high, Managerial Policy and Conditions accounted for only 35 per cent.

The curve for strikes overall in my data (See Figure 1E) reflects the curve for main issues. (See Figure 15D) In 1984, the number of strikes was at its lowest for the entire survey period with a corresponding increase in the number of issues which were of importance. While Conditions and Managerial Policy retained their previous status, issues such as Dismissals, Demarcation, Contract Labour, Union and Job Maintenance

3 Their status as first or second issues was interchangeable.
4 But not the ABS curve.
appeared. Although the status quo returned to some extent in 1985, Dismissals remained, and by 1986, Health and Safety and Dismissals accounted for first and second issues. Conditions and Managerial Policy on the other hand, declined to 7.5 per cent each, the lowest that either had been up until that time. In 1987, they declined even further to 4.0 per cent each.

Despite differences in the major issue over the earlier years, Western Australia follows the same trend as most of the other states: Following a decline in the number of overall strikes from 1983, there was a distinct change in the issues which predominated in strike action. As in the other states, issues that were concerned with security of employment and the maintenance of existing conditions, achieved importance.

6.1.6. Tasmania
Between 1973 -82, Pay, Dismissals and Managerial Policy were, like NSW, the issues at the forefront of industrial action in Tasmania. Again, like NSW, 1980 was the only year when Pay was not one of the first two issues. Unlike NSW, as Figure 16C indicates, these issues accounted for the majority of all strikes. In only one year, 1981 (and that includes the whole survey period) did the major issues not predominate.

There was a partial change in trend from 1983 onwards. Pay as a first or second issue featured in 1984 and 1987, but appears to have been replaced by Allowances in the other years. As for the other issues that had been prominent in the earlier period, they continued to hold their place. From 1984-87, overall strike levels in Tasmania were relatively high, (see Figure 1F) which suggests that apart from the decline of Pay as an issue, concern over the other issues had heightened.
The curve for strikes overall (see Figure 1F) reflects the rise and fall curve for the main issues, but not necessarily the peaks. (See Figure 16D) While this is readily explainable in states like NSW where frequently, the major issues did not account for the majority of strike action, in Tasmania where the opposite was the case, it would be expected that the peaks would coincide. In fact, the deviations are caused by variations in the percentages. For example, in 1981 when overall strike numbers showed a slight increase, a decline is registered for main issues. 1981 was the only year when the percentage of main issues dropped below 50 per cent. In 1985-87 where overall strike activity is fairly static, there was a decrease in 1986 followed by a sharp increase in 1987. The percentage involvement of main issues for these years was 63.7 per cent, 55.5 per cent and 100 per cent respectively.

Tasmania resembles Queensland in its pattern of strike activity in respect of increased numbers in 1984, followed by a decline. There is a difference however insofar as the
numbers in Tasmania did not fall below the 1970s level. In terms of issues, there was a discernible change in trend that was not as distinctive as the change that occurred in other states.

6.1.7. Northern Territory

Pay, Allowances and Managerial Policy were the major issues in the Northern Territory between 1973-82. There were no strikes recorded in 1977. As Figure 17C demonstrates, the major issues accounted for more than 50 per cent of all strikes during the entire survey period.

From 1983, a change in trend is discernible. While Managerial Policy retained its position as a first or second issue, Pay featured only once, in 1985 and Allowances once, in 1987. Issues concerned with security of employment attained greater emphasis than in the earlier period, along with Health & Safety in 1983 and 1984. (These issues had also been prevalent in 1982 along with Pay and Allowances.)

The curve for strikes overall (See Figure 1G) generally reflects the curve for main issues, although the peaks do not always coincide. (See Figure 17D) The reasons why are the same for the Northern Territory as they were for Tasmania. That is, there were marked variations in the percentages, even though the major issues always accounted for over 50 per cent of strikes. In 1981, for example, the three major issues accounted for 63.7 per cent, down from 100 per cent in 1980. Again, in 1984 when strikes overall peaked, the major issues represented only 50 per cent, a drop from 91.8 per cent in the previous year.
The Northern Territory, like Tasmania ran counter to the national trend, in respect of strike activity remaining relatively high from 1984-87. Nevertheless, despite the increased strike activity, the trend in the states towards a decrease in Pay as an issue from 1983 was evident also in the Northern Territory.

6.1.8. Australian Capital Territory

Pay was the most frequent major issue between 1976-82. Even so, for the period 1973-82, a number of other issues, concerned mostly with job security were prominent and, if aggregated, more prevalent than Pay even when combined with Allowances. No strikes were recorded in 1974. As Figure 18C shows, the major issues accounted for more than 50 per cent of strike activity during the entire survey period.

There was some change in trend from 1983. Pay and Allowances featured only once in
1984 and 1987 respectively; Union and Dismissals disappeared as first or second issues. The emphasis on security of employment that had been evident in the earlier period, was undiminished. The aggregation of Job Maintenance and Contract labour would be sufficient to make job security the major issue for the entire period. In addition, Political as an issue arose in 1983, and Superannuation in 1987.

The curve for the number of strikes overall (see Figure 1H) reflects the rise and fall of first and second issues in Figure 18D, except for 1982. The same reasons for the deviation in the ACT apply here as elsewhere. In 1981 major issues had accounted for 88.8 per cent of all strikes, and dropped to 66.7 per cent in 1982.

<table>
<thead>
<tr>
<th>ACT Strikes - 1973-87</th>
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<tr>
<td><strong>Main Issues and Log of Claims</strong></td>
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<tr>
<td>Numbers</td>
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<tr>
<td>150</td>
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<td>73 74 75 76 77 78 79 80 81 82 83 84 85 86 87</td>
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<td>Figure 18D</td>
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In 1973, 1978 and 1987 strikes were the preferred form of industrial action in the ACT; in 1975 strikes and bans were equal. In all other years, bans were the preferred form. Consequently an appraisal of their role will be included in the analysis.

As Figure 18E(i) shows, in the years 1973-79, strikes and bans were concerned with a variety of issues. In a less structured way, the pattern reflects the situation in South Australia. Meaning that bans tended to reflect the concerns of strike activity, albeit, not necessarily at the same time.

Two issues alone were confined to a particular activity: Only strikes occurred over Contract Labour (in 1977 and 1978). In both cases, Contract Labour was a second issue and accounted for only 16.7 per cent and 14.3 per cent respectively, of all strike activity. It should be recalled though, that strikes were the preferred form of industrial action in 1978 accounting for 75 per cent in a year when overall disputation was low. The second issue, Political, occurred in 1974, 1976 and 1977, and involved only bans. In contrast to Contract Labour, Political was the first issue on each occasion and
responsible for sizeable proportions of ban activity. In 1974 and 1976, 57.1 per cent and in 1977, 46.7 per cent. In each of those years, bans were the preferred form of direct action accounting for 100 per cent in 1974 (there were no strikes recorded for that year); 57.1 per cent in 1976, when overall disputation was low; and 46.7 per cent in 1977, a year of increased levels of overall disputation.

In 1980, bans increased to unprecedented levels and remained high until 1985. During the same period, strikes were comparatively low, despite increased activity between 1980-82.

As Figure 18E(ii) indicates, strikes and bans were concerned with a variety of issues in the years 1980-87 as they had been in the seventies. Only one issue, Dismissals has been deleted as a major issue, while Superannuation, Health & Safety and Demarcation disputes are added. Once again, bans tended to reflect the concerns of strike activity, and from 1985 were more structured in the sense that strikes and bans occurred over the same issues simultaneously.

One issue was confined to a particular activity: Only strikes occurred over Superannuation as a major issue (in 1987)\(^5\). It was a first issue equal to Allowances, Hours and Health and Safety and accounted for 25 per cent of all strikes. 1987 was a peak year for strikes in the ACT, and for the first time since 1978, the preferred form of industrial action, accounting for 61.5 per cent of disputation.

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\(^{5}\) There were a number of bans applied over Superannuation in 1984 however they accounted for only 9.1 per cent, and did not qualify as a first or second issue.
Peak years for both activities occurred during the eighties and were accompanied by several changes in the pattern of disputation. In 1980-81, bans peaked and strikes were relatively high (in comparison to the seventies). Pay and Allowances were the issues that dominated strike action, while bans favoured Demarcation disputes with Allowances in 1981 in support of strike action\(^6\). While strikes increased slightly in 1982, the number of bans fell sharply. Pay was a first issue for strikes and second issue for bans; no other issues were shared.

![ACT Strikes and Bans - 1980-87](image)

Strike activity declined in 1983, while bans rose to a peak level. There were no common issues. From 1984-86, strikes remained low and increased to their peak in 1987. During the same period, bans had started to fall. Over this latter period, there was a much greater tendency for strikes and bans to reflect the same concerns, with emphases on Conditions, Manning, Hours and Contract Labour in contrast to the early eighties when Pay and Allowances had dominated. In this context it should also be noted that between 1985-87, although there was a decline in bans, and until 1987, strikes were low, both activities involved a greater number of issues (that qualified as first or second) than normal.

Between 1974-80, first and second issues occupied the majority of bans. From 1981-84, this trend was reversed. In those years 1982 was the exception: major issues accounted for 64.6 per cent. However, 1982 was also a year when the number of bans fell quite markedly. In 1985, when the number of bans decreased, the major issues as a

\(^6\) Note earlier reservation about support.
percentage of total bans, increased. This was also the period when a more structured relationship between strikes and bans emerged.

6.2. CONCLUSION

States which experienced the highest numbers of strikes were more likely to show clear cut first and second issues. That is not to say that those states had a narrower range of issues which was not the case. Rather, the larger number made for clearer identification of the issues involving the highest disputation. As the analysis indicated, in NSW for example, the major issues only once accounted for half the total number of strikes. While the percentages share varied amongst the high strike states, it was rare for them to attain the same levels as the states in which fewer strikes were recorded.

Notwithstanding the differences mentioned above, a change in trend was identified in all states, usually from 1982 or 1983 onwards. As far as the larger strike states were concerned, in NSW, from 1973-82, Pay, Dismissals and Managerial Policy dominated, while from 1983, Managerial Policy, Allowances and issues concerned with security of employment were prominent. Pay, Conditions and Log of Claims occupied the 1973-82 period in Victoria with Pay, Allowances, Superannuation and in one year only, Job Maintenance in the latter period. In Queensland, Pay, Conditions, Dismissals, Managerial Policy and Log of Claims were at the forefront between 1973-82. With Conditions and Managerial Policy remaining, Dismissals, Hours, Contract Labour and Health & Safety became major issues. Western Australia, between 1973-83 was dominated by Managerial Policy and Conditions. Pay was also a major issue although it did not feature between 1978-81, and in some years, Union was prominent. From 1984, Conditions, Managerial Policy and security of employment became the major concerns.

In respect of the smaller strike states, Pay, Allowances and Conditions, plus an assortment of other issues accounted for first and second issues in South Australia between 1973-82. From 1983 onwards, Superannuation and issues concerned with security of employment became dominant. Between 1973-82 in Tasmania, Pay Dismissals and Managerial Policy were the major issues. From 1983 onwards, Pay (to a lesser extent), Allowances and Contract Labour featured. In the Northern Territory, Pay, Allowances and Managerial Policy were the main issues between 1973-87, while Managerial Policy, Health and Safety and issues concerned with security of employment occupied the 1983-87 period. Pay and job security issues dominated the 1976-82 years in the ACT, with Superannuation added to job security between 1983-87.

7 That is, NSW, Victoria, Queensland and West Australia.
8 South Australia, Tasmania, Northern Territory and ACT
In conclusion, Pay and Managerial Policy were the two issues that were most often the major cause of strikes in the period 1973-82. This was the case, to a greater or lesser extent, in all states. From 1983, coinciding with the downturn in strike levels in most states, there was a change in trend. This was the case even in those states which did not have an overall decline in strike numbers. Pay ceased to be a major issue in all states except Victoria and Tasmania where, even so, it declined in importance. Managerial Policy continued to be a major issue in NSW, Queensland, Western Australia, Tasmania, the Northern Territory and ACT. The most significant feature of the trend between 1983-87 however, was the upsurge in issues associated with security of employment. Although these issues (including Job Maintenance, Manning and Contract Labour) had been the cause of strike action in the earlier period (particularly in the ACT), they achieved much greater prominence from 1983 onwards.

In Chapter Four, the levels of strikes and bans were looked at to identify trends that occurred in each state. With the exceptions of Queensland, Tasmania, the Northern Territory and ACT, an overall decline in strike numbers was noted in the remaining states from between 1980-82. The decline in strike numbers was accompanied by an increase in bans as a percentage of industrial action, and in some states represented an increase in numbers. This trend was evident also in those states in which strike activity did not experience an overall decline, except for the Northern Territory. In Chapter Five, the trend was identified in terms of changes when Pay, Allowances and Log of Claims were the issues. This chapter has sought to identify trends as far as the whole range of issues were concerned. The analysis in both parts has not concerned itself with bans except in South Australia and the ACT where they were generally the preferred form of industrial action.

A further dimension was added when the causes on a state and industry basis were considered. In summary the overall decline in strikes during the 1980s was accompanied by a decline in the number of disputes over Pay. While the initial observation of these two facts may lead towards the conclusion that a decline in Pay disputes is causative, the concomitant reduction of Pay as a percentage of disputes suggests that such a conclusion may be an oversimplification. During this period, particularly after 1983 when a much more decided change is evident in the level and forms of industrial disputation, the issues which were classified as major issues, underwent a transformation that, although not uniform in each state, nevertheless indicated a changed industrial climate. One of the factors which arose in regard to Pay, was the increase in Allowances as a percentage of disputation, and its relative stability in terms of numbers. Another pronounced feature at this point was the overall increase in job security issues in both numbers and as a percentage of
strikes and bans.

Further analysis of these two coinciding trends revealed traits that were characteristic of individual states or industries. A picture emerged whereby basic trends were identified that constituted a set of issues which were shared in each state and industry. They were Pay, Allowances, Job Maintenance, Union, Demarcation, Managerial Policy, Conditions and Log of Claims. In addition, a further set of issues that were relevant to particular states or industries were also identified. While the former set of issues remained relatively constant throughout, their status as major issues was affected by changes in levels of disputation and the emergence of issues from the latter group to positions of prominence. Variations were most noticeable upon appraisal of the issues which gained prominence in individual states and industries while being almost non-existent in others. Similarities, apart from the core set, were also identifiable from individual analysis. The Hours campaign between 1979-81 for example, was of national significance.
Chapter Seven

TRENDS IN INDUSTRIAL DISPUTATION

This final section will coordinate the data from the last three chapters in an attempt to explain the trends that were revealed. The underlying premise is that industrial disputation in Australia is subject to dynamic, often discrete, forces. It is characteristic of most areas of disputation that, despite the emergence of trends, divergencies will arise: that there will be similarities and differences which are not always explicable; and that an instrumentalist mode of analysis may not always reveal the answers to questions asked. Nevertheless, the attempt to provide explanations must be attempted not in spite of, but because of, the esoteric nature of conflict in Australian industrial relations.

7.1. THE FORMS

7.1.1. State Trends

In Chapter Four it was ascertained that a distinct change in trends was evident in industrial disputation during the 1980s. This was born out (at least where strikes were concerned) by statistics from ABS. Be that as it may, the analysis from this point on will concentrate on the results from my data and research.

On a national basis, as Figure 11 shows, there was a decline in strike numbers from 1982 which was accompanied by a gradual, albeit slight, increase in bans from 1983. Strikes were the preferred form of industrial action on a national basis, being surpassed by bans in one year only, 1986 (and then only marginally). Looking at strikes alone, the national trend towards a decline is unmistakable. Even when bans are included the reduction in disputation on a national level is still evident.

As the state breakdowns have revealed, however, the national trend was not necessarily reflected in state trends. NSW, the largest state in terms of disputation, was the only state to replicate the national curves. Strikes were the preferred form of industrial action apart from 1986 when bans overtook strikes, due to many bans in the Construction, Transport and Storage and Other Industries. This coincided with a decline in strikes and an increase in bans in the Mining and Manufacturing industries. Although there was a marked decline in strike numbers from 1982, a steady increase in bans
from 1983, resulted in peak ban levels during the final survey years despite (or perhaps to compensate for) the decline in strikes.

Victoria, the second largest state, was the next closest to the national trend towards a decline in disputation in the 1980s, notwithstanding a distinct difference overall in gradations. \(^1\) Strikes were the preferred form in Victoria except for 1984-86 when they were exceeded by bans in every industry.

Leaving aside for the moment South Australia and the ACT, where bans were the usual preferred form, industrial disputation in the remaining states frequently ran counter to the national trend. In Queensland, strikes were the preferred form until 1981, when bans increased dramatically in number so that, until 1987, they were equal to or greater in number than strikes. Even so, Queensland would not have deviated greatly from the national trend had it not been for 1984 when peak strike activity was experienced. This was almost entirely the result of a dispute between electricity workers, the state Government and SEQEB which will be dealt with in greater detail later. Suffice now to say that in terms of levels and forms of disputation, Queensland differed from the national trend for reasons that were grounded in the internal political, legal and industrial situation in that state. \(^2\)

Western Australia also partially reflected the national trend, although the decline in strike numbers during the 1980s lasted only until 1985 when, counter to the national trend, they started to increase. Strikes were the preferred form until 1984 at which time bans increased to an almost equal number, and by 1987, were the preferred form. 1987 was also the peak year for bans. The increased strike activity from 1985 in Western Australia was an industry-wide phenomenon and, unlike Queensland, not attributable to a specific dispute. It can be argued that the increase in bans was in accordance with the national trend if their relationship with strikes is discounted.

At first glance Tasmania appears to reflect the national trend during the 1980s. This however is true only as far as the rise and fall of the curves and the prominence of bans in 1986 are concerned. Closer scrutiny reveals that during the 1970s, the curves had been divergent, with the level of disputation well below the national trend. Therefore, while the 1980s appear consistent, as Figures 1F and 1L show, peak strike activity during 1982 and 1984 was actually counter to the national trend. Strikes in the

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1 For example, where the national trend in strikes peaked in 1981, the decline was already in progress in Victoria. (See Figures 1B and 1L)
2 In the case study, as well as demonstrating the significance of the political, legal and industrial situation in Queensland, I will also mention the impact that weather had during the conflict and its ramifications.
Manufacturing, Construction and Transport and Storage Industries accounted for the upturn in 1982; and in 1984, Mining, Manufacturing and Other Industries strikes were responsible.

Strikes were the preferred form of industrial action in the Northern Territory apart from 1977 when bans in the Transport and Storage industry increased to the point where they emerged as the preferred form. As in Tasmania, an increase in strike activity during the 1980s ran counter to the national trend. The years 1983 and 1984 recorded the highest number of strikes for the entire survey period. In 1983, Mining and Other Industries were responsible; while in 1984 Construction and Transport and Storage industry strikes accounted for the peak levels.

South Australia and the ACT deviated from the national trend in that bans were the preferred form of industrial activity throughout most of the survey period. In South Australia the national trend is reflected to some extent by the decline in strikes during the 1980s. However, with bans clearly the preferred form throughout, the similarity is limited. The same could be said of the ACT, but once again the relationship with strikes limits the parallel considerably. An interesting comparison can be made between South Australia and the ACT in that the shared decline in strikes was matched by completely different behaviour as far as bans were concerned. (See Figures 1D and 1H)

It can be concluded from the above summary that to speak of 'a trend' in Australian industrial relations disputes is fraught with difficulty. The higher levels of disputation in NSW and Victoria combine to dominate aggregated statistics so that patterns elsewhere remain hidden and unidentified. With NSW and Victoria the only states to broadly reflect the national trend, divergences in the remaining states appear to be unique and various. At this stage it appears that Queensland was the only state where divergence from the national trend was grounded in a single dispute (SEQEB). In this regard, Queensland could be considered aberrational rather than unique. That is, if SEQEB had not occurred, Queensland may well have reflected the national trend. As far as the remaining states were concerned, it seems that divergences, particularly when increased strike activity was involved, occurred in a number of industries. This suggests *prima facie* that divergence from the national trend was subject to forces unique to a state, but not particular to a single industry. Whether or not a common state interest was being expressed is something that will be addressed presently.

The most readily identifiable national trend, and in some respects the most significant, was the increase in bans as a percentage of industrial action during the 1980s. This phenomenon occurred in NSW, Victoria, Queensland, Western Australia and Tasmania. In South Australia and the ACT, bans had always been responsible for a high percentage of
disputation. Only the Northern Territory was exempt from this trend. (See Figures 2A-2H) While the starting point varied from state to state, (as did the percentages) the trend is unmistakable. Furthermore, the 1980s trend is in contrast to the 1970s when, although bans generally represented a smaller percentage of industrial action, there were manifest differences in the relationship of strikes and bans between the states.

Although national trends may emerge from the statistics, it seems appropriate for a time to dispense with a notion of Australian industrial relations when considering the data, other than as a broad summary term. In the final analysis of course, external factors of national import such as the Accord will be included. For now, industrial conflict will be looked at discretely in terms of states and industries.

In Chapter Four, as well as looking at the forms and levels of industrial disputation on a state basis, the data was further broken down into individual industries. An additional perspective was thus revealed which demonstrated the diversity of disputation within each state as well as trends that were sometimes unique to a given industry or state.

In NSW the decline in strikes from 1982 was common to all industries, although in Transport and Storage and Other Industries it was the continuation of a trend that had already begun. The Mining, Manufacturing and Construction industries all experienced peak strike activity in 1981.3 Prior to 1982, trends in strike activity varied considerably with no two industries experiencing identical patterns. The incidence of bans also varied considerably. As Figures 3A and 3B show, while the trend and the relationship of bans to strikes in the Mining and Manufacturing industries were almost identical, in the three remaining industries bans appear to have been used in quite different ways. (See Figures 3C-3E) In a recapitulation of the argument used earlier in regard to 'national' trends, the two largest industries (in terms of disputation), Mining and Manufacturing, were the only ones to reflect the state trends.

In Victoria, the decline in strikes during the 1980s was common to Manufacturing, Construction and Other Industries. Generally, the decline was not as marked as it had been in NSW. The Transport and Storage industry was subject to fluctuating strike activity which rose to a peak in 1984. Bans in Manufacturing, Construction and Other Industries reflected the state trend to varying degrees. The years of peak ban activity on a state basis were 1975 and 1985. In the first instance, bans in Manufacturing and Other Industries were responsible; in the second, bans were relatively high in all

3 They were not necessarily years though, when strike activity was at its highest over the survey period.
Victorian industries. Manufacturing, the largest industry, most closely reflected the state trend.

The industrial patterns of Queensland industries are extremely varied, and no single industry reflects the curves overall in the state trend. Strike activity between industries altered significantly with peaks being achieved in different, often alternate, years. While as a general rule strike activity in Queensland appears to have been subject to the circumstances in individual industries, a notable exception was 1984, when increases to a greater or lesser extent occurred in every industry except Construction (where they were in any case relatively high). Bans in most industries also increased during 1984; in the Mining and Construction industries, quite disproportionately. The state trend was reflected more closely in relation to bans, particularly in the 1980s.

Bans were the preferred form of industrial action in all industries in South Australia. Strike numbers were highest in the Manufacturing industry and were most closely aligned to the state curve, although by no means identical to it. Peak years as far as both strike and ban activities were concerned differed from industry to industry and hence were variously responsible for the peaks in the state trend. In 1976 and 1981, bans in the Manufacturing industry were responsible; in 1979 it was Other Industries; and in 1987, the Construction industry.

In Western Australia, the decline in strikes during the early 1980s and the increase from 1985, was common to the Mining, Manufacturing and Other Industries. The Construction industry is included in the latter period. The state trend for strike activity in Western Australia was almost identical to that in the Mining industry, although peak activity in the Manufacturing industry in 1978, contributed largely to the state picture. Otherwise, strike activity varied considerably from industry to industry, with Mining, the largest industry, determining the state trend. Quite a different story emerges where bans are concerned. The state trend shows bans well below the level of strikes until 1984 at which time they increased steadily. The only industry to come close to replicating this trend was Construction. In the Mining and Manufacturing industries, bans remained low and almost level throughout the period, while in Transport and Storage and Other Industries, strikes and bans alternated up until 1984 as the preferred form. From 1984, bans in Transport and Storage and Other Industries increased, combining with Construction to create an upward state curve.

No industry in Tasmania was identical to the state trend in strikes. Increased activity in different industries at various times was responsible for the state curves. In 1978, the decline in strikes was evident in all industries, while the increase the following year
was attributable to Mining and Manufacturing. Manufacturing and Transport and Storage were responsible for peak activity in 1982 and Mining and Other Industries in 1984. Although Manufacturing also contributed in 1984 in terms of numbers, there was actually a decline which was counter to the state trend. The increase in bans during the 1980s was limited to Construction, Transport and Storage and Other Industries. According to the state trend, bans were well below strikes during most of the period, with 1986 the only year when they were the preferred form. Bearing in mind that bans were, in any case, few in number in Tasmania, no industry mirrors exactly the state trend.

In the Northern Territory, a combination of industries contributed to the state trend at different times. Peak strike activity, in 1984, was experienced in Mining, Construction, Transport and Storage and (to a lesser extent) Other Industries. During the earlier period, Manufacturing and Other Industries were responsible for the majority of strikes and thus, were the determinants of the state trend. No industry reflected the trend in bans. Transport and Storage in particular ran counter to the state trend, with bans the preferred form during those years when they were used.

Construction and Other Industries were jointly responsible for the state trends in the ACT in both strikes and bans. They did however alternate at times, so that at any particular time the trend was dictated by one rather than the other. The third industry, Transport and Storage, experienced negligible levels of disputation throughout the period.

State trends in strike and ban activity fell into three categories. The first was where one industry was responsible for the most disputation, either in strikes or bans. It was not necessarily the case that one industry would dominate both. For example, where Manufacturing dictated strike trends, Construction may have dominated the trend in bans. In the second category, shifting levels of disputation between industries meant that the responsibility for the state trend changed from one period to another. The third category was comprised of those states where a more equal distribution of disputation occurred. This resulted in a trend that was a combination of some or all of the industries, without any one standing out as a determinant.

7.1.2. Industry Trends

In this final analysis of the data from Chapter Four, I will consider whether trends existed on an industry basis. As the preceding section has demonstrated, there was frequently no appearance of shared trends between industries within a state. While this
was not always the case, there was enough diversity to justify a brief industry comparison.

One immediately noticeable aspect of the Mining industry in each state is the prominence of strikes as the preferred form, and the negligibility of bans. There appears to be an identifiable trend starting in the early seventies, with low strike numbers in each state, followed by the late 1970s and early 1980s, when each state experienced high levels of strike activity at some time during that period. The trend disappears from 1983 when each state displays quite different patterns of industrial disputation.

In the Manufacturing industry, with the exception of South Australia, strikes were the overall preferred form of industrial action. The curves over the first five years were the same in NSW, Victoria, Queensland and Tasmania. Peak strike activity after 1977 varied considerably. Western Australia was the only state to peak in 1978; NSW and South Australia in 1981; and Tasmania in 1982. Otherwise, despite fluctuations an overall decline over the survey period was evident in NSW, Victoria, Queensland, South Australia, Western Australia and the Northern Territory. While this might point to a general industry trend, it was only during the first five years that there appeared to be a distinct industry trend.

No clear trends emerged in the Construction or Transport and Storage industries. Apart from a tendency in both for bans to increase during the 1980s, each state appears to have functioned independently. One feature of the Transport and Storage industry which bears mention was the apparent interchangeability of strikes and bans. However, while this may be regarded as an industry feature, there is no evidence on comparison, of a coordinated pattern between states.

The relationship between strikes and bans varied considerably in Other Industries. In NSW and Victoria they were close in numbers, with strikes usually the preferred form until the mid-1980s. The same applied to Queensland until 1980. Elsewhere, the patterns of industrial action differed widely. The only identifiable industry trend was the prominence of bans as the preferred form during the 1980s (the Northern Territory was an exception). Nevertheless there were variations in the starting point to this trend, as well as the levels of activity each state experienced relative to the earlier period.

At this stage it is not possible to draw definite conclusions about industry trends. Certainly there were a number of features which were shared by some industries that set them apart from other industries. The relationship between strikes and bans was the most prominent. Common periods of peak strike activity was another. Furthermore, the
industry similarities were sometimes greater than the state similarities. Even so, all
this may suggest is a practical or pragmatic approach to industrial disputation relevant
to the concerns and industrial capacities of a particular industry. It does not necessarily
imply coordination on an inter-state basis or a communality of industrial objectives.

In the following section these questions will be addressed within the context of the issues
involved. First of all, on a state basis using the data from Chapter Four; then on an
industry basis with the data from Chapter Five.

7.2. THE ISSUES

7.2.1. Pay, Allowances and Log of Claims

Chapter Five considered the proposition that trends in levels of direct action are
determined by the incidence of wage disputes. Clearly implied was the notion that Pay is
the single most important issue, and the one most likely to initiate industrial
disputation. Concentrating on strikes (except for South Australia and the ACT)\(^4\) the data
was considered in two ways. Firstly, by looking at actual levels of Pay disputes in
contrast to Allowances and Log of Claims. Secondly, by considering all three as a
percentage of total strikes.

As far as the first perspective was concerned, it appears that as a general rule, the rise
and fall of overall strike levels mirrored the rise and fall of Pay, Allowances and Log of
Claims. The decline in strikes between 1981-82 coincided with a decrease in the
number of strikes over Pay, Allowances and Log of Claims. This was common to all states
despite variations in the time at which the decline began. An increase in strike numbers
in Victoria, Western Australia and the ACT in 1987 coincided with an increase in the
number of strikes over the three issues, while in NSW, the three issues increased
during a period of overall decline in strike numbers.

As far as the second perspective was concerned, the nexus between strike levels and Pay,
Allowances and Log of Claims becomes more complex when subjected to percentage
comparisons. It was the case that there was some relationship between the level of
strike activity and the number of strikes over Pay, Allowances and Log of Claims. The
decline in strikes overall was accompanied by a general decrease in the three issues \(^5\) as
a percentage of strikes, although there were considerable variations between states in
the extent of the percentage decline.

\(^4\) Where bans were also included because they were the preferred form.
\(^5\) Unless otherwise specified, I am referring to Pay, Allowances and Log of Claims in
aggregation.
Between 1973-81 (when overall, strike numbers were high) the percentage share of Pay, Allowances and Log of Claims was relatively high. There were considerable variations between the states with, for example, NSW ranging between 30-50 per cent, Victoria 41-84 per cent and Queensland, 30-61 per cent.\(^6\) Then between 1983-87, although strike levels varied between the states (with some actually experiencing increases) every state underwent a decline in the percentages of strikes over Pay, Allowances and Log of Claims.

If the proposition that Pay is a chief determinant of industrial action is to hold, the logical pattern would be one where, despite movements in overall levels, Pay maintained at the least, a constant percentage of activity. Indeed, an increase in Pay as a percentage of direct action could be envisaged during periods of overall decline. Except for minimal deviations, this was not the case. What the data suggests is that a trend developed from 1982-83 whereby the three issues ceased to occupy the importance in disputation that had existed previously. There was a drop in the aggregated issues as a percentage of strikes regardless of increases or decreases in actual numbers during that period. Because the decline in the percentage of Pay, Allowances and Log of Claims disputes happened against a background of the wage freeze and then the Accord, the explanation of the trend appears to be obvious. Is it plausible, though, to argue that the overall decline in strike levels can be attributed to the same sources?

Another dimension is added when the three issues are disaggregated. The decline of Pay as a major issue during the 1980s is unquestionable. However, no such decline is noticeable for Allowances, which in most states maintained or increased previous levels. Furthermore, Allowances continued to occupy at least the same percentage of overall disputation as before. Clearly, if the wage freeze and Accord account for the decline in Pay disputes, then the maintenance or increase of Allowances may well be attributable to the same sources. While the legislative and quasi-legislative power of the freeze and the agreement reached between the Government and ACTU over the Accord regulated Pay demands more strictly, claims for Allowances continued, in all probability outside the centralised wage-fixing procedures. The relative stability of Allowances as an issue suggests that the restrictions on Pay demands dictated by the Accord were, to some extent at least, compensated for by claims for Allowances. Whether this was confined to particular industries will be considered in due course.

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\(^6\)These are genuine examples. The same holds true for the other states.
7.2.2. The major issues

Chapter Six considered the two most prominent issues annually in each state in addition to Log of Claims (where it was not itself a major issue).\(^7\)

There was a great deal of variation between states in the percentage of strikes accounted for by the major issues. NSW was the only state where they accounted for less than 50 per cent throughout the survey period, though 1973 and 1987 were exceptions even in NSW. In Victoria and Queensland during most years between 1973-82, the major issues accounted for over 50 per cent with a reversal during the 1983-87 period when they fell below 50 per cent. In all other states, the major issues accounted for over 50 per cent during most or all of the years during both periods.

From 1973-82, Pay was a major issue in every state. The next most prominent issue was Managerial Policy which was a major issue in NSW, Queensland, South Australia, Western Australia, Tasmania and the Northern Territory. Other issues which achieved major status were Dismissals (NSW, Queensland, Tasmania), Conditions (Victoria, Queensland, South Australia, Western Australia), Log of Claims (Victoria, Queensland), Allowances (South Australia, Northern Territory) and in the ACT, job security issues. Industrial concerns therefore, were concentrated on a fairly narrow set of issues that in various combinations, were indicative of a national trend, with Pay and Managerial Policy the most prominent.

In 1983, the pattern of industrial disputation changed in most states. As the earlier part of this chapter has shown when summarising the data from Chapter Four, industrial disputation declined in most states, even those where bans increased. In the previous section it was noted that Pay disputes declined during the 1980s in line with a general decline in disputation. The only states where Pay continued to be a major issue were Victoria and the ACT.\(^*\) Managerial Policy on the other hand, continued to be a major issue in NSW, Victoria, Queensland, Western Australia, Tasmania, and the Northern Territory. Otherwise the predominant trend Australia-wide was towards issues associated with security of employment. In addition, Health and Safety (Queensland, South Australia, Western Australia, Northern Territory, ACT), Allowances (Victoria, South Australia, Tasmania), Conditions (Queensland, Western Australia), Demarcation (Western Australia, ACT\(^*\)) were also major issues between 1983-87. As well, in some

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\(^7\) As the introduction to this section points out, 'two issues' is something of a misnomer; also the reasons for including Log of Claims is explained elsewhere.

\(^*\) Denotes bans
states issues achieved major status in isolation; for example, Hours in Queensland and Union in Western Australia.

Clearly, the changes in trends in levels and forms of disputation, were accompanied by significant changes in the issues. Although Managerial Policy remained a constant throughout, Pay declined in numbers and, in most states, in status, during the 1980s. At the same time, issues associated with security of employment achieved major significance. In general there was an expansion of issues that in some cases had always existed on a minor level, in addition to the emergence of new issues that were indicative of a changed industrial climate. The concentrated formulae of the earlier period were greatly reduced. Two questions immediately arise from these findings. The first is: is there a causal link between the decrease in Pay as an issue, and the increase in job security issues? This needs to be considered within the context of the prevailing political situation. For example, allowing for the impact of the wage freeze and Accord on Pay demands, would their absence have forestalled the increase of job security issues, or would they have occurred in any case? The second question bears some relation to the first: To what extent were the changes a general reflection of industrial disputation, rather than a picture of the larger industries? As the data has shown, the trends were evident in all states. However as earlier analysis has shown, conclusions drawn on that basis tend to disintegrate when industries are examined individually.

7.3. CONCLUSION
Notwithstanding the complexities involved in identifying trends in Australian industrial relations, the existence of trends is evident. The examination of different aspects of industrial disputation has been useful in identifying certain broad trends. As well, variations to those trends and aberrational behaviour have been exposed. Of greater value though, has been the opportunity to submit the various trends to comparative analysis. Thus, following Chapter Four where changes to the forms and levels of disputation were discussed on a state and industry basis, the results from Chapters Five and Six showed trends in issues by state.
Chapter Eight

THE POLITICAL CLIMATE

The period covered by my research has witnessed a number of changes, not least in the industrial relations arena. A range of anti-union legislation, legal actions in the civil courts, a decline in union membership, the New Right, the Prices and Incomes Accord and changing trends in the level and forms of industrial disputations, are just some of the factors which have contributed to a dynamic political and industrial situation.

8.1.1. Governments and the labour movement

The notion that a harmony of interests may exist between employers and employees is part of the labourist (as distinct from the 'revolutionary') trade union tradition in Australia. 'Defence, not Defiance' was the slogan adopted by some of the first Australian trade unions, who, holding labourist aspirations, worked towards the election of Labor Governments. They held the belief that working class emancipation would be achieved through the ballot box; that a Labor Government would legislate in ways that would benefit workers.\(^1\) Certainly by the time the Whitlam Government was elected in 1972, there was a positive expectation that there would be meaningful consultation between the Labor Party in and out of Parliament and the ACTU. With these expectations in mind, the increase in industrial disputation during Labor's term may be be considered in two ways. First as a manifestation of the perceived breakdown in this relationship by the union movement. Secondly as a failure on Labor's part to convince the unions that real benefits had accrued to them as a result of the Government's tenure. While it is not intended to address these issues here, they are raised as background.

Although there were high levels of disputation in 1980 and 1981, it would be false to suggest that there was no co-operation at all between the Fraser Government and the ACTU. Indeed, Prime Minister Fraser, in describing the negotiations that had taken place during a major transport workers' dispute, conceded the positive spirit from all quarters. Nevertheless, there was distrust on both sides, combined with uncertainty about the stability of a centralised wage-fixation system. The introduction in 1977 of

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legislation aimed at curbing industrial activity remained a contentious issue between the Government and ACTU. Sheahan has summarised the situation thus:

The Fraser years have seen a disturbing growth of bitterness in industrial disputes. Explicit attempts to cut real employee incomes, tax changes designed to favour those on high incomes and anti-union legislation have aggravated the conflict on the union side. Unless arrested, this growing bitterness will destroy the possibility of an incomes policy.

When wage indexation did go, it was not at Fraser’s instigation. The decision was taken while he was overseas by a Full Bench of the Conciliation and Arbitration Commission. Sir John Moore, President of the Commission, criticised both the Government and the ACTU: It seemed that the commitment of the participants to the system was not strong enough to sustain the requirements for its continued operation.

By November 1982, the threat of a wage freeze was real. Industrial disputation had declined during the year against a background of continuing job losses and an embittered union movement. Both my data and ABS statistics confirm that most states had experienced some decline in industrial action during 1982 (see Figures 1A-1H) prior to the imposition of the freeze. The decline nationally in strikes and bans is marked (see Figure 1I). There was an increased tendency towards the four day working week, a fact that was born out by a survey conducted by forty Metal Trades Industry Association (MTIA) affiliates. Fourteen of the companies had instituted a reduced working week, and, commented the executive director of the MTIA, “this was probably only the tip of the iceberg”. Added to this was the increased number of retrenchment notices being issued. In this climate, unions were diverting greater energy towards redundancy pay cases than overall wage rises.

Unions were particularly incensed by the large number of retrenchments that were taking place in companies which were recording large profits. In their view, some companies were using the recession to “rationalise” their workforces. The ACTU believed the Government had actively encouraged this trend. Confrontation between

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2 See Chapter Seven for details of the legislation.
3 P Sheahan, Crisis in Abundance, Ringwood, 1980, p.166.
4 Financial Review, 5.11.82.
5 For example, BHP had retrenched 6,250 workers over the past 16 months with an additional 2,200 planned for the following two months. An overall profit of $360million had been recorded; Qantas, with plans for 1,000 retrenchments over the next 5 months had announced a profit of $61million; and Australian Paper Manufacturers with 400 retrenched workers had recorded a profit of $63million. Sydney Morning Herald, 8.11.82.
6 Loc.cit.
Government, employers and the unions seemed inevitable in this unfavourable atmosphere.

It was against this background that the Hawke Government was elected in March 1983. With the perceived failure of the Whitlam Government's reformist policies and the hostilities created by Fraser's confrontationist attitude, the catch-cries of "consensus" and "national reconstruction" heralded new hope to a labour movement beleaguered by high unemployment, a wage freeze and steadily increasing inflation.

8.1.2 The Prices and Incomes Accord

The Accord agreement was entered into in February 1983. The document was not confined to wages and policy issues. It covered a wide range of economic policy areas including industrial relations, industry development, immigration, social security and, health and education. In the central area of wages and prices, the agreement lists a number of "fundamental" features of effective prices and incomes policies "essential to its acceptance and continued viability". Chapman and Gruen note the following three:

(i) policy should ensure that living standards of wage earners and of the non-income earning sectors of the population requiring protection are maintained and through time increased with movements in national productivity;

(ii) government policy should be applied to prices and income groups rather than...to wages alone; and

(iii) the policies should be designed to bring about an equitable and clearly discernible redistribution of income.7

One of the first initiatives of the Labor Government elected in March 1983, was the calling of an economic summit. Prime Minister Hawke, while acknowledging the wage freeze as incomplete and unfair, had prior to the summit floated the possibility of extending the freeze until the end of the year. The ACTU had undertaken not to proceed with any wage claims until the summit had taken place.

A change in union attitudes had clearly taken place since the Whitlam Government's demise in 1975. Labor's expenditure programs aimed at increasing the 'social wage' did not convince the unions, who, according to Whitlam behaved as if Labor's great advances did not exist.8 The union movement had refused to support referendums on prices and

7 B J Chapman & F Gruen, op.cit., p.3.
incomes in 1973. Ironically, Hawke who was then Federal President of the Australian Labor Party (ALP) and President of the ACTU, had campaigned against the incomes power, which was intended to achieve a prices and incomes agreement with the union movement. Such an agreement would have been somethin akin to the agreement reached before Hawke became Prime Minister in 1983.

Having regard to Whitlam's statements about the union movement's inability to accept the 'social wage' concept, the Accord appeared to be, at first glance, aberrational. Whitlam's opinion was shared by others. Dabscheck has observed:

> With respect to broader matters which concern the welfare of unions and unionists, the ACTU and its affiliates more often that not react to events, rather than shape them. They are usually not in a position to trade off wage restraint for something else.\(^9\)

The policy represented a change on the part of the ACTU whereby the focus of wage bargaining shifted from the money wage to the social wage based on real wages after taxation and Government expenditure, together with the development of superannuation schemes. A return to full wage indexation was one of the key features.\(^{10}\) It is worth bearing in mind, that the Accord had been negotiated while the ALP was still in opposition.

Since the Accord there has unquestionably been a continued decline in industrial disputes with a concomitant reduction in pay demands. To say however that the first (the Accord) is entirely responsible for the second and third (decline in disputes and pay demands) is to adopt a simplistic approach which fails to recognise the political, industrial and economic climate in which change has occurred. It would also be to ignore the existence and evolution of a wide range of issues that point to a dynamic rather than static industrial relations situation.

By 1985, from the ACTU perspective, the union movement had continued to be subjected to various anti-union strategies which had served to undermine workers' living standards in Australia. Many of these had been as a result of actions taken by state governments and private companies, since the election of the Hawke Government in 1983. At the ACTU Congress in October 1985, a strategy statement entitled *Anti-Union Attack*, identified these strategies, which included:

- the use of legislation to punish unions and individuals;

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employer actions under the Trade Practices Act (TPA) or at common law against unions;

discouragement of union membership;

efforts to destroy the centralised wage fixation system;

encouragement to individual employers and employees to opt out of the conciliation and arbitration system;

the promotion of small business with special exemptions from general award and employment standards;

privatisation; and

use of anti-union propaganda to isolate the union movement from the general community and union leaders from union members.¹¹

The document also claimed that anti-union employment practices play a key role in undermining unionism in Australia. These include:

employees being required to enter into individual contracts of employment without reference to unions or industrial tribunals; and

the severance of ordinary employment relationships through the use of certain forms of self-employment, sub-contracting and outwork.

Apart from threatening award coverage, sick leave, annual leave, workers compensation, apprenticeship, training schemes and safety standards these practices, according to Anti-Union Attack, seek also to "replace union organisation and solidarity with individualism and competition between workers".¹² Concern for these issues is manifested in the results of my data on causes which also demonstrates the diversity of interests that exist within the trade union movement.

ACTU involvement in economic and industrial planning and decision-making through the processes of the Prices and Incomes Accord are an acknowledged response to these perceived anti-union practices. Congress took the view that union response should be based on the following:


¹² Ibid., p.3.
(i) Prices and Incomes Accord. Continued support for the Prices and Incomes Accord which ensures the active involvement of the Union Movement (sic) in the development of economic and industrial relations policies. Demonstration through the mechanisms of the Accord of the important role that the Union Movement may place in the representation of workers' interests and in creating a constructive environment for economic growth and industrial relations in which unnecessary conflict is minimised and negotiated solutions to problems are facilitated.

Anti-Union Attack further suggested the union response be based on the political input of the union movement in policy making; education in respect of anti-union strategies and their consequences; the need to improve public perception of unions; improving the industrial relations environment through implementation of the Hancock Report; a concerted attack on anti-union employment practices; and legislation encouraging union membership. In addition, strategies aimed at recruitment, workplace organisation and international support were also outlined.13

The Accord has been renegotiated several times since the original. Award restructuring has become an integral part of the process which recognises the nexus between the economy and wage restraint. In 1989, in response to a question on what the agenda would contain after the current award restructuring had been achieved, ACTU secretary, Bill Kelty, replied:

...if we can cement the award restructuring and we lay the basis for change in this country, we will have started to create a framework for a cultural change in our society, in the terms of the workforce...You can't legislate for goodness, you can't legislate for happiness, you can't legislate for cooperation. All you can do is to provide a framework to enable those employers and unions for workers to co-operate with.14

One of the errors that is sometimes made in discussing or analysing industrial conflict is grounded in the assumption that direct action can be automatically linked with a desire for gain. Dabscheck, for instance says:

Unions are self-seeking organisations. They will always pursue improved wages and working conditions for their members. This is a constant of union life and action.15

In fact, the Accord has demonstrably been responsible for unions not pursuing wages and working conditions. While the ACTU's 1987 Future Strategies document confirmed that wages and conditions were still central to the objectives of trade unions, it pointed out

13 Ibid., pp.3-6.
14 Financial Review. 24.4.89.
that the welfare of union members cannot be protected or advanced by money wage increases alone: "Bargaining with Government on issues of taxation, social wage and general economic policies remain (sic) an essential ingredient of the collective response of the trade union movement".\(^{16}\) Of course, quite often gain is the motivation, but theories that are based on such generalised assertions must be questioned. To suggest, for example, that agreements reached between the Government and the ACTU on prices and incomes policy provide a coherent explanation for a decrease in industrial disputes, is to ignore several political and industrial realities. One such reality is that retention of the status quo in some economic and political situations has been responsible for an increasing proportion of industrial conflict in Australia. Another reality, one that is more difficult to substantiate, is that the degree of industrial conflict cannot necessarily be measured statistically. While collective action such as strikes, bans and work-to-rules are amenable to measurement, other forms such as absenteeism, sabotage or go-slows are not. This is particularly the case where individual direct action is concerned. Nor is it credible to automatically attribute gain as a factor in industrial action that has occurred over social, political and environmental issues. In the latter case for example, some element of sacrifice on the part of unionists may have willingly and collectively been conceded.

The Accord has developed through its various stages with some difficulty at times. It is the central most important platform on which the present Government stands. Without it, lack of control of the union movement could become a problem leading to an election loss. This, at least is the view of the ACTU. The extent to which the Accord is viewed as a responsible, progressive and economically viable concept very much depends on the degree to which it is held accountable for the positive achievements of the Labor Government. As such it is something held up as almost a panacea for curing all the ills that may occur, particularly in the industrial relations environment.

To what extent has it been successful in fact? The positive achievements are impressive. Since the first Accord in 1983, unemployment levels have dropped, inflation has decreased, industrial disputation has declined and a series of innovative wages policies have created real wage restraint. As well, productivity and efficiency in a number of industries have increased alongside a greater awareness and practise of industrial democracy. The concept of a social wage has become a manifest reality. Benefits like Medicare, superannuation and reduction of income tax have been introduced to advance the quality of life for a great number of workers. Award restructuring has

\(^{16}\) ACTU, *Future Strategies For the Trade Union Movement*, Melbourne, September 1987, p.44.
provided a blueprint for radical change in a number of industries where rationalisation together with improved technology have created greater productivity and profits. Many workers also have benefited by the gaining of new skills for which higher wages are paid.

But what are the negative aspects? While the ACTU claims that none exist, (an opinion which is probably shared by the Government) there do appear to be some undeniable unfavourable consequences of the Accord. Wage restraint has been accompanied by a fall in real wages. Arguably the accrued benefits from the social wage to some extent are compensatory, but the decline is nevertheless real in terms of disposable income. A dramatic rise in interest rates has placed an acute burden on home-owners, especially in the middle-income groups. Although interest rates fall into the fiscal policy arena, the broad claims made by exponents of the Accord, must accept at least some de facto responsibility. For unions, the Accord period has witnessed a decline in union membership according to Labour Force statistics. Although the same trend is not revealed by other ABS statistics, union leaders generally acknowledge that a decline has taken place. Moreover the Accord does not have the approval of all sections of the trade union movement. Several hundred rank and file unionists and some union officials attended a conference in Canberra during July 1986 called 'National Fightback'. One of the reasons given for calling the conference was that since the Fraser Government, anti-union propaganda had been effective in making people responsive to anti-union ideas. Add to this, a trade union bureaucracy which has become unresponsive to the rank and file, and you have a recipe for disaster. As the ALP is being 'remodelled', so too is the ACTU, with that body adopting a corporatist approach to unionism, attempting to amalgamate the needs of labour and capital, attempting a social contract with a ruling class so rapacious that appeasement is impossible.

It has become clear that the Accord is an instrument for disarming working people rather than a rallying point for the exploited. The bankruptcy of the 'prices' element of the Accord is a standing joke against working people.17

The projected increase in investments has not occurred. With deregulation of the Australian dollar and banking system, overseas investment from Australia has increased while investments from overseas have decreased. Meanwhile imports have risen as export markets have declined. The failure of business in Australia to invest or re-invest profits has meant that growth in industry and productivity have not increased at the projected level. One of the fundamental tenets of the Accord was that wage

17 The National Fightback Conference, Background papers/Perspectives, 4-6 July, 1986, pp.8-9.
restraint would lead to greater profits which in turn would be re-invested in Australian industry.

ACTU participation in the Accord cannot be seen as a capitulation to economic pressures for wage restraint. It was clearly a reaction to a political and industrial climate that required a broad response; one that would lift the union movement out of an increasingly defensive position. Co-operation in the Accord was a vital part of that process in that the emphasis on consensus removed the confrontationist element from a volatile industrial relations environment.

8.1.3. The political arena

To speak of a national trend in industrial disputation is, as the data has shown, replete with difficulty. Nevertheless, that some changes have taken place since 1983 is unquestionable. The election of a Labor Government and the almost simultaneous Accord, have been held chiefly responsible for these changes, which were manifested in two ways: firstly, the overall decline in industrial disputation, and secondly, the reduction (both in numbers and percentages) of Pay disputes. While I would not dispute the proposition that the Accord had a significant impact on the incidence of disputation, to suggest that it alone was responsible would be to ignore the climate in which these changes took place. There were problems associated with writing this chapter which are largely attributable to the point that I am making. In particular, the pilots' dispute was in progress, and each development was a critical signature of change taking place. While it is not intended that the pilots' dispute should form a case study in this thesis, many of the developments as they occurred have been noted, primarily because of their legal ramifications. Also, and by no means insignificantly, the conduct of the dispute by all parties has marked a dramatic change in the industrial climate; one that, with benefit of hindsight, should probably have been foreseen.

At the time when I commenced writing this chapter (October 1989), the dispute between pilots and Australia's domestic airlines had been in progress for eight weeks. During the first week of the dispute, Labor Prime Minister, Bob Hawke advocated the imposition of common law writs on the pilots. He was motivated by the economic necessity of confining wage movements within the bounds of agreements reached between the Government and ACTU. The 29.7 per cent increase sought by the Australian Federation of Air Pilots (AFAP) was well outside the acceptable amount of six per cent under the national wage-fixing guidelines. As such it threatened the Accord, with the foreseeable result of a nationwide push for wage increases that would unbalance the economy and destabilise the restructuring process favoured by Labor and the ACTU. With the mass resignation of the
pilots, largely to avoid common law actions, the Government and airlines have held firm. The airlines advertised widely for pilots to fill the vacant positions on an individual contract basis and declined to negotiate with the pilots' union. They received support from the Government in this endeavour as well as financial relief towards the payroll costs of avoiding standdowns of other airline personnel. In addition, the Government provided military aircraft and personnel for the airlines' use, and cleared the way for international aircraft to carry passengers on domestic flights within Australia.

It is difficult, if not impossible, to imagine the pilots' dispute being conducted in the same way back in 1983. The issuing of common law writs, individual employment contracts and non-recognition of the pilots' Federation would not have been entertained as viable means of settling a dispute. For a Labor Government particularly to have advocated such measures would have been anathema. Between 1983 and 1989, the climate has changed to the extent that a Labor Government has responded to conflict in a way that conservative parties have frequently prescribed; common law writs are regarded as a legitimate course of action; and individual employment contracts have been recognised as a successful measure for achieving rationalisation of industries. The ACTU has been placed in a somewhat curious dilemma. On the one hand, the Congress of the ACTU condemned the tactics that have been used:

Congress expresses its total opposition to the tactics used against individual pilots and their union in the current industrial dispute. These tactics include:

(i) The cancellation of their awards.
(ii) Threats by employers to invoke common law action against individual pilots and their Federation.
(iii) The recruiting of overseas pilots, during the dispute.
(iv) The introduction of individual contract labour.
(v) Threatened appropriation of pilots' superannuation funds.
(vi) The use of military aircraft.
(vii) Attempts to destroy the pilots' legitimate organisation.18

On the other hand, the ACTU has remained firmly committed to the wage fixing principles set out in the Accord, despite the above reservations about the conduct of the dispute. The ACTU role has largely been confined to protecting those workers in the airline industry who may have been stood down as a result. As such, support for the pilots has been limited to the congress resolution. It would be clear to even the most casual observer that the ACTU entertains little sympathy with the pilots' plight. Without prejudice I note here that the pilots' organisation is not affiliated to the ACTU.

18 ACTU, Pilots Dispute 1989 Resolution, D251-89.
There were a number of steps along the way which created this climate. Some involved disputes which have become watersheds in Australian industrial relations: The SEQEB dispute in Queensland; the successful litigation by Mudginberri Station Pty. Ltd. with substantial damages awarded against the Australasian Meat Industry Employees Union (AMIEU); the Robe River dispute in the Pilbara region of Western Australia; and the Dollar Sweets dispute in Victoria. There has been the growth of the New Right, including the H R Nicholls Society, the membership of which includes many of those people who have been responsible for the conduct of the abovementioned disputes. The Accord between the Government and the ACTU has been implemented with constant change, and geared towards recognition of economic necessity as a priority, sometimes in place of long-held union principles. There has been a (reported) reduction in the proportion of workers who are unionised; a decline in employment in the manufacturing industry alongside a growth in technology and overseas investment; privatisation; and deregulation. The maintenance of jobs has become a major concern of many unions while in some industries, negotiations for the best redundancy package possible has been paramount where failure to maintain job levels has occurred. Against this background, the legal avenues available to employers in particular, have been increasingly canvassed. Unions are no longer regarded as inviolable.

8.1.4. The New Right

During the Accord period, the influence of the New Right ideology has grown markedly. Although the ideology had been in existence for some considerable time, it manifested itself overtly during the disputes mentioned previously. The New Right represents more of a collection of ideas than an organised entity. It is not a political party although its adherents are strongly inclined towards the conservative side of politics, and some are members of conservative political parties. Nor is it an organisation founded upon a constitution and regulated by a set of rules. There are no 'paid-up' members of the New Right although media commentaries frequently refer to New Right members. The phrase is to be understood as one which depicts adherents who hold a set of beliefs which have come to be identified as New Right doctrine. Although no formal infrastructure exists on an institutional level, members of the New Right maintain intellectual cohesion through an informal network that operates in a number of ways. For example several adherents of the New Right meet on an ad hoc basis irregularly to discuss ideas and are known collectively as the H R Nicholls Society. The inaugural meeting of the society in early 1986 represented a coming together of like-minded people who had been espousing their philosophy on an individual basis for some time and as such was more of a culmination than an origination. The H R Nicholls Society has to some extent become the symbol of
New Right thinking. But other mouthpieces also exist such as the Institute of Public Affairs, a right-wing think tank which contributes regularly to media discussion on industrial relations; and the New Right Report, a publication of the Conservative Action and Victory Fund.

Adherents of the New Right are an amorphous collection of people, some of whom are prominent in their professional capacities. Their personal and business interests, are diverse. As such their views are often given as individuals, and frequently as actors in a particular situation in a manner that excludes identifications with New Right thinking. For example, a regular column in The Australian newspaper by John Hyde, the executive director of the Australian Institute for Public Policy, actively promotes New Right precepts without acknowledging their influence. Gerard Henderson, a director of Sydney Institute, formerly the NSW Institute of Public Affairs also makes regular contributions to The Sydney Morning Herald along the same lines.

In some respects the use of the term New Right is inadequate. On the one hand it embraces an ideology which is not fully shared by all its adherents. For example, although the notion that trade unions have too much power is a basic tenet, concepts such as "a woman's place is in the home", are not shared by all New Right proponents. Another shared tenet opposes the centralised wage-fixing system while attitudes towards de-regulation are mixed. Furthermore, the tag 'New Right', perhaps because it has often been uttered with derision, is not one that has overwhelming acceptance. Costello is of the following opinion:

I do not find the label New Right helpful to analysis. As far as I can ascertain it is used in the Australian political context principally by union officials to describe any one they don't like from time to time. I have heard it applied to people as diverse as the Prime Minister, Mr. Keating, Paul Hogan, John Howard, the Melbourne Chamber of Commerce, and many more as well.

What we have seen since 1983 is groups of employers who have broken away from the Confederation of Australian Industry.....They were followed by employer associations which principally had small businessmen as members, such as the Australian Chamber of Commerce and now even the MTIA and ACM have broken from the Confederation.

Those organizations that broke away at an early date were often described as New Right because they by and large opposed centralised wage fixing.

While Costello's brief resume is correct up to a point, it negates the groundswell of adherents who have willingly become identified as New Right thinkers. The New Right Report is proudly dedicated to traditional conservatism. Perhaps one reason why some

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19 P Costello, Letter, 1.12.89.
individuals reject the New Right label is because of the media ridicule and criticism that has been levelled against the doctrine. The ideas therefore become more potent when they are projected as rational propositions and not as part of an ideology that is widely regarded as extremist. Another reason may be grounded in the divisions that exist between the intellectual and grass-roots members. For example, while there may be overall agreement between the two streams that trade unions have too much power, the former would not necessarily wish to be identified with the racist or sexist attitudes of some of the latter. Then too, there may be disagreements on how fundamental problems can be solved. As will be seen in the Robe River case study in Chapter Twelve, Charles Copeman, a prominent New Right spokesman (who at the time acknowledged his allegiance to the New Right\(^20\)) attempted to opt out of the industrial relations system. A critic of his methods was Hugh Morgan, managing director of another Pilbara operation, the Western Mining Corporation (WMC). Morgan also has strong connections with the New Right. For the purposes of my discussion, I will continue to refer to the ultra-conservative ideology that has evolved as New Right while acknowledging that the term is embryonic and has only limited acceptance from some of the people to whom I shall refer.

Despite a high public profile and the prominence of its members, the New Right has been the subject of much adverse comment. Criticism has come not only from the 'other' side of politics, but also from sections of the traditionally conservative business community and members of the conservative political parties. Notwithstanding the frequent scorn and derision which the New Right has attracted, its influence on industrial relations has been significant. With power disproportionate to its representation, its advocates have successfully promoted their views through the media and practice. Strictly speaking, it is without power in the structural or organisational sense but exerts considerable influence. One of the consequences has been that, the use of legal avenues has become an accepted and successful method of defeating industrial disputation.

Before broaching the legal ramifications, the question of how the ideas of the New Right achieved a position of influence needs to be addressed. According to Maddox and Hagan, the culture of debate (of democratic discussion) has been seriously eroded. Sloganeering has taken the place of genuine debate, while persuasion has degenerated into manipulation:

> There is a certain sophistry in the rhetoric of the New Right which has reduced an intellectual appraisal of supposed economic realities to a set of

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\(^20\) He has since distanced himself.
maxims which ‘everybody’ including the Labor Government ‘accepts’. It matters nothing that newspaper pollsters can report that the personnel and the explicit arguments of the New Right are little known among the general population.21

One of the maxims that Maddox and Hagan consider is, "Trade unions have too much power". They identify "too much" as the key words which carry an implication that as a quantitative qualification, trade unions have more power than they should have according to some theoretical standard. This has certainly been a catch-cry of the New Right. For example, Gerry Gutman, an economic consultant, maintained, "In the last two decades the trade unions have emerged as an institution whose power overshadows all others in our society and frequently contests the power of the State".22 WMC's Morgan, commenting on the recommendations of the Hancock committee said, "The power of Australian trade unions is so great, so that committee argued, that the new Labour Court proposed in their recommendations will have exclusive jurisdiction in industrial matters, but will have no power to impose sanctions, except on employers".23 John Hyde likened trade unions to sects like the Rajneeshi and illegal organisations such as the Cosa Nostra where "members feel it is a legitimate entity, and they defend it almost irrespective of the legitimacy of its actions in the eyes of others".24 Hyde cited Peter Scherer's description of unions:

Australian unions are part of the state, but in the sense of local governments with entrenched traditions and autonomy. They are creatures of the state yet not subservient to it - unruly principalities rather than vassals.25

Maddox and Hagan assume that at least one theoretical standard exists against which the relative power of trade unions is measured and is implicit in the theory of the free-market. From that, a subordinate series of inter-connected theoretical standards may be used separately to support the conclusion stated in the maxim. Under the general free-market theory for example, it might be held "that individual workers should enjoy only a measure of power proportionate to their individual market labour-value". The argument can then be formulated in this way:

22 G O Gutman, 'Australian Industrial Relations: Revamping the System', in Quadrant, April 1986, p.56.
(a) Any given group of individual workers should have a measure of power proportionate only to the arithmetic sum of their individual labour-values.

(b) In the collectivity of a trade union a group of individuals has more power than just the sum of their individual market-determined powers.

(c) Therefore trade unions have too much power.26

Another version using the key words 'too much', implies that trade unions have too much power vis-a-vis some other type of organisation, institution, collectivity or entity such as business corporations. The argument can then be supported by proposing that:

(a) Business corporations should have more power than trade unions.

(b) Trade unions have more power than business corporations.

(c) Therefore trade unions have too much power.27

Drawing from a different sub-theory concerned with the notion of individual freedom, a further argument can be formulated thus:

(a) Individual workers should be free to negotiate with their employees on an individual basis.

(b) Trade unions have the power to prevent this kind of bargaining and do in fact prevent it.

(c) Therefore trade unions have too much power.28

These, according to Maddox and Hagan are just some of the possibilities for advancing the maxim, and, they note, many others are either implied or made explicit in New Right rhetoric. For example, the notion that the excessive power of trade unions is destructive of family relationships and usurps the authority of the State. (See for example, Morgan's depiction of a family torn asunder by the British coal miners' strike.)29 The highly emotive content of such claims expressed in simplistic and vague terms has a potential for wide appeal. "By not specifying the grounds on which the conclusions are drawn it is possible for different members of the audience to fill in the blanks in different ways, and thus appeal to a whole range of prejudices".30

This was borne out by a television debate on the programme *Four Corners* when opposing sides were asked to consider, "Do trade unions have too much power?".31 Andrew Hay, president of the Australian Chamber of Commerce (and a well-known spokesman for the

27 *Loc.cit.*
28 *Loc.cit.*
29 H Morgan, *op.cit.*, p.22.
31 Australian Broadcasting Commission, *Four Corners*, 8.6.87.
New Right), in supporting the affirmative side maintained that 70-80 per cent of people believe that trade unions and their bosses exercise too much power. He then married this to a statement that Australia had the lowest productivity in the world. Hay went on to say that the trade union movement was prepared to subvert our democratic form of government and cited Fiji as an example. Hay also listed a number of privileges enjoyed by trade unions: they don't pay tax; they have monopoly status; they don't make financial statements; and they draw power from the Australian Conciliation and Arbitration Commission. It is easy to see how statements of this kind, uttered as self-evident truths, have a considerable propaganda value if taken at face-value. On this occasion the claims were subjected to argument from the other side. John Halfpenny, at the time Victorian secretary of the Amalgamated Metal Workers' Union (AMWU), pointed out that all trade unionists pay tax. Jenny George, an ACTU Executive, said that Australian trade unions were circumscribed by more legal restrictions than any other country. They are bound by provisions in the CAA whereby trade union leaders are elected by secret ballots and accountable to their membership. "Trade unions", said George, "are not a power unto themselves". It should also be noted that trade unions are required to produce, and to distribute to their members, very detailed financial statements.

More important perhaps than refuting some of the premises upon which the New Right formulated its assertion that trade unions have too much power, was the questioning of the maxim in the first place. Halfpenny agreed that unions have power - the power of 3,000,000 individuals. There is nothing wrong or mystifying about that, he said. "Get away from the notion that power is sinister". It is the way in which power is exercised that is important. If used in a responsible way, choices are opened up. Collective trade union power makes choices possible. Now while this does not disprove the maxim it begins to undermine it by attacking some of the fundamental premises: that power in the hands of trade unionists is disproportionate; irresponsible; and sinister. Halfpenny proceeded then to pose his own questions based on the "dishonest prejudice that only trade unions exercise power". How much power are three million workers entitled to? Who measures? Owners? - for example "two brewery runners"? How much information are we given about prices? "Only what we read in the media", he concluded. According to Halfpenny, the past few years had seen a revolution in trade union power.

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32 I assume that Hay was referring to trade union support for the deposed democratically elected government in Fiji as the result of a military coup.

33 See Industrial Relations Act 1988, s.279. Similar provisions existed in earlier legislation.
which had resulted in positive achievements: wage restraint, industrial relations restraint more generally, a social wage and social impact.

These are points which need to be addressed. The success of the Accord has very largely depended upon the existence of trade union power. No compact could have been entered into without the ACTU's power to control the demands of the trade union movement. Employers and employer groups not associated with the New Right have supported the Accord and acknowledged its success in a number of areas, including wage restraint and a decline in industrial disputation. At least implicitly, they accept the legitimacy of trade union power when it plays a positive role in achieving their particular ends. Included in that acceptance is an acknowledgement that the present industrial relations system, flawed though it may be, is best suited to serve the interests of Australian enterprise.

While the concept of social justice was not a subject of the *Four Corners* debate, its introduction by Halfpenny defined another area of conflict between New Right and labour movement ideology. Lauchlan Chipman, writing for the Centre for Independent Studies in 1981 defended the proposition that liberty, justice, and the free market are social notions that are mutually supportive.34 "It is not one of the proper tasks of the State", he said, "to redistribute part of the legitimately acquired wealth of those who have it amongst those who have not".35 This has been a fundamental tenet of New Right thinking, which has been severely critical of Labor's social welfare policies as well as of the industrial relations system. Consequently, the very nature of the Accord strikes at the heart of New Right doctrine. Both means and ends are anathema. Castle and Hagan in discussing the conflict point out that the ACTU has much more involvement now (because of the Accord) in the shaping of the Australian economy than at any time in its history:

Its policy influence is also far more pervasive than it has ever been. The adoption of social wage theory has meant that the ACTU's influence extends well beyond the economics of the work place, and affects non-workers as well, both young and old, via welfare and superannuation plans.36

Exponents of the Accord approve of the social policies it promotes. By accepting the original premise that the redistribution of income leads to greater social equity, the reality of wage restraint during the Accord period has been achieved. To Accord adherents, the means and ends are desirable and justified. New Right critics of the

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Accord dispute the original premise because of its pernicious effect on the marketplace. For example:

Australia needs a new industrial relations system, not a (sic) Accord. Centralised wage-fixing is loaded against employers because it ignores the international marketplace and ossifies "wage relativities..." The ACTU package of tax cuts, wage rises and hand-outs amounts to exploitation of a weak Government losing its last grip on the economy.37

The Australian industrial relations system is a central subject of dispute between the two ideologies. On the one hand, the Labor Government in agreement with the ACTU strongly supports the maintenance of centralised wage-fixing and dispute settlement under the auspices of conciliation and arbitration tribunals. There has also been strong support for the system from within the business community.38

On the other hand, the New Right favours de-regulation of the system with a preference for collective bargaining between employers and employees on an enterprise basis. The conciliation and arbitration system it argues, lacks the power to force trade unions to accept its decisions and abide by its orders. A novel view of the commission was expressed by Paul Houlihan, Industrial Director of the National Farmers' Federation:

The one consistent feature of the Commission's behaviour has been that it always wants to find in favour of the side that it considers will win the dispute. Traditionally, and overwhelmingly, that has meant finding in favour of trade unions.39

Although the industrial relations system is a target for criticism from all sections of the New Right, there are a plurality of views as to what the alternative should be. The most extreme view has been expressed by Hay, who maintains that, "radical reforms" must be adopted if Australia is to prevent itself from "sinking into the mire of international indebtedness". One of the reforms he called for was the abolition of the trade union movement! Hay prescribed more politically active chambers of commerce, prepared to take direct action against "the industrial warfare waged by the trade union movement".40

38 Although not party to the Accord, prominent employer groups endorsed its major features at the Economic Summit which followed the original Accord.
40 *Canberra Times*, 30.3.88.
Gutman favours a revamped industrial relations system consisting of an Industrial Cooperation Commission which would be responsible for registering union and employers' associations, monitoring their rules and internal affairs, and maintaining a register of collective agreements (arrived at through collective bargaining). A Code of Industrial Conflict would embody the ground rules for industrial and basic obligations, some of which would be enshrined in legislation. Interestingly, Gutman implicitly accepts that strikes and lockouts may occur.41

Hyde sees the task as one of breaking down the legitimacy of trade union sovereignty in the eyes of rank and file unionists. "...bring unions under the law - by some means short of beating unionists up in a bloody skirmish."42 Governments, according to Hyde, should limit union excesses by lowering trade barriers, deregulation and privatisation. Union privilege should be changed a little at a time, fighting, like England's Margaret Thatcher, from "the high moral ground".43 Hyde's use of emotive language is a feature of his regular column in The Australian. Headlines such as "Time to get our house in order - for the sake of our children", and "Overprotected - and under the thumb", introduce articles which are populist critiques of government and the "monopoly power of trade unions".44 The latter is a term much favoured by Hyde which he uses in the way described by Maddox and Hagan.

Gerard Henderson argues that industrial relations reform requires that employers should be able to enter into productivity bargaining at the industrial workplace level with their employees (not unions). Agreements, says Henderson, should be subject to the common law with penalties on both sides for any breaches of contract. Essentially, "the principles of commercial freedom should prevail in industrial relations".45

Diverse though these views are (and others could be added), they all embrace the reduction of trade union power and the (at least partial) demise of the industrial relations system as a prerequisite to change. Many New Right adherents propose enterprise-based unions and/or individual employment contracts as a means to achieving this end. Paramount in the New Right strategy, is a concerted attack on trade

41 G Gutman, op.cit., p.66. I confirmed this with Gutman who said that it would be unrealistic to suggest that whatever system was adopted, some strikes, lockouts and bans would not continue to be a factor in industrial life.
43 Ibid., pp.171-2.
44 The Weekend Australian, 2-3.1.88, The Australian, 5.9.89.
45 The Australian, 28.8.89.
unions in their current form through the legal avenues available to them under the TPA and common law.

Shaun Carney described the inaugural meeting of the H R Nicholls Society as "one of the most important in the world of industrial relations during the 1980s". Even if the society dwindles to nothing, its role, he says, will have been important in shaping the public perception of unions, employers, the Arbitration Commission and governments through its provisions of a focus of disenchantment. Although the number of people calling for the non-Labor parties to adopt extreme policies was small, "the few had access to enormous resources and were actually using propaganda skilfully". Carney's assessment is an accurate portrayal of the role played by the New Right over the past few years. It has been a remarkably successful campaign in two important ways. Firstly, it has placed trade unions in an acutely defensive position. As Maddox and Hagan suggest, with public debate distinctly one-sided, the logic of New Right arguments and the premises on which they are based, go virtually unchallenged. "May we ask", they say,

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\text{does big business have too much power? does business encroach on the freedom of the individual person? Does business ever coerce government or frustrate policy?}
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And it is true. While the New Right has been sharply criticised and made the butt of many jokes and cartoons, its message has nevertheless become part of political consciousness. Pervasive, and in many ways insidious, the rhetoric of the New Right prescribes a vision of a better society in the populist tradition.

Secondly, prominent "New Right" members have been directly involved in legal actions over the past few years which have changed the direction of industrial relations in Australia. The notion that regardless of legal impediments, a positive 'right to strike' exists has been subjected to the full force of the law from outside the conciliation and arbitration system.

8.1.5. Conclusion

The emergence of the New Right as a force in the political and industrial arenas was grounded in the Accord, in that the relationship between the Hawke Government and the ACTU was seen to bestow too much power on the labour movement. As an arm of Government, the ACTU's role in economic and industrial policy-making, sections of

46 S Carney, 'Australia in Accord', quoted in The Age, 5.8.88.
47 Maddox & Hagan, op.cit., p.34.
business believed that the employers and their interests had been placed in an inferior position in terms of access to the Government and influence in policy input.

By the same token, not all unions have been happy with the Accord either. While the pilots's union could be regarded as a special case (it was not affiliated to the ACTU anyway), other unions have been critical of the ACTU’s role.

It is my contention that, not one, but all of these factors have contributed towards the climate in which the pilot's dispute is being conducted. That it is a landmark dispute is beyond doubt; that it heralds an historic precedent in terms of a Labor Government response is also without question.48 In almost all respects, the pilots' dispute symbolises the changes which have taken place. As I will record later, these views are not shared by many of the people I talked to in the labour movement. For the most part, I met with scepticism but with little real argument against the propositions, although there was general acknowledgement that change had occurred. Without exception, the Accord was held responsible for any positive changes that had taken place.

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48 While there have been other occasions when Labor Governments have reacted to disputation aggressively, there is no precedent of which I am aware for such an array of 'anti-union' responses at the very outset of a dispute.
Chapter Nine

THE INDUSTRIAL CLIMATE

The elements that make up the industrial climate are numerous and their relative importance varies. This chapter emphasises the situation that developed over job security, particularly in respect of award restructuring and industry reform; and the legal framework and environment which developed during the Fraser Government and into the period of the Hawke Government.

9.1.1. Job Maintenance

It is appropriate here to consider why job security issues became so prominent during the 1980s. As Figure 19 shows, from 1982 there was an increase in levels of unemployment. ¹ This coincided with an increase in Job Maintenance issues as a factor in disputation, the decline in strikes and the increase in bans.

By the end of 1982, unions were in the situation of acknowledging that it would be difficult to proceed with a wage maintenance campaign when continued reports of retrenchments were being received. As well, the four-day working week was becoming

a more common practice, the result of agreements reached during work-place deals. Both employers and union officials described as somewhat optimistic a confidential Federal Government Report which indicated there would be "no improvement" in the NSW job market before late 1983! This was at variance with other more pessimistic projections. Against a background in which the wage freeze was being discussed, and job losses were occurring, it is not surprising that greater emphasis began to be placed on redundancy pay cases rather than wage issues. It is even less surprising that in those industries affected, disputes over job security began to escalate.

Industrial disputation over security of employment issues developed in two stages. From 1982 (and earlier in some places) the increase in job losses was met with resistance by the trade union movement. Although the ACTU had recognised that unemployment was a serious problem and that some changes would be needed, the emphasis during this first stage was to maintain current levels of job placements if possible. This, notwithstanding the imposition of a four-day working week in some areas. As Figures 11C-18E(ii) in Chapter Four indicates, Manning and/or Job Maintenance became major issues in all states during 1982-83.

From 1984, the Accord started to have an affect on attitudes. There was an implied acceptance that some jobs would have to be sacrificed if many industries were to survive. To that end, rather than opposing retrenchments or redundancy, a greater emphasis was placed by unions on negotiating the best possible package deals. Intrinsic to the ACTU's participation in the Accord, was the recognition of economic realities. These were outlined in the *Future Strategies* document where, in acknowledgement of Australia's major economic challenges, the ACTU concluded:

> These circumstances have in turn required that unions be more closely involved in the processes of production rather than just the distribution of the receipts of production. This means that unions must be interested and involved at company and industry level with issues such as training, investment, production methods and industry policy.  

Employers and unions cooperated in the process of restructuring. Tripartite bodies consisting of representatives from Government, employers and trade unions, (principally the National Training Board) were formed to develop policies and implementation strategies for the national training reform agenda. With the introduction of modern technology into inefficient and non cost-effective industries,

2 *Financial Review*, 5.11.82.
3 ACTU, *Future Strategies for the Trade Union Movement*, (Revised), September 1987, pp.4-5.
unions became more open to multi-skilling and job redesign. While this was by no means universal, and indeed strongly opposed in some areas, a greater awareness of the need for consultative processes began to emerge. A number of companies introduced industrial democracy programmes with varying degrees of success. Others, while firmly maintaining the 'right to manage', embraced the tenets underpinning the Accord.

Award restructuring also included supposed trade-offs for the decline in 'real wages' that followed the Accord. Superannuation, Workers' Compensation and Hours moved to the forefront as issues of most concern. My data has not singled out Workers' Compensation, but as Figures 11C-18E(ii) show, Superannuation and Hours were major dispute issues over this latter period. An indeterminate number remain hidden in the data, as some disputes in the *Weekly Reports* simply specified 'Award Restructuring' as an issue and were included under Log of Claims. Presumably, a number of these would have been about Classifications.

The above gives a very broad interpretation of the changes which have taken place. Not surprisingly, these changes have met with a variety of responses in different industries. While it is not possible here to provide a detailed exposition of the individual industries, the following is an attempt to encapsulate by example what took place during this critical period of change.

Coal mining has undergone a period of intense political and industrial activity alongside the rationalisation of the industry. With approximately 65 per cent of annual coal production exported, Australia is the single largest exporter of black coal. 4 Coal is an important source of export revenue and changes in the industry were not without political repercussions. With the Hawke Government's acquiescence in the proposed deregulation of the coal industry, historic ties between the Labor Party and the Australian Coal and Shale Employees' Federation (Miners' Federation) were broken, culminating in the disaffiliation of the Miners' Federation from the ALP in New South Wales. 5 In 1986, the Federation predicted that the Government's decision "to cave-in

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5 I questioned Margaret Lee about the position the Miners' Federation is likely to take in the forthcoming federal election in the light of the Liberal/National Party policy on industrial relations. She said that no decision had yet been made however she did not anticipate that the election of a non Labor government would have any adverse effect on industrial relations in the coal mining industry. As she explained it, some lessons had been learned from the British coal miners' strike. For example, there are no huge stockpiles of coal in Australia. She also pointed out that with the current market situation, Australia was selling as much coal as it could produce, so that an industry-wide strike would have a very detrimental effect on Australia's export earnings and balance of payments. It was unlikely therefore that any
to the multinationals demand to further deregulate the coal export industry through the relaxation of price controls, threatens thousands of mining jobs unless it is reversed. 6 By October 1989, a wave of mine closures, retrenchments and protracted disputes had occurred leaving the industry with 4000 less jobs, and 16 less mines. 7 Although the situation later stabilised with a current boom in investments, profits and jobs, Geoff Brown, President of the Northern District of the Miners' Federation, was critical of the Government's suggestion that a statement of common interest could be arrived at between producers and mineworkers. As for the notion that an improved perception of industrial relations is necessary:

...nobody could accuse unions of dragging their feet on modernising industrial relations in the coal industry. Award restructuring and amalgamation are at the top of our agenda. 8

In 1981-82, conflict in the mining industry had erupted over wages, which owners and miners sought to negotiate (unsuccessfully) through collective bargaining procedures. 9 During the following years, the source of conflict focussed on the very survival of the industry, with jobs the chief source of concern to mining industry unions. One dispute alone, a lockout at Broken Hill in 1986, was followed by the loss of 860 jobs (almost a third of the local mining industry's workforce). 10

Other metalliferous mines not covered by the Federation have also been involved in disputes since 1982, especially in the Western Australian iron ore industry. One, the Robe River dispute, will be the subject of a case study in Chapter Twelve. While the maintenance of jobs has continued to be a top priority, there has nevertheless been a qualified acceptance by unions that some job losses were inevitable if the various mining industries were to remain viable in the international market. Furthermore, there have been occasions when, in the interests of creating new jobs, unions have put forward proposals aimed at guaranteeing productivity. One such occurrence involved the oil exploration project on the North-West Shelf where unions offered a virtual strike-free contract to achieve a competitive edge over international competitors. The proposal put forward by the Western Australia Trades and Labor Council appeared to government would be prepared to run the risk of enforcing legislation that would inevitably result in an immediate and indefinite stoppage. Interview, 30.10.89.

6 National Liaison Committee, Coal industry deregulation, Sydney, November 1986.
7 G. Brown, paper presented at Singleton Coal Discussion day, 20.10.89.
8 Loc. cit.
offer limited indemnity against employers suffering any financial loss as a result of industrial action. The unions also committed themselves to a minimum number of unions on the assembly site and a single workers' authority to "exercise control of the industrial relations issues on site". 11

By the end of 1987, the impact of change in the mineral industry was evident. Record production figures in the final December quarter showed an increase of 14 per cent over the previous three months. The Australian Mining Industry Council (AMIC) attributed the upturn, in part, to more harmonious industrial relations. Lauchlan McIntosh, the executive director of AMIC also claimed that the figures "demonstrated what could be achieved by the minerals industry when wasteful strikes and work practices were controlled". 12

Job losses in the Australian manufacturing industry were severe by the end of 1982. In the metal industry alone, fifty thousand workers had been retrenched in 1982. 13 The four-day working week had also started to become widespread. MTIA affiliate companies in Melbourne had shown that fourteen of the forty companies represented at one meeting had initiated a reduced working week. Bert Evans, executive director of the MTIA suggested that this was probably only "the tip of the iceberg". 14 The MTIA has taken a leading role in embracing the fundamentals of the Accord. It has not aligned itself with other peak employer groups associated with the New Right who have advocated deregulation of the industrial relations system and the introduction of collective bargaining. With a view to increasing the industry's efficiency and competitiveness with overseas markets, the MTIA in 1986 produced a document entitled *MTIA Proposals For A Compact With The Metal Unions.* In the introduction it stated:

This can only be achieved by a concerted effort by all who work in the industry; by a close working relationship based on mutuality of interest between management and employees in all the workplaces and between the Metal Unions and MTIA at the industry consultative level. It is with a view to fostering such relationships that this agreement has been prepared for consideration. 15

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13 *The Age*, 27.11.82. This is a conservative estimate. Some have put it as high as 100,000. See, for example, *Sydney Morning Herald*, 1.10.88.
14 *Financial Review*, 5.11.82.
Intrinsic to the document was the acknowledgement that trade unions had a valuable role to play. It recognised that the relationship between employers and unions in the past had not been generally constructive. The prevailing "them and us" industrial attitudes were rejected, instead it advocated: "a more open-minded attitude to change on the part of managements and employees; more information sharing, greater employee participation in the workplace and closer identification by employees with the viability of the enterprise". Training and career development were covered, as well as the removal of restrictive work practices, described as impediments to efficiency, productivity and competitiveness. In many ways, the proposal foreshadowed many of the features which have become recognised as 'award restructuring'. Although many sections of the metal industry have since closed down with major job losses as the result, some have re-emerged along the lines proposed by MTIA and award restructuring. Two outstanding examples are the old General Motors Holden and Valiant plants which are now owned by Toyota and Mitsubishi respectively. While job levels are much lower than under the previous ownerships, productivity and efficiency have increased significantly. Job security is recognised as an important factor which Mitsubishi has actively encouraged by promising that no retrenchments would take place during bad periods. Even so, acceptance on an industry-wide basis by employers has not been achieved, and in some cases, according to Laurie Carmichael, "the lead has been taken by unions with management lagging behind".

Major job losses have occurred in a number of places. For example, Broken Hill Proprietary Company Limited (BHP) Australia's largest manufacturing company, cut the workforce at its Newcastle and Whyalla steelworks by 40 per cent despite strong opposition from unions. By March 1989, BHP and the unions had negotiated an agreement to restructure the steel industry and make it viable into the 1990s. A three-year agreement signed by BHP and the Federated Ironworkers' Association (FIA) guaranteed job security for 25,000 workers. The unions and BHP were committed under the agreement to employee involvement in improving all aspects of the business, including production, working environments and the marketing of steel. They also agreed to co-operate in quality and productivity improvements in order to make BHP more competitive internationally. One of the concessions gained by the unions was that no employees would be retrenched during the three-year period, and extended to eight years an arrangement whereby no jobs could be lost except through attrition. The

16 Ibid., Annexure 1, p.3.
17 Australian Broadcasting Commission, Overseas and Undersold, 30.11.89.
18 L. Carmichael, Loc.cit.
19 Sydney Morning Herald, 13.10.87.
Federal secretary of the FIA, described the agreement as historic because of the assurances on job security, marking also a dramatic improvement in relations between BHP and unions. Both sides agreed to take steps to avoid industrial disputes by observing settlement procedures. The agreement also aimed to bolster productivity by improving the reliability, availability and competitive price of high quality steel products.

Just six months later, in September 1989, BHP announced that the Port Kembla steelworks was to shed 2,000 more jobs as part of a voluntary retirement scheme, bringing the total number of job losses to 14,000 since 1982. Despite the agreement over attrition, the decision was regarded critically by unions in the industry especially as the region (Illawarra) had been hit particularly hard by the closure of a power station and its feeder mine during the year, at a cost of five hundred jobs.

Job losses in other areas have represented a conflict of interests between government, environmentalists and unions. For example, the disputes in various areas of Australia over logging have been protracted and led to profound disagreement between the government and ACTU. On one such occasion in Tasmania, Bob Richardson, ACTU industrial officer said: "The decision (to limit logging) means that there are job losses, great uncertainty for industry and there will be a lot of suffering in local communities, so it won't get the support of the ACTU - in fact it will get implacable opposition".

While job losses in the manufacturing industry have met with opposition from the trade union movement, there appears to have been a concerted effort to 'turn the tide'. Evans has said, he "sometimes has to pinch himself to believe the change in attitudes, as both sides - employers and unions - show a willingness to work together". Improved mechanisation and new technology have revolutionised some areas of manufacturing so that increased productivity has reversed the unemployment trend and provided greater job security. Nevertheless, the process has not been without criticism. John Halfpenny, secretary of the Victorian Trades Hall Council wondered why, if restructuring has been such a success, "how come we're not as popular now with unionists"?

The waterfront has been one of the transport and storage industries most susceptible to change. In early 1989, after more than two years studying the industry, an Inter-state Commission proposed some long-term strategies for reform. In February 1989 the

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20 *Sydney Morning Herald*, 23.3.89.
21 *West Australian*, 10.8.88.
prospect of reform by agreement was severely undermined when the Association of Employers of Waterside Labour (AEWL) brought a case before the arbitration commission which sought to implement new rostering arrangements. The principal waterfront union, the Waterside Workers' Federation (WWF) responded to the claim with overtime bans on the basis that a recruitment freeze had left five ports, 300 workers short. By June, the major issues remained unresolved. Waterfront unions and employers were given notice by the Government that they had three months in which to reach agreement on the reforms, or have the changes imposed on them. A central focus of disagreement was the retrenchment and redundancy proposals. Included in the reform proposal were recommendations on worker levels, employment arrangements and restrictive work practices. The 17-point plan involved the Government in contributing half the cost of a $290 million retrenchment package, whereby elderly wharfies would be given $100,000 'golden handshakes', with millions of dollars also set aside for retraining and restructuring schemes. Shipowners distanced themselves from the concept of 'golden handshakes' being suggested for the waterfront. They had already achieved substantial cuts in crews and increases in efficiency, and required the Government's help in further reductions in the number of crew berths on Australian ships. Clearly the recommended merger between the seamens' and wharfies' union would appear to threaten the 'improvements' already underway in the shipping industry. Despite the estimated elimination of a further 1000 jobs, the federal secretary of the WWF, Tas Bull, said he believed the Inter-state Commission's package could be implemented "pretty much as recommended". He welcomed the Government's decision to implement reforms by consultation instead of confrontation.

In October 1989, Cabinet approved the $154 million reform package despite the reservations of some departments about its lack of detail and accountability, and the objections of some ministers. The redundancy scheme would see 3,000 older workers paid off and no forced retrenchments would occur over the following three years. The remaining issues such as the principles to apply in the changeover, work practices, roster arrangements, demarcation and union coverage were still to be negotiated.

One notable aspect of the waterfront reform is comparable to the 1989 pilots' dispute. Both, albeit under quite different circumstances and for quite different reasons, involved substantial subsidisation by the Federal Government to the private sector. By

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24 Financial Review, 22.2.89.
25 The Australian, 2.6.89.
26 Loc.cit.
27 Sydney Morning Herald, 11.10.89.
way of contrast, rationalisation initiatives on the part of state governments in public sector transport have not received financial support from the federal purse. A decision by the Victorian Labor Government to introduce new ticketing arrangements on Melbourne trams provoked a strike lasting several weeks. The issue was bitterly contested by the union, especially after union members were arrested at ALP headquarters and charged with willful trespass. The union's secretary, Lou Di Gregorio described the ALP's actions in calling the police as disgraceful, and said the ALP had no right to have his members arrested simply because they were fighting for their jobs. He went on to say:

If the ALP behaves in this way, I can assure you they won't be in power for much longer. I am not very pleased, particularly given that I have been a member of the party for 25 years and worked hard to get them in power.28

While there may be nothing remarkable about a dispute over job losses becoming so acrimonious, in fact no mention had been made by the Victorian Government that any job losses would occur. Clearly, the Government's policy was regarded by tramway unionists sceptically, as the strength and intensity of their opposition can only be explained in terms of an anticipated and inevitable loss of jobs.

This strength of commitment to job maintenance has not always been reflected in other public sector Transport and Storage industry disputes. Or, it would be more accurate to say, widespread opposition to cutbacks has not always resulted in prolonged industrial disputation despite a commitment to job maintenance. The UNP Government in NSW instigated cuts in public sector transport within months of attaining government in March 1988. In August it announced that 1000 Urban Transit Authority (UTA) employees would lose their jobs.29 Even more drastic was the announcement in July 1989, that 8000 jobs would be 'axed' by the State Rail Authority (SRA).30

In the latter two cases, although industrial action was certainly threatened, I can find no evidence of it actually taking place. Although railway workers participated in the 'Day of Outrage' on the 26th July 1989 along with building workers, printers, teachers and others, no specific industrial campaign was mounted.31 This raises a question as to why cutbacks in public transport systems appear less likely to provoke industrial

28 The Age, 13.12.89.
29 Sydney Morning Herald, 20.8.88.
30 Sydney Morning Herald, 14.7.89.
31 The "Day of Outrage" was in protest against NSW Government retrenchment policies in general.
action when made by a conservative government. Obviously, the three examples used here do not provide a sufficient basis on which conclusions could be drawn, especially as political factors particular to those states have not been considered. Even so, the contrast is interesting. In Victoria, the Government had specified redeployment, not retrenchments of the tram conductors while in NSW very definite retrenchment objectives were announced. Yet it was in Victoria that a protracted and bitter dispute was waged. These examples raise interesting questions, but, there are too many variables to draw any conclusions without further research.

As Other Industries consists of a vast number of industries, I will concentrate here on the public sector, which represents the largest proportion contained in this category. The Commonwealth public service has repeatedly undertaken industrial action in response to Government initiatives to cut back public sector spending. This has taken the form of both strikes and bans. Against the background of a projected reduction of 3000 staff, some departments have resisted the cuts with vigorous claims for even higher staffing levels. In this respect, the public service unions have behaved differently to unions in many other industries, where to maintain the status quo would have been considered an achievement. During 1987, in one such dispute at the Department of Social Security (DSS), a request for an extra 1026 staff based on the findings of a Joint Staffing Review (JSR) were rejected.32 Apart from disagreeing with the substance of the demand, the Minister, Brian Howe said in reply:

There is also the question of the unions claim for a 4% salary increase under the second tier provisions. You are aware the Government is insisting on genuine productivity and efficiency gains as offsets to granting this claim. I believe that this matter has the highest priority of those raised by the unions and that we should concentrate on seeking to achieve a satisfactory conclusion on it.33

The divisions that occurred between departmental officers and the Government over staffing cuts are exemplified by a Customs Department dispute in August 1988. In a Ministerial Minute T.P. Hayes, the Comptroller-General of Customs, asserted that Commonwealth public servants at middle and lower levels believed they had the right to express dissatisfaction with the Government by engaging in disruptive work practices and drawing their full pay at the same time. He held a "socially irresponsible ACOA" responsible for this attitude. Although Hayes said at the top of the minute that the dispute is "obstensibly" about staff numbers, he argued in conclusion:

32 G. McMorran & P. Robson, Letter to Secretary of DSS, 15.9.87.
33 B. Howe, Telex Message to P. Robson & G. McMorran, 17.9.87.
It would of course be very damaging to management in the ACS if the Government conceded anything on staff numbers (Notwithstanding that we disputed vigorously with Finance the application of the last round of reductions to the ACS). Instead, the Government should be seen to be backing its public sector managers to the hilt.34

A week later, in a letter to Peter Robson, national secretary of the ACOA, the Minister, John Button stated the Government's position clearly:

Customs has to contribute to the efficiency dividend directed by the Government and pay for second tier salary increases. Customs management and staff have to work smarter, utilise technological change to advantage, develop more productive systems and deploy existing resources more effectively according to priorities. The Government is requiring this of Customs as it is of other agencies.35

The above two disputes are fairly typical examples of conflict in the Commonwealth Public Service over staffing cuts, particularly since 1987 when it became clear that any pay rises under the two tier system were contingent upon greater efficiency and productivity. There was understandably some cynicism about the notion that efficiency and productivity could be measured in job losses, a logistical problem which remains largely unresolved.

Another example of opposition to the Federal Government's policies occurred in May 1989, following the proposed sale of the Cockatoo Island dockyard to property developers.36 From May 10, 1500 workers occupied the island in Sydney Harbour on a roster system. In August, after fourteen weeks, the dockyard workers voted to end their strike during which six workers had been arrested on charges including assault, resisting arrest and hindering police. In the week prior, the Federal Industrial Relations Commission warned the workers they would face penalties and fines if they did not end their strike. The island's shop committee reluctantly recommended that workers accept the redundancy package and return to work. Committee president, John Panuccio complained that workers had not received support from the ACTU or the NSW Labor Council:

There's a lot of disgust at some of our leadership which did not lead the way. We were throwing our heads against a brick wall by trying to get them to support our campaign.37

34 T. P. Hayes, 'Industrial Disputes in ACS over Staffing Levels', Minute Paper, 16.8.88.
36 Cockatoo Island is a Defence facility and is the responsibility of the Minister for Defence, Kim Beazley.
37 Canberra Times, 12.8.89.
The political or, more specifically, the electoral consequences of job losses has been significant. In January 1987, the NSW Labor Government issued a threat to close down the state dockyard at Newcastle unless unions agreed to radical reforms including the retrenchment of nearly half the workforce. Although there had been a considerable reduction in industrial disputes, and capital investment by the Government, the dockyard had incurred substantial losses since 1980. While the major dockyard union, the FIA, was unhappy at the prospect of retrenchments, they were regarded as the better of "two evils" as the closure of the dockyard would be "disastrous". The Newcastle secretary, Len Corrigan said, "We appreciate the dockyard has been losing money and we can't afford to keep backing it up with public funds, but Newcastle is in such a depressed state at the moment, there are no jobs to go to".38 By February, the dockyard workers were in open conflict with the Unsworth Government. At a demonstration outside Parliament House in Sydney, violence erupted when workers were refused admittance. Two dock workers were arrested and charged with assault and offensive behaviour.39 Two hours later, a peace package was announced which agreed to keep the dockyards open providing the unions accept the retrenchments. One compromise the Government allowed was for increased redundancy payments under a scheme that would allow workers to volunteer for retrenchment. Final determination of those to be retrenched, however, would remain with the dockyard management.40 The Government also agreed to introduce a system of arbitration and discussion with the unions to achieve the elimination of wasteful work practices and dismissals. One week later retrenchment notices were issued to 140 workers and delivered by special courier to their homes during the evening. Police were posted outside the dockyard the following morning to prevent any of the sacked workers from trying to enter the yard. Any who did so, according to the police, would be charged with trespass. The Newcastle Trades Hall Council secretary, Peter Barrack, described the management's actions as a "breach of an understanding with the Premier that unions would be consulted before any decision on retrenchments was made".41 In early March, the Government announced it would decommission the dockyard operation and put it to tender. Premier Unsworth maintained that despite the prospect of conflict between the Government and left-wing sections of the labour movement, his policy of reviewing (and if necessary streamlining) public sector employment would continue in order to fund priority

38 Canberra Times, 10.1.87.
39 Sydney Morning Herald, 12.2.87.
40 The Australian, 12.2.87.
41 Sydney Morning Herald, 19.2.87.
programs. By July it was all over, despite the persistence of some workers in continuing to turn up for work. Most had agreed to accept the redundancy packages being offered. Barrack compared the actions of the Minister for Public Works, Laurie Brereton, with those of Charles Copeman from Peko-Wallsend. Copeman, the hero of the New Right came out better in comparison, said Barrack.

The NSW state Government election was held in March 1988 and resulted in a win for the Greiner L/NP Coalition. Although the swings against Labor varied considerably in individual seats, however, the largest occurred in traditional Labor strongholds. An independent won the seat of Newcastle with a swing of almost 22 per cent. (The BHP steelworks in Newcastle had also implemented an extensive retrenchment programme.) As well, mining communities in Lithgow and Cessnock, power workers in Swansea, miners and steelworkers in the Wollongong area, all traditional Labor seats, all reacted similarly. Substantial retrenchments in each of these areas had resulted in high unemployment with little perceived prospects for the future. The community backlash against the Unsworth Labor Government was made clear in the ballot box.

As the research in the earlier chapters suggested, Job Maintenance is an issue which merits discrete attention. The limited examples I have supplied of disputes involving Job Maintenance provide some indication of the intensity with which this issue is viewed by sections of the union movement. They do not, I believe, indicate the full extent to which Job Maintenance has been responsible for increasing proportions of the conflict that has occurred during the 1980s. Ironically, while accounting for an increased proportion of the industrial disputation that occurs, Job Maintenance is probably also largely responsible for the overall reduction in the level of disputation. One important aspect which has not been discussed here has been contract labour. While space unfortunately does not permit a separate analysis, the significance of contract labour as an issue during the 1980s is highlighted in the case studies contained in Chapters Ten, Eleven and Twelve.

42 Financial Review, 5.3.87.
43 Charles Copeman was a central figure in the Robe River dispute which is the subject of a case study in Chapter Twelve. Barrack is referring here to his actions during that dispute and his identification with 'New Right' ideology.
44 The Age, 21.3.88.
45 From a legal standpoint it is a very complex subject. Commonwealth and state laws vary considerably, even in definition and give rise to some confusion in distinguishing between contract labour (or 'independent contractors') and employees. For example, in NSW independent contractors are deemed employees for the purposes of some Acts and awards, but not others.
9.1.2. The legal environment

Industrial relations activities in Australia are subject to a wide range of legal strictures. In the first place, Commonwealth and state industrial tribunals are responsible for the making and variation of awards and for conciliation and settlement of industrial disputes as well as regulating the affairs of member organisations. Until 1956, the Commonwealth Conciliation and Arbitration Court was also responsible for the enforcement of orders and as such was empowered to impose sanctions for non-compliance; a combination of functions which the High Court then held to be unconstitutional.46 There are statutory provisions contained in the Commonwealth TPA as well as various state laws governing, for example, essential services. In addition, various actions associated with picketing are unlawful both by statute and common law. Finally, employers, trade unions and individual employees are subject to common law actions whereby damages may be sought and granted for a variety of reasons. To a greater or lesser degree all of these contribute to the industrial environment. The extent to which they have an impact on conduct is immeasurable. Their deterrence value is also non-quantifiable, (after all, it is difficult to assess the incidence of non-events). Notwithstanding these qualifications, the increase in civil actions over the past few years has coincided with a decline in strikes, and there is some reason for believing that the two are not unrelated.

9.1.3. The common law

A substantial body of case law in Australia and Britain provides much of the legal arena in which industrial disputation occurs. Despite an array of legislation which confers legal status upon trade unions and protects their existence, effective industrial action by Australian workers nearly always involves a breach of their contracts of employment. Although damages can be sought at common law for inducing breach of contract, intimidation and conspiracy, employers in the past have rarely resorted to this recourse. According to Creighton et al, the reasons why are three-fold.

(i) an awareness that such actions are unlikely to be conducive of harmonious industrial relations, especially if the case comes to trial several years after the events which gave rise to the cause of action;
(ii) the fact that on the available evidence the courts could be expected to take a restrictive approach to the assessment of damages in such cases.......and,
(iii) a realization that even if a court did award substantial damages it is most unlikely that the average worker would have the money to pay them.47

46 R. v. Kirby; Ex parte Boilermakers' Society of Australia (1956) 94 C.L.R. 254.
It would be difficult to argue against the first reason. Litigation rarely leads to harmonious relationships in any sphere, and there is no reason why industrial relations should be an exception. But as far as the next two reasons are concerned, events over the last few years suggest that they may no longer represent the current picture. As Peter Costello, a barrister who represented Dollar Sweets says, the "potential to recover damages against trade unions at common law is of critical importance to employers".\(^4^8\) He concludes that despite the cost and length of proceedings, the opportunity to regain the position that existed prior to a dispute allows the employer to negotiate on an equal footing with the union and to insist upon his rights.\(^4^9\)

While it is difficult to estimate accurately the impact that Dollar Sweets and Mudginberri\(^5^0\) have had, it seems probable that their lessons have been assimilated. For a start, the issue or mere threat of common law writs has had the effect of forcing some unions to withdraw from industrial action. There are some notable examples. During a dispute in December 1988, an action was brought by Colonial Sugar Refining Co. Ltd. (CSR) in Victoria against individuals, including union officials and delegates. Injunctions were sought to remove strike and picket action as well as the payment of damages for the "multi-million dollar" losses suffered at CSR's Yarraville refinery.\(^5^1\) This was in addition to a legal action against three unions and fifty-five strikers in which the Australian Conciliation and Arbitration Commission (ACAC) was being requested to issue a certificate to register breaches of an industry bans clause. If successful, the way would be cleared for Federal Court action to impose fines of up to $1000 per day. On the day before the actions at common law were set down for hearing in the Victorian Supreme Court, the strike ended and the CSR dropped all proceedings.\(^5^2\)

A seven-week strike at BP Coal Australia's Howick mine in the Hunter Valley ended in December 1988, when Miners' Federation officials gave an undertaking to the NSW Supreme Court, that Coal Industry Tribunal orders would be obeyed. This followed a common law action by BP seeking huge damages.\(^5^3\) The Miners' Federation has acknowledged that the Howick incident has had some influence on how industrial action is now approached. They are far more cautious now. It was pointed out that the Howick

\(^{48}\) P. Costello, 'Legal Remedies Against Trade Union Conduct in Australia', in *Arbitration in Contempt*, Melbourne, 1986, p.146.
\(^{49}\) Loc.cit.
\(^{50}\) Mudginberri was not an action at common law but I mention it here as an important development in the situation which is being described.
\(^{52}\) *The Australian*, 5.1.89.
\(^{53}\) *The Weekend Australian*, 31.12.88-1.1.89.
dispute was not supported by union officials in the first place, and that in future lodge-led strikes would be more strongly discouraged.54

In September, 1989, Australia's domestic airlines sent letters to 1700 pilots, warning them of serious consequences unless they honoured their contracts of employment. Two days later the pilots resigned *en masse* after the companies began issuing termination notices and writs for damages. The Pilots' Federation has maintained throughout that the writs served against them, and further threatened writs,55 were their sole reason for resigning. That being the case, here at least is one example of the negative side of common law writs in dispute resolution. Arguably, the pilots *may* have been back at work at a relatively early stage had they not been pushed into resigning. I emphasise *may* because there is some reason to believe that the airlines had a hidden agenda based on the deregulation of the airline industry in 1990. The mass resignations of the pilots could aid in the rationalisation and streamlining of the industry, and as such, the airlines' actions may be regarded as provocative. Whatever the airlines' intentions were, there is every reason to believe that had the pilots agreed to negotiate during the first week of the dispute, a satisfactory settlement would have been reached.56 In any case, had they not felt coerced into resigning, there is some doubt that the dispute would have been so enduring. The history of the relationship between the Federation and the airlines, particularly Ansett, is a major factor here, as are the personalities and the attitudes of the individuals involved.

The above examples are not intended to suggest that the issue of common law writs have become an everyday practice in industrial relations. In each of these cases, the number of workers involved was high as were the potential damages payouts. Nor do I want to imply that common law in relation to breach of contract, intimidation or conspiracy relates only to industrial matters. The pertinence that it has in relation to industrial matters is that it does not grant immunity to trade unions, their officials or members. Furthermore, while actions have generally been confined to one of these three torts, the whole range of common law is available, when applicable. For example, a defamation action was brought against the National Secretary of the Australian Railways Union

54 M. Lee, Miners' Federation, *Interview*, 30.10.89.
55 Prior to their resignations, the tourism industries in Australia and the United States of America had publicly announced their intentions of pursuing class actions against the pilots.
56 This was the view of Keith Marks (*Interview*, Melbourne, 8.11.89.) who was the legal representative of the tourism industry and Grant Bellchamber, (*Interview*, Melbourne, 9.11.89.) a research officer from the ACTU.
(ARU) when he spoke out on the "buy back" lease by the SRA from a company which the Chairman of the SRA was involved with as a director.  

It is far more usual for interim or interlocutory injunctions to be sought by employers to restrain strike action. In most cases they are obeyed by unions although interim injunctions are often granted ex parte, that is, "without notice of the application being given to the party sought to be restrained, in conditions of urgency where failure of the Court to act might involve irreparable injury". Nevertheless, the willingness of courts to grant an injunction will normally depend on the processes of conciliation and arbitration having been observed. Typically, an employer and union would have had their dispute heard in the industrial tribunal; a recommendation or order made to the effect that industrial action should cease; and the non-compliance by the union with such a recommendation or order. Usually, it is only when disputing parties step outside the industrial processes that common law actions occur. This has been the state of play to date; however, following a recent decision in the pilots' case which will be discussed later, that situation may be subject to change in the future.

In April 1988, after protracted legal proceedings, the Federated Confectioners' Association (FCA) in an out-of-court settlement paid damages of $175,000 to Dollar Sweets Pty. Ltd. It was the first action that had been mounted at common law since the early 1970s.  

The union had entered into a dispute with the Dollar Sweets company over a reduction in working hours which only half the company's employees supported. A picket line was set up to prevent deliveries to the company's factory, a tactic which resulted in violence and threats against some of the drivers. Following notification of a dispute, the ACAC recommended that the picket be lifted. When the FAC failed to comply, an injunction restraining the picketing was obtained by Dollar Sweets from the Victorian Supreme Court. Murphy J found that the plaintiff had established an arguable case that the defendants were committing the torts of interference with the plaintiff's commercial contracts, intimidation (in so far as their threats had successfully turned drivers away) and conspiracy.  

57 J. Walshe, Secretary of ARU, letter, 5.9.86.  
59 Dollar Sweets Pty. Ltd. v Federated Confectioners Association of Australia, (1086) VR 383.  
60 Creighton and Stewart, op.cit., pp.235-236.
The Victoria State Chamber of Commerce which had backed Dollar Sweets, welcomed the settlement as "a historic landmark in Australian industrial history...it would encourage other employers to take similar steps if faced with such industrial action.\textsuperscript{61} Whatever the merits of the Dollar Sweets case, its impact has been incalculable. It provided two crucial lessons. The first was that picketing under certain circumstances is illegal; and the second, and for these purposes, the most important, was that refusal to obey a Supreme Court injunction could lead to a potentially costly damages payout for unions. Although this was known prior to Dollar Sweets the disinclination of employers to embark on such a course of action was part of the industrial relations culture. Keith Marks, a former Deputy President of the Commission questioned the importance that has been placed on the Dollar Sweets case.\textsuperscript{62} He felt that under the circumstances, the outcome had been unremarkable in that the issuing of the injunction was in no way unusual and the tort of intimidation was already well established.\textsuperscript{63}

I am inclined to disagree with him. While the law in the case may have been unremarkable, the ramifications have been considerable. Earlier, I outlined some of the cases where common law writs have either been threatened or issued in industrial disputes since Dollar Sweets. Much more pervasive, I believe, has been the way that employers are now thinking. The 'idea' that the common law is a recourse that is both acceptable and effective has gained ground. It is no longer a measure that employers necessarily regard as futile and too costly. This is in a large part due to the publicity given to Dollar Sweets, and also to the media attention given to members of the New Right who have widely endorsed use of the common law. Despite protestations from the ACTU to the contrary,\textsuperscript{64} it is difficult to see how a marked change in employer attitudes could not have some impact on how industrial disputation is conducted.

The Dollar Sweets case does not stand on its own. In addition, as the following section will outline, legislative initiatives in both the Commonwealth and state spheres have contributed to the changed legal environment.

9.1.4. The legislative environment

In 1969 Clarrie O'Shea, the Victorian state Secretary of the Australian Tramways and Motor Omnibus Employees Association, was imprisoned for contempt of court because he refused to supply information about the union's funds. Demonstrations occurred

\textsuperscript{61} Sydney Morning Herald, 13.4.88.
\textsuperscript{62} K. Marks, Interview, 8.11.89.
\textsuperscript{63} See Rookes v Barnard, (1964) AC 1129.
\textsuperscript{64} G. Bellchamber, ACTU research officer, Interview, 9.11.89.
throughout Australian until an anonymous donor paid the outstanding fines owed by the union. From that time the existence of sanctions against trade unions provided in conciliation and arbitration legislation have been acknowledged (grudgingly by some) to be an ineffective means of curbing industrial disputation.

In 1977, the then Prime Minister, Malcolm Fraser enacted legislation aimed at curbing some forms of industrial activity. The most controversial in terms of its background and ramifications was the insertion of Section 45D into the TPA on the recommendations of the 1976 Report of the Swanson Committee. The Committee which had consisted entirely of representatives of business interests (no consumer or trade union organisations were represented), had been asked to examine the structure and operation of the TPA and to pay particular attention to anti-competitive conduct by employees, and employee or employer organisations. The legislation provided a severe restriction on 'secondary boycotts' and included sanctions to comprise pecuniary penalties against organisations, applications for injunctions and civil actions for damages:

Whilst activities by persons or bodies other than trade unions and their members may be comprehended within its scope, there is no doubt that its main "bite" is likely to be directed against the industrial pressures of trade unions. As such it constitutes something of a reversal of a generally held view that labour unions should be exempted from the scope of restrictive trade practices legislation.

Two sets of further amendments to the TPA followed in December 1978 and May 1980. Both were introduced following particular disputes. The first was the 'live-meat-export' dispute of 1978 and the second, the 'Laidley dispute' of March/April 1980.

Not surprisingly, the trade union movement did not favour the legislation while employers and employer organisations welcomed it. This dichotomy was not resolved by the subsequent Committee of Review into Industrial Relations. The Hancock Report, made no recommendations on the basis that there were two conflicting views within the Committee. These views are worth quoting, because they succinctly represent the opposing views of the trade union movement and employers:

One is that the activities dealt with by sections 45D and 45E are essentially industrial and should be dealt with by tribunals which understand industrial relations processes and the requirements of dispute resolution. The contrary view differentiates sections 45D and 45E from other industrial laws as dealing with the interests of third parties. On this view, a party which is in 'no conflict over pay and conditions should have legal redress

66 Sykes and Yerbury, op.cit., p.379.
for its grievance and should not be expected to rely upon the forms of
discretion and compromise which are appropriate to industrial relations.68

In time the Act provided the basis for damages awarded against the AMIEU in the
precedent-setting Mudginberri case.69 The Labor Government on attaining office tried
unsuccessfully to repeal Sections 45D and 45E of the TPA. (The Repeal Bill was defeated
in the Senate by the Coalition and Australian Democrats.) They remain on the statute
books today.

Fraser also enacted the Commonwealth Employees (Employment Provisions) Act, 1977.
(CEEP) This gave government authorities the power to suspend or dismiss employees
who took strike or work bans action. CEEP's purpose was to counter growing militancy
amongst Commonwealth employees. Although the Act was used several times it had little
impact on industrial relations in the public sector. An ILO Committee of Experts
criticised CEEP as running counter to ILO Convention No.87 (para.28.3) They reversed
their decision in the following year.70 This Act was later repealed by the Hawke
Government although it retains some influence. It was cited by Justice Brooking in the
pilots' case to define the sense in which he was using "industrial action".71

The Fraser Government was not only concerned with placing restrictions upon industrial
activity. A fundamental tenet of Liberal and National Party philosophy is the primacy of
the individual's rights. To that avowed end, the Conciliation and Arbitration Act, 1904,
(CAA) was amended to include the promotion of voluntary unionism and withdraw award
rights for preference to unionists. Anthony Street, addressing the second reading of the
Amendment Bill in March 1977, said:

Our industrial relations policy is based on certain fundamental principles
which provide the cornerstones for the legislation...Those principles are:
each member of our community has both rights and obligations; individual
rights must be protected; equally, obligations must be met....we, as
Government, accept that it is our responsibility to develop an industrial
relations framework in which the rights of individuals are protected, for
example the right to choose employment and to join, or not to join,
industrial organisations.72

69 Mudginberri was a precedent in the sense that it was the first time that the TPA had been
used to the limits.
71 Justice Brooking, Judgement, Victoria, 23.11.89., p.40. Brooking did not deem it
necessary to mention the Act's repeal.
72 C.P.D., Hansard, House of Representatives, 31.3.77, p.836.
Without casting doubts on the conservatives' sincere adherence to principles of individualism, there can be little doubt that the Fraser Government's extensive legislation was also aimed at curbing union power. The two premises go hand-in-hand notwithstanding that the Coalition's industrial relations policy was based on the assumption that there are no irreconcilable conflicts between capital and labour in the workplace. The 1975 policy defined the processes of industrial relations "as possible within the framework of the concept of a partnership between employers and employees".73

The ACTU response to the various legislative initiatives of the Fraser Government are adequately summed up by the titles to their Bulletins of 1980 and 1982: WORKERS BEWARE! FRASER'S LEGISLATION IS A CONCERTED ATTACK ON AUSTRALIAN UNIONISM, and New anti-union legislation.74

As well as the sanctions outlined above, other legislation already existed for use against trade unions and employees. These included laws in some states governing essential services, sanctions under state industrial legislation, plus special and general state laws. In addition, provisions in the Commonwealth and State's Crimes Acts outlawed certain activities associated with strikes and picketing. Notwithstanding their presence on the statute books, these laws were used infrequently. The Fraser innovations introduced a positive inducement to employers to take legal action against unions, and provided the impetus for a future tactical change in attitude.

The Federal Labor Government was elected in 1983 on a platform that promised national recovery, national reconciliation and national reconstruction. Just prior to the election, the Accord had been negotiated between the ALP and ACTU. Whatever the expectations the Hawke Government and the ACTU may have had, the consensus approach appears to have had minimal impact on the legal climate that had its origins during the Fraser years. Indeed, if anything, there has been an intensification. Since 1983, several major landmark disputes have occurred, all of which achieved significance because of the legal recourses that have been used. In Queensland, legislation introduced by the National Party Government was reminiscent of the nineteenth century. Amidst all this, an ultra-conservative body of opinion often referred to as the New Right has emerged. With limited numbers and virtually no formal organisation, the New Right has exerted its influence in the industrial sphere on a number of levels. Not the least of those has been

73 The Liberal and National Country Party Employment and Industrial Relations Policy, Canberra, 1975.
its active involvement in the use of all legal avenues to defeat industrial disputation whenever possible.

9.1.5 The Brooking judgement

Since the matters discussed at the beginning of this chapter, there have been some further developments in the pilots' dispute which have direct relevance to some of the issues raised herein. While I would not want to suggest that one dispute alone can be regarded as representative of industrial relations in Australia, I believe that the events which have taken place reflect the ambit of change.

On November 21 1989, a judgement was handed down by Mr. Justice Brooking in the Victorian Supreme Court which questioned the shibboleth that, despite legal restrictions, there exists a fundamental 'right to strike' in Australia. The airlines were seeking unspecified damages for losses incurred as a result of the six days of bans on pilots working outside the hours of 9.00 am to 5.00 pm, interference with contractual relations, inducing breach of contract, civil conspiracy, and intimidation.75

Brooking's landmark decision found that the pilots' Federation had conspired to injure the airlines by directing pilots to work only between the hours of 9 a.m. and 5 p.m. The defendants (AFAP and twenty-three Federation officials) had put forward the argument that "it was an implied term of the contract that no strike or industrial action by a pilot could constitute a breach of his contract of employment".76 Brooking confessed to "some reluctance to imply a term whereby one party to a contract is not to be obliged to perform his main obligation to it."77 He also rejected the argument that a series of stop-work meetings provided a defence to the claim for "inducing breach of contract or interfering with contractual relations or to the claim for interfering with trade or business by unlawful means".78 In questioning the validity of resolutions taken at the stop-work meetings, Brooking raised two points:

In the first place, even on the assumption that the resolutions passed at the stopwork meetings were in some sense binding on all members of the Federation, it does not follow that the case can be treated, so far as inducement and procurement are concerned, as one in which all the alleged contract breakers are to be taken as having voted in favour of the resolution and so as not having been induced......

The second and distinct point concerns the question whether the resolution was valid or binding in any sense......In the present case I am inclined to

75 The Australian Industrial Law Review, No.27, 1.2.90, p.31.
76 Justice Brooking, op.cit., p.30.
77 Loc.cit.
78 Ibid, p.58.
think that no adequate notice was given of the business to be transacted at the meeting.79

Without entering into the detailed legal arguments involved in the case, it is clear that the judgement has important implications for the conduct of industrial disputation in the future. In the first place, by stepping outside the conciliation and arbitration system, the AFAP lost any institutional protection that it may have had. Secondly, the findings of Justice Brooking express the common law and its tradition. They do not rely in the general sense on a knowledge of industrial relations and its practice in the Australian context. Brooking does cite the Industrial Relations Act, 1988 whereby the defendant's (sic) conduct was also unlawful because it constituted an offence against section 312 which prohibits incitement to boycott an award.80 But generally, the judgement is a strictly legal interpretation by a member of the judiciary unpracticed in the complexities of industrial relations. No criticism of Justice Brooking is implied here. As a Supreme Court judge his sphere of action, not only entitles but obligates him to treat each case on its merits without regard to special circumstances. Consequently, he could only find on the facts and evidence presented, in the same way and by the same process as he would for any other litigants.

Consequences for the AFAP have not been confined to the possible damages payout which may ensue. During the course of the dispute, the airlines have signed up a number of pilots from Australia and overseas on an individual contract basis. Notwithstanding the Federation's willingness to negotiate now within the industrial tribunal, it can no longer claim to be representative of the pilots employed in the industry. Even if the AFAP were to accept the conditions set down by the tribunal for a return to work, it is doubtful that the majority of its members would be re-employed. Subsequent negotiations in the tribunal have revealed the Federation's lack of bargaining power. None of its conditions have been accepted by the airlines, while the Federation has been forced to capitulate on a number of claims. Prior to the judgement, in October, the Federation had attempted to resume negotiations within the Industrial Relations Commission. Justice Maddern, the Commission President ruled that the Federation would not be a party to a settlement and would have no say in the making of a new pilots' award. The Federation's application for compulsory conciliation talks with the airlines was also dismissed.81 Even if agreement

79 Ibid., pp.47-51
80 Section 312(1)(a) provided that an officer or agent of an organisation bound by an award shall not advise, encourage or incite a member to refrain from working in accordance with the award or certified agreement which by sec. 312(2) applied to advice, encouragement or incitement in relation to employment or work with or for a particular employer or of a particular kind. The Australian Industrial Law Review, No.27, 1.2.90., p.33.
81 Sydney Morning Herald, 11.10.89.
was reached in the industrial tribunal there is every reason to believe that the Federation as a result of its actions early in the dispute, namely encouraging the mass resignations and opting out of the system, has rendered itself irrelevant to the industry as it is now operating.

The implications of the Brooking judgement were not lost on the Labor Government, the labour movement and employers. The Government's initial response was divided. The Minister for Industrial Relations, Peter Morris raised the possibility of enacting legislation to protect the right to withdraw labour. Other members of the Government, including Hawke, did not support Morris, a position that was described by some commentators as a "rebuff" for the Minister. A spokesman for Hawke said that while the Prime Minister's view had always been that the right to strike was enshrined in convention, it would not be given legislative force. Hawke did however, express some concern about the judgement. Damages, he said, were not "his cup of tea", a perplexing statement given his advocacy of common law action at the beginning of the dispute. Indeed, he admitted that his earlier language when he had talked about "war" had been provocative. His view now, was that the airlines would be wrong to collect damages against the unions and he recommended that they not attempt to do so. In an address to the National Press Club, Hawke said, he thought the airlines "almost had to take the action they did and they had our support, but not, from my point of view, to exact retribution".

How can the Prime Minister's about face be interpreted? His later statements (those made after the Brooking judgement) could suggest that his compliance with, and endorsement of the airlines' actions, were parts of a strategy adopted to defeat the pilots' Federation. As such, the position of the Government was purely tactical and did not anticipate the airlines actually proceeding to the ultimate conclusion. I think that this explanation is highly unlikely. The Government was well aware that the possible and even probable outcome of a hearing for damages would result in a favourable decision for the airlines. Moreover, after the Mudginberri and Dollar Sweets cases, damages awarded against a union would not be unprecedented. The fact that the cases bore little resemblance to each other is quite beside the point. What the Government may not have anticipated however, was the substance of Justice Brooking's findings against the Federation which called into question the 'right to strike' and consequently placed the Labor Government in an anomalous position with the labour movement.

82 *Financial Review*, 27.11.89.
83 *Age*, 28.11.89.
84 *Age*, 8.12.89.
The response from the ACTU on hearing the Brooking judgement was immediate and unequivocal. Apart from the resolution passed early on in the dispute, the ACTU had supported the Government's attitude. In what can only be described as 'tunnel-vision', the ACTU had proceeded on the basis that the Accord must be protected at any costs. Not only was the AFAP not affiliated to the ACTU, there existed an animosity between the two organisations that appears to have blinded the ACTU to the risks involved to unions in general. Because no sympathy could be extended to the pilots who were regarded as greedy and elitist, the conduct of the dispute aroused no theoretical criticism of the principles involved apart from the resolution taken at Congress. Once the judgement was made, the ACTU, aware of its ramifications, did an about face, and there can be little doubt that pressure at this point was exerted on the Government to modify the situation. This, I believe, provides the real explanation for the change in Hawke's attitude. One week after the judgement was announced, the ACTU executive passed a resolution in support of the Federation on the damages issue.

The problem for the ACTU is difficult. While it wants to support the Government, the arbitration system and the Accord against the pilots, it also needs to side with the pilots because of the threat to basic trade-union rights. ACTU president, Simon Crean, announced that some consideration would also be given to appealing the decision. He said, that a meeting with the Government would be sought to discuss legislative changes to protect the rights of unions to take legitimate industrial action. Some indication of the defensive situation of the ACTU is indicated by the nature of the proposed legislation which would not seek to enshrine the 'right to strike'. The proposal, it has been suggested would be more likely to require employers to exhaust all other avenues of conciliation and arbitration before being able to resort to legal action. Nevertheless, tame though the ACTU proposal may have been, the threatened support by the ACTU for the Federation would not have been welcomed by the Government. There would be an added reason for nervousness should the ACTU provide support to the AFAP in an appeal to the High Court.

The judgement hailed as a "milestone" by employer organisations such as the Australian Chamber of Commerce and the NFF who said, "it (the court's decision) would encourage their members to take common law action against workers who took industrial action". John Collins, president of the Australian Chamber of Commerce said the decision affirmed many of the principles of the Dollar Sweets case. He went on to say:

85 Age, 29.11.89.
86 Loc.cit.
87 The Weekend Australian, 25-26.11.89.
In a short-sighted attempt to preserve the sanctity of the prices and incomes accord the ACTU has, perversely, become a party to shattering one of the pillars of trade unionism - the supposed right to strike.88

It is hardly surprising that no reservations were expressed by employers. Not only had the 'right to strike' been challenged, the administrative and directive power of union officials had also been eroded. The decision has undoubtedly enhanced the prospect of success at common law in industrial disputes, and if, as the pilots' Federation anticipates, the judgement is appealed to the High Court, the whole basis of industrial disputation in Australia will undergo a rigid scrutiny.

Until the Brooking judgement, actions at common law in Australia had taken a particular form. Typically, the union involved would have ignored orders made by a tribunal and injunctive relief then sought by the employer. (This has also been the scenario under which sections 45D and 45E of the TPA have been invoked.) In the pilots' case, the action for damages at common law were sought without the prior issue of injunctions. Until the mass resignations, the airlines had not sought injunctions against the Federation's '9 to 5' directive although the opportunity then existed for them to do so. Instead, the threat of a common law suit for damages was made, virtually from the onset of the dispute. Although there is no legal requirement for employers to initiate proceedings by seeking injunctive relief, the airlines have created a precedent by their action which could hardly go unnoticed by other employers. The extent to which they will follow the airlines suit in the future remains to be seen.

Another important aspect of the judgement has been the basis on which Brooking found against the Federation. The implications are as yet unclear and would no doubt be a central focus for attention should the case go to the High Court. As it stands at the moment, it appears that, as is the case with injunctive relief, a precedent has been created which could render certain functions of the conciliation and arbitration commissions irrelevant. It has nearly always been the case that when industrial disputes are in the process of arbitration, and both parties are acting in accordance with tribunal directives, no recourse to the external legal system is sought.89 Following the Brooking judgement, this may not continue to be the case. A possible scenario may be, that a union has organised stop-work meetings at which a resolution is passed in favour of taking industrial action. Even though no orders are made by the commission to cease the action, (and hence the union is not defying the commission), the process by which the stop-work meetings were called, may be actionable at common law based on the

88 Loc.cit.
89 The Robe River case study in the following chapter looks at an exception to this 'rule'.

precedent created in the pilots’ case. It does not matter that the circumstances in the pilots’ dispute were different, leaves the way open for employers in the future to pursue damages even when no breach of conciliation and arbitration law has occurred. While this has always been possible, employers have refrained from such action. Perhaps they will continue to do so, despite the precedent which as yet, remains untested in the form that I have outlined. Even so, the decision will remain as a ‘sword of Damocles’ to the union movement and will no doubt have a significant effect on how union officials perform their duties.

Considerable space has been given in the previous chapter to discussion of the New Right, and in this chapter, the pilots’ dispute. Although members of the New Right openly endorsed the airlines actions, their involvement has been minimal. Ironically, the most outspoken member of the New Right about the dispute has been the then National Party Senator, John Stone who was critical of the Government and airlines, and openly advocated that negotiations with the Pilots’ Federation be resumed. This was a decided retraction from his previously well publicised attitude towards unions and endorsement of contract labour. A member of Senator Stone’s office commented that, apart from wanting an end to the dispute, and being highly critical of the Government’s handling of it, “John was being political”. That aside, it appears that a climate has been created whereby the policies of the New Right have become part of industrial consciousness, to the extent that the actual participation of individuals associated with the New Right is unnecessary. With the common law achieving widespread acceptance as a weapon against industrial action, other precepts favoured by the New Right, such as enterprise-based unions, continue to gain ground and are now being advocated in a limited way by the Federal Government and the ACTU. Significantly, they are no longer associated in the public mind with the New Right but form part of the discussion of industrial relations with a firm place on the political agenda.

In the following chapters I will be looking at three of the disputes which have played a prominent role in advancing industrial relations to its present state. One of the features of the pilots’ dispute which I have not discussed at any length, has been the introduction of individual contracts of employment by the airlines with the explicit approval of the Labor Government. The implications for trade unionism in Australia of this development

90 The pilots had placed themselves outside the industrial relations system.
91 Australian Broadcasting Commission, AM,
92 Senator Stone had been following Coalition policy which, his aide agreed, was at some variance with his personal philosophy.
are enormous. As the case studies will show, contract labour is, and will probably remain, one of the most important issues for trade unions in the foreseeable future.

Each in its own way, the following case studies are important indicators of the changes which have taken place in industrial relations during the 1980s. Different in detail and context though they are, the Mudginberri, SEQEB and Robe River disputes have all had a lasting impact on the industrial relations arena long after they have ceased to be active disputes.
Chapter Ten

THE SEQEB DISPUTE

Another [member of the audience] from an ACOA meeting was so horrified at the state of affairs in Queensland she suggested we have a revolution. We pointed out we were flat out trying to hold a picket."

10.1.1. Background

Between June 1978 and February 1985 industrial relations in Queensland's electricity industry had been, to put it mildly, troubled. There had been eleven major disputes which had cut power supplies. Since March 1980, the Government had declared a state of emergency three times (one did not result from a power strike) and had threatened union deregistration, publication of strikers' names and the fining of strikers and union leaders.¹ Since 1977, when the industry was rationalised, electricity charges had soared at twice the rate of consumer prices in general.

In August 1984, Wayne Gilbert the newly appointed general manager, advised SEQEB staff that he intended to reduce the size of the organisation by 10 per cent, without introducing redundancies or contract labour.² This was in contrast to a secret memo leaked in 1984 which outlined a scenario for the increased use of contractors. The memo outlined options aimed at minimising the board's costs by reducing the permanent workforce. SEQEB claimed the memo was merely a discussion paper which was "never acted upon".³ According to officials at the ETU and MOA, the memo also anticipated the strike and recommended taking the ETU on first.⁴

Since rationalisation, contract labour had been used during peak periods after agreements reached between the ETU and SEQEB. During this period there had been a decrease in the number of SEQEB employees. For example, in 1977 there were three line construction gangs with approximately thirty employees in each gang. By the end of

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¹ Pam Gardiner in an address at Perry Park, Brisbane, 30.5.86., 'Time to Organise', in Papers Presented to the National Fightback Conference, 4-6 July, 1986, p.15. (ACOA was the Australian Clerical Officers' Association)
² Courier-Mail, 17.2.85.
³ Business Review Weekly, 18.10.84., p.15.
⁵ W. Randall, (ETU) & J. McGee, (MOA), Interviews. Both tried to locate the memo without success but assured me of its existence and content. Memo No.3934 was also referred to in a letter from N.D. Kane, the then secretary of the ETU.
1984 there were two gangs with approximately seventeen in each. "This staffing level was reflected right across all the Board Depots", according to Neal Kane, the then ETU secretary. "Continual approaches to SEQEB to upgrade their staffing levels over that period met with negative responses". Contractors, he points out, are mostly small businesses whose priority is profit rather than safety.

From early 1984 SEQEB and the ETU negotiated for an agreement on the use of contract labour. In August the proposed agreement was rejected by the ETU State Council. In September bans were imposed on three projects that SEQEB advised were to be let to contractors. In December, after a compulsory conference of the State Industrial Commission meetings between the ETU and SEQEB failed to resolve the matter. ETU members returned to work on 7 December for further meetings and conferences with the Commission. On the 17 January 1985, the ETU refused again to perform work on the banned projects and a general strike of members resulted. A severe storm hit Brisbane on the 18 January and ETU members obeyed the Commission's order to return to work, but resumed their strike on the 26 January, this time refusing to obey a Commission order. A state of emergency was declared on 8 February under which orders in council were made ordering the men back to work and ordering SEQEB to dismiss workers who did not return.

From this time the Government assumed responsibility from SEQEB management for making decisions (although SEQEB had been implementing Government policy all along). The issues became diverse. The right to manage versus opposition to contract labour became subordinate to the reinstatement of dismissed workers and law and order. Democracy itself became an issue which, in the conflict that ensued, had meaning that varied with concept and ideology.

No discussion of the SEQEB dispute could be considered adequate without some mention of the protagonists involved. Not only did the dispute illustrate the divisions that existed between the various actors in the dispute, but there was a strong element of personal crusading that emanated from the key characters.

10.1.2. **Sir Joh Bjelke-Peterson**
While it is speculative to suggest that Sir Joh deliberately provoked the dispute, his previously stated attitudes towards union power, and statements made by him during the dispute, suggest that he was primarily concerned with curbing union power and radically changing the industrial environment. Indeed, Sir Joh regarded his fight against the Queensland power unions as a crusade as important as President Reagan's fight with

5 N. D. Kane, *Letter*, 17.4.86.
the air-traffic controllers and Mrs Thatcher's battle with the British unions. "We can't afford to lose", he declared. "We will win and this will change the face of unionism in Australia". Some credence must therefore be given to the provocation theory on the grounds that the dispute served long-term goals. Whether 'deliberate provocation' can be asserted is another question altogether.

Sir Joh had suffered a humiliating defeat at the hands of the power unions in 1980. He had taken over negotiations himself and conceded gains that were much greater than even the unions had hoped for. Part of the deal was that the unions would not gloat over the defeat of the Premier and leave his 'tough-guy' image intact. During the SEQEB dispute in 1985, Sir Joh showed no signs of backing down. On the contrary, he challenged other unions to follow suit. "There's no way I'll let up. The more unions they throw into the ring, the better", he said.

Defeat of the unions was only part of the Premier's agenda. An election was imminent and it was acknowledged by Sir Joh that there could not be a better election issue "in a million years". The National Party had suffered a setback in the Rockhampton by-election in February 1985, where they had campaigned heavily on the strike issue. Sir Joh was dismissive about the defeat. The ALP stronghold was hopeless, he said, "It is not worth worrying about politically". Clearly (and correctly as it turned out), Sir Joh regarded the people of Rockhampton as unrepresentative of the rest of the State.

The agenda also included the economy. It is alleged that a report by Mike Ahern, the Minister for Industry, Small Business and Technology, showed serious structural problems in the economy and an over-dependence on resource-based industries such as mining and commodities. Another report, Queensland: Facing the Issues by Phil Day, a senior lecturer in regional and town planning, was also critical of the Government's performance in key areas. Peter Coaldrake, chairman of Griffith University's School of Social and Industrial Administration suggested that Sir Joh's latest battle involved more than the maintenance of Queensland's power supplies, or crushing the union movement through draconian no-strike legislation. It also served to divert attention from the badly performing Queensland economy:

Both Sir Joh and the Queensland National Party have had a general wish to devise some strategy whereby the odour (sic) that the Government is

6 Canberra Times, 21.2.85.
7 Loc. cit.
8 Courier-Mail, 20.2.85.
9 Courier-Mail, 14.2.85.
10 Sydney Morning Herald, 18.2.85.
11 The Age, 19.3.85.
12 Loc. cit.
getting on the economy could be deflected elsewhere. The power crisis has
given it the opportunity to blame Queensland's economic problems on the
unions, possibly right up to the election.13

10.1.3. Wayne Gilbert

Gilbert's appointment as General Manager of SEQEB was viewed with anxiety by unions.
With experience in the public and private sectors, Gilbert had earned a reputation as a
tough, anti-union negotiator, particularly in regard to battles fought and won at Carlton &
United Breweries and Tooth's Kent Brewery. Tooth's, which Gilbert claimed had the
worst industrial relations record of any brewing company in Australia, has since been
likened by him to the situation on his arrival at SEQEB. Both, he says, "were highly
unionised with strong malignant unions".14 According to Gilbert, the Liquor Trades
Union in NSW and the ETU in Queensland represented relatively extreme forms of
unionism. Gilbert's view of his charter from his employers was that: "They wanted
someone to restrain spiralling costs and someone who would question the whole activities
of the organisation and not just work on the cost plus pricing system endemic in qangos".15

Not surprisingly, the unions and Gilbert were in disagreement over what the dispute was
really about. For the unions, contract labour (a reduction in the permanent workforce)
and safety were the issues. For Gilbert, it was "about the right of any public authority
to maintain a balanced and flexible workplace and to allow it to supply an essential
service at the cheapest possible price".16

Since the dispute ended Gilbert has been quite outspoken on his attitude towards shop
stewards. He has made statements which suggest that, from the beginning, shop stewards
had been a special target. The unwillingness of management to improve conditions or
take a stand against shop stewards was, he said, a "recipe for disaster". "I realised we
weren't dealing with rational people and a major barney was just a matter of time. The
shop stewards....were like sharks at a feeding frenzy".17 And, in an address to the
inaugural meeting of the H.R. Nicholls Society, Gilbert maintained that even at the
"eleventh hour" he felt "there was a goodwill amongst our individual employees, but not
our shop stewards or union officials who were increasingly militant".18 Gilbert's
attitude was apparently shared by Sir Joh. Cabinet sources have quoted him as saying,

13 Loc.cit.
15 Loc.cit.
16 Australian, 16-17.2.85.
17 Gilbert, quoted in Business Review Weekly, 18.10.85., pp.15-16. See also, Industrial
18 W. L. Gilbert, 'The Queensland Power Dispute', in Arbitration in Contempt, Melbourne,
1986, p.33.
"We are trying to tempt some of them back but we are not interested in the bad boys - the pommie shop stewards".\(^\text{19}\) Given Gilbert's stated hostility towards shop stewards, it was not surprising to hear from Wayne Randall, the assistant secretary of the ETU, that no shop stewards have been re-employed on Gilbert's orders.\(^\text{20}\) An industrial officer at SEQEB denied that there is any policy on re-employment of shop stewards, although he agreed that none had been re-employed. Their unwillingness to sign the contract would be the only reason for their non-reinstatement, he explained.\(^\text{21}\)

Gilbert acknowledged that unions would continue to exist. He was the overseer in the formation of what he has described as the forerunner to an industry-based union. The Queensland Power Workers' Association (QPWA), formed after the strike ended is not a traditional trade union. Gilbert has given it perhaps his highest praise by saying, "it does not see itself in the same light as traditional unions - it couldn't bring itself to be called a union." The QWPA has since become an acceptable model of trade unionism to conservative individuals and groups, one that embraces the 'right to manage' and abjures any recourse to direct action.

10.1.4. The unions

At the outset, the ETU approached the situation from the standpoint that defeat was literally unthinkable. Previous industrial action had resulted in success, and, as assistant secretary Wayne Randall pointed out to me, the ETU believed that because it had never suffered a loss, it could not happen.\(^\text{22}\) This naive belief in the ETU's infallibility may well account for the ETU's determination to direct the action in the beginning, declining the offer of the Queensland Trades and Labor Council (QTLC) to draw up a plan of action.

Support from other unions for the ETU was two-edged and to a large extent based on self-interest. While sympathy for the sacked workers was undoubtedly a strong factor, the recognition that other unions could ultimately suffer the same fate was a motivating force. In a newspaper advertisement placed during February 1985, entitled 'Open Letter to the People of Queensland re Power Dispute', eight unions declared their support and fears. The advertisement stated in part:

The public should be under no misconception that the present belligerent attitude of the Premier is confined to the power unions. The outcome of the present dispute, which has been inflamed by the Premier, will affect all Queensland workers and may destroy the independence and integrity of this state's Industrial Commission....

19 Courier-Mail, 13.2.85.
20 W. Randall, Interview, 18.4.88.
21 J. Wilkinson, Interview, 19.4.88.
22 W. Randall, Interview, 18.4.88.
Already contract and temporary employment are replacing jobs for teachers, solicitors, draughtsmen, architects, surveyors, railway employees, nurses and scientists.23

Further support came from members of the Printing and Kindred Industries Union (PKIU) working for the Brisbane Courier-Mail, who refused to handle State Government advertisements. On February 20, the paper was produced by staff labour.24 It was at this time that key trade union leaders met in Sydney to consider a national economic boycott involving a transport industry blockade of Queensland. They decided that unless Prime Minister Hawke’s attempts to resolve the row were successful, the unions were prepared to cut Queensland off during the following week. Meanwhile, Telecom employees placed statewide bans on the installation and maintenance of telephone equipment at SEQEB, the Queensland Electricity Commission (QEC) and other government instrumentalities.25

By this time, the QTLC was actively involved. That evening (February 21), a peace plan was accepted. It was the first time the Premier had given ground during the dispute, having previously refused under any circumstances to re-employ the 1000 ETU members sacked from their jobs. Ray Dempsey, secretary of the QTLC announced that power would be restored immediately and further negotiations would take place with the Government. Members of the MOA who had been on strike in sympathy with the ETU, returned to work and commenced load shedding operations. As it turned out, the offer of re-employment was conditional on the signing of a no-strike agreement and a 38-hour week. As the ETU had pioneered the shorter working week in Queensland, an agreement to return to work under the Government’s conditions would have been seen as undermining the national shorter working week.

The return of the power operators was an important event on two counts. First, they had been placed in a difficult position through the Government’s application to the Supreme Court under the State’s secondary boycott law. They faced fines of up to $50,000 individually if they continued their strike in support of the ETU. The intention of the Government to use every legal avenue available to restore power was obvious. Secondly, the QTLC was receiving feedback from unions whose members were resentful because they had been put out of work because of a dispute that was not their own.

By early March, some of the dismissed ETU members had returned to work and with the power operators back, the ETU felt that it had been abandoned by the trade union

23 The unions involved were the QTU, QSSU, QPOA, ARU, QREU, QNU, HEF, FCU. Sunday Mail, 17.2.85.
24 Courier-Mail, 20.2.85.
25 The Australian, 21.2.85.
movement. An attempt to persuade other SEQEB employees to join the strike had failed, while coal miners and Mt. Isa copper miners ended their sympathy strike. The only support in the form of industrial action remaining from other unions were bans imposed by maritime unions, Telecom and Australia Post employees.\(^{26}\)

Not only had the ETU failed to win the dispute but the actions of the Premier left little doubt that the trade union movement was under attack. At this point, the reinstatement of the sacked linesmen was paramount and the ACTU geared up for a protracted national campaign following the rejection of a peace package by the Queensland Government. The peace package which proposed a moratorium on threatened industrial action was viewed as "blackmail" by Sir Joh who repeated his stand that no sacked ETU members would be re-employed unless they signed no-strike contracts. Simon Crean, who was then a senior vice president of the ACTU (with the presidency well in his sights) determined that the trade union movement could not allow the Queensland Government to overturn decisions made by its own industrial commission and that action against the Government in other states was a distinct possibility. Crean believed that if the union movement allowed the Queensland Government to "get away with it", it would set a precedent for "conservative forces" in other states which had the potential to form governments in the future.\(^{27}\) The ACTU formed a national support committee to co-ordinate union support in other states in addition to establishing a national fighting fund. At least $1m dollars was expected to be raised. The Federal Government was approached to ensure that overseas workers were not allowed to take the jobs of sacked SEQEB workers and a call was made to all unions requiring their members not to apply for the jobs.\(^{28}\) The then president of the ACTU, Cliff Dolan announced a 'hit list' of private businesses and industries which had given money to the Bjelke-Peterson Foundation (the National Party's fund-raising body). He further warned that Queensland's farmers could expect industrial trouble, apparently because of strong support for National Party candidates in rural electorates.\(^{29}\)

The Federal Labor Government, while refusing to endorse plans for industrial action indicated support for an application for federal award coverage by the ETU. The problem with the plan to achieve a federal award was that, even if it did succeed in the long-term, it would be too late for the sacked workers. State Labor MPs were annoyed by statements made by Hawke who called on "all of the unions taking action in support of the Electrical Trades Union to return to work and cease any retaliatory action"\(^{30}\) From the opposite

\(^{26}\) _Sydney Morning Herald_, 2.3.85.

\(^{27}\) _The Age_, 14.3.85.

\(^{28}\) _The Age_, 14.3.85.

\(^{29}\) _Canberra Times_, 22.3.85.

\(^{30}\) _Canberra Times_, 21.2.85.
perspective, Hawke's refusal to endorse the blockade was regarded as inadequate. As one newspaper editorial surmised, the Federal Government was seen to be "implicitly condoning an illegal action by its de-facto coalition partner, the ACTU, and its union affiliates".31

At midnight on April 19, the blockade began. No trains, planes or ships were allowed in or out of Queensland for 24 hours, although plans to blockade all road entrances to Queensland were abandoned by the ACTU after considering the difficulties in manning 22 route blocks. The blockade was seen to be a 'face-saving' exercise and a 'one-day wonder'.32 The Premier dismissed the blockade as a "union disaster" which did not amount to anything other than an opportunity for the State Government to take the Federal Government to court over its failure to allow interstate mail to be delivered to Queensland; action that was illegal under Section 94 of the Postal Services Act, 1975.33 An industry spokesmen for the Queensland Confederation of Industry also declared the blockade a failure. Other than keeping the dispute before the public's eye, it had been "totally ineffective". The ACTU industrial officer who co-ordinated the campaign, Ian Court, disagreed. He said:

By any reasonable measure the blockade has to be judged as successful in showing the Queensland Government that unions do have the power and resources to carry out effective industrial action...

It was also effective in focussing attention on the issue on a national basis and as a morale booster to the SEQEB workers and unionists throughout Queensland.34

Undeterred, on the following day the Queensland Government renewed legal action against the power station operators. With Queensland operating on 50 per cent electricity supply, blackouts and rationing had resulted in standdowns and losses to industry and commerce. An application was lodged with the Supreme Court for an injunction which would require 150 unionists to restore full power under the Industrial (Commercial practices) Act 1984. Fines of up to $50,000 for individuals and $250,000 against the union were possible.

At the same time unions made a concentrated effort to isolate the State Government. They cut off oil to Parliament House and executive building generators; liquor supplies to government departments; and state-wide postal and telecommunication services to the Government, its statutory authorities, SEQEB and the QEC. On April 21, a QTLC deputation met the secretary to the Governor of Queensland, Sir James Ramsey, to

31 Canberra Times, 18.4.85.
32 The Age, 19.4.85.
33 Courier-Mail, 20.4.85.
34 Courier-Mail, 20.4.85.
present petitions warning of the dangerous situation that would develop if untrained people were allowed into the State's power stations. The QTLC maintained that the Governor should step in because of the threat to the power system. This was quite an extraordinary and desperate measure on the part of the QTLC, bearing in mind the "constitutional crisis" of 1975.

Perhaps an even more extraordinary event was the sight of Crean on television on April 22 pleading for the sacked workers: "You should give us one more chance, Mr Minister, just one more chance".

Over the following two weeks, the union campaign continued. A rally of three thousand construction workers outside Parliament House was addressed by the then Minister for Foreign Affairs, Bill Hayden, and Senator George Georges. Bans were imposed by the Seamen's Union (SUA), the WWF and bank employees (ABEU). Labour Day Rallies protesting the Queensland legislation were held in Melbourne, Sydney, Perth and Adelaide. Support for the striking electricity workers came from a wide cross-section of the community and represented a variety of attitudes. A Catholic priest, Father Dick Pascoe celebrated mass outside a SEQEB depot and was a familiar face at demonstrations. His station did not protect him from being arrested. In his view, it was wrong for Catholics to 'scab'. He claimed the verbal support of the Pope and two archbishops, and the moral support of Jesus Christ. Father Pascoe was the spokesman for the Concerned Christians, a group formed in 1976 in response to Aboriginal land rights and street march issues. Other regular demonstrators belonged to a group called Citizens For Democracy. These and other groups doggedly attended pickets and demonstrations even though they had no connection with the dispute itself.

On May 13, the industrial campaign was suspended after the Federal Government agreed to intervene in the dispute by passing legislation to resolve the crisis. All bans were lifted and a planned airline stoppage on May 15 was cancelled. The proposed legislation aimed at forcing the power industry out of the Queensland Government's jurisdiction and into a federal industrial award. Concurrently, the Queensland Minister for Employment and Industrial Relations, Vince Lester, moved to take Federal Court action under the

35 *Courier-Mail*, 21.4.84.
36 Sir John Kerr's dismissal of the Whitlam Labor Government in November 1975 was widely viewed by the labour movement as an unjustifiable act that exceeded the vice-regal role.
37 Crean quoted in *The Age*, 23.4.85.
38 Bill Hayden, now Governor-General of Australia was then the federal member for Ipswich, a working class mining district close to Brisbane. Senator Georges has since resigned his parliamentary post in protest at the Labor Government, especially its handling of the SEQEB dispute. At the time he was a Labor Senator for Queensland.
39 *Canberra Times*, 2.5.85.
40 *The Courier-Mail*, 19.4.88.
secondary boycott provisions of the TPA against the TWU and the ACTU's Ian Court. According to Lester, the ACTU's decision to suspend the proposed blockade was a major backdown because 20,000 people were destined to be stood down as a result. He accused the Federal Government of supporting law breakers with its new legislation.\(^41\)

Lester's assertion that the ACTU's decision was a major backdown would probably be the only point of agreement between the Government and the ETU. Bitterly disappointed at the calling off of the blockade, the ETU declined to give the no-strike undertaking required by the Australian Democrats to ensure their support for the *Conciliation and Arbitration (Electricity Industry)* Bill. Nevertheless, the Queensland power industry unions were prepared to give assurances that continuity of power supplies were ensured. On May 29 the Federal Government's legislation passed through the Senate with the support of the Australian Democrats. Predictably, the Queensland Government and electricity boards immediately filed a challenge to the validity of the legislation in the High Court.

Over the next two months, although picketing continued outside Queensland power stations, support from other unions was minimal. The loss of impetus in the ETU's industrial campaign was blamed firmly on the ACTU where the legislation was widely regarded as letting the ACTU "off the hook" (sic).\(^42\) On July 16, the QTLC ratified a disputes committee decision to act over delays in the High Court's decision. It was intended that unions would strike at businesses whose owners were supporters and advisers to the State Government on industrial relations policy. At the same time, the dispute at Mudginberri in the Northern Territory had also started to receive publicity. On occasions the two disputes were linked by the Premier and in the newspapers.\(^43\)

On August 20, at a rally attended by 13,000 workers, a mandate was given for resumption of the industrial campaign against the State Government. Addressing the meeting by landline from Canberra, ACTU secretary, Bill Kelty, said the the ACTU was committed to the sacked SEQEB workers and supported their resolution. Meetings elsewhere attracted 10,000 people who endorsed the resolution.\(^44\) On the same day, a demonstration took place outside Parliament House, partly in support of the sacked workers, but also because of an announcement by the Government that it was planning new laws to de-unionise half the State's workforce, wiping out penalty rates in the process.\(^45\) Over 100 demonstrators were arrested, provoking a strange response from

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\(^41\) *The Age*, 14.5.85.
\(^42\) *Financial Review*, 23.5.85.
\(^43\) *Courier-Mail*, 17.7.85.
\(^44\) *Courier-Mail*, 21.8.85.
\(^45\) In April 1987, amendments to the *Industrial Conciliation and Arbitration Act* (1961-86) and the *Industrial (Commercial Practices)* Act (1984-85) was introduced into the Queensland
Dempsey who said, "The union movement disassociates itself from those demonstrators who are not fair-dinkum unionists". On other occasions Dempsey had decried the support of the 'Concerned Christians' group which is a curious attitude given the need for public awareness of the issues involved, and the principles at stake in the dispute.

Indeed Dempsey's outburst becomes even more incongruous by his own evidence. On trips around the State, he acknowledged that there was little sympathy for the SEQEB workers, but some concern for the Government's proposals to attack penalty rates and other award conditions.

By October, the ETU had become totally disconsolate. The ACTU's national tactics committee refused a request from ETU national secretary, Ray Perriam to again blockade the state. The committee resolved to take no action over the Queensland power dispute while the ETU's federal award application was before the Australian Arbitration Commission. Then, on October 7, the powerful Building Trades Group of unions which had been a leader in union battles with the the State Government over the preceding eight months, called for an end to efforts to have SEQEB workers reinstated. Unions from that time were directed to try and find the sacked workers other jobs. The Group's honorary secretary, Hugh Hamilton pointed out that the present methods of fighting the State Government only highlighted the trade union movement's weaknesses. He stressed the need for unity and solidarity to be built up among workers and the great need for unions to assess political and industrial situations on a scientific basis instead of relying on a 'gut reaction'. Hamilton concluded that it was obvious the trade union movement on a state and national basis did not have the capacity to organise a blockade "of a character that may be required to get SEQEB workers their jobs back".

What had been generally recognised for some time by realists in the trade union movement - that the sacked workers had virtually no chance of regaining their jobs - was evident to all at this point. The ETU maintained that the fight should continue, bitter over the union movement's capitulation to Sir Joh. According to ETU state organiser Dinny Madden, at least 200 sacked workers over the age of 50 and nearing retirement, had had their futures destroyed. The sackings had cost them their full superannuation and other benefits, while there was little chance for their re-employment elsewhere. They were the reason why the campaign for reinstatement had to continue. His

Parliament. Public servants were excluded from the provisions in the former Act in its final form.

46 Canberra Times, 3.9.85.
47 Canberra Times, 3.9.85.
48 Courier-Mail, 4.10.85.
49 Courier-Mail, 8.10.85.
50 Courier-Mail, 10.10.85.
arguments fell on deaf ears. Unions had become concerned about the way in which the dispute had put other unions in a bad light and made signing up members difficult. The QTLC strategy was to get away from pickets and bans type tactics and concentrate on legal and political manoeuvres which would make the Queensland legislation irrelevant.51

In any case, there is a strong argument for suggesting that the involvement of the ACTU, the Federal Government and Queensland unions was only partially out of concern for the sacked ETU workers. It was widely believed that the workers had acted precipitately from the beginning, were unwilling to take advice, and lacking in judgement. The major issues of concern were the legal initiatives taken by the Queensland Government and the projected move towards the widespread introduction of contract labour throughout the State.

It was a major defeat for the trade union movement that had enduring ramifications. It marked the start of a nation-wide trend towards anti-union behaviour by conservative forces that was personified by aggressive and confrontationist approaches to industrial relations. Wayne Gilbert opened his address to the H.R. Nicholls Society with these words:

I am delighted to be invited to speak....on what I regard as one of the most important and historic activities occurring in the Australian industrial arena today. That, of course, is the deregulation of the hitherto bound up industrial society and, hopefully, the demise of rampant and militant union control of this country that we have all seen probably since the beginning of this century.52

He went on to say that he was "also pleased to be part of what I think is a watershed in industrial relations in Australia".53 The new union structure at SEQEB reflects Gilbert's vision of how unions should function on enterprise-based lines. The QPWA enjoys, ironically, a privileged position. Ironically because, while the principle of 'preference' and rights of entry have been abolished by SEQEB, the QPWA leaders enjoy preference and rights of entry over other unions.

10.1.5. The industrial climate

During the dispute questions arose about rights, the development and application of the law, policing and the role of the judiciary. The polarisation of public opinion can be seen in the context of fundamental conflict about these issues. It is easy to assert but sometimes difficult to substantiate political links between governments, the police and

51 Canberra Times, 23.10.85.
53 Loc.cit.
judiciary. There does however appear to be evidence that links do exist between police and the former conservative Government of Queensland.54

The notion that the electricity workers represented a challenge to the rule of law and democracy was used throughout the dispute to explain and legitimise the rigorous enforcement of law and order. Lester engaged in colourful analogy when he said, "To put it crudely, the leaders of the ETU in Queensland have achieved as much for their SEQEB members as the Yorkshire Ripper did for night shoppers in Leeds".55

Critical to the Government was the depiction of picketers as unlawful. Equally critical to the electricity workers was the necessity to inform fellow workers of the issues involved. Picketing has always been a touchy issue because of the distinction between 'informational' picketing and 'intimidation' (watching and besetting). As such, unlawful picketing has not always been easy to establish.56 The question of the 'right to picket' and the legality of picketing became paramount in the conflict that followed in the dispute. Laws were enacted to restrict militant unions (particularly in public sector industries) and penalise workers on an individual basis.

The law was used extensively throughout the dispute. Both the State Government and the Federal Government engaged in legal techniques (and not a few legal technicalities) in order to achieve their desired, albeit different, goals. Whether either Government could claim that their tactics were aimed principally at dispute resolution is highly questionable. As far as the Queensland Government was concerned, no dispute existed once the power operators had ceased load shedding and SEQEB was fully manned and operational again. For the Federal Government, the Accord was placed under pressure. The Government was under a moral obligation to assist the ACTU when union power and principles were at stake. However, the Queensland Government was able to achieve political mileage out of law and order issues and undertake legal action to deflect every move made by the ACTU, Federal Government and unions. Prime Minister Hawke's dilemma was summed up succinctly in a Sydney Morning Herald editorial which said:

He knows too, that the industrial movement cannot allow Sir Joh's legislation to remain on the statute books. It provides too seductive a precedent for a future conservative government to copy. In the short

54 There has been overwhelming evidence presented to the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (commonly known as the Fitzgerald Inquiry) that this is the case, although no evidence was presented that has any direct bearing on the SEQEB dispute.
55 Courier-Mail, 2.5.85.
term, it threatens the Accord, the centrepiece of the Federal Government’s economic strategy, by placing industrial harmony at risk.57

10.1.6. The legislation

The Industrial (Commercial Practices) Act 1984, outlawed secondary boycotts and primary boycotts in relation to demarcation disputes; strikes without seven days clear notice; and preference disputes. The Act provided for injunctions and fines of up to $50,000 for individuals and up to $250,000 for organisations. The power operators were induced to return to work and subsequently to discontinue load-shedding after being threatened with this Act.

The Electricity (Continuity of Supply) Act 1985, formalised provisions made under the state of emergency proclaimed under the State Transport Act 1838-61. The Bill was passed into legislation after only three and a half hours discussion in the Queensland Parliament.58 The Act gave to the Electricity Commissioner civil conscription powers with authority to direct any person to carry out the necessary work to ensure a supply of electricity. As such, virtual state-of-emergency powers belong to the Electricity Commissioner at all times. Police are empowered to arrest picketers if it is considered that, by doing or omitting to do any action, they are seeking to “Harass, annoy or cause harm or distress to any person in relation to the performance of duties associated with the supply of electricity”.59 In addition, the Act contained a reversion to the 38-hour week. The Act is unique in that full legal effect is given to the dismissals of the SEQEB workers.60 The removal of the electricity industry from the jurisdiction of the State Industrial Commission was also included in this Act.

Introduced and debated within two hours, with no introduction and no Opposition members having time to read its contents, an amendment to the Act was passed in March 1985. Ancillary powers under the amended Act allowed police to arrest without warrant (for example, persons harassing electricity workers or persons whom police believe on reasonable grounds to have committed an offence). Labor opposition leader Neville Warburton said of the Act: "...the same workers were subjected to a National Party Vendetta to make them look like lawless thugs even though the majority had participated in only one or two strikes in their working lives."61

Even the Liberal Party, which had supported the Government’s stand and voted in favour of the legislation, protested at its urgent introduction. The Opposition spokesman for

57 Sydney Morning Herald, 15.4.84.
58 Queensland Times, 6.3.85.
59 No definition of harass or distress etc. is tendered.
61 Courier-Mail, 6.3.85.
Mines, Kenneth Hamilton Vaughan said that the introduction of the amendments exemplified the Government's lack of understanding of industrial relations. He went on to say:

We have a position under this legislation of virtual industrial slavery, a situation where workers are being forced into industrial slavery....I feel sincerely there is nothing this Government won't do to suppress working people. Strikes are a safety valve, and with the Government introducing this type of legislation, we are heading for trouble whether it is warranted or not.62

The amendments to the Act received some admiration. Les Priddle, a lawyer and head of the University of Queensland's Commerce Department said:

It's a nasty law. It's a shinkicker's law. But it's kicking the shins of shinkickers. Unions have been blackmailing this State and these laws are intended to stand up to that.63

The perceived failure of the judiciary to control the ETU in the Industrial Commission was the justification used by the Premier to absolve it of all responsibility in energy matters. This decision was met with anger by the President of the Industrial Court, Mr. Justice Mathews. At a brief, public sitting of the Court and Commission Justice Mathews expressed concern at the "loose and inaccurate statements" that had been made in criticism of the Commission. He described as absurd the Premier's remarks that the Commission as a dispute settling tribunal:

....has never settled anything very much other than giving it exactly what the unions want; they have always got what they want simply because they will never accept anything until they get what they want.64

The President pointed out that since rationalisation of the electricity industry in 1977:

the most significant industrial gains achieved by union members employed by the electricity boards have not been ordered, recommended or suggested by the Commission but have resulted from and are attributable to direct negotiations between unions and the employers; the latter acting with the approval of government.65

Fundamental legal maxims underwent change. The rules of evidence have been turned around. One section provides that "Proof of publication in any newspaper of any speech to any person...should be admissible or conclusive evidence that the speech was made by the person to whom it is attributed".

62 Courier Mail, 27.3.85.
63 Sydney Morning Herald, 4.4.85.
64 Sir Joh Bjelke-Peterson, quoted by Justice Mathews, Statement by the President, Brisbane, March 5, 1985.
65 Loc.cit.
Under the *Industrial Conciliation and Arbitration Amendment Act* 1985, the maxim of "innocent until proven guilty" was reversed. This Act also widened the definition of strike to include 'go-slow' and otherwise doing work in a way not usually done. Non-union workers are not to be prejudiced or threatened in any way. Incitement or counselling by definition included a publication, by or on behalf of a union, statements on television or radio and statements in a newspaper. In addition, the Act provided for a secret ballot at the direction of the Industrial Commission and widened the grounds for union de-registration. The debate over this Act was gagged by the Government after less than three hours, causing the State Opposition to storm out of Parliament in protest.66

The *Electricity Authorities Industrial Causes Act* 1985, replaced the jurisdiction of the state industrial commission with the Electricity Authorities Industrial Causes Tribunal. The Act also removed preference provisions; declared participation in, inciting, counselling or abetting a strike, illegal; and made a strike a fundamental breach of contract providing automatic penalties. A list of guidelines for the tribunal does not include the interests of employees in the electricity industry.67

While many of the arrests during the dispute were made under s 5 of the *Electricity (Continuity of Supply) Act*, convictions have not necessarily followed. Many charges were later dropped or dismissed by magistrates. Some convictions were later set aside by the High Court.68 Nevertheless, the imposition of bail conditions served the purpose of keeping many picketers away from picket lines. Arrests were also made of persons not actively involved in picketing. On one occasion a number of solicitors, who were standing separately from pickets and acting only as legal observers, were arrested.69

An illuminating insight into how picketers may have expected to be treated is provided by the legal advice given to the ETU by their solicitors which said, in part: "It would always be advantageous to have an independent person present so that it will minimise the tendencies of Police fabricating any evidence to the contrary".70

It is interesting to note that despite the range of new laws, successful prosecutions were more likely to occur under existing laws. Indeed, a number of Acts were used during the dispute when picketing or a procession was taking place. Arrests were made under the *Traffic Act* for offences such as disobeying a lawful direction and taking part in a procession. The *Vagrancy, Gaming (and Other Offences) Act* was also used (including the arrest and conviction of Senator Georges as a vagrant). In other cases the *Radio*

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66 *Courier-Mail*, 20.3.85.
69 *Courier-Mail*, 24.4.85.
70 Grasso Searles & Romano, *Letter to ETU Executive Officer*, 29.3.85.
Communications Act 1983 and the Telecommunications Act 1975, (for illegal use of a telephone) were utilised.

Most of the discussion concerning the SEQEB dispute has centred on the legislative initiatives of Sir Joh Bjelke-Peterson. While that is understandable, it must also be noted that the Queensland Government, with great confidence, pursued every legal avenue available to defeat any federal or constitutional challenges. Many of these were decided long after the dispute had ceased to be active. Moreover, statements from the Federal Government, the ACTU and civil liberties organisations that accused the Queensland Government of contravening international treaties through breaches of the ILO Conventions 29, 87, 98 and 105, the International Covenant of Civil and Political Rights, and the International Covenant of Economic, Social and Cultural Rights, were summarily dismissed. All these conventions had been ratified by the Commonwealth Government. There was some debate at the time about the possibility of mounting a Constitutional challenge by invoking the External Affairs Powers. I was advised by a Constitutional lawyer that such a challenge would be possible under section 52 of the Constitution and that there was legal precedent which could lead to it being successful.  

Nor were the findings of the Human Rights Commission heeded. For example, the Commission found "that the Queensland Electricity (Continuity of Supply) Act 1985 is inconsistent with Article 8 of the ICCPR, which prohibits forced or compulsory labour and with Article 22 of the ICCPR, which guarantees the right to freedom of association...." One possibility open to the Federal Government in this regard was to challenge the legislation in the High Court under Section 52 of the Constitution. Although the legal precedents existed for such a move, the judicial composition of the bench at that time would probably have resulted in a split decision. While this is an interesting aspect in appraising the actions taken, and not taken, by the Federal Government, it has little relevance to the context of discussion here.

10.1.7. Conclusion

There are a number of aspects to the SEQEB dispute which have far-reaching implications for industrial relations in Australia. The notion that trade unions have too much power, while not new, has been embellished. Bjelke-Peterson paved the way for

71 Crispin Hull, Interview, 10.4.85. He explained that under section 52, the Commonwealth had the power to make laws in regard to foreign affairs. He cited the Whitlam Government's Race Relation Act which was upheld in the High Court. Hull suggested that one of the reasons why a challenge was not mounted was that, in the absence of Justice Murphy, there would be a three-split decision.


73 C. Hull, 'High Court tied, but all's fair in 'war' with Joh', Canberra Times, 7.4.85.
an attack on trade union power by setting up a model for change. Tempting though it is, I have omitted from this discussion the highly colourful language used by Sir Joh during the dispute. On the printed page, many of Sir Joh's remarks appear infantile and frequently ridiculous. I believe it would be a mistake to allow his vernacular use of language to detract from the substantive arguments he was making, no matter how amusing it may be. His attacks on trade union power were motivated by an ideological commitment to alter the fabric of industrial society. His success, both in terms of winning the dispute and later being re-elected to Government are testimony to an acute political awareness.

Another aspect of the dispute which has had enduring implications is the notion that the 'right to manage' has been eroded by unions, and that greater productivity and efficiency can only be achieved by that right being regained. As will be seen in the following two case studies, the 'right to manage' was central to the principles involved in actions taken by the respective managements.

Contract labour was an issue with the union movement prior to the SEQEB dispute. Subsequent measures taken by the Queensland Government to introduce a system of voluntary employment contracts have not always met with success. Nevertheless, contract labour has increased markedly since the dispute. It is an important feature of the Mudginberri and Robe River disputes which follow.

The legal initiatives of the Queensland Government have been documented earlier. The challenge to the industrial relations system as a viable forum for solving the problems endemic to an industrial environment, cannot be understated. One further aspect that should be noted is that the Mudginberri dispute was underway before the SEQEB dispute finally concluded. In August 1985, Sir Joh announced: "I have supported the owner of the abattoir and organised that he be funded and there is no problem in that regard....We have determined that he (Jay Pendarvis) is not going to lose, and he's winning all along".74 The Queensland Government moved to introduce legislation which would legitimise the type of industrial agreement at the heart of the Mudginberri dispute and make the Mudginberri agreement a legislative model.

chapter eleven

The Mudginberri Dispute

11.1.1. Background

Small abattoirs in the Northern Territory like Mudginberri are geographically isolated and have developed without regulations imposed by unions or industrial tribunals. With high operating costs, these sheds employed fewer workers than would be required in union establishments and had unusual employment arrangements. Under a contract system, the abattoir operators were not the employers of the process workers. Instead, a contractor, having reached agreement with the operator on a price for the season, provided the labour force and was responsible for the payment of workers, some of whom set themselves up as companies. At Mudginberri, the agreement entailed a payment by results system. The AMIEU wanted the union tally system adopted in line with the Meatworkers' Award. Ironically, the tally system had originally been adopted by employers against union opposition. Small abattoirs like Mudginberri, under the contract system were competitive despite paying higher rates, because unit labour costs were low. The workforce was smaller, and entitlements such as workers compensation, weekend penalty rates, and waiting time were non-existent. Nor was payment made for meat rejected for quality reasons. In August 1983, the AMIEU served a log of claims on meat processors in the Northern Territory seeking a federal award. As a result, the Meat Industry Award 1981 was applied in the Northern Territory with the consent of all parties. However, the method of payment issue remained unresolved.

The AMIEU, committed to obtaining agreement on the tally system, in July 1984 placed a picket line on the road to Mudginberri Station which caused the operation to close when meat inspectors refused to cross the picket line. An application for injunctive relief under Section 45D of the TPA was granted. A Full Bench of the ACAC refused to hear the matter until all industrial action ceased. The picket line was called off and the AMIEU undertook not to take any further industrial action while the making of the award was before the Commission. The parties agreed to "accept and work to any such award". The

1 J Kitay & R Powe, 'Exploitation at $1,000 per Week? The Mudginberri Dispute'. The Journal of Industrial Relations, No.29, September 1987, p.370.
3 Loc.cit.
union was encouraged in its efforts to apply award standards by the Norwest Beef Abattoir at Katherine, which was working under a registered agreement and hoped to raise the labour costs of firms like Mudginberri to its own level.4

The main issue before the Commission was whether the existing "contract system" should continue or a new unit tally system be adopted. With some reservations, the Full Bench of the Commission supported the "contract system" and referred the matter to Commissioner McKenzie for the appropriate award to be made. On April 29 1985, the Northern Territory Meat Workers Award was handed down. It contained a system of payment by results, to be negotiated between employers and the majority of employees or their nominated representatives.5 The crucial factor for the AMIEU was that the award contained no provision for mandatory union involvement.

Mudginberri subsequently negotiated an agreement with its employees who did not nominate the union as their representative. Jay Pendarvis, the proprietor and managing director of Mudginberri had been informed during the award hearing that the rules of the AMIEU now required that employees could not negotiate on their own behalf, but only through the union. It is not certain how many of the Mudginberri employees were members of the AMIEU, but expulsion followed for those who were.6

Slaughtering commenced on May 10 1985, the agreement's starting date. The AMIEU, still committed to the unit tally system, once again placed a picket on the road leading to the station. It remained in place until September 8, 1985. Subsequently, government meat inspectors refused to cross the picket lines. Legal proceedings were instigated with the aim of both stopping the industrial action and achieving compensation for Mudginberri's losses. The litigation lasted for two years and shifted from the industrial tribunal to the courts, with the emphasis on enforcement and penalties rather than settlement.7 The dispute eventually gave rise to a complicated set of legal proceedings in the Federal Court and High Court of Australia.

There are three aspects of the Mudginberri dispute which I will consider. The most memorable, or to be precise, the one for which Mudginberri has become most famous was the legal action which ultimately resulted in the record damages awarded against the union. (Initially $1.76 million was awarded, later reduced on appeal to $1.44 million.) Secondly, and also of considerable importance, has been the impact that the judgement has had on the trade union movement, where it has come to be regarded as part of a

5 Pittard, op.cit., p.27.
6 Ibid., p.28.
continuing assault on unions and their right to engage in direct action. This, notwithstanding only limited support during the dispute from the ACTU. The principle has become much greater in importance than the dispute itself. Finally, the legal action taken by Mudginberri was a concerted effort on the part not only of the station proprietor, Jay Pendarvis, but also the Meat and Allied Trades Federation of Australia (MATFA), the National Farmers Federation (NFF), the Westpac Banking Corporation, and the Northern Territory and Queensland Governments. It has since been held up by the New Right as a beacon for other employers, and as an example of the possibilities contained in Sections 45D and 45E of the TPA, should they be used to their full potential.

11.1.2. The union

The extent to which the AMIEU was prepared to go in pursuing its demands and risking punitive damages could be seen as bordering on the obsessive if their actions are viewed only in terms of their dispute with the Mudginberri Station. A great deal more was at stake. With a declining workforce in the meat industry, membership and the inclusion of preference clauses in awards was of paramount importance to the AMIEU. In addition, the union opposed contract labour which, it held, eroded the standards of wages and conditions of employment in the industry. There was some substance in this claim according to the ACAC which, while declining to impose the Queensland Award or Katherine Agreement on unwilling employers, nevertheless stated that the contract system did not provide adequate award coverage. The Commission mentioned annual leave, sick leave and payment for waiting time as desirable benefits not currently enjoyed by workers. Contract labour, in the union's view could not be regarded as the coming together of two equal parties. Jack O'Toole, federal secretary of the AMIEU argued before the Commission:

> It was put rather forcibly that all of these things were agreed between parties and that the whole thrust of the employers or the federation's approach to this question of piecework is that it would be left to the parties; that they should be able to settle their differences. Sir, we would submit that the whole basis of the union's organisation and representation and provisions of the statute encouraging organisation is a recognition that a group of individual employees may not and almost certainly will not be in an equal bargaining position with the employer.

While with hindsight the action taken by the AMIEU could not be regarded as successful given the substantial damages awarded against the union, at the time support from other unions aided and abetted the effectiveness of the campaign. Along with the Commonwealth meat inspectors, members of the Meat Inspectors Association (MIA), who refused to cross the picket line, other unions including the WWF and the TWU joined in a series of

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9 Australian Conciliation and Arbitration Commission, Transcript, 14.11.84, 585.
24-hour strikes nationally, in support of the AMIEU during July and August 1985. As a consequence, the Mudginberri Station lost a $2 million contract to Taiwan.

Support also came from the ACTU who regarded the dispute as an attack on the right to organise and take industrial action and an attempt to erode terms and conditions of employment. Moreover, the union, in refusing to pay any fines, was obeying the ACTU policy against the use of courts, as distinct from the Arbitration Commission in industrial disputes. Even so, the ACTU was under duress at the time. Not only was the SEQEB dispute lingering with no visible signs of victory but the Accord had been placed under great strain by the Federal Government's stated intention to de-register the militant Builders Labourers' Federation (BLF), an action which, however justifiable, could not be condoned by the trade union movement. It was the issue of the BLF that was receiving most attention from the Federal Government, the ACTU and the media.

The ACTU Congress of September 1985, passed a resolution that supported the legal battles against the Queensland Government by the ETU; the AMIEU against the TPA and the new negotiable system of wage setting in the Northern Territory. All were viewed by the ACTU as an attack on the Accord. Alan Boulton, an ACTU legal officer appeared before the Commission representing the union in December 1985. By that time, the union was no longer questioning the 1984 Full Bench decision to reject a tally system. Public opinion was clearly on the side of Jay Pendarvis who was being hailed as a hero. More importantly, the workers at Mudginberri themselves were right behind him. As well, by December 1985, outstanding fines of over $100,000 were owing in addition to orders for the sequestration of the union's funds. Instead Boulton emphasised two issues: The fear on the part of unionists that employers would seek to use the new award provision to erode terms and conditions of employment elsewhere; in other words, that the developments in the Northern Territory could spread to other awards in other industries. His second concern was the union's exclusion from the new award. He argued, "it would be contrary to the spirit of the CAA and of the conciliation and arbitration system to exclude the union".

The union's ultimate and total defeat was only predictable up to a point. Failure to obtain the co-operation of the workforce at Mudginberri must have been a decisive factor. It is difficult to imagine a situation where a prolonged picket will have a favourable outcome for the union when all the workers are squarely behind the besieged employer. Also, while the decision to seek injunctive relief under the TPA could have been predicted, given that Mudginberri had resorted to the same tactic earlier, in 1984, the outcome

10 The Age, 12.9.85.
11 A Boulton quoted by Kitay and Powe, op.cit., p.391.
would have been more difficult to foresee. The full range of legal tactics employed by the Mudginberri Station, made possible by the substantial backing it received from outside sources, could not have been predicted when the AMIEU first began its campaign.

11.1.3. The concerted effort

Jay Pendarvis has assumed the mantle of a hero because of his determination to defeat the union, and his ultimate success. For many, he has become the symbol of the aggressive and uncompromising attitude that employers disenchanted with the industrial relations system wish to personify. This was the case even while the dispute was in progress and victory was by no means assured. He was named Australian of the Year by *The Australian* newspaper. During and subsequent to the dispute he has received standing ovations from meetings of farmers that he has been called upon to address. Pendarvis has since disposed of Mudginberri and moved to Western Australia and a quieter life. Despite the huge damages he was awarded, he has a limited sense of victory. "Even though we won, we didn't win" he has since remarked.\(^{12}\) "It was the most soul-destroying thing which could have happened - I am not sure I will ever recover from it".\(^{13}\) Whether or not he is a reluctant hero is not for me to ponder, but his stature could be more symbolic than actual. In any case, it is extremely doubtful that Pendarvis could have pursued his matter through the courts to the point that he did, without the financial and moral support of a number of organisations.

The conservative Northern Territory government provided Pendarvis with a credit of $1 million to fight the union with no security arrangements, or plans for repayments. When these funds had been spent, the Westpac Banking Corporation after initially refusing a loan of $200,000 to Pendarvis changed its mind and made a loan with no ceiling to the amount. The eventual loan amounted to $2 million, part of which went back to the office of the Northern Territory's Chief Minister, who has since resigned. Westpac explained, "with the Legislative Assembly now in session, the Government is anxious to have the advances (of $992,000) refinanced to avoid any embarrassment at question time".\(^{14}\) One explanation of Westpac's involvement has been that the bank was actively seeking to obtain a larger share of government business. As the original Memorandum of Understanding between the Northern Territory Government and Mudginberri for the loan required Mudginberri to pursue the damages claim against the union, Westpac's financing of the loan is thought to have the same explicit condition.\(^{15}\) Criticism of the bank's role came from a number of sources including Westpac's internal

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12 *Canberra Times*, 24.6.89.
14 'The Mudginberri dispute, What does Westpac have to do with it?', *ACOA Journal*, No.829, September 1986, p.11.
staff and even the party president of the governing Country/Liberal Party of the
Northern Territory government who said he was:

staggered at the way the deal had been handled and the secrecy surrounding
it....a special relationship has been developed between the Government and
the Bank....and as a result of that relationship....Westpac Banking
Corporation achieved an unfair advantage over the other banks.16

This view, it is claimed, has also been supported by the National Australia Bank
Limited.17 The argument could be made that Westpac's involvement was fundamentally
commercial; that its advancement of a loan on unsecured grounds at the behest of a
government was a calculated risk if the attainment of government business was the
prize. However, there does seem to be a suggestion that Westpac's role exceeded market
considerations. The Chief General Manager of Westpac, after maintaining that Westpac
was "pushing to make sure we got a fair share of Australian Government business in the
future", advanced the opinion that one of the most frightening challenges facing business
in Australia was the drive by unions for a role in the provision of superannuation. He is
also quoted as saying, "just imagine if funds of that kind across the country are
controlled by unions...God help us".18 (In fact, neither unions or any other
organisation can control superannuation funds which are always handled by Trust Deeds
and authorised Trustees.) In the aftermath of Mudginberri, Westpac has provided a new
product for corporations called 'litigation loans'.

Important though contributions in the form of financial and moral support from
governmental and corporate banking sectors were, the role of the NFF was pivotal.
Spearheading the campaign was Ian McLachlan, the NFF president who pursued
Mudginberri's interests with a fervour consistent with a political commitment to
challenging the nexus between trade union power and the industrial relations system.
Mudginberri was not McLachlan's first stand. In 1978 he had been the mainstay in
organising farmers engaged in a battle with the AMIEU over the right to export live
sheep to the Middle East markets. McLachlan represented the NFF in the 1984 National
Wage Case where he argued that the main criterion in wage fixation should be the
capacity of employers to pay. He added that "the regulation of relations between
employer and employee must be conducted at the level where the profit is made or the
jobs lost", in individual enterprises.19 The NFF had successfully pursued this
argument on capacity to pay in arbitration hearings since 1983. In 1985, the NFF was
calling for the abandonment of all penalties from the CCA. Violations of awards by

16 Loc.cit.
17 Loc.cit.
18 Loc.cit.
19 Kitay & Powe, op.cit., p.373.
employers or employees, it claimed, should be dealt with under common law. The Federation stressed that all breaches by unions would be prosecuted vigorously. According to Kitay and Powe, by 1985, the NFF was the most hardline of any major employer group. "Their policies were more in keeping with the New Right than with more traditional Australian conservatism".20 One NFF official has stated that prior to the Mudginberri situation, the "organisation had been gearing up for a national campaign and was looking for an issue".21

In the following passage, Paul Houlihan, industrial-relations director of the NFF describes the Federation's early involvement:

Mudginberri had been simmering along for about two months when Jay ran out of money and the NFF didn't have any.

We were racing around knocking on doors and going to functions all over the bloody country auctioning sheep and anything else we could get our hands on to try and keep Mudginberri going.

The banks were telling us there wasn't any money for miles and people were going broke in front of our eyes but somehow money kept coming out of the woodwork and over a period of about nine months we raised about $1.25 million.

I'd talked myself hoarse from one end of the bloody country to another along with Ian (McLachlan) and a couple of others to raise $1.25 million. That seemed a hell of a lot of money to me.22

It is not possible to quantify the value of the moral support given to Pendarvis by these activities, but the financial contribution must have been critical, if not decisive. Houlihan went on to describe their later efforts:

Then McLachlan stood up at a rally and suddenly announced that we were going to raise $10 million. My first reaction was this is lunacy. I went to Ian and said "Look Ian, you've gone out publicly and said we're going to raise $10 million. If we raise $8 million that'll be a magnificent achievement but everyone will see it as a failure because you've gone out and shot your mouth off and said we're going to raise $10 million". He just looked at me and said, "Yeah, that's right, $8 million will be a failure".

We went out and raised $12 million.23

There is no doubt that the NFF campaign was genuinely sympathetic to Pendarvis and his situation, but, the crusading element is unmistakable. Without being unduly cynical, it is fair to say that if the NFF was pivotal to the successful litigation by Mudginberri; it in

20 Loc.cit.
21 Loc.cit.
22 P Houlihan, quoted in Canberra Times, 24.6.89.
23 Houlihan, quoted, Canberra Times, 24.6.89.
turned served the purpose of promoting the political and industrial objectives of the Federation. The campaign was the genesis of an NFF fighting fund aimed at providing financial aid to employers involved in industrial disputes and has since been used for that purpose on a number of occasions. McLachlan has subsequently taken steps towards a political career by gaining pre-selection for the Liberal Party in the 'blue-ribbon' seat of Barker in South Australia. His participation in the Mudginberri dispute has been a positive factor in conservative circles, one that has served to promote his candidacy for political office.

11.1.4. The legalities

Mudginberri was the first case in which an employer used the provisions contained in the TPA to pursue damages against a union. Until then, Section 45D had not operated as a punitive measure, although its very existence acted as a deterrent. According to a Commissioner of the Industrial Commission of NSW, C. J. McArdle, in his experience, people were frightened off "even when the action being taken was quite justified". (Incidentally, McArdle's use of the word "justified" explicitly accepts that some secondary boycotts in his view are a proper course of industrial action.)

Pittard has identified three central aspects to the legal proceedings:

(i) The proceedings to obtain damages and injunctive relief (both interim and permanent) against the AMIEU and its officers for breaches of s 45D of the TPA.

(ii) The proceedings to compel obedience to the courts' orders: the imposition of fines on the union and sequestration of union funds to enforce payments of the fines.

(iii) The administrative law aspect which gave rise to questions concerning the role of the Commonwealth Department of Primary Industry in the provision of meat inspectors during the currency of the dispute.

In addition, there were legal proceedings peripheral to the three central aspects to the litigation. These proceedings according to Pittard:

reveal the extent to which the processes of law and avenues of redress and appeal were used to the full by the parties involved. These included litigation about whether a judge should be disqualified from certain proceedings, whether the discretion in a judge of the Federal Court not to adjourn one of the cases has been properly exercised and an application for

24 The Australian, 28.4.87.
25 Sydney Morning Herald, 18.12.86.
26 Pittard, Loc.cit., p.24. A summary of the main legal events in chronological order is contained in Appendix A
While it is not possible here to detail all of the legal proceedings (see Appendix 2), I wish to make some points in their regard. First of all, and this may be a moot point, the first legal proceeding undertaken by Mudginberri in June 1985 was to seek an interim injunction under the secondary boycott provisions in the TPA. No approach was made to the ACAC seeking an order to have the picket line removed. It could be argued that this was a practical decision on the part of Pendarvis, based on the supposition that the AMIEU would not have obeyed the order in any case. However on the previous occasion in July 1984, the AMIEU had obeyed the Commission's order, albeit so that the hearing could take place. Having regard to the stated position of the AMIEU it is probably reasonable to assume that the picket line would not have been removed. Nevertheless it was unusual for an employer to seek legal redress before the avenues existing in the industrial relations system had at least been tested, if not exhausted.

In the second strand identified by Pittard relating to the imposition of fines and sequestration of union funds, the AMIEU was immutable. Every successful legal step taken by Mudginberri was appealed unsuccessfully by the union, right up to the High Court. The financial costs to both parties were enormous, but at least Pendarvis had considerable support from outside interests. Remembering that by September 1985 the AMIEU no longer held out any hope for the tally system being adopted at Mudginberri, their intransigence in refusing to pay their fines for contempt of court (and by doing so, incurring additional penalties) is attributable to a number of possible reasons. The union was taking a principled stand in line with ACTU policy against the imposition of pecuniary penalties imposed by courts outside the industrial relations system. The AMIEU's legal officer Philip Morgan confirmed that this was partly the case, although the union's relationship with the ACTU was not particularly good at this stage. Earlier, according to Morgan, the AMIEU had been publicly castigated by Simon Crean for not withdrawing the picket line. The principle, in which case, may have been more in keeping with the communist-led AMIEU Queensland branch than the ACTU.28 Another reason could be that the union expected to win. Morgan agreed that the lack of precedent was a factor. He suggested that in the absence of any experience, the AMIEU decided to take the case as far as it could go and see what happened.29 Historically there were some grounds for the latter belief, not in terms of past legal decisions, but because the situation was without precedent. Pittard summarised it thus:

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27 Loc.cit.
28 P. Morgan, Interview, 1.3.90.
29 Loc.cit.
The significance of the legal proceedings in the second strand lies in the fact that for the first time the Federal Court was called upon to fine for contempt of court in respect of disobedience of orders made pursuant to provisions dealing with secondary boycotts in the Trade Practices Act and that union funds were subject to sequestration orders.

Pittard concluded that Australian unions were realising, for the first time since the 1960s, the full impact that the use of existing law had upon the unions. I believe this assessment to be only partially correct. Although the particular circumstances of Mudginberri were unique, the notion that existing laws could be used efficaciously in the courts against trade unions was by no means new. That they had not been used for this particular purpose to date, was not decisive. In fact, SEQEB was a very recent example of every appropriate law and court being used to the fullest extent. Even without the financial and moral support of Sir Joh Bjelke-Peterson, the SEQEB dispute provided some warning to the ACTU and AMIEU of the dangers involved in pursuing the matter to its limits. Both disputes, also, were ideologically based in their concentrated attacks on trade union power.

One further explanation may be that the proceedings produced a 'roller-coaster' effect, and once they had started there was no way of stopping them until they had reached a conclusion. I suggested this possibility to Morgan, who was of the opinion that this may well have been the case. I am inclined to this point of view myself, although I do not believe that it was a conscious factor. Nevertheless, it is significant in the wider context when we consider disputes that go on past the point at which one of the parties should logically, or strategically, withdraw.

As for the remaining issues raised by Pittard, the administrative law aspect is one that I have chosen not to discuss, although it is not without importance in the political context. Briefly, it entailed Federal Court proceedings under the Administrative Decisions (Judicial Review) Act 1977, in which an order was sought to review the decisions taken by officers of the Department of Primary Industry and the Export Inspection Service. They had refused Mudginberri's request that authorised inspectors who were not members of the MIA be provided to carry out the inspection function. The application was dismissed. An appeal lodged with the Full Court of the Federal Court was later upheld on the basis that the department had a duty to provide inspectors.

The final aspect also had little relevance to the merits of the case. It involved proceedings in the High Court by the AMIEU to disqualify Morling J of the Federal Court

30 Pittard, _op.cit_, p.34.
31 Morgan, _op.cit_.
32 Pittard, _op.cit_, pp.34-35.
from hearing the claim for damages in the dispute, on the grounds that he had made statements earlier which precluded him from hearing the damages claim with an open mind. The High Court refused the prohibition and the decision was subsequently affirmed by the Full Court of the High Court. The AMIEU continued to appeal against judgements made by Morling J without success.33

One final point should be raised in regard to the legal proceedings. As mentioned in the previous section, the resources of Mudginberri were considerable. With the financial backing of Westpac, the Northern Territory and Queensland Governments, as well as the NFF, Mudginberri was in a secure position to pursue protracted proceedings. The AMIEU on the other hand paid all of its legal costs. Unlike SEQEB, no fighting fund was raised by the ACTU, and no financial support was forthcoming from other unions.

11.1.5. Conclusion

The Mudginberri dispute has assumed an important place in Australian industrial relations history. Seldom is the subject of trade union power mentioned in the media or elsewhere without some reference to the dispute. When that happens, the stress is invariably made on how Mudginberri demonstrated one way in which trade union power can be defeated. The dispute has also become part of a contemporary stratagem for providing an alternative to the conciliation and arbitration route. Plainly speaking, it heralds an attack on the industrial relations system: Houlihan in his address to the H R Nicholls Society said: "I believe the lesson for the trade union movement from Mudginberri is that there is a system of real law, of courts whose decisions are to be observed and whose penalties are enforceable".34

Commissioner McArdle has perceived it as a warning to the trade union movement. He cites the common ingredients of the Mudginberri and Dollar Sweets disputes: "small employer, powerful and immune union and third-party-financed action against the union before civil courts". Unions, he says, must accept that the immunity of the 1970s and early 1980s has ended. They must accept penal sanctions, because the alternative is worse and "no amount of brave rhetoric will stop the bailiffs if the civil courts become established arbiters in industrial disputes". In his view:

If the non-industrial courts become the established venue for sanctions - which is the American system - the union may dissipate as a force very quickly. For this reason they need to choose the option which will ensure

33 Ibid., p.36.
34 P. Houlihan, 'A Brief History of Mudginberri and its Implications for Australia's Trade Unions' in Arbitration in Contempt, Melbourne, 1986, p.100.
their long-term survival. This can only be reinstatement of the policing role of the industrial courts.35

Not surprisingly, McArdle's prescription, however well-intentioned, has not been embraced by the union movement. The lessons however have been taken very seriously. In the ACTU's *Future Strategies For The Trade Union Movement*, a number of steps are itemised to avoid similar encounters with the law in the future - or at least to minimise the risk. They include, in summary:

- exercising restraint in the use of boycott tactics; careful selection of targets;
- developing defensive (and offensive) tactics which can minimise the risk of legal intervention or its effectiveness;
- establishing 'early warning' systems to try to head off the possibility of legal action;
- ensuring that members follow a dispute-handling process;
- seeking support from members, officials and other unions before industrial action commences;
- developing the concept that an attack against one is an attack against all;
- being prepared to beat a strategic retreat where that is the prudent course;
- trying to keep disputes within the framework of the relevant conciliation and arbitration system;
- establishing and maintaining substantial fighting funds which can be used to prosecute the dispute, and to help defend legal proceedings where they become inevitable; and
- recognising that legal action can destroy a union.

The ACTU's prescription:

There is no doubt that these responses could reduce the risk of future *Mudginberri* or *Dollar Sweets* cases, and/or would lessen their impact if and when they do occur. The Robe River dispute(s) of 1986-87 provide an interesting illustration of some of these tactics in operation.36

35 *Sydney Morning Herald*, 18.12.86.
Before going on to Robe River, there is one final point that needs to be made. Mudginberri was unusual, even unique in some aspects, not the least of which was the relationship between the workers and the union. Perhaps the above ACTU list should have included a recommendation that the workers involved at the targeted workplace be at least sympathetic to the union’s position, if not committed. In the case of Mudginberri, the take home pay under the new award was $1000 per week compared to the union advocated tally system which would have brought them about $500 per week.37 When Jay Pendarvis received his damages payout, $148,000 of it was shared out amongst the workers ($8,000 each) who had remained loyal to him throughout the dispute. Mudginberri’s head stockman commented that the AMIEU had black-banned the men for life but they were proud they had beaten the union. “We had people threaten us, even with guns, but we stood our ground”. He went on to say, “Jay Pendarvis did a lot for us and everyone here felt he was worth supporting so we fought the union”.38 Without discussing the merits of that view vis a vis the union’s view, it would appear to be a severe handicap for a union to proceed aggressively against an employer, who is not only a hero to farmers across the nation, but to his own workers as well.

37 The Australian, 1.8.85.
38 The Australian, 14-15.11.87.
Chapter Twelve

THE ROBE RIVER DISPUTE

12.1.1. Background

In 1985, Peko-Wallsend acquired the controlling interest in Robe River Iron Ore Associates (RRIA) and took over all managerial responsibility. Previously, the company had been owned by an American-managed consortium with significant Australian and Japanese shareholdings. Because of RRIA's Japanese shareholding, it had been considered favoured in its capacity to negotiate with an affluent Japanese steel industry. Of its total output, between 75 and 85 per cent was sold directly to Japan. This represented about one-half of Japan's iron ore imports.\(^1\)

During 1986 it was predicted that a large reduction in Japanese steel production capacity would take place in the following three years and this would have severe consequences for Pilbara producers. This, in conjunction with the impact of intensive competition from Brazil and India for iron ore markets, according to Thompson and Smith, provides "the essential background for understanding the pressure and tension which underlay the Robe River dispute".\(^2\) While I would not disagree with their analysis on this point, I believe that another important factor in the dispute lay in the isolation of the Pilbara region from the cities in which decisions were being made. Situated in the north of Western Australia, workers in the Pilbara region are subject to isolation from urban centres where decisions are made and also to extreme temperatures. Both, as I will demonstrate later, were factors in the difficulties experienced by the ACTU to intervene successfully. The dispute occurred in two stages: The first was a lockout lasting for three weeks; and the second a strike of forty days duration.

12.1.2. Stage I - The Lockout

Following an independent audit of RRIA between January and July 1986, the board determined that site management was not moving quickly enough to control union demands, cut back overstaffing and reduce the number of restrictive work practices. Peko-Wallsend's chief executive, Charles Copeman acted swiftly. Four key executives were dismissed and workers were simultaneously notified that, with a new management

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2 Ibid., p.79.
in control, major changes in the company's operation would take place immediately. RRIA also served notice that it wanted 185 voluntary redundancies by August 20. If they were not forthcoming, a redundancy agreement would be implemented which empowered the company to sack its employees on a "last-on, first off" basis.3

A conference before the WAIC (following the unions' application), resulted in an order that from August 4 the status quo existing on July 31 should remain for thirty days while conferences were convened to discuss the changes demanded by the company. The order was issued after the company had indicated it would not obey the Commission's request for a thirty day moratorium. Unions were ordered to refrain from any industrial action.

Notwithstanding the Commission's orders, during the following week a log of claims was served on unions. The company required a wage cut of up to 30 per cent, an end to restrictive work practices and a new set of charges for the housing accommodation provided. In addition to a complete overhaul of working arrangements, the company wanted to replace the State award with a Federal award to take in all Peko-Wallisend's mining interests across the country.4 The unions responded by advising members that they should not carry out unlawful instructions which would negate the order of the commission. The company in turn sacked sixty workers who acted on the unions' advice. The situation was further exacerbated when police were called in to enforce the sackings. Reinstatement of the sacked workers was ordered by the Commission who insisted that the company abide by the original order. Management's response was to lockout the entire workforce of 1,160 workers on August 11, thereby closing down the mining operation at Pannawonica and the port site of Cape Lambert. "The battle lines had now clearly been drawn by the company, not only against the workers and trade unions, but against the authority of the State Industrial Commission".5

From the beginning of the dispute, both the State and Federal Governments had expressed concern at the damaging implications the lockout could have for Australia's export markets in iron-ore, particularly with Japan. The then Federal Minister for Trade, John Dawkins was at the time in Japan trying to persuade the Japanese to take more iron ore from the Pilbara. Said one commentator, "......Mr. Dawkins has been left in the ridiculous position of having to wander around Tokyo explaining that the sudden closure of the entire mine is no more than an aberration in a region that has really become a picture of industrial peace and tranquility".6 A further source of embarrassment was

3 The Australian, 12.8.86.
4 The Australian, 14.8.86.
5 Ibid., p.80.
6 The Australian, 14.8.86.
the failure of Peko-Wallsend to inform its Japanese partners, Mitsui and Company, Nippon Steel and Sumitomo Corporation, of its intentions. Representatives of Mitsui and Company in Japan contacted the president of the Mining Unions Association two days after the lockout to clarify what impact the Rover River dispute would have on the rest of the Pilbara.7 (The two other major mining operations in the Pilbara, Mt. Newman and Hammersley Mines, were not involved in the dispute.)

On August 22, the company, by lodging an appeal for a stay, successfully thwarted an order from the Full bench of the Commission ordering the reinstatement of all the sacked workers. The Industrial Appeal Court consists of judges from the Western Australia Supreme Court. The company's decision had the automatic effect of suspending the Commission's ruling until the appeal was decided.8

Three weeks into the dispute, Peko's Japanese partners had still not received any formal explanation for the lockout or been notified how long iron ore shipments were to be suspended. Mitsui executives at this stage urged Peko to have talks with the Western Australian Government.9 Charles Copeman did meet with the State Minister for Minerals and Energy, David Parker, but after initial agreement, negotiations broke down and were followed by a vitriolic public exchange.10

The extent to which the three Japanese partners were concerned is evident from the stiffly worded three-point teleprinter message sent to Copeman stating: that the companies wanted the dispute solved as quickly as possible; that this should be done within the established institutions; and that it should be in close co-operation with the Western Australian Government. As Thompson and Smith point out, the "fact that the Japanese are normally very restrained about direct criticism implies that the telex signalled serious disapproval of Management's actions".11

Ten days later, on September 3, the lockout ended following the failure of RRIA's appeal to the Industrial Appeals Court to have the Commission's reinstatement order overturned.

12.1.3. Interval

An uneasy peace followed the mine's re-opening. In protracted proceedings before the Commission which resumed sitting on September 5, the company refused to enter into

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7 Financial Review, 14.8.86.
8 Financial Review, 25.8.86.
9 Thompson & Smith, op.cit., p.81.
10 Loc.cit.
11 Loc.cit.
conciliation and insisted that every issue be arbitrated. Sixty days later, only thirty-two of the 220 work practices had been heard. Regarding these the Commission brought down a decision in favour of the company and, as far as the remaining work practices were concerned, ruled that all of the company changes would stand unless the unions could prove that specific matters "required the Commission's interference with the general prerogative of the respondent (the Company) to manage its affairs".12

Somewhat paradoxically, although emerging as the clear victor from the proceedings, the company was strongly criticised and blamed by the Commission for the dispute. Earlier, in October, while still deliberating over the issues involved, the Commission ordered Peko-Wallsend to pay approximately $1.5 million in compensation to the workers who had been locked out. Commissioner Collier explained that this award, which equalled the lost earnings, would have been more "except for the fact that in the past workers have involved themselves in reckless industrial action with scant regard for its effect on the employers".13

In the meantime, the situation at the mine itself was tense. At least one-third of the labour force resigned, while the townspeople split into two communities consisting of staff and wage labour. The company created a 'grot squad' consisting of militant shop stewards who were directed to perform menial tasks like picking up paper and pulling weeds. Some skilled tradespeople were reclassified as labourers while staff members did union-related work. After a company newsletter which threatened to 'get' diehard unionists, workers booked off on sick leave.14 Tense though the situation remained, production picked up in September, although October was not a good month. During November, there were record levels of productivity. Whenever Copeman or the Japanese participants went to the Pilbara, workers would go off sick and there would be rolling stoppages.15 In an atmosphere where morale was low, with the community isolated and divided, the conditions for a potentially explosive situation had been created.

12.1.4. Stage II - The strike

On December 10, members of the Federated Engine Drivers and Firemen's Association (FEDFA) went on strike over a manning issue, followed six days later by the rest of the workforce. When the company used staff labour for transport, members of the maritime unions, who had not previously been involved in the lockout or the current dispute, joined the strike. By December 16, both the mine and port were totally on strike.16

12 Thompson & Smith, op.cit., p.82.
13 The Australian, 31.10.86.
14 Thompson & Smith, op.cit., p.82.
15 The Age, 9.1.87.
16 West Australian, 17.12.86.
On January 5 1987, four weeks after the strike's beginning, RRIA announced its intention to serve writs against individual unionists. These were in addition to company writs issued for millions of dollars in damages the week before against the ten unions involved in the strike. The Federal Government intervened, calling on RRIA to withdraw its court action, for the miners to return to work and the acceptance of all parties to the decisions of the Western Australia and Industrial Commission (WAIC). On the same day in Sydney, the Arbitration Commission refused RRIA's application for a return to work order for tugboat crews. Whereas RRIA claimed they were on strike, Commissioner Turbet understood them to be stood aside with pay.

The following day, RRIA served writs on five workers, all vocal union supporters who had been active on the picket lines. Threatened writs against all nine hundred strikers were withheld.

Copeman then offered to meet Simon Crean, president of the ACTU without setting preconditions for talks. Crean, in Melbourne, responded by telexing a proposed peace plan which was rejected by Peko because they could not accept the two key points: that RRIA must withdraw its common law actions; and that the status quo prevail on disputed staffing levels at the company's Pannawonica mine until the WAIC ruling. January 7 also saw the unusual step by Chief Commissioner Collier of summoning both sides to a conference. Copeman failed to appear, leaving himself open to a fine of $2,000, although Collier said he was unlikely to take the matter further than seeking an explanation.

Peko did, however, agree to conciliation talks with mining union leaders over the dispute at Cape Lambert. This appeared to be an important breakthrough at the time, given Peko's refusal to enter into conciliation for the past five months. It was also the first time that the parties had agreed to negotiate independently of the Commission. On the evening of January 8, at the meeting's conclusion, the parties expressed restrained optimism.

On the following day, eighteen more writs were issued against individual unionists bringing the total to twenty-four, in addition to the ten previously served on unions. During the weekend, the company placed full-page advertisements in newspapers explaining their actions and accusing the unions of unlawful and damaging behaviour.

17 Financial Review, 5.1.87. The ten unions involved were the PGEU, BWIU, ETU, FEDFA, OPDU, AMWU, and three maritime unions, including the SUA.
18 Sydney Morning Herald, 6.1.87.
19 The Age, 7.1.87.
20 Sydney Morning Herald, 8.1.87.
21 Sydney Morning Herald, 9.1.87.
22 The Weekend Australian, 10-11.1.87.
The original dispute over manning levels and staff labour had by now been eclipsed by the issue of common law writs.

The meeting between Copeman and Crean which took place on January 13 resulted in a conditional acceptance by Peko of all the ACTU's negotiating points. A blueprint for the resolution of the dispute now existed by mutual agreement. Copeman agreed to withdraw the writs (conditional on a return to work). Both agreed that the basis for any agreement between the company and workers was the establishment of a new dispute settling procedure.

While Crean was satisfied that the dispute was well on the way to being resolved, a meeting of shop stewards the next day indicated that the peace plan would not succeed. One shop steward, Kim Metcalfe from the AMWU stated that Crean should have consulted the workers before making comments about going back to work. He went on to say:

We want more than a new dispute settling formula, I can tell you.....There's no way we'll go through those gates 'til every one of our claims is settled.23

Meanwhile, in temperatures well into the 40s°c, pickets at the mines had increased. Although extra police were called in, no arrests were made, and no violence reported by police. Solidarity within the Pilbara region also increased. At one meeting at Hammersley, 200 unionists voted $10 per week for the next five weeks in aid of the Robe River strike fund.24

Jack Marks, president of the Western Australian Mining Unions Association (WAMUA) was sceptical about the peace plan. Of Crean's intention to fly to the Pilbara, he remarked, "There is no way in the world that anyone has got a magic wand that is going to leap off the plane and say hi, ho, back to work we go".25 Crean remained confident that his plan would be accepted by the workers, and on January 16, he flew to the Pilbara.

Crean's first meeting was at Wickham. After four hours of intense and often heated discussion (no pun is intended here although the temperatures were very high) a vote was taken which rejected Crean's recommendation and decided to stay out indefinitely. Another four hour meeting at Pannawonica carried the same resolution.

An amended proposal, negotiated during the week between Crean, local union officials and Peko management was accepted by a mass meeting on January 24, with very little opposition. The document itself varied only slightly from the original peace proposal.

23 K. Metcalfe, quoted in The Age, 15.1.87.
24 Loc.cit.
25 Loc.cit.
One sentence had been added which read: "After normal operations have resumed the Company will clarify its position in meetings with representatives of the Unions on the matters raised by them on 21 January 1987".26

12.1.5. Management

Charles Copeman, chief executive of Peko-Wallsend stands out as the major figure in the dispute. It was Copeman who was primarily responsible for the ethos which came to dominate the dispute. His personal beliefs and allegiances are fundamental to understanding how the dispute developed. A member of the Liberal Party, Copeman did not rule out the possibility that he may one day throw his cause into the political arena if the opportunity arose.27 At the time he openly admitted he would like to see a change in government, partly because he believed that union power was driving the dollar and the country "down the tube".28 But it would be a mistake to suggest that Copeman's political aspirations were a major factor in how he behaved as Peko's chief executive, although his decision to act can easily be interpreted as being motivated by a personal commitment to bring about change. From the start of stage I of the dispute, he made it clear he held the industrial relations system responsible for the situation at Robe River. The company, according to Copeman had decided to act because the time was right to call the bluff of those, including the Arbitration Commission who took the curious view that management regarded executive decisions as a privilege.29 Copeman contends that he did not set out to challenge the industrial relations system when he sacked the workforce; "what has happened is the result of the commissioner giving an unwise order".30 While he does not regard himself as a trail blazer, and firmly rejects the title 'Rambo of the Pilbara', Copeman's refusal to abide by the WAIC's orders was grounded in his belief that the 'right to manage' was a prerogative that could not be subjugated by decisions of the Commission:

We believe they (the Industrial Commission) do not have jurisdiction to give orders to management. What they are trying to say is that management must work in accordance with a whole lot of practices which have not themselves been the subject of the commission's investigations.31

What is left unclear here is, just what did Copeman and the Peko management regard the Commission's proper jurisdiction? As some company executives blandly explained,
Peko disobeyed the umpire's position because it was wrong. If the Commission had not issued orders for an end to the lockout, and a moratorium period, would its jurisdiction then have been questioned? The logical extension of that view is that unions should not have to abide by commission decisions which they believe to impede their proper functions. Another dubious feature of the company's reasoning was its antipathy to industrial democracy. Peko executives maintained that unions had acquired too much say in management, despite a dramatic drop in working days lost in the iron ore industry which had accompanied a system of workplace industrial democracy which had evolved in recent years. It seems therefore that short-term losses were a sacrifice the company was prepared to tolerate in order to achieve the long-term objective of management prerogative. The principle involved assumed paramount importance.

Copeman, a founding member of the H R Nicholls Society, and regarded as a standard bearer of the New Right, is sceptical about the role of the State, believing that "Even Mrs Thatcher can't do a great deal to affect what happens". The salvation of Australia therefore lies in the hands of individuals and business, especially business. Although he sees the importance of the H R Nicholls Society as being exaggerated, he draws strength from the knowledge that "kindred spirits" agreed with his general outlook. While Copeman actively promotes the New Right attitudes on deregulation and a free market, according to the *Robe River Report* (a trade union publication), he has shown no reluctance in the past to accepting government intervention in the form of financial aid.

12.1.6. The unions

One of the dilemmas facing union officials was the difficulty in deciding what action, if any, could be taken once Peko-Wallsend had decided to lockout and sack its workers, and not obey the WAIC's order to reinstate them. One option open to them was to call all Pilbara workers out on a general strike. This would have been counter-productive as they well recognised. It would have alienated the Hammersley and Mt. Newman managements who thus far had supported the need to respect the Industrial Commission.

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32 *The Age*, 14.8.86.
33 Loc.cit.
34 *The Age*, 30.1.87.
35 Between 1977-80, Mt. Lyall Mining received cash payments of around $6 million. Copeman, then chairman of directors had pleaded before the Industries Assistance Commission for government help in covering losses. Peko-Wallsend, as well as claiming tax deductions on plant and equipment, can, as a mining company also claim rebates for expenditure on site preparation and clearing, buildings, electricity, water and roads, housing and health facilities for employees, as well as equipment and buildings for the treatment of minerals. In addition, Peko reaps tax-free profits from its gold mines in the Northern Territory and also profits from government expenditures on infrastructure such as ports, railways, roads, water and community facilities. *Robe River Report*, February 1987, p.2.
The real cost would be in a fewer number of jobs in a smaller industry once the strike was over, and more difficulties in selling to Japan. "We'd just be cutting our own throats", said one union official. Another aspect was the unions' perception that the company was determined to set up an entire workforce using contract labour the following month. The extent to which the unions involved were in a defensive position cannot be underestimated.

The ACTU was suspicious of the company's motives. Crean found it difficult to understand why a confrontationist stance was being taken when unions at Robe River had indicated a willingness to discuss the issues of work practices. There are definite grounds for believing that industrial peace was not, at that time, a priority on the company's list of objectives. If industrial peace was an objective, the company's action in keeping three hundred white-collar staff (foremen and supervisors) on full wages during the lockout is mystifying. The intention was to replace the 1,160 sacked workers with the white-collar workers, pending the Appeals Court decision, but the company must have been fully aware of the potentially explosive effect of such a move. Certainly, the unionists involved had no doubts about the possible consequences. A spokesman for the Association of Draughting, Supervisory and Technical Employees (ADSTE) made it clear: "Our people are scared and there is no way that six cops in Karratha and Copeman's millions will be able to protect them if they are ordered to do this work". Although the Appeals Court decision resulted in RRIA re-employing the sacked workers, the demarcation lines had been clearly drawn. During the intervening period, the communities in which the sacked workers and white-collar staff lived became divided again along lines that had been created during the lockout.

During the early part of the dispute's second stage, the ACTU was reluctant to become involved in what it regarded as an unpopular dispute. The company's decision to sue striking unionists was regarded as an attack on the fundamental rights of workers and caused the ACTU to become actively involved in finding a resolution. Crean, who was seriously concerned about the wider ramifications of RRIA's legal initiatives, approached the company with a peace proposal. He did not rule out a national campaign to protect the right to strike if the company refused to accept his overtures. He described RRIA's tactics as "quite stupid". The use of common law legal action was a direct threat on the right to strike, and in his view:

36 Financial Review, 15.8.86.
39 The Age, 3.9.86.
40 Financial Review, 5.1.87.
Most people in the community would agree that there should be the right to strike. It is the fundamental right in a democratic society. 41

Although Crean maintained that the unions had done nothing wrong at Robe River, and indeed said he could not understand why they had stayed at work so long, 42 his concerns were much more attuned to the wider picture - the possible ramifications should the legal actions be pursued. In some respects, he appears to have regarded RRIA’s actions as a challenge which had to be met. He accused the New Right of wanting a return to the early 1900s, when the work force had to deal individually with employers without the protection of established unions. 43 If this was the “hidden agenda”, and this great game plan to try and take on the trade union movement was one of the issues, then, said Crean, “we have to respond”. 44

The unions directly involved in the dispute were, not surprisingly, more concerned with the immediate situation. While he would not comment on the conference that took place between the company, ACTU and union officials on January 8, Marks pointed out that the unions had been ready to talk for five months. “We are not the mad dogs the New Right present us as”. he said, “We know we are doing Australia no good the longer we are locked into the dance macabre with this company”. 45

Union officials concede that many of the work practices could not be defended. A spokesman for FEDFA allowed Peko had some justification early in the dispute:

It had some right to change work practices which senior union people like myself did not even know about. Some practices had to go. But the manner in which they tried to get rid of the practices, no self-respecting unionist or trade union official could condone. 46

Having negotiated a peace proposal with the company and union officials in Perth, Crean’s failure to convince the on site workers came as something of a disappointment. While he may not have been expecting this setback, the union officials were less than surprised. After the Pilbara meetings, Marks commented: “They saw us as a gang of carpetbaggers flying in with our own brand of snake oil - we should have spent more time explaining things to them”. 47 Amalgamated Metal Workers and Shipwrights’ Union (AMWSU) shop steward, Neill Flynn said of the peace plan: “We understand the macro-

41 The Age, 6.1.87.
42 Financial Review, 7.1.87.
43 Sydney Morning Herald, 8.1.87.
44 Financial Review, 8.1.87.
45 West Australian, 8.1.87.
46 The Age, 9.1.87.
47 The Age, 19.1.87.
economic debate, how employment in the iron-ore industry depends on productivity but we are playing for the highest stakes workers can play for - our own jobs". 48

The subsequent approval of the peace plan, which as explained earlier, was different only by one sentence to the original, can be explained according to Thompson and Smith by three reasons:

(i) The amended document did explicitly take into account the specific requests of the membership. The rank and file now saw themselves as having actually participated in determining the agreement.

(ii) The needs and objectives thought to be important by the membership were to be pursued in further meetings even though very few of the workers felt that much would be gained by any clarification of the company’s position.

(iii) The union officials were able to control the membership by persuading them of new circumstances which had greatly enhanced the company’s position of power. 49

By this time also, the three maritime unions had received orders to return to work from the ACAC. Refusal to obey would have left them open to proceedings under Section 45D of the TPA. An additional, if not decisive, factor was the advice given by a solicitor that any support action from unionists in the Pilbara or elsewhere would incur legal actions that would be carried by the entire union movement. This was related to the readiness of other unionists on work sites in the Pilbara to broaden the struggle if requested. Legal advice that such united action should be averted, was accepted. 50

12.1.7. The legalities

Peko’s decision to disobey the WAIC’s order during stage I of the dispute was not merely an expression of protest at the perceived denigration of managerial prerogative. Directly related to that protest was a challenge to the industrial relations system. The challenge had as a philosophical basis, the denial of fundamental tenets that were established in 1907 by Justice Higgins in the Harvester judgement. Copeman questioned the notion that a company should go broke if it could not pay award wages. He contended that the Higgins judgement had enabled the Arbitration Commission to force onerous conditions on companies such as Robe River. The intention therefore was to challenge this “illogical 1906 (sic) precedent” as an affront to natural justice. To that end, the

48 Flynn has been described as one of the 12 notorious ‘warlords’ of the Pilbara, “demon figures blamed by some state-level union officials and management alike for prolonging the dispute”. Loc.cit.
49 Thompson & Smith, op.cit., p.86.
50 Thompson & Smith, op.cit., pp.86-87.
company was prepared to seek relief in the Supreme Court of Western Australia or another appropriate 'real' court.\(^{51}\)

Copeman's reasoning here is indicative of one of the issues raised in the previous chapter in regard to the 'New Right'. It involves the acceptance of a statement (or maxim) to the effect that the present system represents an affront to natural justice that would not occur in other 'real' courts. In fact, it is difficult to see how natural justice in its legal context may have been affronted by the Harvester or later judgements, and the notion that within the legal system 'real' courts would make up for the lack, is problematical. Two rules apply to satisfy that natural justice has been served. The first is the *audi alteram partem* rule which requires that both sides should be heard before a decision is given. The second is the *nemo debet esse judex in propria sua causa*, which requires that hearing should be given free of bias; nobody can be both suitor and judge. Campbell and Whitmore suggest that a third rule may also be emerging whereby a right exists to a reasoned decision after a hearing.\(^{52}\) However critical Copeman may be of the industrial relations system, the accusation that it is an affront to natural justice cannot be justified on either ground.

Be that as it may, the challenge to the industrial relations system in general and the Commission in particular were not without effect. Justice Brinsden effectively endorsed the company's action pending a hearing by the Appeals Court on which he was to sit. He maintained that the effect of the Commission's order would be to reinstate the employees on almost the same terms as the company found unacceptable. "If the company is successful in its appeal, it may then have to take steps to discontinue their services again", he said. "One can see immediately that if it did take such actions, the industrial harmony in the north would be hardly enhanced".\(^{53}\) Brinsden, prior to the hearing had left open the possibility that the Appeals Court would override the decision of a full bench of the Commission which would have represented a severe blow to the Commission's authority.\(^{54}\)

Peko demonstrated that it was also prepared to be tough on its detractors. The company during stage I issued defamation writs in the Supreme Court against the Minister for Minerals and Energy, David Parker and some news organisations. The writs were concerned with two matters: (i) statements made on the alleged breach of agreement, and (ii) reported statements about Herbert Larratt, Peko-Wallsend's corporate manager for

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51 *The Australian*, 13.8.86.
54 Loc.cit.
industrial services. The State Government was also in a litigious frame of mind. On August 12 it announced that it would take legal action and seek "substantial damages" from the company for breaching its contract to supply electricity to the Pilbara grid via its operation at the site.

During stage II of the dispute, Peko expanded its use of the legal system. The executive director of RRIA explained that there were several areas of common law which could be applied more successfully than section 45D of the TPA. The writs issued against the shop stewards on January 6 sought damages arising out of the men's conduct, alleging they had procured, incited, and/or persuaded Robe River employees to breach their contracts of employment. It was also alleged the men had interfered with the contractual relations between Robe River and the companies to which it was contracted to supply iron ore, and that they further interfered with the supply of goods and services to and by RRIA. Damages were also claimed for alleged conspiracy to cause harm to the company's business and in respect of alleged nuisance arising from the conduct of picketing of the company's premises. While no amount was specified in the claims, the company estimated the cost of the strike to be $500 a minute. Further into the dispute, the three main areas of redress were damages against the Seamens' Union for loss of revenue because the ore could not be shipped; damages from the subsequent loss of sales to customers; and damages resulting from the inability of contractors to go on site.

It is not possible here to go into all the legal actions that were taken by the company and I think the above two examples demonstrate the way in which the company was intending to go. There is just one more action which should be noted, and that is Peko's application for a Federal award in place of the State award. With the Western Australian Government's declared intention to intervene and oppose the application, it was unlikely to succeed. Nevertheless, Peko's move would force the unions to spend time and money fighting the attempt.

12.1.8. Epilogue

Thompson and Smith, writing in 1987, asked what would happen in the long run. Their prophesy was that RRIA from a management perspective would need to get rid of a large number of workers and replace them with people not involved in the dispute. "Otherwise, in one way or another, the workers who remain will be resistant to the

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57 West Australian, 7.1.87.
59 Financial Review, 15.8.86.
extension of managerial prerogative". To some extent their forecast was correct. The workforce over the following few months decreased by four hundred. Working conditions for committed unionists were made extremely difficult with the creation of 'grot squads' and the use of non-union labour for skilled work. Unionists who stepped out of line were threatened with eviction from their homes. Copeman, while not commenting on specific allegations, admitted that "dedicated troublemakers" were being "to a degree isolated" from the workforce. An ETU shop steward pointed out a clause in the tenancy agreement which enabled management to evict workers from their company-owned homes "for any purpose which in the opinion of the landlord is inconsistent with accepted moral or ethical standards". Evictions in turn forced workers to leave the area without actually being sacked. Copeman agreed that steps were being taken to isolate some employees, "those people it is difficult to remove from the workforce".

In this atmosphere, the uneasy peace continued. Towards the end of the year, Peko informed mining unions of its intentions to withdraw from the registered industrial agreement covering the terms and conditions of employment. Herb Larratt, the general manager of corporate and industrial services, said that the decision was part of the company's continuing objective to win "the right to manage" and this objective had not been deviated from since last year.

Early in April 1988, RRIA stepped-up a campaign to get workers to sign individual productivity contracts. Negotiations for the second-tier wage increase were used as a bargaining tool in the process. The WAIC ordered the company to withdraw its contract requirements. Amid the renewed tension, a 48-hour strike by tugboat operators occurred. The operators had been protesting at delays in negotiations for the second-tier wage rise and superannuation agreement. They returned to work in obedience to an order from the Arbitration Commission. On April 18 RRIA instituted legal action against 29 tugboat operators as individuals. The unions on site were not targeted. This legal action consisted of two components. The company filed actions for breaches of employment contracts as well as a range of common law actions. The civil writs sought damages for delays and loss of profits. In addition, criminal writs were lodged under Section 81 of the Police Act which deals with the unauthorised use of boats. Offences under the Act carry penalties of $2,000 fine or two years in jail, as well as provision for damages.

The ACTU called on the company to immediately withdraw the writs which appeared to represent a return to the confrontationist tactics of 1986. Crean warned that

60 Thompson & Smith, op.cit., p.87.
61 Sydney Morning Herald, 27.4.87.
63 West Australian, 2.4.88.
sympathetic action by other unions could result. Understandably, he voiced some concern at the involvement of the three Japanese partners. Peko had not made the same mistake it had in 1986. This time the Japanese partners were involved in the decisions. Commissioner Turbet in the Arbitration Commission urged the company to defer action. He added, "I am of a personal view that industrial and civil remedies to industrial issues is a very dangerous mix which make the task of the industrial arbitrator obtaining a lasting settlement more difficult." Of course, that may well have been the company's intention. Outside the Commission, a company spokesman responded that the legal action was "part and parcel" of the company's arbitration claim. He would have been well aware that the functions of the Commission abrogated any formal links between the two processes.

Despite insistent requests from the Western Australian Government, RRIA remained immovable and far from trying to placate the concerned parties, attempted to recruit tug crews from New Zealand. Nor was the company particularly concerned with keeping the State Government 'on-side'. In a thinly disguised warning, RRIA announced it had legal advice that anyone trying to pressure the company to drop its civil and criminal writs against the tugboat operators would be in contempt of court.

Some considerable time later, following the intervention of Crean, RRIA had a 'change-of-heart' about the legal proceedings against the tugboat operators. The criminal charges were dismissed after RRIA offered no evidence in court on the matter. A notice of discontinuance was filed in regard to the civil writs.

Relations between the company and workers at Robe River remained strained. Pam Buchanan, a Labor backbencher and Government Whip, itemised in the State Parliament the working conditions that existed under RRIA's contract agreement. The company, she said, was victimising its workers and treating them like slaves. Examples Buchanan gave were that the company could transfer a worker to the other mine site several hundred kilometres away with only a week's notice and change a worker's duty without suitable training. One of the worst aspects of the employment contract employees had to sign, she said, was that the company had the right to conduct body searches.

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64 West Australian, 20.4.88.
65 West Australian, 20.4.88.
66 West Australian, 20.4.88.
67 West Australian, 27.4.88.
68 Canberra Times, 29.4.88.
69 These matters are unreported. I obtained this information from one of the solicitors, Philip Laskaris, who had some involvement with the cases. Unfortunately, he was unable to recollect the correct dates but was adamant that these events took place "a very considerable time" after the dispute had ended.
70 West Australian, 7.9.89.
In September 1989, after a hearing that lasted almost a year (from July 1988 to June 1989), the WAIC handed down an award to the Robe River workers which was immediately hailed as a victory by the unions. The award protected the workers' right to union representation, established complex dispute settling procedures and prevented white-collar staff from performing blue-collar duties, even during strikes. 71

12.1.9. Conclusion

The industrial relations conflict at Robe River cannot be attributed to any single issue. Obustensibly it was over the excessive work practices that had built up over the years, but when considering the company's attitude from the time Peko-Wallsend acquired the controlling interest, it becomes clear that a whole new philosophy was being instigated. The work practices issue provided the reason for putting that philosophy into action. The company's stand on work practices requires no discussion here; after all, even the unions admitted that the case against them in that respect was justified.

The disputes in their first and second stages were motivated by one overriding first principle, and that was the 'right to manage'. Subservient to that principle were two axioms from which RRIA proceeded. The first was that trade unions have too much power and need to be subjugated to the first principle. As such, the prior company practice of consultation with unions needed to be eradicated. Industrial democracy in Peko's view was inconsistent with management prerogative. The second axiom was that industrial tribunals, particularly the State tribunal, played negative roles in both their conciliatory and arbitrary functions. Peko was not unwilling to participate in the system, but was not prepared to abide by any findings which it believed subordinated the company's 'right to manage'.

The role of Copeman was important. He provided yet another hero for the exponents of a de-regulated industrial relations system based on free-market precepts. By attacking the system and resorting to legal actions in what he termed, the 'real courts', the legal possibilities created by SEQEB, Dollar Sweets and Mudginberri were further enhanced. Copeman's aggressive approach was nevertheless the target of widespread criticism. For example, when the strike ended in January 1987, Copeman's 'capitulation' was applauded somewhat cynically in an editorial in The Age newspaper, which said:

The New Right eager for another industrial victory to add to the stale and limited list of Mudginberri, Dollar Sweets and the South-East Queensland Electricity Board, will have to wait a little longer. This must be a little worrying for them. The more dust that settles on their scoreboard of industrial waterloos, the more it becomes obvious that they are preaching irrelevant and simplistic policies which are bad for worker-management

71 West Australian, 7.9.89.
dealings. Mr Copeman, who several months ago was being paraded as the New Right's latest cult figure, is to be congratulated for choosing common sense and conciliation ahead of political grandstanding and confrontation.72

Later events revealed it was not really a capitulation. Subsequent actions by the company left little doubt that the basic philosophy that Peko had instilled, was still a primary motivation in RRIA's attitude towards its workers. The action it took against the tugboat operators in April 1988, foreshadowed in one respect, the possibilities that became explicit in the later Brooking judgement in the pilots' case. In issuing writs against the 29 workers (as individuals) after they had obeyed a Commission order to return to work, a new phase in industrial relations had begun.

The unions' responses to Peko's attacks bear some analysis. Thompson and Smith point out that the 'passive resistance' offered by the unions in the first four months of the dispute, was very much out of character for Pilbara unions in general and Robe River unions in particular. The explanation for this is partly due to the unions being caught off-guard. The major reason they proffer is that Peko played on their fears. Union officials recognised a New Right imposition in the Pilbara which carried with it not only lessons but also fear of the results found in Mudginberri, SEQEB and Dollar Sweets.73 This view is confirmed by the ACTU to the extent that the union response was based on a strategy formulated out of lessons learnt from the earlier disputes. (I have briefly itemised the strategy in the Mudginberri case study) The tactics used by the unions and ACTU during the dispute were thus seen to be vindicated. Future Strategies concluded:

It is important that the disputes were settled within the existing, formal industrial relations structure. The Company would clearly have preferred it otherwise. But in the final analysis a combination of legal, social, political and market forces obliged them to agree to operate within the parameters of the existing system. This is not any easy or efficient way to run an industrial relations system, but it does show that carefully planned and executed strategies can be used to defeat even a determined and well-resourced opponent.74

As subsequent events revealed, the ACTU may have been a little premature in its analysis. True, the unions did achieve a significant victory in bringing the company back to the negotiating table and remaining within the industrial relations system. The company's agenda, however, remained unchanged. Only the tactics were altered to accommodate its programme. A campaign towards a workforce consisting of non-unionised, contract labour was systematically instituted. To that end, delaying tactics in negotiations for a second-tier wage agreement were used by the company as a bargaining

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72 The Age, 27.1.87.
73 Thompson & Smith, op.cit., p.90.
tool. When the tugboat operators took strike action in protest at the delays, the company ignored the union and issued writs against the individuals involved. With hindsight, the so-called 'capitulation' of RRIA can be seen as a strategic retreat. The work practices issue was resolved in the company's favour, and the 'right to manage' principle continued to be the dominant factor in RRIA's relationship with its workforce.
IN CONCLUSION

Two theoretical propositions were posited in the introduction to this thesis. The first was that law can be a two-edged sword in the prevention and resolution of conflict. The second, was that industrial peace and the absence of industrial conflict are not necessarily contemporaneous. Implicit in the latter proposition is the premise that, the absence of measurable or identifiable manifestations of industrial conflict may be due to a number of reasons including law and the prevailing political and economic climate.

Some of the literature on industrial relations from the US, UK and Australia was examined in Chapter One with a view to developing a theoretical framework for the analysis of industrial conflict. To gain some perspective, systems and collective bargaining theory were focussed upon with particular emphasis on Dunlop's theory and subsequent modifications; and the pluralistic and unitary frames of reference approaches. These were considered most helpful in contributing to a theoretical framework that would serve my field of research.

Dunlop's premise that industrial relations systems are held together by an ideology or a common set of beliefs provides a "jumping-off" point for constructing a model that is adaptive to industrial conflict in Australia. The pluralistic frame of approach accepts a diversity of interests and aspirations and, importantly, holds that industrial conflict is both normal and to be expected. A common set of ideas and beliefs in the system will provide its sustenance even though the ideologies and participants may differ in theory and in practice. Systems theory, I concluded could also accommodate without contradiction a unitary approach, on the understanding that a unitary ideology will have consequences if it is put into practice by opting out of the system. This was illustrated later in the thesis with reference to some of the proximate and contingent parties in the case studies.

In the overview of collective bargaining theory, the framework put forward by Begin and Beal was considered somewhat rigid, at least for Australian analysis. The four sub-processes outlined in Walton and McKersie's model proved useful, particularly the attitudinal structuring sub-process which defines the quality and type of relationship between labour and management; and encompasses the efforts, intended and unintended, by parties to shape their opponents' behaviour. Because much of the
analysis in the thesis was concerned with the personalities involved, this sub-
process took on particular relevance. The revised theoretical framework of Kochan,
Katz and McKersie sought to address some of the anomalies they perceived to occur in
industrial relations theory and practice. Their model, incorporating the roles of the
environment, values, business strategies, institutional structures and history in the
analysis of industrial relations processes and outcomes seemed to be moving closer to
an appropriate framework for analysing my data. An adaption of Kochan et al's model
by Niland and Spooner for analysing industrial relations reform in Australia
provided further inspiration.

The Weekly Reports and their efficacy as a source of data was also included in Chapter
One. Problems with their use were identified by a number of industrial relations
analysts including Coolican, Niland and Hay. Some doubts were also recorded by
officers from the collecting agency (DEIR) itself. Nevertheless, there seemed to be
general agreement that the Weekly Reports provide the most fertile source of data
that exists. This is a view with which I concur (along with ABS) notwithstanding the
problems.

A brief outline of the development of labour law in the US and UK was provided in the
final part of Chapter One. The British legal tradition has had enduring influence on
the evolvement of labour law in Australia. This has been the case despite the
existence of a body of industrial relations law and a centralised wage-fixing system
in Australia that does not exist in the UK. Parallels may be seen between the
legislation enacted by the Thatcher Government and that of Joh Bjelke-Peterson's
National Party Government in Queensland. Furthermore, the present federal
opposition (the Liberal/National Parties) propose similar legislation in their joint
party platform. Nor does the absence of a centralised industrial relations system in
the US preclude parallels. For example, the Taft-Hartley Act 1947 featured
prohibition of secondary boycotts. Efforts to repeal this Act have been as
unsuccessful as attempts to repeal the secondary boycott provisions in the TPA, the
Australian counterpart. All three countries engage in collective bargaining, and it
seems that, while the system is important, it does not necessarily prescribe the legal
environment. Clearly, in Australia the existence of a body of law which regulates the
practice, and protects the participants in industrial relations is a fundamental
deviation from the other two countries. Nevertheless, the pursuit of demands
through collective direct action in Australia is in many ways subject to the same
restraints that apply in the non-centralised systems operating in the US and UK.

Attitudes to industrial conflict were also considered. I argued that there are two
basic attitudes towards industrial conflict - that it is a 'bad thing' or it is 'not a bad thing'. The attitude that industrial conflict is a 'bad thing' was considered from a number of perspectives, namely that: it is "rude and barbarous"; it is an attack on managerial prerogative; and it is, in some forms (strikes, secondary boycotts and on occasion picketing), illegal. Attitudes in which the notion that conflict is 'not a bad thing' were implicit, held that: it is part of the bargaining process; it is located in the social and political structure; it is inevitable but subject to regulation and institutionalisation; and it is part of the nature of the employer/employee relationship. While these do not present a comprehensive range of attitudes towards industrial conflict, they do serve to illustrate the division between two broad categories of thought. I refer back to the Latham quotation in the Introduction, critical of arguments that "the object of industrial legislation should be to promote peace in industry". He surmised that, "Industrial peace, if regarded merely as the absence of strikes and lockouts, is but accidental and precarious".\(^1\) There is also some irony perhaps in the quotation given that Latham was a conservative Attorney-General and was being quoted by Hawke (in his days as President of the ACTU) clearly with approval. Hawke's later actions and postulations tend to place some doubt on his continuing belief in the Latham perspective.

In the final section, on application of the law, I indicated some of the historical references on industrial disputes that were used, particularly those where law was featured. Contemporary sources for the research period were also outlined, including books, journals, trade union and employer material and newspapers. It was pointed out that only a small percentage of labour law research is concerned with industrial relations conflict, with the greatest concentration being on structures and systems. It was explained that, personal interviews were conducted where possible.

In Chapter Two, the analytical framework I devised for analysing patterns in industrial conflict in Australia was explained. Drawing from much of the theoretical literature already in existence on industrial relations systems and collective bargaining theory, a simple model was constructed which focussed on the conflict elements in industrial relations. It consisted of six parts: background, the climate, the legal environment, proximate parties, contingent parties and dispute resolution. All of the components in the thesis fit somewhere into this framework. Although it is structured in its presentation, the analysis takes up those elements in the framework which were of most relevance to the topic under discussion and there was no attempt to apply equal weight to them. For example, while the background to each dispute has been outlined, the prevailing political and industrial climate is discussed more

\(^1\) J Latham, quoted by RJL Hawke, *op.cit.*, p.50.
generally in earlier chapters. Analysis of the levels, causes and forms of collective
direct action which provide both background and statistical evidence of the industrial
climate, were included separately.

In Chapter Three the methodology was explained. The first part discussed the data
analysis: the aims, methodology, limitations, definitions, recording of disputes and
the forms. It also included a brief discussion of the Hancock Report in respect of the
data. The use of bans data was placed in context vis a vis other forms of industrial
action. The relationship between strikes and bans over the survey period has
provided a central focus to my analysis both of the data and of the industrial climate.

I was once asked whether bans were a feature of nineteenth century conflict. While
unable to answer that question, I believe that it raises a significant point. Legislation
in Britain against workingmen originated in 1351. It seems reasonable to assume
that some form of dissent was being expressed in order for there to be a legal and
political response. Further legislation has continued to be enacted until the present
day. There are a number of reasons why this has occurred, such as increased worker
militancy; recognition of certain rights and obligations on the part of both employers
and employees; and changes in industrial relations systems. Another reason is
founded on Hyman's premise that "...the very structure of work in industry generates
conflict...the strike is only its manifest form of expression". The very nature of
the relationship between employers and employees produces conflict, or at the very
least dissent. The need to continually alter laws and introduce new ones represents a
political response to the fact that conflict is both changing in form and unavoidable.
In other words, given a situation in which one form of dissent is outlawed, another
way of expressing dissent will appear. The making of a law does not remove the cause
of a problem, it merely prescribes in what way actors in the relationship may
respond to it. Bans in this context can be seen as the creative result of a need to
combat anti-strike legislation.

As I have also argued, bans are an efficacious form of industrial action for other
reasons. Keith Marks was not surprised by the increase in bans during the 1980s.
Bans, he said, did not cost a day's pay and for the most part avoided the industrial
tribunals. He also made the point that bans were extremely difficult to include in
awards and also difficult to enforce. Other ways in which conflict may be expressed
were also suggested, such as go-slows, co-ordinated acts of industrial sabotage, and

2 Statute of Labourers, 1351
3 Hyman, op.cit., p.59
4 K. Marks, Interview, 8.11.89.
absenteeism. The latter usually involves an individual rather than a collective response to discontent. Other variations which were also mentioned were the co-ordinated campaign of sick leave by Queensland police compounded by the excessive issue of parking tickets to overload the accounting department. While all these alternative forms of direct and indirect action may be extremely effective, no statistical measurement of their incidence is possible. Measurement of strikes and, in a limited way, of bans is possible because they are recorded as industrial action.

The second part of Chapter Three described the aims, methodology, and interviews undertaken in respect of the legal framework. Included also was a brief discussion on some of the problems encountered in gaining access to some of the parties.

BACKGROUND

Industrial conflict does not occur in a vacuum - it has both history and context. A strike, for example, will take place in the context of the organisation in which it is happening and in the wider political and industrial contexts. These are largely created by historical factors. In the case of a single dispute, the organisational factor may have a history of only five minutes, but in the wider context, the political and industrial climates will consist of a combination of historical and contemporary influences. Both the organisational and the wider contexts have been considered in this thesis. The part that background plays in the organisational context were demonstrated in the case studies in the final three chapters; the wider political and industrial contexts were discussed in Chapters Eight and Nine; while Chapters Four to Seven provide an empirical overview based on the analysis of some nine thousand industrial disputes. I will turn to the empirical analysis first.

Data analysis

I have argued in Chapter Four that there are good reasons for including bans as well as strikes in dispute analysis. One dispute, which occurred during 1986 and lasted for several months, demonstrates the effectiveness of long-term bans and their relevance to dispute analysis. In August 1986, the Plumbers and Gasfitters Union (PGEU) began a campaign of bans on large building projects in New South Wales and Victoria in support of claims for a $70-a-week pay rise, a 36-hour week and a 27.5 per cent annual leave loading. Although only a relatively small number of workers was involved, the bans which covered the installation of fire sprinklers and toilets had a severe effect. Members of other construction industry unions would not work because PGEU members also refused to install temporary toilets on site.5

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5 Australian Financial Review, 20.2.87.
In February 1987, seven companies, all members of the MBA lodged Federal Court applications under Section 45D of the TPA. In March 1987, the PGEU was ordered by a Federal Court judge to lift all bans. The union did not immediately comply and faced the possibility of contempt of court charges which could have resulted in heavy fines as well as the gaoling of key officials. The campaign was characterised by the small number of workers involved, and its maximum impact on the employers. The cost to the building industry of the PGEU bans was estimated to be $380,000 per week.  

While the plumbers' dispute was longer and more costly than is perhaps usual, it would be a mistake to regard it as aberrational. That a dispute existed is beyond question. That the bans were effective in terms of impact and importance to employers is demonstrated by the legal measures that were taken to have them lifted.

As the data included in Chapters Four, Five and Six has already been summarised in Chapter Seven, I will not repeat the exercise in detail here. The findings in Chapter Four revealed the relationship of strikes and bans by state and industry. With the exception of South Australia, the Northern Territory and ACT, the incidence of bans increased from 1984 onwards, in most states to unprecedented levels. As the deviations in the Northern Territory and ACT are understandable (given that bans were the preferred form of industrial action in most years of the survey) a national trend was thus revealed.

A national decline in the number of strikes over Pay, Allowances and Log of Claims (in aggregation) after 1981-82 was revealed in the first part of Chapter Five. The overall decline in strikes in most states during this period would explain this result. However, the findings also showed that the three issues also accounted for a smaller percentage of overall disputation in all states. When the issues were disaggregated a more subtle picture emerged in which a decline in strikes over Pay and Log of Claims was in contrast to the incidence of strikes over Allowances, which remained constant and in some states increased both in numbers and as a percentage of disputation.

In Chapter Six which looked at the major issues in each state, a change from 1982 onwards was also evident. This of course would be expected given that Pay as a major issue had ceased to be pre-eminent. The emergence of issues concerned with security of employment was marked in most states between 1983-87.

Further analysis of the data, which was not presented in any detail, indicated that there were significant differences between the patterns of industrial activity in the

6 *Sydney Morning Herald*, 18.3.87.
various industries with the result that the larger industries numerically dominated the findings. As a consequence, most state trends tend to be determined by Manufacturing while trends in strike and ban activities in other industries are overlooked because of their lower numbers. In the same way, trends which are suggested by composite state figures will not disclose those industries which do not conform to the state trends. Likewise, where the issues were concerned, Manufacturing tended to dominate the overall state results, although all industries in every state corresponded closely with the major state issues in Chapter Six.

A core set of issues was identified which included Pay, Allowances, Job Maintenance, Union, Demarcation, Managerial Policy, Conditions and Log of Claims. I also extricated many of the issues which are normally placed in Managerial Policy. The results indicate that even when issues like Dismissals are omitted, Managerial Policy remains a major issue. R R Nelson argues:

How workers feel about their job, about fellow workers, about management, and about the organization, may be more important in influencing productivity than is the particular way they are instructed to do their work, the formal organization structure, or even financial incentives......

As the 'right to manage' principle becomes a fixed attitude amongst an increasing number of employers, it is easy to see why disputation over Managerial Policy has remained prominent. To some extent there has probably been some balance between those employers who have adopted radical attitudes towards managerial prerogative and those who have instigated programmes of industrial democracy. Unfortunately, for the purposes of this analysis, I was unable to look in any detail at the issues which were consigned to Managerial Policy. Such an exercise would be useful in determining any trends which have occurred as a result of these changes.

Another major set of issues which were identified were those concerned with employment security. They included Job Maintenance, Contract Labour, Classifications and in some instances, Manning issues.

The case studies
All three disputes had a background of periods of conflict and tenuous peace. Since 1978, Queensland's electricity industry had undergone eleven major strikes involving the cut of power supplies. Twice, the Government had declared a state of emergency due to strikes. Unions had been threatened with deregistration and fines.

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With the introduction of rationalisation in 1977, contract labour became an increasingly contentious issue. For the unions, job security and safety were involved (and the principle of unionism no doubt), while for SEQEB and the Government, managerial prerogative and industry rationalisation were paramount. Another feature that had bearing on the subsequent dispute was the entrenched view held by the ETU based on previous experience, that it could not lose. That experience, however, was a prime motivation in the Government's intransigent position. The dispute was not just about sorting out a contract labour problem. Rather, it was to do with challenging and diluting trade union power, and to some extent, the role of the industrial tribunals.

The background to the Mudginberri dispute had its foundations in the adoption of a tally system for the meat industry and the making of awards for industry-wide coverage. Central to the dispute was the introduction of a contract system whereby abattoir operators were not the employers of the process workers. Instead, the labour force was provided by a contractor who was responsible for the payment of workers. This system made small, isolated abattoirs like Mudginberri competitive. One of the problem for the AMIEU was that the wage agreements undermined award conditions in that they did not contain entitlements such as workers compensation, weekend penalty rates and waiting time. The crunch came when an agreement was reached between Jay Pendarvis, the proprietor and managing director of Mudginberri in which the employees did not nominate the union as its representative. This set the scene for the events which followed.

At Robe River, a long history of industrial action and restrictive work practices provided the background to the dispute. The controlling interest in RRIA by Peko-Wallsend in 1985 was followed by a prediction during 1986 that a large reduction in Japanese steel production would have severe consequences for Pilbara producers. Charles Copeman, Peko's chief executive insisted that issues of overstaffing, the number of restrictive work practices and union involvement in management decisions needed to be addressed. A new management was put in place to oversee the required changes. All of the ensuing conflict flowed on from this point. This dispute, unlike the other two, involved first a lockout and then a strike. The relationship between the union, Pilbara management and Charles Copeman were critical in the conflict which ensued, as was the physical isolation of the workers involved.

Needless to say an understanding of all three disputes would not be complete without some knowledge of their background, the relationships between the proximate parties and the political and industrial environment in which they occurred.
THE POLITICAL CLIMATE

Following a brief background on the Whitlam and Fraser periods, the Prices and Incomes Accord was discussed in Chapter Eight. From 1983 onwards, this agreement provided the basis for, not only the conduct of industrial relations on a policy level, but also for the interaction between all parties, both proximate and contingent in the industrial relations arena. Given the scope of the document and its subsequent modifications, it is not surprising that it has had profound implications on the political and industrial climate. There has been a decline in industrial disputes and a concomitant reduction in pay demands. Real wages have been contained to an extent which was hitherto regarded as beyond attainment. But this has occurred against a background of a range of anti-union strategies adopted by state governments, private companies and employer bodies. Some of these were illustrated in the case studies. The range of strategies were depicted in the 1985 strategy document Anti-Union Attack and they are itemised in Chapter Eight. Significantly, many of the concerns raised in the ACTU document were reflected in my data on causes and in analysis of the impact of common law and civil actions against trade unions and their members.

I have argued that the extent to which the Accord is viewed as a responsible, progressive and economically viable concept depends on the degree to which it is held accountable for the positive achievements of the Labor Government. Another perspective is that the Accord is also viewed in sceptical quarters as being a 'noose around the trade union movement's neck'. One of the manifestations of this may be seen in the proportionate increase in disputes over Allowances as an Accord avoidance. A further manifestation may be construed by the overall increase in bans as a form of direct collective action during the Accord period. Yet another perspective is added by the New Right in that the Accord represents a coalition between government and labour which creates an imbalance in policy-making in favour of the ACTU.

At the time of writing, the pilots' dispute was in progress. The pilots' dispute was not a strike (as it is publicly called, although not, I note, by the informed media). Rather, the pilots' dispute began with bans placed on the airlines, restricting flying time to between 9 am and 5 pm. The dispute demonstrated the crucial point that the industrial relations system is only as good as its participants' commitment to it. The pilots' decision to step out of the system was a threat, not only to the wage-fixing principles agreed to under the Accord, but also to the more fundamental agreement that industrial relations in Australia be regulated in a particular way. Agreement is fundamental because, unless the parties register themselves and conduct their industrial relations business under the umbrella of the system, there is no system.
If the pilots had been successful in opting out of the system, that is in negotiating directly with their employers and receiving wage rises outside the national wage-fixing principles, it would have served as an example to other unions, especially those which, like the AFAP believed that their members had lost relativities as a result of National Wage Case decisions over the Accord years.

One of the aspects of change which was looked at was the influence of the New Right, its ideology and adherents. It is easy to dismiss the New Right as extremist. Indeed, I have attempted to demonstrate in Chapter Seven some of the more irrational and simplistic arguments that have emanated from some of the most prominent members. I do not however, dismiss them. Some of the ideas which they have promoted have become widely accepted to the point where they are no longer attributed to the New Right. In particular, the notion that enterprise-based unions are the most acceptable form of unionism has gained ground. While the Labor Government and ACTU do not endorse the radical changes called for by members of the New Right, there has undoubtedly been some movement in that direction. Although, Australia would not accept enterprise unions on the Japanese lines, the Treasurer, Paul Keating has predicted that the union movement was working towards fewer unions with a single bargaining unit for each enterprise. This represents a major change from the present situation.

It will be recalled that in the first week of the pilots' dispute, Prime Minister Hawke, himself a former ACTU president, advocated the use of common law writs against the pilots. His later backdown does not negate the extraordinary situation whereby a Labor Prime Minister, particularly one with Hawke's background, adopts an attitude which is anathema to Labor/labour principles. Helping the airlines out with military planes is not exactly traditional Labor either. Even so, these are just symptoms of a much greater change which has taken place.

As I have suggested at various points in this thesis, the much-vaunted Accord has been widely attributed as the mainstay of Government policy. Both the ACTU and Government hold the Accord solely responsible for the decline in industrial disputation during the period. I have maintained that in addition to the Accord, other factors have contributed to the downward trend. As my data indicated (along with that of the ABS) the decline in strikes was already evident prior to Hawke's election in 1983. Whether this trend would have continued is beyond prediction, but given the

9 The Sunday Herald, 19.11.89.
unemployment situation there is some reason to believe that this may have been the case. In any case, I would argue that the overall increase in bans provided an alternative form of industrial action that was antidotal to the decline in strikes. The role of the ACTU cannot be underestimated either. Although it has continued to promote trade union principles, the Accord has not infrequently placed the organisation in a crisis of identity. On the one hand, the ACTU continues to represent the interests of its members, while on the other, it remains firmly committed to supporting the Labor Government’s economic policies, despite claims that working people bear the greatest costs of these policies. One example of the ACTU’s dilemma was demonstrated in the case study of the SEQEB dispute, where, although the Federal Government was against the employer, there was a tension between the ACTU and Government over what action should be taken. Ultimately, the ACTU followed the Federal Government’s direction after initially participating in a campaign of direct industrial action.

The case studies
In presenting the case studies there were some features which have relevance to the political climate which were not discussed and should be noted. The first, and by no means unimportant omission, has been the level of debate over the disputes in the federal sphere. My depiction of the three disputes has concentrated on the arena in which they have unfolded and the actions which have had a direct affect on the outcomes. When the role of the Federal Government was a factor in the handling of a dispute, it has been noted; otherwise I have steered clear of federal politics. To do otherwise would have enlarged the case studies considerably. As a result, the attitude of the Federal Opposition has been largely ignored. The Liberal/National Party Coalition was firmly behind the employers in all three disputes and publicly stated their support. One example from the Robe River dispute provides some indication of their position: When Peko began legal action against the striking workers during stage II, the then Opposition spokesman on Industrial Relations, Neil Brown stated that the Opposition fully supported Peko’s legal action against the unions. He maintained that every person and company that suffered loss and damage as a result of illegal actions was entitled to sue. From the Opposition’s viewpoint, the use of common law action showed how industrial tribunals had failed to bring unruly trade unions under control.10 Brown’s statement speaks for itself. However one comment needs to be made in relation to his suggestion that Peko had suffered losses as the result of "illegal actions" on the part of Robe River workers. At the time he said this, the workers had not been ordered back to work by the WAIC so the

10 Canberra Times, 7.1.87.
assertion that the tribunal had failed to bring "unruly trade unions under control" was clearly wrong in the context of the industrial relations system. Brown was attributing lawlessness to trade unions, in this context without foundation, in much the same way that Copeman, for example, said industrial tribunals were an affront to natural justice. The statement is taken unquestioningly as one of fact. As such, he endorsed the belief that trade unions are a power unto themselves, a notion that has been a chief source of propaganda during the disputes.

If on the other hand he was suggesting that strikes are unlawful actions at common law, regardless of the orders or recommendations of industrial tribunals, he was raising a completely different question. Sturt Glacken, an aide to Brown believes that this was the case. He pointed out that, as a former industrial relations lawyer, Brown was well aware of the common law on conspiracy and breach of employment contract. Just about any strike in this view would be considered an illegal activity which entitled an employer to seek redress at common law. The accusation of lawlessness in this case becomes a statement of fact. Without seeking to trivialise the Opposition's policies, it is my belief that support for the employers in all three disputes encompassed both attitudes outlined above. The two approaches outlined above are implicit in the Liberal/National Party policy. Under the section 'Common Law', the policy says: "We will encourage the use of the common law in the civil courts in appropriate cases as a means of obtaining redress for unjustified industrial action". In the following section headed 'Compliance with Commission Decisions' which deals with effective sanctions for non-compliance with the Commission's decisions and orders, the policy states: "In addition, any person who suffers loss or damage as a result of industrial action in breach of a direction would be able to sue the responsible organisation for damages in the Federal Court".

The second omission concerns the role of the media. While I have used newspapers very extensively for information on all three disputes, the part played by the media in influencing public opinion has been, for the most part, avoided. It is an unfortunate omission because the role of the media needs to be subjected to critical analysis, particularly in Queensland where the print media is de-centralised and has strong links with the National Party. Again, the size of the case studies would have reached impractical proportions had the media been included.

11 Sturt Glacken, Interview, 7.3.90.
13 Ibid., p.8.
THE INDUSTRIAL CLIMATE

Job Maintenance

In Chapter Nine the subject of Job Maintenance came under scrutiny. Although the discussion was not placed in the context of the Accord, its influence could not be missed. While the ACTU does not endorse job losses, award restructuring effectively accepts that they must and will occur if the Accord's objectives are to be achieved. The selected examples used in the section on Job Maintenance demonstrated that both the Federal and state governments (of whatever political colour) have shown determination in implementing rationalisation programmes, despite quite intense opposition from employees. It appears (on admittedly insufficient evidence) that greater conflict is likely to occur when the government concerned is Labor.

It would also appear that award restructuring has met with a greater degree of cooperation in the private sector than in the public sector. Part of the reason for that may well be the opportunities available in the private sector for 'trade-offs'. For example, while complying with wage-fixing principles, some unions have successfully negotiated allowances or bonus payments outside the centralised wage fixing process. One example of this was provided by the Miners' Federation whose members have obtained increases in bonus payments during the Accord period that are now at least equivalent to their base wage. Their take-home pay, according to a Federation officer, has increased during the Accord period at a very high rate.14

While miners (for reasons which I will not go into here) are frequently regarded as a "special case", the results from my data indicates that Allowances have been responsible for a significant proportion of disputation in other industries, particularly Construction and Transport and Storage. It would be naive to assume that at least some of those disputes were not successful, bearing in mind that on many occasions the disputes were over increases to existing allowances.

There are some grounds therefore on which to base at least a prima facie conclusion that public sector employees who are unable to negotiate through collective bargaining for allowances or bonus payments, are bearing the brunt of the Accord.15 Marks was not surprised by my findings on allowances. He agreed that they were

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14 Allowances as a component in the wage package is firmly entrenched. One aspect is that some allowances are paid in duplicate. For example, a 'disability allowance' is paid to all miners and when an actual disability occurs, then a double allowance is paid. The same applies to the 'wet allowance' and others. M. Lee, Interview, 30.10.89.

15 Some public sector employees in blue-collar trades, for example electricians do receive allowances, however they are not obtained through collective bargaining but as part of award negotiations,
probably negotiated independently of the award structure as an Accord avoidance. In any case, this may provide part of the reason why there has been an increase in public sector union membership during a period of proportional decline in the private sector.\footnote{16}

Chapter Nine looked also at the increase in civil and common law legal actions during the 1980s. The \textit{Dollar Sweets} case was briefly outlined because it was, and remains, a landmark case; partly because of the damages payout by the union but more importantly, because it became an example to employers of the remedies at law which are available to them. Justice Brooking's decision in the pilots' dispute was also examined. Once again, this landmark decision has enormous implications for the trade union movement. A brief outline was also included on the common law and legislative environment in respect to industrial relations.

**THE LEGAL ENVIRONMENT**

A feature of change which I have sought to demonstrate has been the impact of civil and common law actions against unions. As I have said earlier, it is not possible to quantify how great the impact has been. Certainly, some of the unions that I spoke to agreed that they are now much more cautious about taking industrial action. That the threat of legal action has deterred, or cut short some industrial action is, I believe, an inevitable consequence of the prevailing political, legal and industrial climate. Examples were given of strikes brought to an end by the threat of common law action. It was not suggested that the issue of common laws writs has become an everyday practice. Rather, that they have come to be regarded as a measure which employers, should they choose to use it, can do so with some expectation of success. The Brooking judgement confirmed this although the common law in relation to breach of contract, intimidation and conspiracy does not relate only to trade unions. Its importance lies in the reaffirmation that trade unions are not immune from tort actions.

The consequences for the AFAP following the Brooking judgement have been considerable. In addition to the prospect of huge damages payouts, they must also contend with the possibility of being a union without a membership employed in the industry. For the AFAP, the overall cost of attempting to opt out of the industrial relations system and conduct pay negotiations on an enterprise basis, have been disastrous.

I also raised in Chapter Nine the actions of the Prime Minister, Bob Hawke during the dispute. His adamance that the AFAP should not succeed was stated at the very beginning of the dispute and constantly re-stated thereafter. His endorsement of the issue of common law writs during the first week represented a departure from both labour and Labor Party principles. Paradoxically, his position was also in direct conflict with the principles set down in the Accord agreement while his justification was in upholding the Accord's wage-fixing principles.

The case studies

As the three case studies showed, the law was a vital element in each dispute. During SEQEB, new legislation was enacted by the State Government; at Mudginberri, section 45D of the TPA was taken to its limits; in the case of Robe River, the common law was utilised more than once in an attempt to defeat the workers. Each of these cases in its own way was portentous. In all, the role of the industrial relations system was challenged as the most efficient means of dealing with industrial disputation.

I have already provided discrete résumés of the legal proceedings which took place and there is no need to enlarge on them further. What is of interest in summary, is the development from one dispute to another. Taking the 'right to manage' as the first principle, the notion that trade unions have too much power was a prime motivation when Sir Joh engaged the ETU in a protracted dispute. The subjugation of the unions to the principle formed the basis of the Queensland Government's legislation. An essential ingredient was the depletion of the role of the industrial tribunals as a factor in dealing with recalcitrant unions. They retained their functions, but the immediate aims of the employer were better served through the normal courts. Mudginberri started while the SEQEB dispute was still active. By the time the AMIEU placed the picket line on the road to the property in May 1985, the Queensland Government had already demonstrated the efficacy of using courts outside the industrial system to curb industrial action. In addition, Sir Joh was hailing the agreement obtained by Mudginberri as a legislative model for Queensland. He also provided financial backing to Jay Pendarvis along with the conservative Northern Territory Government, the Westpac Banking Corporation and the NFF. The impetus created by the SEQEB dispute in threatening damages against unions was taken up by Pendarvis, for whom proceedings under Section 45D of the TPA was the logical step to take. SEQEB provided Mudginberri with an example of how union power can be defeated when the industrial tribunals are dispensed with as the sole arbiter of industrial disputes. Mudginberri went one step further than SEQEB by instituting legal proceedings against the union before even seeking orders from the ACAC. The
question of whether the union would have obeyed an order is unanswerable.

Robe River followed on from, not only SEQEB and Mudginberri, but Dollar Sweets as well. Damages awarded against unions through civil actions had gained ground. (In the case of Dollar Sweets, the damages were settled out of court, no doubt because the union anticipated a greater payout from the court's decision.) When Peko-Wallsend decided to take up the cause by temporarily opting out of the industrial relations system, the legal actions became a cause célèbre. Even when Peko co-operated with the WAIC the issue of the writs remained fundamental to their industrial policy. This was the case in both Stage II and later with the tugboat operators. The belief that courts outside the system would place a stranglehold on union power was axiomatic.

Two aspects of the legal actions taken by the company bear mentioning here. The first relates to the issue of writs against individual employees rather than unions or union officials. This had worked very effectively in Queensland. The occasion when RRIA took this course of action was against the tugboat operators in April 1988. (They had served writs on individuals in the 1987 strike in addition to union officials) In this instance, unlike the earlier ones or the SEQEB writs, the purpose was not to obtain a return to work. Their sole purpose was to sue the individual tugboat operators for their 48 hour strike and receive damages for lost income. The second aspect relates directly to the first. Whereas Mudginberri had taken legal action without seeking a remedy from the ACAC, RRIA went one step further and served writs on the tugboat operators after they had returned to work on an order from the Commission. In doing so, the company was clearly indicating that obedience to the industrial tribunals was not a factor that merited any favour in its relationship with the workforce. While during the SEQEB dispute it was within the Government's capacity to change the system, at Mudginberri the system was bypassed and at Robe River the system was ignored.

From the standpoint of the unions involved, SEQEB and Mudginberri are notable for their failures. As the case studies have shown, there were reasons unique to both disputes. My concern here is with those activities which gave rise to defeat in both disputes. The first relates to their departure from the industrial relations system. When the ETU workers refused to obey the orders of the WAIC and return to work, they provided the opportunity for the State Government to proceed through the normal courts. Likewise at Mudginberri, the AMIEU's refusal to accept the award handed down by the Commission led to its prosecution in the civil courts under the TPA. Although in both cases the unions continued to pursue their aims through the
industrial tribunals (in the case of SEQEB by applying for a federal award), their other activities left them open to civil proceedings which were integral to their ultimate defeat. The second reason which they held in common was their intransigence. With both, strong principles were involved. These appear to have blinded the unions to the consequences of their actions and to the wider ramifications their defeat would have for the entire trade union movement. There is surely a psychological factor involved here that forbids a backdown in the face of a formidable opposition and almost certain defeat. In both cases, there must have been a time when a strategic withdrawal was the most practical move in terms of costs (financial and human) and outcomes. That neither union appears to have considered a withdrawal at any stage is an indication of their commitment to winning at any cost.

By the time the Robe River dispute was underway, Dollar Sweets had been added to SEQEB and Mudginberri as examples of the problems that can arise when unions forgo the protection offered by the industrial relations system. The lessons learnt from these three disputes were applied by unions during the Robe River dispute. Despite provocation from the company, which itself disobeyed orders from the WAIC the unions remained firmly committed to seeking remedies through the industrial relations system. Legal proceedings undertaken by the company in the 'real courts' became a bargaining issue during the 1987 strike. Ultimately, the company withdrew the writs and itself returned to the system.

When, after a marathon sitting, the Commission finally handed down an award in September 1989, it was claimed as a victory by the unions. It could also be seen as a reward for abiding with the system in the face of company provocation to do otherwise. But if that was the case, some account must be taken of the costs involved. The workforce was reduced, contract labour had become a company policy and living conditions for unionists were subject to stringent requirements. Both the mining and port communities remained divided with demarcation lines drawn between unionists, non-unionists and staff labour. Finally, the company's attitude towards the industrial relations system left little doubt that any action taken by workers would be met, not by an appeal to the relevant commission, but by recourse to the common law.

One interesting development has been the change in attitude of at least one union. The secondary boycott provisions of the TPA are particularly distasteful to most unions. There has been a recent case where a union, the FIA undertook proceedings against another union, the BWIU, using section 45D. It has been described as an
"unprecedented and embarrassing" dispute.\footnote{The Australian, 30.5.89.} I would not like to suggest that this case presages a spate of similar actions in the future, but, like Hawke's remarks to the airlines, it would have been inconceivable in 1983.

**PROXIMATE PARTIES**

There are occasions when industrial action occurs for reasons that are outside the employer/employee relationship. Examples of such instances are ACTU led political strikes called in protest at government policy; solidarity actions which are in support of workers in other workplaces; and demarcation disputes between unions. For the most part though, industrial disputation is the result of a seemingly irreconcilable difference between the rank and file at the workplace and the employer. It is at the point where the rank and file, usually represented by their union(s) and the employer cannot reach agreement that direct action may occur. Their relationship past and present will be a strong determinant in whether this happens as will the resolve of the parties to either enter into or avoid conflict. Other factors which enter into the picture are the adequacy of dispute settling procedures and the commitment of the parties to reach a solution at the enterprise level. The economic strength of the enterprise (or industry) to withstand losses in productivity may also be a factor, particularly when permanent job losses may result from strike action. As I have argued elsewhere, an increase in bans as an alternative to strike action is in part, a reflection of concern over job security. The industrial strength of the union(s) involved will also figure at the point where a decision is either taken or not taken to engage in direct industrial action.

For the proximate parties to a dispute, there is at least one issue upon which they have been unable to reach agreement. It will usually be that issue which will give the dispute meaning for them. In the case of the pilots' dispute, the primary issue was a wage claim in excess of the amount set down in the wage-fixing principles. For the airlines, their commitment to the wage-fixing principles was grounded in the economic necessity of wage restraint throughout the industry. However, other secondary issues are frequently involved. In the case of the pilots' dispute it was whether the pilots were entitled to enter into negotiations at the enterprise level, while in other disputes, the principle of managerial prerogative may be the secondary, but guiding factor.

**The case studies**

Characteristic of all three disputes in the case studies was a pronounced crusading
element on the part of the employers and their supporters. Paramount was the principle of management's 'right to manage'. According to Roy Kriegler, Australian managers have a deep-seated fear of:

losing prerogatives in decision-making, together with doubts that workers can make worthwhile and constructive contributions, and concern that giving workers a voice will strengthen the union's bargaining position. Most Australian managers feel much safer operating as the traditional supervisor within a hierarchial organisational structure.18

This assessment appears to be true for the three disputes in question, although some reservations have to be drawn in relation to Mudginberri, where the manager's prerogative was not in question from his own workforce. For the purposes of this discussion, Kriegler does not go far enough. When considering SEQEB, Mudginberri and Robe River, it is necessary to look at the lengths to which employers are prepared to go in order to achieve those ends.

An underlying assumption of all three employers was that the industrial relations system was inadequate to their managerial and industrial requirements. With SEQEB, the Government decided that the state industrial tribunal was no longer capable of handling the dispute. A new set of laws was enacted to complement those existing, with the intention of gaining absolute control over the workforce. With Mudginberri, the Federal and High Courts became the focus for legal activity even though the ACAC continued its involvement. With Robe River, the company stepped outside the industrial relations system rather than comply with orders which undermined its managerial prerogative. Common to all three was a direct challenge to the prevailing industrial relations system.

All three disputes involved future or active adherents of the New Right. SEQEB's Wayne Gilbert was a foundation member of the H R Nicholls Society, and Sir Joh Bjelke-Peterson, while not a member, was strongly supported then and later by sections of the New Right; Paul Houlihan, the NFF industrial director was also a foundation member of the Nicholls Society. In addition, Ian McLachlan's reputation amongst the New Right is heroic; Peko-Wallsend's Charles Copeman is also associated with the New Right in ideology and personal associations, one of whom is Peter Costello who was a lawyer for Dollar Sweets and an adviser to Copeman during the Robe River dispute. I cannot account for the degree of coincidence that marks the careers of some of these individuals, but it is worth noting that Ian McLachlan, Charles Copeman and Peter Costello are all candidates for the Liberal Party in the

1990 federal election. All have sought and gained pre-selection since their involvement in the disputes. Bjelke-Peterson has retired from the state parliament after an abortive attempt to move into the federal sphere, largely on the urging of sections of the New Right.

CONTINGENT PARTIES

The roles of the contingent parties - executive government, the industrial tribunals and the peak union and employer bodies - in industrial conflict are inextricably linked with the prevailing political and industrial climate. Industrial conflict while still at the proximate party stage will be focussed on the issues as determined by those parties. Once the contingent parties become involved the issues frequently take on other dimensions. This was illustrated in the pilots' dispute where, for the Government the issue was clearly that the Prices and Incomes Accord would be undermined by the pilots' wage claim. For the Industrial Relations Commission, the issues were whether its determination of six per cent in accordance with the wage-fixing principles would be disregarded with widespread consequences as other unions followed suit, and the challenge to the industrial relations system itself by the Federation's decision that it could and should be by-passed. For the ACTU the issues were complex in that on the one hand the AFAP's action threatened the Accord while on the other, the legal actions taken against the union were in violation of both union principles and the Accord. The issue for the ACTU was further exacerbated by a long-standing tension between itself and the non-affiliated AFAP. For the peak employer bodies, their tacit approval of the Accord and wage restraint placed them firmly in the Government and airlines' camps. At the same time there was considerable pressure applied on the Government to take a more conciliatory role while at the same time standing firm.

I do not mean to suggest that the pilots' dispute was typical, clearly it was not. I have mentioned it here to illustrate how, once the contingent parties become involved in industrial conflict the issues undergo a transformation, particularly if they are highly placed on the political and industrial agendas. There is a sense in which the proximate parties become unimportant in the larger picture.

The case studies

The role of the Queensland Government during the SEQEB dispute has been dealt with elsewhere. Suffice to say that as a public sector dispute, the Queensland Government was both a proximate and a contingent party. It was argued in Chapter ten that the involvement of the ACTU, the Federal Government and the unions was only partially out of concern for the sacked ETU workers. Tension during the dispute between the
ACTU, the ETU and Queensland Trades and Labour Council erupted at times into public display of anger and frustration. Their main concern was the legal initiatives being taken by the Queensland Government and the attack on the industrial relations system. Conversely, there was widespread support from amongst peak employer bodies for the Queensland Government's actions because they were seen to represent a challenge to what was perceived to be excessive union power.

ACTU involvement in the Mudginberri dispute was as a principled stand against the pecuniary penalties imposed by courts outside the industrial relations system. There was little actual sympathy for the AMIEU which had been publicly berated by the then President of the ACTU, Simon Crean, for not withdrawing the picket line. The other contingent parties involved in this dispute were considerable. Mudginberri Station received financial support from Westpac, the Northern Territory and Queensland Governments and the NFF. The larger issues for the contingent parties in this dispute, were not the tally system (the issue behind the dispute) but testing the provisions under the TPA to defeat the union. It was a statement about trade union power and how it could be defeated by a concerted effort. The successful outcome for Mudginberri provided an example of how unions could be taken on from outside the industrial relations system.

In the case of Robe River, the Western Australian Government and the Federal Government were both concerned about the potential cost the dispute could have for Australia's export markets in iron-ore. There was further consternation expressed by all the contingent parties at the attack on the industrial relations system by Charles Copeman, although he received considerable support from some members of the New Right. Others, like WMC's Hugh Morgan were critical of Copeman's actions. The ACTU with SEQEB, Dollar Sweets and Mudginberri as background were concerned about yet another dispute where the industrial relations tribunal was being bypassed in favour of court actions. There was considerable sympathy for the workers at Robe River and their treatment at the hands of the company. The ACTU had fully endorsed the union's response to the company's action and made determined efforts to negotiate an agreement under conditions that were both difficult and hostile. For the ACTU, it was a critical matter of principle. If a union which had complied with all requests from the industrial tribunal; stated its intention to adhere to commission rulings; and had indicated its willingness to negotiate the issues (by already conceding a number of points), could be attacked from outside the system, then the precedent for the entire labour movement would be serious.

The contingent parties in all of these disputes were involved in the disputes for
reasons other than those which precipitated the disputes. In all there were some common features - managerial prerogative, contract labour, trade union power and the use of law outside the industrial relations system.

DISPUTE RESOLUTION

This thesis has not attempted to make any analysis of dispute resolution as such. It has been included in the analytical framework because it provides an obvious final point, and that, is that one way or another, all disputes come to an end eventually. The way in which they do this will be largely determined by the character of the dispute itself. All of the other elements outlined in the analytical framework, the background, the political and industrial climate, the legal environment, and the proximate and contingent parties, will to a greater or lesser extent be critical to how the dispute is resolved. There are three basic outcomes to dispute resolution. They are resolved by:

(i) determination or decision by an industrial tribunal or the courts;

(ii) capitulation of one of the proximate parties; or

(iii) agreement reached through negotiations between the proximate parties or with the intervention of one or more of the contingent parties.

The degree of conflict which occurs is subject to a number of factors, some of which have been outlined. But one of the aspects of dispute resolution which bears consideration is that, the not only will the intensity of the conflict have a significant impact on the way in which the dispute is resolved, it could also have implications for whether it has been resolved finally. Where capitulation is a factor, then the aggrieved (capitulating) party may merely be marking time until the next occasion. The Queensland Government during the SEQEB disputes serves as an example. The elements of conflict will be crucial determinants in the dispute resolution outcome and the immediate and subsequent consequences.

Conclusion

That the law can be a two-edged sword has I believed been clearly demonstrated. It protects and regulates; and it proscribes and punishes. For unions who have in the past gained some comfort from a perceived de facto immunity to penal provisions for direct action, the revival and use of non-industrial laws has been a source of considerable concern. The protection offered by the industrial relations system has become critical and adherence to its determinations and decisions can no longer be
regarded as matter of choice. While I have not argued that the use of torts at common
law and the civil law have become everyday practice, the importance placed on the
disputes that have been discussed by government, peak employer and union bodies,
and the trade union movement cannot be underestimated. The extent to which they
have reduced disputation, increased commitment and adherence to the system is not
possible to quantify. What I do suggest is that they have been integral in creating a
changed industrial environment which is more sensitive to the legal framework and
the political agenda.

I have put forward the proposition also that industrial peace and the absence of
industrial conflict are not necessarily contemporaneous. As explained earlier, there
are practical limitations in the recording of industrial disputation. My analysis has
concentrated mainly on two forms, strikes and bans. The increase in bans since
1983 may be explained in a number of ways. For example, by levels of
unemployment and the Accord. I have suggested that the law and the prevailing
industrial and political climate may also be reasons. But it is also possible that,
these factors may only serve to conceal underlying conflict which cannot be easily
identified or measured. One of its manifestations that I have sought to identify is the
measurement of bans and their relationship to strike activity. It is hardly
surprising that in the industrial and political climate that has evolved during the
Accord period, there have been demonstrable changes in the incidence, character and
causes of industrial conflict. Nor is it surprising that there have been changes in
attitudes and responses to industrial conflict by the proximate and contingent parties.
Industrial peace has a value which is expressed in terms of the low incidence of
strike activity, and does not indicate the actual level of conflict that exists and may be
manifested either through, other forms of direct or indirect action; or by no action at
all.
Working days lost per thousand employees, 1973-87

Source: ABS Catalogue No.6322.0
Appendix 2

Summary of main legal events in chronological order


21 June 1985  Fine of $10,000 plus $2,000 per day was imposed by Bowen CJ for contempt of the court's order granting the interim injunction (1985) 27 AILR para 311; [1985] ATPR 40-580


18 July 1985  Order to sequestrate the AMIEU's property to enforce payment of the fine was made by Bowen CJ (1985) 61 ALR 291.

14 August 1985  Application by Mudginberri, to review decisions made by Commonwealth Department of Primary Industry in respect of provision of meat inspectors to Mudginberri, dismissed by Neaves J of Federal Court (No NT G16 of 1985).

16 August 1985  AMIEU was found by Lockhart J to be in breach of the order of Morling J (1985) 94 FCR 398.

10 September 1985  Full bench of the Federal Court upheld the decision of Morling J granting permanent injunctions (1985) 61 ALR 417.

11 September 1985  Fine of $100,000 on the AMIEU was imposed by Lockhart J for contempt of the permanent injunction plus a sequestration order (1985) 28 AILR para 21.

17 December 1985  Appeal by the AMIEU against the fines and sequestration orders made by Bowen CJ was dismissed by the full bench of the Federal Court (1985) 61 ALR 635.

19 December 1985  Appeal by Mudginberri against order of Neaves J in respect of whether there was an obligation to the Department of Primary Industry to provide meat inspection services. Full Court of Federal Court held there was such an obligation (1985) 68 ALR 613.

21 February 1986  High Court refused leave to appeal from decision of Full Court of Federal Court in relation to decision about provision of meat inspectors to Mudginberri (noted in (1986) 28 AILR para 100).

14 April 1986  Application by Mudginberri to Gray J of the Federal Court to dismiss application by AMIEU that orders of the court had been procured by fraud or false evidence of the Managing Director of Mudginberri, on the basis that the AMIEU's application was frivolous or vexatious. This was dismissed by Gray J (1986) 65 ALR 683.
21 July 1986  Application by AMIEU to challenged the grant of the permanent injunction on the basis that it had been procured by fraud or false evidence, was dismissed by Morling J (No VG36 of 1986)(1986) 28 AILR para 444.


13 August 1986  The High Court of Australia upheld the power of the Federal Court of Australia to fine the AMIEU for contempt of court (1986) 161 CLR 98; 60 ALJR 608; 66 ALR 577.

15 December 1986  Full Bench of the Federal Court of Australia dismissed an appeal by the AMIEU against the decision of Lockhart J to fine the AMIEU $100,000 for breach of its order (NSW G244 of 1985; NSW G294 of 1985) noted (1987) 29 AILR para 203.

16 June 1987  Full Bench of the Federal Court dismissed an appeal by AMIEU against the award damages by Morling J in respect of breach of s 45D of the Trade Practices Act but varying the quantum of damages to $1,458,810 (1987) 74 ALR 7.

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