The Federal Cabinet, State Premiers, and the British Economic Mission, December 1928
THE ROLE OF THE COMMONWEALTH GOVERNMENT IN

INDUSTRIAL RELATIONS, 1923-1929

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Thesis present as requirement for
the degree of Master of Arts
in
the Australian National University
1974
This thesis is my own work and all the sources used in its composition have been acknowledged.
I, Latham, deal in sonorous legal-sounding phrase
In high and mighty cases, long or short,
With noble speeches that go on for days and days,
But you should hear me on the Arbitration Court.

From The Masque of the Boobooks (1958)
ACKNOWLEDGEMENTS

In 1969 I was given the task of sorting the Latham Papers and it was while I was engaged on this work that it occurred to me that 'Latham and arbitration' might be a good topic for a thesis. Later, when I was doing the research and the writing of the thesis, I was always aware that my greatest debt was to the late Sir John Latham, who throughout his life took extraordinary care to record his ideas and decisions and to preserve all his papers.

Apart from the Latham Papers, the thesis is based on records held in several libraries, archives, and employer organizations. I was helped by many people who gave me access to records, drew my attention to other sources, or shared with me their recollections of the events and politicians of the 1920s. In particular, I would like to thank Senator Lionel Murphy, the Commonwealth Attorney-General, Mr. F. Strahan, formerly of the Prime Minister's Department, Mr. W. D. Fanning, formerly of the Attorney-General's Department, Mr. C. R. Hall, formerly of the New South Wales Chamber of Manufactures, Mr. L. F. Fitzhardinge, Dr. Jim Hagan, Dr. Winifred Mitchell, Mr. Robert Paton of the National Library, Miss Doreen Wheeler of the Australian National University Archives, and Mrs Lorraine MacKnight and Miss Jill Brophy of the Commonwealth Archives Office.
My supervisor, Dr. Eric Fry, was always patient, encouraging and helpful and, surprisingly, never seemed to doubt that I would eventually complete the work. I have greatly enjoyed working with him.

Sadly, the subject of the thesis does not seem to appeal to most feminine minds and I am therefore most grateful to Mrs. Noreen Fraser, Miss Noreen Noel and my mother who, at different stages, readily undertook the typing.
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ABBREVIATIONS

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<td>A.N.L.</td>
<td>National Library of Australia</td>
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<td>A.N.U.</td>
<td>Australian National University Archives</td>
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<td>Commonwealth Archives Office</td>
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</tr>
<tr>
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</tr>
<tr>
<td>M.T.I.A.</td>
<td>Metal Trades Industry Association</td>
</tr>
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<td>N.S.W.C.M.</td>
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<td>S.M.H.</td>
<td>Sydney Morning Herald</td>
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<tr>
<td>V.C.M.</td>
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INTRODUCTION

Twenty years before S.M. Bruce became Prime Minister of Australia, the Ministry led by Sir Edmund Barton took the decision to establish a Commonwealth industrial arbitration system. In the following years successive Prime Ministers and Attorneys-General found that they had to devote an enormous amount of time to resolving the difficulties that arose from industrial regulation and industrial conflict. Thus most of the problems faced by the Bruce-Page Ministry in the field of industrial relations were not new and its decisions and actions were influenced by the ideas and the constitutional, legislative and administrative acts of earlier governments. Consequently, it will be necessary in this thesis to make a very general survey of the role of the Commonwealth Government in industrial relations in the period 1903-1923. This survey will be followed by a few comments on the Ministers and public servants who determined the Government's arbitration policy in the early years of Bruce's Prime Ministership. It will then be possible to turn to the main subject of the thesis and study the ways in which the Government, in the years 1923-1929, interpreted and responded to the role that it had inherited in the unhappy and difficult area of industrial relations.
Despite the protracted and bitter interstate strikes in the shipping and pastoral industries of the early 1890s, neither industrial relations in general nor industrial arbitration in particular aroused much interest at the Federal Conventions. Some delegates opposed compulsory arbitration in principle, while others believed that it could safely be left to the States. But two delegates of exceptional stubbornness, Charles Kingston of South Australia and H.B. Higgins of Victoria, were convinced that the new Commonwealth Parliament should be empowered to establish courts of conciliation and arbitration. On three occasions their proposals were easily defeated but in January, 1898, they finally secured a slight majority.\(^1\) As a result, the Constitution of Australia, which came into force in 1901, gave the Commonwealth Parliament power to legislate regarding "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State".\(^2\)

Higgins had argued in 1898 that, by supporting his proposal, the delegates would merely be leaving it open for the Parliament, if it wished, to legislate on the subject of arbitration. The proposal had not been supported by Barton. However, Kingston was a Minister in the Barton Government and he wasted little time in drafting a comprehensive arbitration


\(^2\) Constitution of the Commonwealth of Australia. Section 51 (xxxv).
bill. It was presented to the Federal Parliament by the Attorney-General, Alfred Deakin, in July, 1903. A few weeks later the Labour Party moved that the provisions of the Bill should extend to State railway employees, the motion was carried, and the Bill lapsed. It was re-introduced by Deakin, with some changes, in March, 1904. The rights of the State railway workers and the question of preference of employment to unionists were debated ad nauseam and there were two changes of government before the Bill finally became law in September, 1904. In spite of the political conflict and controversy which it had provoked, its supporters had great expectations. Deakin declared that it marked "the beginning of a new phase of civilization, ....... the establishment of a People's Peace which will transform industrial society just as the King's Peace transformed civil society".¹

The provisions of the 1904 Arbitration Act can be divided into four categories. Firstly, it prohibited all strikes and lockouts and stipulated that a maximum fine of £1,000 could be imposed on both individuals and organizations that engaged in stoppages. In reality, the Commonwealth Parliament only had power to prohibit interstate stoppages.

Secondly, the Act set down the constitution and powers of the Commonwealth Court of Conciliation and Arbitration. The Court was to consist of a President, who would be a Justice

¹ C.P.D. v. 15, 30 July, 1903, p.2864.
of the High Court and who would be appointed for a seven year term. The President could appoint a Deputy President. The Court would be able to compel parties involved in an industrial dispute to appear before it and it could make awards which would be binding on these parties. Awards could subsequently be varied and they could be made common rules, binding on all employers and employees in particular industries. In its awards the Court could specify minimum rates of wages and it could direct that preference of employment be given to members of the claimant organizations, other things being equal. It could impose penalties for contempt or for breaches of awards. It could direct that a dispute be referred to a State authority, but once an award was made it was to prevail over any inconsistent State law or award. The Court would not be bound by the rules of evidence and parties were not to be represented by lawyers.

Thirdly, several sections of the Act dealt with registered organizations. An association of 100 or more employees, or an association of employers who together had at least 100 employees, could be registered with the Court as organizations. They could then submit to the Court any dispute in which they were interested, they could be represented in the hearings, and they could sue for the recovery of dues, levies and fines. Moreover, once they were registered, no rival organization covering the same classes of
employees or employers could be registered. An organization could be deregistered if its rules imposed unreasonable conditions on members, did not permit the admission of new members, or did not provide for regular audits of accounts, and also if it refused to obey an order of the Court.

Finally, the Act encouraged conciliation and industrial agreements. Organizations could make agreements which could be filed in the Court, and if they were broken the Court could then impose penalties. It could also order an agreement to be varied to bring it into conformity with a common rule.

In 1905 Richard O'Connor was appointed President of the Federal Arbitration Court. In 1907 he was succeeded by Higgins, who held office until 1921. For some years the President was underworked, but during World War I he became greatly overworked and there were more and more complaints of long delays before hearings took place. Only one award was handed down in 1906 and only three in 1911, but the number had grown to 8 by 1913 and 32 by 1920. Similarly, only three industrial agreements were filed in the Court in 1908, but there were 109 in 1913 and 183 in 1920. The increasing activity of the Court resulted from the strong support that it received from most unions, especially after Higgins enunciated his ideas on the living wage in the Harvester
Judgement of 1907.\(^1\) The State authorities did not follow the Harvester Judgement, at least for several years,\(^2\) and the Federal Court acquired a favourable reputation among the unions which it retained until the 1920s. Most unions registered in the Federal Court at an early date: the Australian Workers Union in 1905, the Amalgamated Society of Engineers in 1905, the Federated Carters and Drivers Union in 1906, the Federated Seamen's Union in 1906, the Waterside Workers Federation in 1907, the Amalgamated Timber Workers Union in 1907 and the Federated Enginedrivers and Firemen's Association in 1908. By 1914 there were 106 unions registered in the Court, but only one employers' association of any significance.\(^3\)

The debates on the 1904 Arbitration Act had revealed some major differences between the political parties. In particular, Labour parliamentarians clashed with most of

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1. 2 C.A.R. 1. The Harvester Judgement was not concerned with industrial arbitration, but with the provisions of the 1906 Excise Tariff Act. The Act was later held to be unconstitutional. However, in the 1908 Marine Cooks case and subsequent arbitration cases, Higgins reaffirmed the principles set down in the Harvester Judgement and made use of his findings on the cost of living.


3. The Commonwealth Steamship Owners Federation was registered in 1905. Four small employers' organizations had also been registered by 1914. See Report of Proceedings taken under the Conciliation and Arbitration Act 1904-1911 and the Arbitration (Public Service) Act. Melbourne, 1914
their opponents on the questions of preference to unionists and the rights of State railway workers. The divisions on these and other issues, which continued for many years, meant that each time a party came to power it sooner or later sought to amend the Arbitration Act. But an even more fundamental division between parties gradually became apparent. The leaders of the Liberal Party, and later the Nationalist Party, alleged that Australia was becoming a country of strikes and demanded that the Court and, in extreme cases, the Government take action to bring the strikes to an end. Labour leaders minimized the seriousness of industrial unrest and believed that, when large strikes did occur, the Government should mediate but should avoid all "provocative acts". They regarded the Arbitration Court not so much as an arbitral or judicial authority, but rather as a legislative body, which should be able to regulate in detail the conditions of labour in as many industries as possible. Thus, while non-Labour Governments believed that the greatest problem was the failure of the Court to prevent serious strikes, Labour Governments were chiefly concerned with removing the constitutional and statutory limitations on the power of the Court to regulate labour conditions.

The judgements of the High Court relating to the Commonwealth's arbitration power were numerous, complex and often conflicting and created, in Higgins' words, a "Serbonian
bog of technicalities", which restricted and frustrated the work of the Arbitration Court. Labour leaders condemned the conservative High Court. In 1912 the Attorney-General, W.M. Hughes, lamented "The history of our efforts at legislation under Section 51 (xxxv) has been most varied, disastrous and almost pathetic."¹ Yet as the years passed the High Court tended more and more to give a wide interpretation to the arbitration power, with Griffith and Barton fighting a losing battle to limit the functions of the Court to the settlement of genuine interstate stoppages. After 1920 the Isaacs-Higgins approach prevailed, and only Gavan Duffy continued to hold the narrow interpretation of Section 51 (xxxv).

By the 1920s the High Court's interpretations of each of the words "interstate", "industrial" and "disputes" had given the Arbitration Court a much wider jurisdiction than had been intended by most of the delegates at the Federal Conventions. In 1914 the High Court stated that an interstate dispute was simply a dispute that, at a given moment, existed in more than one State. Griffith and Barton were thus overruled in holding that in the building industry, where the questions in dispute must be local and where there was no interstate competition, an interstate dispute was an impossibility.²

1. C.P.D. v. 68, 20 Nov. 1912, p. 5684
2. 18 C.L.R. 255. (1914 Builders' Labourers Case).
The Court was frequently asked to define the word "industrial". It did not consider that the word limited the Arbitration Court's jurisdiction to disputes involving manual employees, and declared that the Court could regulate the conditions of actors, journalists and bank employees. The justices disagreed on two questions. Griffith and Barton held that industrial disputes were disputes between employers and employees in profit-making enterprises. Isaacs and Rich, on the other hand, argued that industrial disputes could take place in all operations where capital and labour were in co-operation and where there was disagreement over the terms and conditions of that co-operation. Thus it did not matter whether the employer was public or private and the dispute did not have to be between employers and employees, but could be between different classes of employees. The latter view triumphed in 1919, when it was decided that an award of the Federal Arbitration Court could extend to the employees of municipal corporations.¹ Related to this was the great question, which had brought down Deakin's Government in 1904, of whether the Court could regulate the conditions of State employees. In 1906 the High Court declared that it did not have this power.² It reversed its decision in the 1920 Engineers Case, and decreed that a State could be a party to a dispute before the Federal Court, provided that the dispute related to the State's industrial rather

¹. 26 C.L.R. 508. (1919 Municipalities Case).
². 4 C.L.R. 488. (1906 Railway Servants Case).
than governmental functions.\textsuperscript{1} This decision brought the employees of the State railways within the jurisdiction of the Federal Court.

The Court was again divided in its interpretation of the word "dispute". Griffith and Barton asserted that there had to be genuine discontent on the part of the membership of the union, and the rejection of a union's log of claims by the employers was not sufficient evidence of a dispute.\textsuperscript{2} But after 1914 this became the minority view and it was accepted that the Court could deal with artificial or "paper disputes". The rejection of a log of claims was proof of a dispute and it was not necessary to have a disturbance of any kind. The change in the High Court's position was partly due to a change in its attitude towards unions. In 1917 Higgins stated that the union was not merely the delegate of its members, but was a party principal. It was therefore sufficient if a union was in dispute with an employer, even if individual unionists had no grievances.\textsuperscript{3} Extending this argument, it was later held that a union could have a dispute with an employer who employed non-unionists and consequently the Court could regulate the conditions of non-unionists as well as unionists.\textsuperscript{4}

\begin{itemize}
\item 1. 28 \textit{C.L.R.} 129. (1920 Engineers Case).
\item 2. 16 \textit{C.L.R.} 591. (1912 Merchant Service Guild Case), 18 \textit{C.L.R.} 273. (Holyman's Case).
\item 3. 23 \textit{C.L.R.} 22. (1917 Pastoralists Case).
\item 4. 35 \textit{C.L.R.} 528. (1925 Burwood Cinema Case).
\end{itemize}
While many of the High Court's decisions extended the jurisdiction of the Arbitration Court, there were two cases which resulted in a considerable reduction of its powers. In Whybrow's case (1910)\(^1\) the Court declared that the Commonwealth's arbitral power was a judicial, not a legislative, power. The awards of the Federal Court could only apply to the parties in dispute and they could not include matters which had not been among the claims and counter-claims of the parties. The Court could therefore not make a common rule and unions were forced to devote time and money to submitting their claims to as many employers as they could identify. Moreover, they had to make their claims as comprehensive and as ambitious as possible, as if the Court was later to vary the award it would only grant conditions which had been among the original demands. Another important consequence of Whybrow's Case concerned the relations between Federal and State tribunals. The awards of the Federal Court could no longer be classed as laws, which would prevail over State laws or awards. Instead, the Court held that where there was conflict the State laws would prevail, but there was no conflict if it was possible to obey both Federal and State awards. This ingenious decision encouraged unions to seek awards from both the Federal Court and State authorities, as employers would have to obey whichever award gave the highest wages, shortest working week and best conditions.

\(^1\) 10 C.L.R. 266.
In 1918 the High Court, in Alexander's Case, stated that an arbitrator could only exercise judicial power if he held office for life. As the President of the Arbitration Court was appointed for seven year terms, the responsibility of imposing penalties for breaches or non-observance of the Arbitration Act or of the Court's awards and orders had to be left to other courts and magistrates. This decision greatly weakened the authority of the Federal Arbitration Court.

The second Fisher Labour Government (1910-13) was particularly concerned about the limited powers of the Arbitration Court. A growing number of unions was turning to Federal arbitration, yet at the same time the High Court seemed determined to reduce the Arbitration Court to ineffectiveness. On five occasions Hughes introduced Bills to amend the Arbitration Act. The legislation was designed to prevent appeals to the High Court after awards had been made, to enable registered organizations to be associated with political parties, to open the way for craft awards as well as industrial awards, and to give the Court jurisdiction over Commonwealth public servants. Four of the Bills were passed.

The Constitution remained the great obstacle for Hughes and his colleagues and in 1911 and 1913 referenda were held in the hope of amending Section 51 (xxxv). There were

1. 25 C.L.R. 434.
differences between the two proposed amendments, but basically the Government was seeking power for the Commonwealth over labour and employment in all industries and occupations, wages, and the prevention and settlement of industrial disputes. Both amendments referred specifically to disputes in State railways. The proposals were opposed by the Liberal Party and a section of the Labour Party on the grounds that they would drastically reduce the powers of the State Governments. Although they were both defeated, there was a much higher "yes" vote in 1913 than in 1911.

The leaders of the Liberal Party agreed that it was unfortunate that the Court could not declare a common rule. However, they insisted that it was not the Constitution that was making arbitration ineffective. Littleton Groom attacked Labour politicians who "in seeking to extend the powers of the Court beyond the intention of the Constitution find themselves in hopeless difficulties and then accuse the High Court of technicalities". Instead, the Liberals raised the spectre of union militancy and growing industrial unrest. In 1914 Joseph Cook asserted "In this decade strikes have multiplied, tension has increased, class feeling has become more acute.

3. C.P.D. v. 75, 18 Nov. 1914, p. 724.
Every one of the results predicted for the establishment of the Arbitration Court has been falsified."\(^1\)

Cook, like many of his colleagues, was most inconsistent in his attitude to industrial unrest. He believed that the Federal Court should only have jurisdiction over interstate disputes, yet he blamed the Court for not reducing the number of local strikes. There were one or two genuine interstate disputes in the decade before 1914, but all the great stoppages were confined to one State and could not be dealt with by the Federal Court. The Commonwealth Government was not involved in the miners' strikes of 1909 and 1914, the waterside workers' strikes of 1908 and 1911 or the Brisbane tramway lockout of 1912. Hughes, who was an outstanding negotiator, played an important part in some of these stoppages, but in his capacity as a union official, not as a Commonwealth Minister.\(^2\) In 1911 he hinted that he would be prepared to institute proceedings against his own union, but until the strike extended to a second State he had to stand by helplessly.\(^3\)

After 1914 the position changed and the Commonwealth Government, armed with emergency powers, was directly involved in the great strikes of 1916-20. In November, 1916, the New

\(^1\) C.P.D. V. 75, 26 Nov., 1914, p.1136.
South Wales coalminers stopped work and within a few days hundreds of factories were closed and 250,000 men were idle. Hughes, who was by then both Prime Minister and Attorney-General, acted swiftly. He commandeered all large coal supplies, imposed severe gas and electricity restrictions, presided at compulsory conferences, and set up a tribunal under Justice Edmunds to hear the miners' claims. The strike ended after a month, with Edmunds conceding most of the men's demands, thereby provoking the conservative press to denounce Hughes' intervention. In the great general strike of August, 1917, which extended to every State, Hughes took a much stronger stand against the unions. He consistently argued that the Government was not concerned with the merits of the original dispute, but with the challenge to constitutional government at a time of crisis. He took over control of the whole of the coal stocks and imposed coal restrictions. Regulations were issued establishing a National Service Bureau, prohibiting interference with the loading of ships, and empowering the Government to repeal the preference clauses in the awards of the striking unions. In addition, as Attorney-General, Hughes applied to the Arbitration Court for the deregistration of the Waterside Workers

1. "Prussianism is triumphant. The men have obtained by force the satisfaction of their demands .... The gentle process of passing it on is to be brought into play once more." Argus. 1 Dec. 1916, p.6.

Federation. The application was dismissed but the Government's measures, especially the protection which it gave to the thousands of volunteers, ensured that the strike would collapse. The War Precautions Act remained in force until 1920, and this enabled the Government to intervene effectively in the maritime strikes of 1919-20. In the 1919 seamen's strike Watt and Millen again imposed coal restrictions, summoned compulsory conferences and negotiated directly with a trade union delegation. Moreover, the Secretary of the Seamen's Union was twice prosecuted for offences under the Arbitration Act and he was sentenced to three months' imprisonment. After three months the Government's offer was accepted. Finally, in the marine engineers' strike of 1919-20 Hughes negotiated with both sides, froze the unions' funds and, after the engineers gave in, set up a tribunal under Sir John Monash to hear their claims.

By 1920 the future of the arbitration system was in doubt. By his repeated interventions Hughes had drawn attention to the inability of the Court to settle major stoppages and had established a pattern of Government response, involving Ministerial negotiations, drastic regulations restricting union activities, prosecutions and special tribunals or conferences. But this response required the use of wartime powers and in 1919 Hughes realized that he could not postpone much longer the repeal of the War Precautions Act. He therefore sought an amendment of the
Constitution once again. It was proposed that the Commonwealth should have power to deal with "industrial matters", including labour, employment and unemployment, the terms and conditions of labour in any industry or occupation, and industrial disputes. The Government would only be granted the additional powers for three years, by which time a Constitutional Convention would be held. Despite qualified Labour Party support, the proposal was rejected at a referendum in October, 1919.¹

Hughes was forced to turn once again to legislation. In 1920 three important measures passed through the Federal Parliament. The Arbitration (Public Service) Act empowered the Government to appoint a Public Service Arbitrator who would deal with the plaints of the Commonwealth public service unions. The Act was intended to relieve some of the congestion in the Arbitration Court and was part of a general attempt to introduce an element of expertise into industrial regulation. The 1920 Arbitration Act provided for the appointment of an unspecified number of Deputy Presidents. Two other sections were strenuously opposed by the Labour Party. It extended the definition of "strike" and "lockout" to include an unreasonable refusal to accept or give work. Secondly, in future only the Full Court, and not just the President, could increase standard hours or reduce them to less than 48 a week.

¹ Knowles. _op.cit._ pp.257-60
The 1920 Industrial Peace Act had first been drafted in 1917.¹ Hughes believed that many of the problems associated with arbitration arose from Higgins' willingness to regulate the minutiae of industrial conditions, even though he had no experience of the industry concerned. He proposed that a Commonwealth Industrial Council, on which employers and employees would be represented, should make general rulings on the basic wage, standard hours and the cost of living, while Industrial Boards regulated each industry. The disappearance of the Arbitration Court was implicit in this proposal. However, the 1920 Act merely provided for Commonwealth and local tribunals for particular industries to supplement the work of the Court. Some of the provisions of the Act were almost certainly unconstitutional, but they were never challenged. Four tribunals were set up under the Industrial Peace Act in 1920-21 and they regulated conditions in the coal industry throughout the 1920s.² Hughes quickly


2. The Coal Industry Special Tribunal (set up in Sept. 1920) regulated the conditions of the miners, and the other tribunals dealt with the enginedrivers and firemen, the engineers, and the workers in the coke industry. A Mechanics (Coal Industry) Special Tribunal was set up in Feb. 1927. Memorandum by Garran, 29 Oct. 1929. (C.A.O. A452 29/3892). All the special tribunals were headed by Charles Hibble (1866-1932), a Newcastle lawyer who had been involved in arbitration in the coal industry since 1911.
lost enthusiasm for the scheme and refused to grant a tribunal to the seamen. It was obvious that unions would treat the Arbitration Court with contempt if they knew that its awards could be superseded by those of a special tribunal.

The Industrial Peace Act was one episode in the Prime Minister's long public feud with the President of the Arbitration Court. The self-righteous Higgins and the volatile Hughes were each prepared to denounce the other in articles or press statements, in the Court or in Parliament. Hughes was infuriated by Higgins' refusal to deregister the Waterside Workers Federation in 1917 and by his apparent reluctance to condemn union militancy. He may also have felt, especially in 1920-21, that Higgins' generous awards could ruin the national economy. Ironically, Higgins' criticisms of Hughes were in a similar vein. He argued, with a good deal of evidence, that Hughes had furthered the cause of union militancy by intervening in strikes. In particular, he attacked the practice of appointing special tribunals. "A special tribunal is a device whereby the Government tries to save face when yielding to a strike. It secures present ease by encouraging further and far greater trouble. The Government will induce stoppages if


2. Hughes openly expressed his disgust in Parliament: "I have not read the whole of Justice Higgins' judgement being too overcome by what I did read to proceed any further. Should the last part of it be as bad as the first, I may give the House the chance to consider the desirability of dispensing with his services." C.P.D. v. 83, 26 Sept. 1917, p.2735
it holds out the possibility of a second tribunal to supple-
ment and supersede the decisions of the legitimate tribunal.”

In March, 1921, Higgins resigned as President of the Court.

Higgins' successor was Charles Powers. Aged 68, Powers had been the first Commonwealth Crown Solicitor, a Justice of the High Court since 1912, and Deputy President of the Arbitration Court from 1913 to 1920. In June, 1922, Hughes appointed as Deputy Presidents Sir John Quick, a constitutional authority and former politician, and Noel Webb, Deputy President of the South Australian Industrial Court. Like Higgins, the three men were all strong supporters of Federal arbitration and they were regarded quite favourably by the unions. But they did not have Higgins' strength of character, they showed considerable ineptitude in dealing with militant unions, and their almost pathetic preoccupation with the dignity of their office only succeeded in lessening the authority of the Court.

1. H.B. Higgins. A new province for law and order. London, 1922. p.120.
entarian 1880-89, active in Federation movement, Member of the House of Representatives 1901-13, author of many legal works including The annotated Constitution of the Common-
3. The Solicitor-General considered that Powers and his deputies were very childish and at times relations between the Court and the Attorney-General's Department were very strained. Garran to C. Powers, 7 Dec., 1922, Powers to Garran, 11 Dec., 1922. (C.A.O. A432 29/3413); Garran to L. Groom, 14 Dec. 1922. (A.N.L. MS 236/2/841).
Two years after Higgins' resignation his old adversary fell from power. As a result of the general election of December, 1922, the Country Party, led by Dr. Earle Page, held the balance of power. The Party would not support Hughes, and in February, 1923, he resigned. A coalition government was formed by his Treasurer, S.M. Bruce.

Every generalization about the men in Bruce's Cabinet must be qualified. Most of them were relatively young and inexperienced, but there were exceptions such as George Pearce, Littleton Groom and Austen Chapman. The Ministers were not all "hard-faced businessmen",¹ for they included several farmers, a few lawyers, two doctors, a journalist and three skilled tradesmen. They were mostly rather shadowy figures, with more aptitude for administration than for policy-making, but the two leaders, together with H.S. Pratten and P.G. Stewart, were men of strong characters with definite ideas on a wide range of subjects. On most matters the Cabinet adopted a conservative stance, although Stewart held some radical views on questions affecting rural development.² After his departure in 1924 the Cabinet was remarkably united and the occasional policy and personal differences were mostly kept suppressed.

The unity and conservatism of the Cabinet were evident in its approach to industrial arbitration. The

². For a study of the increasing conservatism of the Country Party after it had attained office, see B.D. Graham. The formation of the Australian country parties. Canberra, 1966.
criticisms of Country Party Ministers gradually died away and arbitration never caused any divisions along party lines within the Cabinet. With the exception of Pratten, Pearce and Groom, none of the Ministers had any experience of the working of arbitration or the weaknesses of arbitration legislation, and most of them never acquired much interest in the subject. Their positive contributions to industrial legislation and policy were negligible. But they were all concerned about industrial unrest, and their stubbornly conservative attitude towards the question of strike penalties eventually frustrated the attempts of the Attorney-General to cope with the great stoppages of 1927-29.

The Cabinet was dominated by its youngest member. In 1923 Bruce was 59 and had been in Parliament for five years, the last two as Treasurer. With a background of wealth and privilege, his life had been a series of successes, whether in school, sport, law, business or politics. Lacking warmth and hating familiarity, he had few friends but many admirers. Good-looking, urbane, authoritative, his cool and self-disparaging manner and his genuine indifference to criticism tended to conceal his supreme self-confidence and his political astuteness and toughness. Bruce had spent most of his adult life in England and he was extremely ignorant about Australian affairs. However, he had an exceptionally good memory and a

barrister's ability to take in rapidly the main points in a brief, so that he could speak with complete assurance on almost any topic. In 1918 he had known little about arbitration, but by 1920 he was addressing Parliament on the subject, and even at this stage he managed to avoid the hackneyed phrases of the employers. In fact, despite his Flinders Lane background, his relations with employers were sometimes strained and he was always more courteous to union leaders. Employers might find Bruce arrogant and insulting, unionists might be irritated by his English accent and aloof manner, but both sides admired the ease with which he distinguished the essential questions at issue in an industrial dispute.

Within Bruce's own department there was no-one who could give him expert advice on industrial matters. The Prime Minister's Department was mainly staffed by poorly-educated clerks who handled its extensive correspondence, ensuring that letters were directed to the most appropriate department. The Department was headed by Percy Deane and Frank Strahan, both of whom were young men of considerable ability, but they were treated as personal servants by Bruce, who did not expect them to advise him on major policy questions and who was even reluctant to allow them to draft important letters. In any case, the suave and gregarious Deane was more interested in

1. C.P.D. v.92, 5 Aug. 1920, p.3329; v.93, 2 Sept. 1920, p.4138
political intrigue than in policy-making. He detested Bruce.¹

Bruce's chief adviser within the Cabinet on matters relating to industrial arbitration was the Attorney-General. Littleton Groom, who in 1923 was aged 56, was a kindly, mild-mannered, religious and hard-working man. He had represented the Darling Downs electorate since 1901, had first become a Minister in 1905, and had served as Attorney-General under Deakin and Hughes.² But Groom was a mediocre Attorney-General and did not carry much authority in Cabinet, Parliament or in his Department. He was not an experienced barrister, he contributed little to the drafting of legislation, and he lacked the legal knowledge and the confidence necessary to give immediate opinions to his colleagues and subordinates. His extreme caution irritated both Ministers and the press, which referred to him as "little Miss Groom" or "the Ministerial jellyfish".³ Groom had participated in all the debates on the Arbitration Act and he had a reasonable knowledge of the inadequacies of arbitration law. He had occasionally met deputations of employers and unionists, but he had never mediated in a major industrial stoppage. He was always happy to leave such a difficult task to the Prime Minister.

1. Conversation with Mr. F. Strahan, 30 July, 1972.
The weaknesses of the Attorney-General were to some extent balanced by the expertise of his principal advisers, who were men of much greater ability, education and experience than the senior officers of other departments. Yet, although the staff of the Attorney-General's Department had increased considerably during the War, it was greatly overworked and there was insufficient specialization. There were only about 12 men in the Central Office, and while some of them were experts in certain branches of the law, they were all expected to engage in drafting, advising, preparation for litigation and administrative work. The tardiness of other departments in sending in their instructions regarding proposed legislation was a major cause of departmental inefficiency. "Again and again members of the staff are badly overworked during the Parliamentary sessions and legislation is produced and drafted hurriedly under conditions of the greatest pressure. In the meantime, administrative work falls into arrears, and correspondence sometimes has to lie for a considerable period without answer."\(^1\) In addition, officers found difficulty in keeping abreast of developments in the law, and it was hardly surprising that their legislation was frequently challenged in the High Court.

Officers in the Central Office, Crown Solicitor's Office and Investigation Branch of the Department were often asked to report on alleged breaches of the Arbitration Act.

However, none of these men were experts in arbitration law, which was still a very new field. The Secretary of the Department referred all questions on arbitration law to Alexander Stewart, the Industrial Registrar. Stewart, a Ballarat lawyer who had held this position since 1907, had been closely associated with Higgins and was an ardent defender of Federal arbitration. Conscious of his expertise, he had no qualms in sending long submissions to the Minister suggesting important changes in policy and legislation. Stewart was considered to be hostile to certain employers. As an officer of the Arbitration Court he worked under the directions of the President rather than the Department.

Unlike Stewart, the three men who headed the Attorney-General's Department believed strongly that arbitration policy was a question for Cabinet, not for public servants. Nevertheless, the borderline between policy and administration is a vague one, and these men had some influence on Government

1. Alexander Stewart (1872-1929). The first Industrial Registrar had been G.H. Castle, who was Commonwealth Crown Solicitor from 1913 to 1926.
3. Victorian Chamber of Manufactures Gazette. 27 Nov. 1928; L. Smith, Secretary, Central Council of Employers of Australia, to Latham, 23 April, 1928; W.R. Schwilk, Secretary, Employers' Federation of N.S.W., to Latham, 26 March, 1929. (C.A.O. A432 29/1231).
policy-making. The Secretary of the Department was Sir Robert Garran, who was also Parliamentary Draftsman and Solicitor-General. In the history of the Commonwealth no public servant has ever attained the fame and prestige of Garran. A graduate of Sydney University, he had been Secretary of the Drafting Committee at the Federal Conventions of 1897-98 and had written the authoritative work on the Australian Constitution. He had become the first Commonwealth public servant in 1901 and headed the Attorney-General's Department for 31 years. Throughout this period he was directly concerned with all major legislation and litigation involving the Commonwealth Government, and several Prime Ministers, including both Hughes and Bruce, treated him as their chief adviser on a wide range of policy matters. Erudite, cultured, with an unassuming manner and a dry humour, Garran was held in awe by parliamentarians, public servants and the press. In 1923 he was 56 and he was increasingly concentrating on major policies and leaving the routine administration of the Department to


2. In collaboration with Quick. See p.19 footnote 2.

3. Garran had an outstanding knowledge of German literature. He lectured on the work of Heine (Age, 30 April, 1925, p.13) and his translations of the songs of Schubert and Schumann were published in 1946.
his deputy and heir apparent, George Knowles. Knowles, 41, was educated at Melbourne University and had risen rapidly through the Department since joining it in 1907. A prodigious worker and outstanding draftsman, he was popular with his subordinates, although it was sometimes felt that he should delegate more responsibilities to them. The third officer who worked closely with the Attorney-General was Martin Boniwell, the Chief Clerk. Most of the arbitration legislation of the 1920s was drafted by either Knowles or Boniwell. In view of their backgrounds, their training and the positions that they held, it was inevitable that Garran, Knowles and Boniwell should adopt a conservative and legalistic approach to industrial relations. Their contacts with unionists were limited and they were not concerned with flexibility, compromise or the "psychology of unionists". Instead, they regarded it as their duty to accept the stated objectives of the Arbitration Act, to identify weaknesses in the Act, to find evidence of breaches of the law, and to ensure that penalties for such breaches were enforced.

Bruce and Groom and their advisers inherited from Hughes many problems and doubts arising from the contro-

1. Conversation with Mr. W.D. Fanning, 5 Dec. 1972. Sir George S. Knowles (1882-1947) succeeded Garran in 1931 and held the three offices of Secretary, Parliamentary Draftsman and Solicitor-General until 1946. He was then appointed the first Australian High Commissioner to South Africa.

2. Martin Boniwell (1883-1967) joined the Department in 1912 and became Chief Clerk in 1921. He was later to be the Commonwealth Public Service Arbitrator 1939-46, and Parliamentary Draftsman 1946-49.
versial role of the Commonwealth Government in industrial relations. In particular, they had to offer some answers to the questions that had become acute between 1914 and 1920. Should the Federal Arbitration Court be retained? Should it be replaced by a system of wages boards or special tribunals? Should arbitration be left entirely to the States? Would it be preferable to return to a system of collective bargaining? If the Court was retained, should the Government again seek to extend its constitutional powers? If another referendum was pointless, how was the Government to deal with the problems of duplication and overlapping jurisdictions and the Court's inability to declare a common rule or to impose penalties? How could legislation overcome the delays and congestion in the Court, the serious economic consequences of some of its awards, and the continuance of industrial stoppages in defiance of both the Act and of awards? In major disputes, should the Government remain aloof, leaving the settlement to the Court or the parties involved, or should it intervene by summoning conferences, putting forward proposals, protecting strike breakers and prosecuting strikers? Throughout its seven years in office the Bruce-Page Government was never able to avoid these questions for long.

The questions can be divided into two classes. Many of them relate to the structure of industrial relations, to the need to create a system that would remove social
injustice and would settle industrial disputes both quickly and permanently. The other questions are concerned with the substance of industrial relations, that is, with the causes and results of strikes and lockouts and the action that the Government could take to end the stoppages. Despite their inter-connection, the two classes of questions will generally be considered separately in this thesis. In Chapters 1, 3, 4 and 6 a study will be made of the attempts of the Bruce-Page Government to change the constitutional and legislative basis of the Commonwealth industrial arbitration system. Chapters 2 and 5 will be concerned with the intervention of the Government in the great disputes of 1924-25 and 1927-29 and with the effect of these events on the Government's whole outlook on industrial relations.
LITTLETON GROOM AND THE STRUCTURE OF INDUSTRIAL ARBITRATION

In the decade that followed the First World War conservative individuals and organizations in many countries were extremely critical of the wide scope of governmental activities. Wartime governments had been forced to regulate the lives of their citizens to an unprecedented degree and it was not surprising that, with peace, there was an insistent demand that they relinquish the extensive powers and controls that they had assumed since 1914. Most governments found it necessary, however reluctantly, to make some concessions to this demand. In Britain, for example, the Baldwin Government, urged on by both employers and trade unionists, withdrew almost completely from the field of industrial regulation, a field in which the Lloyd George Government had been extremely active since the early years of the War.\(^1\)

In Australia there was a similar questioning of the functions of government by men of a conservative disposition. The Prime Minister, W.M. Hughes, was increasingly criticised by employers, manufacturers, importers and pastoralists on account of his "socialistic" enthusiasm for the State enterprises which had been set up during the War. Such criticism

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contributed to his downfall in February, 1923. The leaders of the new government, S.M. Bruce and Earle Page, despite their dissimilar characters, both felt the need to rationalize, to coordinate and to tidy up after the excesses of the Hughes regime. They believed that priority should be given to stabilising the relationship between the Commonwealth and the States, to tackling vigorously the question of populating and developing Australia and to abandoning those activities that were not the proper concern of the Commonwealth Government. The Bruce-Page Government could not be accused of dilatoriness. Commonwealth-State relations and national development were examined in detail at the 1923 Premiers' Conference, with the Commonwealth Government committing itself to an active role in many spheres of economic life. On the other hand, the Government was almost as quick to make important changes in the management of the Commonwealth Bank and the Commonwealth Shipping Line and to arrange the sale of the Williamstown Dockyards and the Geelong Woollen Mills, suggesting that in some respects it had a more laissez-faire conception of government. 1

The Commonwealth Government had accepted a role in industrial relations several years before it became involved in banking, shipping or manufacturing. But its efforts to

promote conciliation and arbitration were no less controversial and it was inevitable that industrial relations should loom large in the plans of the new Government. At the 1922 elections Hughes had committed his Government to maintaining the Commonwealth Arbitration Court, but after February 1923 Bruce was free to consider the question of whether the Commonwealth should continue to exercise the conciliation and arbitration power granted to it by the Constitution. Critics of Federal arbitration were quick to see this and were determined to force Bruce to commit himself immediately, one way or the other, on this fundamental question.

The most formidable opponent of Federal arbitration throughout the life of the Bruce-Page Government was Thomas Bavin. Bavin had had a varied career as a barrister, professor, secretary to a Prime Minister, journalist, conscriptionist and political maverick. In 1923, at the age of 49, he was New South Wales Attorney-General and the strong man in the Nationalist Government. Bavin was critical of the whole idea of industrial arbitration: it was a negative system which prevented injustice and hardship and protected the mediocre man, but did not promote efficiency or recognize merit. Judges were unqualified to deal with the minute details of industry, which were better left to employers and employees.

He opposed the extension of the arbitration system to cover the public service and semi-professional occupations, but recognized that the complete abolition of the system did not come within the realm of practical politics. It was consequently the Federal arbitration system, rather than the general principle of arbitration, that Bavin continually attacked. He claimed that the Federal arbitration power had been an almost unmitigated disaster for Australian industries. The framers of the Constitution had intended it to be a reserve power, to be used only when the States could not effectively deal with a dispute. Instead, 95 per cent of the disputes dealt with by the Federal Court were not genuine interstate disputes at all. Industrial peace could not be promoted by a system that tended to make every dispute extend throughout Australia, that organized employers and wage-earners into huge, hostile bodies, and that made more and more difficult any close, personal association between employer and employee. Granting the Commonwealth complete industrial powers would mean the end of the Federal system in Australia and would prevent the Commonwealth Parliament from concentrating on national issues, such as defence and foreign relations. The only remedy to a chaotic situation was to confine the work of the Commonwealth Court to the shipping and shearing industries, with the States having full powers over industrial relations in all other
The Country Party platform called for the replacement of arbitration courts by conciliatory committees without compulsory powers. Bavin and other opponents of Federal arbitration therefore looked to Page as the man most likely to bring to an end, or at least to limit, the activities of the Federal Court. Even before Hughes had resigned, Bavin had visited Melbourne and had a long discussion with Page about arbitration, in case questions of policy were to arise during Page's negotiations with Bruce and the other Nationalists. In the next month he journeyed to Brisbane and sought the support of the Labour Premier, E.G. Theodore. In early March, 1923, Bavin arranged a conference with the Attorneys-General of Victoria, South Australia and Western Australia, each of whom shared his hostility towards Federal arbitration. After two days' talks they presented to Bruce proposals that they hoped would be accepted at the forthcoming Premiers' Conference.

3. Ibid. 3 March 1923, p.13.
4. Ibid. 8 March 1923, p.9.
The State Attorneys-General stated that their objective was to expedite the settlement of industrial disputes, to prevent the overlapping of State and Federal jurisdictions and to protect responsible government in the States by exempting State instrumentalities from the jurisdiction of Federal tribunals. They argued that Federal control was necessary only in industries in which it was usual for employees to migrate from one State to another. An amendment of the Constitution would ultimately be needed to limit the jurisdiction of the Federal Court to these industries. In the meantime they urged that the Commonwealth Arbitration Act and the Industrial Peace Act be amended to limit their application to disputes in industries in which employees travelled from one State to another, and also to exclude explicitly industries carried on by State governments or by State statutory bodies.  

The Commonwealth Attorney-General's Department drafted a reply to the memorandum, which was approved by Bruce in April, 1923. The reply stated that the Commonwealth Government was in full sympathy with the objects of the four State Attorneys-General. The main difficulties were the overlapping of Commonwealth and State awards, differing awards of State tribunals in industries in which

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there was interstate competition, the limitation of the Federal power to the methods of conciliation and arbitration and the absence of any machinery for adjusting and harmonizing inequalities between different awards. The Government agreed that the only effective and permanent solution was an amendment of the Constitution. But it asserted bluntly that full industrial powers to the States was out of the question and ultimately it might be necessary to give full control to the Commonwealth. In the meantime it conceded that it would be more satisfactory to divide industries, rather than industrial disputes, into Federal or State categories. However, the Commonwealth Government could not accept the contention of the States that the sole criterion of whether an industry was federal or not depended on the mobility of its employees. The conditions under which an industry could be better controlled on a Federal rather than a State basis were continually changing and no permanent definition of Federal industries could be formulated. The Government proposed that a court or commission be appointed, composed of both Federal and State representatives, which would list from time to time the Federal industries. In addition, the Court could determine the basic wage and standard hours for the whole of Australia and hear appeals, instituted by either the parties to awards or by governments, whenever coordination of awards was
thought to be necessary. Until the list of Federal industries was drawn up, it was essential that the Commonwealth Arbitration Court should retain its existing powers.¹

The Commonwealth Government's proposal was announced publicly by Bruce in early May, 1923, and was submitted to the State Attorneys-General at the Premiers' Conference later that month. The five Nationalist Attorneys-General adhered to their earlier memorandum and for two days there was a complete deadlock. Finally, the State representatives reluctantly accepted what was basically the Commonwealth proposal. The Conference agreed that, subject to agreement on the list of Federal industries and the principles on which revisions of the list were to be made, the Commonwealth Government should introduce legislation to amend the Constitution. The amendments would (i) incorporate the list of Federal industries and the principles of revision, (ii) provide for the establishment of a tribunal representing the Commonwealth and the States which would revise the list at intervals of not less than five years, (iii) give the Commonwealth Parliament legislative power over industrial conditions in Federal industries, (iv) give the composite tribunal jurisdiction to review determinations of State

authorities, or to make an order where there was no State
industrial authority, in cases where an industry in one
State was prejudiced by interstate competition as a result
of a State determination, (v) provide for the exclusion of
State instrumentalities, including local authorities, from
the industrial power of the Commonwealth.¹ Littleton
Groom, the Commonwealth Attorney-General, promised to sub-
mit a list of Federal industries to the States within a
few months.²

The State representatives were generally un-
enthusiastic about the decision of the Premiers' Conference.
Bavin said he would support an amendment of the Constitution,
as it would remove the greatest evil: the overlapping of
Federal and State jurisdictions. But he voiced a common
complaint in regretting that another tribunal was to be
created, increasing the scope for unnecessary litigation.³
The Metal Trades Employers Association denounced the
proposals, declaring that it would rather submit to all
industries coming within the Federal jurisdiction than con-
tinue with both Federal and State tribunals.⁴

3. Ibid.
4. H.A. Smedley, Secretary, Metal Trades Employers
   Association of N.S.W. to Groom, 1 June 1923. (M.T.I.A.)
The proposals of the 1923 Premiers' Conference came to nothing. The New South Wales Government took steps to draw up a list of Federal industries, but no list was submitted to the Commonwealth Government by any of the State Governments. In the first half of 1924 Bavin again arranged a number of conferences with State Ministers but by June, 1924, he was asserting, somewhat bitterly, that only the Federal Government could remedy what was an intolerable situation. The advent to power of Labour Governments in South Australia, Western Australia and Tasmania in the course of 1924 probably brought to an end his proselytizing work on behalf of the 1923 proposals. The Labour Party was committed to full Commonwealth control over industrial matters, so that it was unlikely that the four Labour Attorneys-General would agree with Bavin on a list of Federal industries.

Groom made some rough lists of Federal and State industries, but he did not present them to Cabinet. He had always been a strong advocate of Federal arbitration and his lists would have horrified Bavin, Sir Arthur Robinson and the other Nationalist Attorneys-General. In listing his Federal industries he wrote that they should include

2. Ibid. 18 June, 1924, p.13.
any industry that was affected by interstate trade, a definition that did not leave very much to the States. Apart from the shipping and pastoral industries he considered that ship-building, iron and steel manufacture, engineering, saw mills, flour mills, manufactured foods, meat works, the boot trade, felt-hatting, banks and insurance, journalism and the coal, glass, gas, rubber, tanning and theatrical industries should come within Federal jurisdiction.\(^1\)

The failure of the Commonwealth Government to decide upon and submit to the States a list of Federal industries appears to have been due to two factors. The Cabinet was divided over the whole question. Groom favoured extensive Commonwealth industrial powers and more than once he raised the possibility of the States voluntarily granting to the Commonwealth full powers.\(^2\) Yet in 1924 Page was stressing to Bruce that the unanimous view of their supporters, which he shared, was that the States should handle arbitration.\(^3\) It is probable that other Country Party Ministers, particularly P.G. Stewart, had the same belief. Secondly, it is doubtful if the Government was able to devote the necessary time to examining in detail a proposal that entailed a referendum and that was full of political risks.

1. List of federal industries. (A.N.L. MS 236/2/7291).
Bruce was absent from Australia at the Imperial Conference from September, 1923, to March, 1924, and four months later Groom left to attend the League of Nations Assembly. Before his departure Groom had been preoccupied, not with arbitration, but with the 1924 Bankruptcy Bill, while Bruce openly confessed that so far he had found the arbitration question almost insoluble.¹

Thus after nearly two years in office the Bruce-Page Government had completely failed to make a decision about the future of the Federal arbitration system. All the same, the events of 1923 were of some significance. The Nationalist Party organization, the Country Party Ministers and all employer organizations favoured the withdrawal of the Commonwealth from almost the whole field of industrial relations. Yet Bruce, who claimed to be opposed to centralism and who had not been involved in the establishment of the Federal arbitration system, showed no sympathy whatsoever for this view and refused even to discuss it. He was not prepared to go to the other extreme and advocate complete Federal control of arbitration. Such a proposal would have caused an uproar in his Party and antagonized most of the interest groups that supported it. Nevertheless, by summarily rejecting the idea of State control of arbitration, Bruce had committed himself to the retention and

¹ Notes of deputation to Prime Minister from Central Council of Employers of Australia, 17 June 1924. (C.A.O. A458 B502/1).
possibly the strengthening of Federal arbitration, at least for several years. Any other course would leave him open to the accusation that he had surrendered to pressure from Bavin, or Page, or the employers.

The employers increasingly became disgruntled over the inactivity of both the Commonwealth and State Governments following the 1923 Premiers' Conference. At a public meeting in Sydney in June 1924, leading businessmen stated that Bruce's sympathy and fine words were not enough, and in the next few months such bodies as the Graziers' Association of New South Wales and the New South Wales and South Australian Employers' Federation passed resolutions deploring the Federal Government's indecision in its approach to the greatest problem facing Australian industry. This impatience with the Federal Government was shared by many other organizations, for all employer bodies were united in their attitude to Federal arbitration. At almost every conference of such interstate organizations as the Central Council of Employers of Australia, the Associated Chambers of Manufacturers, the Associated Chambers of Commerce, the Metal Trades Employers Association and the Graziers' Federal Council resolutions


2. J. Allen, Secretary, Graziers' Association of N.S.W., to Bruce, 19 Sept. 1924. (C.A.O. A458 B502/1); resolutions moved at 12th annual conference of Central Council of Employers of Australia, Oct. 1924. (A.C.E.F.).
were passed condemning the overlapping of Federal and State arbitration and demanding that the Federal jurisdiction be limited to shipping and, perhaps, to shearing. Several deputations expressed these views to Bruce in 1924 and he received numerous letters on the subject, all substantially the same. No one could doubt the intensity of the employers' opposition to the conflicting arbitration systems or their conviction that State industrial regulation was preferable to Federal control. But when they came to amplify their statements, whether at conferences or during deputations to Ministers, their arguments and examples were invariably poorly prepared, confusing and even contradictory. One delegate began his remarks by saying they realized Bruce knew as much about the subject as they did and, despite Bruce's frequent requests for precise information, it is doubtful if he learned very much from the employers' deputations.

1. For instance, at the 1924 conference of the Central Council of Employers discussion was hampered by the confusion among the delegates on the questions of the Commonwealth's constitutional powers and the ideal remedies for their problems in the area of industrial relations.

Nevertheless, the employers' grievances were certainly genuine. The gist of their criticism was that the overlapping of awards led to continual confusion and uncertainty among workers and management, enabled workers to obtain the advantages of two or more awards, caused resentment among workers who saw men engaged in the same class of work receiving higher wages or better conditions, and resulted in endless disputes within the factory and workshop and often litigation about the meaning and incidence of awards. While admitting the seriousness of such complaints, Commonwealth Ministers could not help observing that overlapping had not been a cause of large strikes. In 1920, when the Queensland branch of the Australian Workers' Union received a State award with higher rates than the Federal award, there had been strikes when the shearers moved south into New South Wales and were paid the lower rates. But the great majority of serious strikes in 1923 and 1924, as in earlier years, were in the coal mining and shipping industries, which were almost entirely regulated by Federal tribunals and where overlapping was not a serious problem. In the field of industrial relations the Federal Government was mainly concerned with major strikes in key industries, and Bruce might have moved much more swiftly if he had thought overlapping was a cause of such stoppages.

The overlapping of Federal and State awards took two forms, both of which were criticized by employers. An employee could work under two awards, obtaining the benefits of both and often avoiding the drawbacks of either. In 1925 it was estimated that of 220,200 persons working under Commonwealth awards, 133,000 were also working under State awards. The High Court in Whybrow's case laid down that a Federal award could not conflict with a State law (which included an award or a wages board determination) but that the test of inconsistency was whether it was possible to obey both awards or not. For instance, if one award laid down a 44 hour week and the other laid down a 48 hour week, it was possible to obey both awards if the employee worked 44 hours, as the hours prescribed were the maximum hours. Similarly, if one award provided for a wage of £4 and the other a wage of £5, it was possible to obey both awards if the employee was paid £5, as the wage was a minimum wage. Thus the unions had nothing to lose and much to gain by moving back and forth between Federal and State tribunals, "picking the eyes" of both awards. The problem was aggravated by the marked differences between State and Federal awards. A typical example were mechanical engineers, who were paid £6.6.6 under a Federal award and £5.10.6 under the New South Wales award.

The second form of overlapping occurred when an employee worked under a single award but discovered that his workmate, or men with the same tasks in a neighbouring factory, worked under a different award, with better rates or conditions. This was an obvious source of discontent and there was constant pressure on management to raise the level of the poorer paid worker in the interest of industrial peace. The problem was particularly acute with respect to hours, with different workers in the same factory working 44, 45, 46½ and 48 hours.¹

Overlapping increased production costs, as under the first form employers were legally obliged to pay higher wages or grant better conditions than was intended by either tribunal, and under the second form there was strong pressure on them to try and lessen resentment and harmonize conditions by improving the rates or conditions of certain workers. It also increased costs by causing numerous minor stoppages and delays and by necessitating the appointment of industrial officers who spent all their time trying to unravel and observe complicated and conflicting awards. Employers complained that industrial relations occupied most of their time, so that the rest of their work suffered.² One employer

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2. G. Delprat, General Manager of B.H.P., said that for eight years he had continually been involved in industrial litigation and he had never had less than two cases pending. F.A.W. Gisborne. "Arbitration in Australia". Edinburgh Review V. 241 (April 1925) p.245.
told Bruce: "What we must have is simplicity and stability. We must be relieved of the need to waste a big proportion of our time in discussing law, travelling to Court, waiting at Court, appealing against Court decrees and fighting over legal technicalities."

While the consequences of overlapping were extremely serious and were felt by as many as 60 industries in Victoria alone, the employers' case suffered from their inability to distinguish the results of conflicting Federal and State jurisdiction from the drawbacks of arbitration generally. For instance, they mentioned that carters and drivers who worked under the timberworkers' award worked 44 hours and those who worked under the carters and drivers' award worked 48 hours. Yet both were Federal awards. Many employers cited the various rates of pay received by different carters and drivers, due to the fact they were covered by four Federal awards and several State awards. This highlighted the crux of the problem: employers suffered mainly from

1. Smedley to Bruce, 18 May 1923. (M.T.I.A.)
2. Central Council of Employers statement, op. cit.
3. Ibid; Western Australian Employers' Federation, "Industrial arbitration; some notes on the operation of the system in Western Australia." (M.D.R. Appendix E.1).
"OH, YOU NAUGHTY DOGS!"

There is no country in the world that has more strikes than Australia; there is no country with such elaborate Court machinery to prevent them.
the overlapping of awards per se, and while this was aggra-
vated by the overlapping of Federal and State jurisdiction, the problem would remain even if dual control came to an end. The Federal Court could be abolished, but the employees in a large organization such as B.H.P. or H.V. McKay would continue to work under dozens of different State awards, many of them overlapping and conflicting. The existence of both craft and industry awards led to considerable dis-
content and confusion, but this was a problem created largely by the tribunals and not by governments.

In their submissions the employers concentrated on the troubles they faced as a result of the division of the arbitration power between the Commonwealth and the States, and did not give any lengthy explanation of the superiority of State tribunals. Traditionally, the Federal Court had paid higher rates than the State tribunals and the employers had little liking for the two Presidents, Higgins and Powers. By 1925 the differences between the Federal and State basic wages were not great and the Queensland Arbitration Court for some years had awarded higher rates than the Federal Court. But the traditional view that the Federal Court was more sympathetic to the

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1. Higgins awarded the first craft award (to the engine-
drivers) in 1913 because he felt that the interests of skilled craftsmen could be overlooked in industry awards. But the worst cases of overlapping arose from the existence of the two types of awards.
employees persisted up to 1926. Some employers complained that Federal awards were far more complicated than State awards.^[1] In the smaller States it was believed that the State tribunals were more familiar with local conditions and could deal with disputes far more speedily and cheaply than the Federal Court.^[2] It was claimed that some Federal wages were based on the cost of living figures in Melbourne and that these were higher than in the other States.^[3] In Victoria and Tasmania employers' criticism of the Federal Court was linked to their opposition to arbitration in general and their support for the wages board system. Finally, employers criticized the Federal Court because of its inability to make a common rule,^[4] but this defect would have been overcome if full industrial powers had been given to the Commonwealth.

The views of the trade unions and the political parties regarding Commonwealth or State control of industrial arbitration were no less emphatic than those of the employers. Deputations from the Melbourne Trades Hall Council and the

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1. Smedley to Bruce, 18 May 1923 (M.T.I.A.)
2. G.H. Boykett, Secretary, South Australian Employers' Federation, to L. Smith. (M.D.R. Appendix E.4).
3. Western Australian Employers' Federation. Notes, op.cit.
4. Ibid.
Commonwealth Council of Federated Trade Unions told Bruce in 1923 and 1925 that although they favoured a system of industrial boards rather than an Arbitration Court, they believed that the Commonwealth should have full industrial powers.¹ The Labour Party had always held this view. In practice, the labour movement was not quite so united, as unionists in Queensland and Western Australia were showing a preference for State awards. The Australian National Federation and also some of the State organizations of the Nationalist Party passed resolutions in 1923 and 1924 calling for an amendment of the Constitution to limit the jurisdiction of the Federal Court to industries of a genuinely interstate character and to exempt all State instrumentalities from Federal jurisdiction. In New South Wales the Consultative Council told Bruce in March 1924 that action was needed urgently and it was critical of the Government's 1923 proposals.² However, it was well known that the influence of the Nationalist organization on policy-making was negligible.

In January 1925 Groom returned to Australia and he and Bruce agreed that a decision about the future of

¹ Notes of deputation to Prime Minister from Melbourne Trades Hall Council, 23 March 1923. (C.A.O. CP 317/5); Age. 14 Feb. 1925, p.17.
² A. Parkhill, Secretary, Consultative Council, to Bruce, 8 March 1924. (C.A.O. A458 B502/1); Australian National Review. 20 Nov. 1924, p.15.
the Federal arbitration system could not be postponed much longer. A strike of the Seamen's Federation was holding up shipping in every major port in the country and condemnation of the arbitration system that failed to prevent such strikes was being voiced by the press, employer organizations, primary producers' groups and Nationalist and Country Party politicians. In public references to arbitration Bruce implied that the Government no longer felt bound by the 1923 proposals, but he characteristically avoided committing the Government until a detailed and expert study had been made of the whole arbitration system.

The terms of reference of this study showed that Bruce was interested in all aspects of arbitration. Previous Governments, and particularly their Attorneys-General, had been concerned largely with the legal problems associated with arbitration - the overlapping of Federal and State jurisdictions, the common rule, penalties, and the constitution of the Court. Bruce asked for a report on these problems but, in addition, he requested a general review of the effects of industrial regulation on the Australian economy. The Commonwealth Government had always been concerned about the economic consequences of industrial stoppages. But Hughes

1. See below, Chapter 2.
and his predecessors had shown little interest in the economic
effects of the means used to prevent stoppages, perhaps
assuming that no award could be as costly as a strike. The
employers had always complained about the repercussions of
Court awards on particular industries and on the whole
economy, and in 1925 the Government finally decided to
investigate the question.

The Government's action was prompted by a general
interest in a complex question rather than by any sudden
concern about the state of the economy. Australia had to
a large degree recovered from the boom and depression period
of 1919-1922 and in 1924-25 was probably in a more prosperous
position than at any other time in the 1920s.¹ In December,
1924, Bruce stated that Australia's prospects had never been
so bright. He went on to say that prices were high for the
country's staple products, methods of production and organi-
zation were being rapidly improved, more money would be
available for development and the establishment of new
industries, and the burden of taxation and debt would be
lightened.² Much of what Bruce said was indisputable.
There were bumper harvests in 1924/25 and the price of wool
reached a record level. By 1924 productivity and real wages

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1. See C.B. Schedvin. Australia and the great depression.
2. Argus. 5 Dec. 1924, pp.11-12.
had at last passed the 1911 mark. Coal production reached a record level in 1924 and the output of steel was increasing rapidly. In manufacturing the boom caused by the War and the 1920 tariff was ending, but the rate of investment in manufacturing in the mid 1920s was still high and the market was expanding, with a mass market developing for motor vehicles and electrical goods.1 Due to rapidly increasing customs revenue, the Commonwealth Government had a budget surplus of £4.5m. in 1923/24 and £1m. in 1924/25. Page was able to abolish land tax on crown leaseholds in 1923, reduce income tax rates in 1924 and 1925, and raise the taxable limit in 1924.

However, in some respects the economic position was unsatisfactory. Certain industries were in difficulties. Shipbuilding had lapsed in the early 1920s, coalmining was increasingly suffering from a surplus of labour and excessive capital, the engineering trades languished with the return of foreign competition, and the wool textile industry was faced with decreasing output and increasing unemployment. Many manufacturing industries were feeling the effects of over-capitalization, a shortage of skilled labour and increased costs at a time when import prices were falling, and

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in 1925 it was necessary for the Government to make further tariff increases.\(^1\) Perhaps the most serious problem was the continuance of the high unemployment rate. In 1924/25 the proportion of Australian unionists unemployed fluctuated between 9.3 and 10.3 per cent. The percentage was much higher in New South Wales and relatively high in Victoria.\(^2\)

The Government's interest in the economic as well as the legal aspects of arbitration was reflected in the choice of the two men who were asked to prepare a report on industrial relations in Australia. William Harrison Moore had been Professor of Law at the University of Melbourne since 1892, had written extensively on Australian constitutional law, and had a deep understanding of politics through his friendship with many Federal and Victorian politicians.\(^3\) E.C. Dyason was a leading Melbourne stockbroker who often contributed articles to economic journals and whose advice was to be sought by the Commonwealth Government on a number of subsequent occasions.\(^4\) Their 60 page report, divided

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3. Harrison Moore (1867-1935) was knighthed later in 1925 and retired as Professor of Law in the same year. He represented Australia at the League of Nations Assembly in 1927-29. He was the author of The Constitution of the Commonwealth of Australia (1902).
4. Edward Dyason (1886-1949) was for many years a mining engineer and was President of the Victorian Chamber of Mines 1918-20. In the 1920s he founded the stockbroking firm of Edward Dyason & Co. and became the director of many companies. He was President of the Economics Society 1930-32.
The Economic section of the report was rather negative in tone. Moore and Dyason came to the conclusion that labour regulation had had little effect on the productive capacity of workers, on the proportion of production going to labour, on the unemployment levels, or on the number of industrial stoppages. More positively, they suggested that the arbitration system had prevented the violent fluctuation in nominal wages that had occurred in other countries and that it had raised real wages in States such as Victoria and Tasmania, or in industries where the level of wages was unduly low, to approximately the general level. They recommended that the Government should publicize the distinction between nominal and real wages and also the fact that most strikes, since 1919, had ended in victory for the employers. They urged that an Economic Service be set up to assess quantitatively the factors such as wages, prices, tariffs and unemployment, on which the Arbitration Court's judgments were based.

1. The report was entitled "Industrial relations in Australia". It was printed, but the authors were not identified. However, the appendices and a letter from Dyason to Garran, 10 Feb. 1925 (C.A.O. A432 29/3407) clearly indicate that Moore and Dyason were members of "the Committee" which produced the report. If there were any other members they were extremely silent and inactive.
Perhaps the most important point which Moore and Dyason made in the Economic Section of their Report was the economic insignificance of industrial stoppages compared with the serious effects of Australia's high level of unemployment. The number of days lost per worker through strikes had averaged 1.5 over the last 11 years, while the loss through unemployment had been 15 times greater. They therefore felt that legislation aimed at reducing the number of stoppages was unnecessary, especially as most strikes took place in the mining industry and were due to the peculiar circumstances of that industry.¹ In fact, they suggested that as the burden of unemployment fell primarily on the workers, while strikes were aimed at the employers, legislation that neglected unemployment but increased penalties on strikes was based on class interest.²

The Legal section of the Report, which was much longer, dealt with the constitutional question of the division of the arbitration power between the Commonwealth and the States. But it was not restricted to that question, for it discussed at some length the problems of overlapping awards, the common rule, the basic wage, the enforcement of

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2. Ibid. Appendix A.1.
awards and the constitution of the Federal Court, in most cases suggesting amendments that could be made to the Arbitration Act.

In dealing with the division of the arbitration power Moore and Dyason's reasoning was tortuous and confusing and the ideas that they rejected were much more clear than those that they favoured. They opposed the 1923 scheme and they also opposed placing all industries under Commonwealth control. They argued that the number of genuine interstate strikes was minimal, that industrial operations was so vast and complicated a subject that it would take up all the time of the Commonwealth Parliament, that in any case the States would still be responsible for apprenticeship, unemployment, workers' compensation and factory legislation, that full control for the Commonwealth could destroy the federal system and lead to the creation of two great opposing organizations of employers and unions, and that the Nationalist Party and the employers favoured a restriction, not an extension, of Commonwealth powers. Although a single authority should ideally deal with industrial disputes, they decided that the dual system would have to continue. Disputes in certain industries tended to be national in their extent or effects and they specified shearing, shipping, stevedoring and coal-mining. Moore and Dyason therefore recommended that the
Constitution be amended to give the Commonwealth Parliament power to make laws for the prevention and settlement of industrial disputes in these four industries. The power was not to be limited to the methods of conciliation and arbitration, nor was it to be confined to interstate disputes. But it was astonishing that the power should be limited to disputes, rather than industrial matters, for it was a standard criticism of Section 51 (xxxv) of the Constitution that before there could be industrial peace there had to be industrial war. Even more astonishing was the fact that Moore and Dyason believed that Section 51 (xxxv) should be retained, as otherwise it would be alleged that the Government was seeking to abolish arbitration generally. This may have been true, but to add a second section to the Constitution referring to industrial disputes would have compounded the problems and satisfied no one.

Turning from the general constitutional question, an important part of the Report dealt with the overlapping of awards, which Moore and Dyason recognized as the most serious defect of the dual arbitration system. In addition to the usual complaints, they expressed the opinion that when depositories of law and justice presented themselves as rival shops it must result in a serious lack of respect for the system, and this was particularly grave as the

system was weak in sanctions and depended on the respect and prestige that it could command. They put forward four proposals which they thought could facilitate the co-ordination of Commonwealth and State awards. Three involved amendments to the Arbitration Act, and the fourth required a constitutional amendment. One difficulty in the way of co-ordinating awards was that they were not coextensive, owing to the inability of the Federal Court to make a common rule. The situation became chaotic when Federal awards were varied several times, with each variation prescribing different rates and each applying to only some of the original parties. Moore believed that the High Court was moving towards a position where the common rule would not be held to be ultra vires, but it would be premature for the Government to act on this assumption. Nevertheless, he thought that the law might be amended by resorting to the Equity notion of representative action.¹ This would mean that where there was a large number of parties to a dispute, the plaint could be submitted to only a select number of them, as representative of the others.

Moore and Dyason believed that the Arbitration Act should provide more guidance to the Court than simply stating that awards were to be made on the basis of "equity, good conscience and the substantial merits of the case." They

¹ Moore-Dyason Report, Appendix C.5.
especially criticized the Court's doctrine of the living wage on the grounds that capacity to pay, not the cost of living, should be the deciding factor in altering wage rates. They therefore thought the Court should be made aware of the importance of the actual production of the country as the ultimate fund from which workers' real wages were paid. They recommended an amendment to the Act stating that "in making every award (the Court) shall have regard to the standard of living, the productivity of industry, and the public welfare."^1

The most original ideas in the Report were contained in the section dealing with the enforcement of awards. It referred to some of the practical difficulties that had been encountered. For instance, a union could only be successfully prosecuted for striking if it was proved that it had authorized the acts of its members and that the members were acting in combination, not separately. In any case, there was a general reluctance to put the penal provisions of the Act into operation and the Court had no authority to deal with sympathy strikes. The problems of enforcement would become more acute if worsening economic conditions prevented the Court from improving or even maintaining the workers' wages and conditions. Moore and Dyason were very critical of penalties being imposed on individuals.

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They suggested that to forbid men to withhold their cooperation in economic services was a form of conscription of labour. The imposition of penalties on large numbers of men, most of whom had always been law-abiding, would cause strong revulsion against the system and would engender class hostility and conflict. The preservation of industrial peace was different from the ordinary preservation of law and order. Compulsion was only effective if there was widespread public opinion in favour of the application of the law, irrespective of personal sympathy with either side or personal views on the merits of the claims. The dislocation caused by strikes had been comparatively small and, as a result, public opinion did not support the automatic application of legal penalties. The framers of the Arbitration Act had seen arbitration as a substitute for stoppages, but a large section of the public regarded it merely as an alternative to stoppages, and it was therefore more realistic to remove the penalties on strikes and lockouts.1

Moore and Dyason believed that the most effective sanctions were not those which imposed the ordinary penalties of criminal law but those which deprived organizations of the benefits arising under the Arbitration Act. There was evidence that many unions did fear the loss of an award

or deregistration. They recommended that registration be conditional on security being given for the observance of the Act and that a bond should be required for all organizations that were parties to awards. In proceedings against organizations for forfeit of their bond or deregistration, acts done by members of the organization should be deemed to be acts of the organization itself, unless it was proved that the organization had done everything possible to prevent its members from committing a breach of the award. Moore and Dyason felt that the Court would exercise stronger curbs on union militancy if the Act required the rules of organizations to provide for greater control over the rank and file and close supervision of finances. However, it was not thought necessary to provide for official control of union elections.¹

Moore and Dyason were rather undecided about the ideal constitution of the Court. An arbitrator did not need high legal attainments, it was undesirable for judges to be brought within the political battlefield, and there was much to be said for having a trained economist as arbitrator. On the other hand, it was most inconvenient for the Court not to have judicial powers when the line between judicial powers and powers incidental to arbitration was often obscure. In addition, permanent tenure

¹ Moore-Dyason Report, pp.52-61.
would be necessary to attract able men, as otherwise they would always fear that controversial awards would lead to their non-appointment when their term expired. Moore and Dyason therefore recommended that members of the Arbitration Court should have the tenure of High Court judges but that pensions be provided to encourage them to retire when age or illness weakened their capacity.¹

Scattered through the Legal Section of the Report were a few other ideas of some significance. The Crown should be able to intervene in any proceedings in the Court involving the public interest, counsel should be allowed to appear by leave of the Court, and the Full Court should be constituted from time to time to deal with matters of general importance. Finally, the Report was very critical of the Industrial Peace Act and recommended that sections of it be repealed. The Act invited resort to different tribunals and gave dangerous powers to Ministers, who could act in collusion with the chairmen of tribunals and grant demands without enquiry.

The Moore-Dyason Report had no influence on attitudes towards arbitration outside the Government, for it remained a confidential document; in fact, its very existence was never made public. But within the Government its influence was powerful, at least up to 1929. Many of

its recommendations were incorporated wholesale into subsequent legislation and Ministers often referred to it for points for speeches. Groom's successor made a most detailed study of it and in 1927 used it to support his case for the reduction of arbitration penalties. The Report had been preceded by an immense amount of research and its appendices contained statistical and other information drawn from a very wide range of sources. The Report had weaknesses. It was written hurriedly and its arguments and conclusions could have been presented more logically. It was extremely tentative on some of the economic questions and on other matters it was equivocal. But, despite these weaknesses, it was the only comprehensive study of arbitration made under the Bruce-Page Government and it provided much of the framework for the debate on arbitration in the following years.

There were not a great many completely original ideas in the Report and its importance was partly due to the fact that it channeled into the Government the ideas and data of a great many authorities. For instance, the Economic section was based heavily on the work of the statistician, J.T. Sutcliffe and the English economist, A. Pigou. The proposals relating to overlapping, the common rule, the basic wage and penalties were influenced
by the writings of Higgins, Jethro Brown, G.S. Beeby and T. McCawley. The submissions of employer organizations were collected together and examined, although they seem to have strengthened rather than changed the views that Moore already held. The two men do not appear to have given any serious considerations to the proposals of trade unionists, although they certainly took into account the attitudes of unionists towards strike penalties.

As the inquiry was confidential, the only submissions came from within the Government. A.M. Stewart, the Industrial Registrar, argued strongly in favour of Commonwealth supremacy in industrial relations, but his

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1. William Jethro Brown (1868-1930), Professor of Law and Modern History, University of Tasmania 1893-1900, Professor of Law, Adelaide University 1906-16, President of the South Australian Industrial Court 1916-27. Author of many works on jurisprudence and industrial relations.


views had little influence. Moore and Dyason accepted his view that a Federal award should override a State award and that the Court should have judicial power, but Stewart was not alone in making these suggestions. The Report specifically rejected his proposal that the Act should provide for the appointment of conciliation commissioners, shop committees and other conciliation machinery, arguing that the value of conciliation depended on its voluntary character.

The other submission, drawn up by Sir Robert Garran and M.C. Boniwell, was very different in tone.¹ The Attorney-General's Department favoured a hard-line policy towards the unions and almost all its recommendations involved the imposition of penalties. It suggested that the Commonwealth should have jurisdiction over all disputes in interstate or overseas shipping and that in such disputes, or where there was interference with a Commonwealth service, the Government should have the power to suspend or cancel a union's registration. The suggestion, which reflected the Department's preoccupation with shipping strikes, was not approved by Moore. Garran urged that the Court should demand a bond for the observance of each award.

cancel awards on deregistration, vest the property of a
deregistered union in a voluntary association, cancel the
union membership of an individual convicted of striking,
and issue injunctions restraining any person from instigat-
ing or aiding a strike, with imprisonment or deportation
as penalties. He also claimed that offences against the
Act and failure to comply with an award by members of an
organization should be grounds for deregistration, and
that the rules of a registered union should provide for
the election of officers under the supervision of the
Commonwealth Electoral Office, and for control of members
by their Committee of Management. The proposals relating
to bonds, cancellation of awards, deregistration, and con-
trol of rank and file unionists were incorporated in the
Moore-Dyason Report.

The most original proposals of Moore and Dyason
were those aimed at overcoming the overlapping of Federal
and State awards and those suggesting that penalties should
be confined to deregistration, cancellation of awards, or
forfeiture of bonds. Some employers had rejected the idea
of penalties on the grounds of their one-sidedness, but
the Moore-Dyason argument, with its emphasis on public
opinion, the distinction between arbitration law and other
laws, and the economic insignificance of strikes, was a

1. Western Australian Employers' Federation. Notes, op.cit.
novel one. The subject of penalties was one of the two areas of disagreement between Moore and Dyason and the Attorney-General's Department. The other was over the extent of Commonwealth jurisdiction, for the Department had made no attempt to define and delimit Federal industries. It was left to Groom and his colleagues in Cabinet to decide which view should prevail.

Bruce had first hinted that the Government was considering the amendment of the Arbitration Act in January, 1925. In a speech in Melbourne he stated that although the arbitration system had been found to be ineffective, the complete abolition of arbitration was out of the question, for it would lead to class war and ultimately either to the degradation of the worker or to Bolshevism. But it was essential to find some way to deal with the overlapping of awards and to secure their observance by employees as well as employers. Greater power should be given to the Court to enforce awards and greater recognition should be given by the law to trade unions and their management.¹ Bruce's speech was criticized for its vagueness² but it did, in fact, summarize the objectives of the 1925 Arbitration Bill.

The Government received the Moore-Dyason Report in March, 1925. In the following month Groom asked Justice Powers for his ideas on the amendment of the Act. Powers' chief concern was that the Court should be given judicial power so that it could enforce its awards and orders. He wrote "The Court cannot interpret its own awards, cancel its awards, interpret sections of the Arbitration Act, compel persons to attend conferences, compel witnesses to answer questions, enforce awards by punishing for breaches, enforce orders, deal with offences against the Act, deal with organizations and members who disobey awards or orders, ensure decorum and respect by punishing for contempt of Court, protect witnesses or decide appeals from the Registrar".¹ It was even doubtful if the Court could deregister unions. The simplest solution was to give the judges life tenure. The Deputy Presidents of the Court, Quick and Webb, supported Powers' appeal for judicial powers, with Webb describing to Groom in dramatic terms the humiliation that they suffered because of the Court's impotence.²

Powers made numerous other suggestions. He and the Deputy Presidents believed that the best solution to overlapping was to give the Commonwealth power over all industrial matters. The Court should have authority to

1. C. Powers to Groom, 5 May, 1925. (A.N.L. MS 1009/28).
2. N. Webb to Groom, 20 Feb. 1925 (A.N.L. MS 236/2/3140).
consider the question of excess profits and to allow higher
rates where the industry could afford them, especially as
the Court had fixed wages at less than the basic wage in
some mining cases where the businesses were in difficulties.
Power was needed to increase an organization's security to
£500 or £1,000, to cancel awards where employees refused to
work or to obey awards, to deregister organizations that
had passed rules or orders contrary to an award or instruc-
ting or advising members to refuse work in accordance with
an award, and to disallow union rules that were contrary to
law or were tyrannical or oppressive. Powers also suggested
that the Act should provide that awards were to lapse when
an organization was deregistered, that unions should be
liable for the actions of their branch officers, and that
they should be able to dismiss members who committed breaches
of awards.

The Government did not seek the views of any other
individual or organization. Employer organizations, such
as the Central Council of Employers of Australia, the Associated
Chambers of Manufactures, and the Commonwealth Steamship
Owners Association continued to send submissions and deputa-
tions.¹ Their views were noted but they had no direct

¹ 1925 Report of Commonwealth Steamship Owners Federation (C.S.O.A.); Employers' Federation of N.S.W., Industrial
Bulletin, Jan. 1925, pp.12-14; W.C. Myhill, Secretary, Metal Trades Employers Association of N.S.W., to
F.L. Edwards, Secretary, N.S.W. Chamber of Manufactures, 27 Feb. 1925. (M.T.I.A.)
influence on the drafting of the Bill.

Among the employers' demands can be discerned conflicting ideas about the groups within unions that were responsible for strikes, and these conflicting ideas were also present in the thinking of Commonwealth Ministers. The Court, the employers, the Attorney-General's Department and Moore and Dyason all urged that unions be liable for the acts of their members, and not merely for the acts of their officials, and that union rules should provide for the tight control of their rank and file by the committee of management. Powers in particular had known many disputes in which irresponsible unionists had acted in defiance of the instructions of their officials. On the other hand, there was a widely-held belief among employers, newspaper editors and men in Government that strikes were caused by the power of agitators who occupied official positions within the unions and who manipulated "the sane, decent rank and file". Many of those who held this belief came to have a great faith in the power of the secret ballot to overcome militant officialdom.

Bruce was a strong believer in the secret ballot and all references to the impending amendments to the Arbitration Act mentioned that they would include provisions for union ballots. Some of his supporters were more sceptical.
The Nationalist backbencher, J.G. Latham, saw Bruce and told him of the doubts, which he shared, expressed by Judge Rolin of the New South Wales Industrial Arbitration Court. Rolin said that a secret ballot would be futile as the union could simply refuse to take it or it could draw up a roll of voters to suit its own purposes. Above all, he criticized the assumption that the ballot would always show a majority against the strike. There were no grounds for this assumption and an affirmative vote would endow a strike with a legality which under the Act it did not possess. Latham found that, while Bruce admitted that the proposal might have weaknesses, he remained committed to it.¹

Powers' submission was received by the Government on 6 May 1925. Ten days later Groom presented the first draft of the Arbitration Bill to Cabinet, together with the comments of Moore and Dyason.² The later drafts of the Bill were completed and discussed by Cabinet in June 1925. Cabinet agreed with Groom that it should not seek, by referendum, full industrial powers for the Commonwealth. The proposal that the Commonwealth arbitration power be limited to two or three industries was likewise rejected.

Instead, it was decided that the Amending Bill should be a less radical measure. Its main objects would be to revise the constitution of the Court, to minimize the overlapping of awards, to allow the Commonwealth Government to intervene in Court proceedings, and to ensure the observance of awards.

The Court was to be reconstituted in order to give it judicial powers. It would consist of three judges, one of whom would be President, who were to be barristers or solicitors of at least five years' standing, and who could not be removed from their office except by the Governor General on the grounds of proved misbehaviour or incapacity. Provision was made for Justice Powers and his colleagues to continue to hold office until their terms of appointment had expired in June, 1926.¹ This amendment had been expected, for the Court, the employers, the unions and the Attorney-General's Department had all agreed that it was important that the Court have judicial power.

The Moore-Dyason report had made five recommendations dealing with the overlapping of awards and two of them were included in the Bill. It stated that where a State law or award or determination dealt with a matter covered in an award or order of the Federal Court, the latter should prevail and the State law or award should be inoperative.

This was to be the position regardless of whether the State law or award was made before or after the Federal award.¹ A second clause provided that in every dispute the Court was to consider if there was anything in the nature of the industry or any other reason why the dispute should be dealt with by the Federal Court rather than by a State authority and, if not, it should dismiss the case.²

The Government's concern about the effect of Court awards on the national economy had been manifest in the commissioning of the Moore-Dyason report and two of the report's suggestions in this field were inserted in the Bill. If the Minister believed that the public welfare was likely to be affected by an award or order of the Court, the Commonwealth Government was to have power to intervene in the Court's proceedings and to make any representations to safeguard the public welfare.³ The Government would also be able to intervene to prevent the filing of an industrial agreement.⁴

The bulk of the Bill was concerned with the enforcement of awards - in fact, 25 clauses dealt with this problem - and offences and penalties were multiplied in the most

2. Ibid. Clause 24.
4. Ibid. Clause 43.
drastic manner. Groom had clearly been unconvinced by Moore and Dyason, and the hard-line policy of Garran and his colleagues was to be applied with a vengeance. The penalties for strikes and lockouts were to remain, with the penalties for individual strikers reduced to £25. In the case of organizations that could not pay fines, process was to be issued against the property of the organization and its members could also be liable for the deficiency. In any dispute an organization was to enter into a bond with the Registrar for the performance of the award, the bond to be forfeited if two or more members of the organization engaged in a strike or lockout. The Court could disallow any rules of an organization that were contrary to law or an award, were tyrannical or oppressive, or prevented members from observing the law or the conditions of an award. Organizations that had done anything in the nature of a strike or lockout, or passed rules contrary to the terms of an award or requiring members to refuse to work in accordance with an award, could be deregistered or their awards could be cancelled or suspended. When a union was deregistered, its award would cease to be binding on employers.

Several clauses were aimed at reducing the power of both the officials and the rank and file of the unions. Officials who ordered or advised members not to abide by
the terms of an award would be liable to 6 months' imprisonment. The Court would be able to order a union to take a secret ballot on any matter in dispute. The rules of every registered organization were to enable any member to demand a secret ballot, and were to provide for absent voting at elections, for inspection of books and registers by any members, and for reasonable facilities for the admission of new members. The Court could enquire into the finances of an organization and was to be supplied with its annual reports, balance sheets and membership lists. The unions were to be forced to take responsibility for the acts of their rank and file, as several clauses provided that acts done by members of an organization were to be deemed to be acts of the organization itself, unless it was proved that the organization had made bona fide attempts to prevent members from committing a breach of the award. When a penalty was imposed on an individual for an offence under the Act, the organization to which he belonged could be liable to an additional penalty.¹

There were a few miscellaneous clauses. The Court was to have jurisdiction over any dispute, whether interstate or not, relating to employment in shipping involved in interstate or overseas trade. Two further suggestions of Moore and Dyason were adopted, enabling the Full Court

¹. 1925 Arbitration Bill. Clauses 5-8, 21-22, 26-41, 44.
to make general rulings and permitting the appearance of counsel with the leave of the Court. An attempt was made to lessen the grievances of employers against retrospective payments by stipulating that employees or their unions were to notify their employers that they were members of the unions and that employers would not be liable for back payments for the period prior to the notification.

The 1925 Arbitration Bill was hardly an outstanding piece of legislation. The last major amendment of the Arbitration Act had been in 1920. In the intervening five years there had been a change of Government, there had been some large strikes, and there had been an almost continuous public debate about the future of the arbitration system. Yet when the Government finally decided to amend the Act it took no steps to obtain and co-ordinate the views of the many interested pressure groups. Instead, a Bill was drafted in a few days and the draftsmen took the rather easy course of basing it almost entirely on three documents: Garran's submission of February 1925, Powers' submission of May 1925, and the Moore-Dyason Report. The only additions were the clauses providing for secret ballots, inserted at the insistence of Bruce, the clause relating to retrospective payments, and one or two additional penal clauses. All the other clauses can be found, almost word for word, in the three documents. Of course, the latter contained suggestions
that were passed over in the drafting of the Bill. Garran's belief that the Government should be able to deregister unions in certain circumstances was considered too extreme. Powers' suggestion that the Court should take into consideration excess profits and, more surprisingly, Moore and Dyason's assertion that it should consider productivity, were ignored. Stewart's ideas on conciliation were rejected and Moore's remedies for overlapping were only partially accepted. But when it came to the penal provisions of the Bill suggestions contained in all three documents were seized upon, so that the final Bill contained far more penalties than even Garran had recommended. Striking trade unions would have been liable for prosecution under six or more clauses.

The independent experts had concluded that stoppages were not serious in Australia and they condemned, in terms of both expediency and justice, the suggestion that legislation should be designed primarily to penalize strikers. Commonwealth Ministers, who were faced with four great maritime strikes in less than twelve months, could not view the question so calmly. They believed that the authority of their Government was under serious challenge and they were conscious of an approaching election in which a loss of authority could mean loss of power. Their experiences with one union distorted their attitudes to all unions and
they therefore accepted a Bill which represented an attack, on an unprecedented scale, on the power, leadership, internal administration and general activities of the unions. It was a bold decision, as the Labour Party would be bound to denounce the legislation as a threat to the million voters who were unionists. Moreover, the Government could not entirely be sure of the support of the employers, as the Bill completely ignored their demand for the limitation of the Commonwealth arbitration power.

As it eventuated, the Government had no opportunity of making its arbitration policy known to Parliament or to the electorate. Groom was preparing his second reading speech when, on 18th September, 1925, Bruce suddenly announced that Parliament would be dissolved almost immediately and a general election would be held. Groom had to lay aside his speech and concentrate on much more dramatic issues, including the future of his political career.
S.M. BRUCE AND THE SUBSTANCE OF INDUSTRIAL ARBITRATION

Some conservative supporters of the Bruce-Page Government believed that the role of Government in industrial relations should be confined to setting up machinery for the settlement of industrial disputes. Once the Arbitration Court had been established, it was the duty of the Government to remain aloof from disputes. It should not concern itself with the causes of a dispute, with the points at issue, or with the order or award made by the Court, and under no circumstances should it align itself with either side or intervene to bring about a settlement independently of the Court. The Country Party parliamentarian Henry Gregory claimed that too often appeals had been made to the Prime Minister to intervene and bring pressure on one side to secure peace. "It is unjust to have political pressure brought to bear on one section when we have an Arbitration Court which makes awards for both sides."\(^1\) Other conservatives felt that arbitration tribunals had failed and the only hope of industrial peace lay in the exercise of governmental power. The Argus deplored the hiatus between the functions of the Court and those of the Executive and complained that "arbitration

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law enjoins governments to stand aloof in a spirit of dispassionate detachment while anarchy develops and obscure people become dictators".¹

In practice the Government was just as much interested in the substance as in the structure of industrial arbitration. In fact, Ministers spent far more time in discussing the causes and results of disputes than in considering reforms of the constitution and procedures of the Arbitration Court. Moreover, they had no qualms about resorting to legislative intervention in their attempts to deal with these causes and results. All the clauses in the 1925 Arbitration Bill regulating union elections, providing for secret ballots during strikes, and imposing penalties of unprecedented severity on officials who incited strikes, were included because the Government believed that strikes were caused by the extremists who were able to work their way into official positions in unions, and to persuade their moderate but pliable members to cease work on the slightest pretext. Similarly, suggestions that the Act be amended to force the Court to consider the productivity of the industry or the economic effect of their awards, or to allow the Government to intervene in Court proceedings, showed that the Government, with its responsibilities for the economic welfare of the country, was actively concerned with both

¹ Argus. 1 Dec. 1924, p.10.
the criteria used by the Court and with the essential content of its awards.

Government intervention in industrial relations could take three forms. Legislative intervention could be justified on the grounds that the Government was merely trying to influence the Court to modify its past practices and to consider factors which, sometimes deliberately, it had neglected in the past. Executive intervention in Court proceedings, a very radical proposal, was more serious in that the Government risked aligning itself with one side or the other, although it would at least be assisting the Court by supplying it with economic data. However, with the third form of intervention, executive intervention in strikes and lockouts, the Government would not only be identified with one side or the other but it would often create situations where the authority of the Court was weakened or even destroyed. This would occur, for instance, if the Government forced employers to grant strikers conditions which had been refused by the Court. Whenever the Government intervened it would be seen as an alternative to the Court, perhaps willing to concede what the Court had refused. The result would be similar to that caused by the overlapping of Federal and State jurisdictions: the Court would no longer be the sole and final authority in industrial matters.
When Bruce first became Prime Minister he seemed to believe strongly that intervention by the Commonwealth Government in industrial disputes was indefensible. He was fortunate in that his first two years in office were relatively free of serious strikes. In 1923 far less workers were involved in strikes than in any year since the War. The number of strikes and also the number of men involved doubled in 1924, but most of them were of very short duration. From February, 1923, to November, 1924, there were only four large disputes. The nine month lockout at the B.H.P. Steelworks at Newcastle ended a few days before the Government came into office. In the Melbourne police strike of November, 1923, Page and George Pearce, the Minister for Home Affairs, had many meetings with Victorian Ministers, cancelled leave for the military forces and brought in troops to protect Commonwealth property. But the Victorian Government preferred to enlist special constables rather than the military forces to restore law and order. In January, 1924, a strike of cokeworkers, who were demanding a 46 hour week, led to 3000 men being idle on the Illawarra coalfield. The strike lasted four months, but there was never any possibility of the Commonwealth Government becoming involved.

Bruce's views on intervention were most clearly expressed during an extremely serious stoppage on the South Maitland coalfield in 1923. The stoppage, variously described
as a strike and a lockout, arose largely because of attempts by the Miners' Federation to combat intermittency of employment by spreading the work evenly between its members, and the owners' insistence that the colliery managers should have complete freedom to select and dismiss employees.\(^1\) The stoppage began in early April, 1923, and within a week 18 of the 20 Maitland mines and 7000 miners were idle. In June, 1923, a deputation of Cessnock citizens saw Bruce at Newcastle and asked him to appoint a tribunal or to use his influence to bring the two sides together. Bruce replied that he would make no comment on who was right or wrong; it was an industrial dispute and it would be quite improper for him to express any views about it. The dispute was a serious one but the Government would only be justified in intervening in a strike of a nation-wide character. In any case, the Government could quite easily come in at the wrong moment and do more harm than good.\(^2\) Later in Parliament, in an obvious reference to Hughes, Bruce said there had been too much Ministerial interference in industrial disputes in the past and generally, in such cases, the dispute was settled on an unsound economic basis.\(^3\) The Maitland strike was


\(^2\) Minutes of deputation to Prime Minister, 1 June 1923, (C.A.O. CP317/5).

\(^3\) C.P.D. v. 103, 13 June 1923, pp. 50-52.
finally settled in July, 1923, on terms proposed by the New South Wales Deputy Premier.¹

The first dispute of a nation-wide character faced by the Bruce-Page Government began on 3rd November, 1924, when the Waterside Workers Federation ordered an overtime strike on all vessels in all the major ports in Australia. The cause of the strike had arisen several years earlier. The waterside workers had taken a prominent part in the 1917 general strike, and following its collapse the shipowners established labour bureaux in Melbourne and Sydney to ensure that the strike-breakers or loyalists who had loaded the ships continued to receive employment. The Melbourne bureau was abolished in 1919 and the interstate shipowners closed their Sydney bureau in 1920. But the overseas shipowners continued to maintain their Sydney bureau and employed about 1200 returned soldiers, as well as a few hundred of the loyalists of 1917.

Gradually the Waterside Workers Federation re-established itself in the favour of the Court. In June, 1923, Justice Powers said that there had been no trouble on the Sydney wharves for years, that the men had been sufficiently punished for the wrong they did in 1917, and that the embittered determination of the shipowners to employ anyone rather than the members of the Federation

¹. S.M.H. 19 July 1923, p.10.
was most unfair. But he did not award preference of employment to the Federation. In December, 1923, he modified his judgement, reasoning that the returned soldiers who were members of the Federation were surely more entitled to employment than the loyalists who had worked in safety on the wharves in 1917. He therefore ordered that in Sydney returned soldiers and sailors who were members of the Federation should have preference over all other persons, with the exception of other returned soldiers. In August, 1924, the High Court held that the Arbitration Court had power to make such an award. Powers' order meant that the loyalists had little chance of continued employment on the wharves and in September, 1924, the Commonwealth and New South Wales Governments each paid £5000 to 219 of the loyalists as compensation. From the viewpoint of the Waterside Workers Federation Powers' order had only slightly improved the position, as the Overseas Shipping Labour Bureau was still in existence. Under the Arbitration Act the Court had no power to make an award which would discriminate against returned soldiers, so it seemed that the only chance that the Federation had to secure the abolition of the Bureau lay in direct action.

1. 18 C.A.R. 1216.
2. 18 C.A.R. 1238.
3. 34 C.L.R. 482.
After two weeks the Federation ended the overtime strike on the interstate ships, but the ban on the overseas ships continued into December, 1924. An overtime ban was far more serious for overseas ships than for Australian ships, as the former were much more concerned with the speed of the turn around and with maintaining sailing schedules. Powers called several conferences but he failed to obtain a settlement. He was very critical of the shipowners for qualifying his grant of preference by only giving work to the returned soldiers in the Federation who registered with the Bureau. "They ask for bread and (the shipowners) give them a stone", he declared dramatically. But as the Federation was breaking the award by striking he would not vary his order.

The strike had continued for a month before Bruce became involved. In a speech at Dandenong on 4th December, 1924, he expressed his grave concern about the strike. Overseas markets would be lost if Australia acquired a reputation for its shipping hold-ups. If wool, wheat and other products could not be exported prices would fall, money would become scarce and unemployment would increase. Bruce then abandoned his dictum that he should not express

1. S.M.H. 18 Nov. 1924, p.9.
2. 20 C.A.R. 745.
his views about an industrial dispute. In words similar to those used by Powers, he asserted that the trouble was due to extremists in the ranks of both the shipowners and the waterside workers, and appealed for a compromise.¹

Whether intended or not, Bruce's comments quickly led to his involvement in the strike. On the next day the Chairman of the Overseas Shipping Representatives Association asked for an assurance that newspaper reports of criticism by Bruce of the shipowners were incorrect, only to be told that they were accurate.² The same day a cable arrived from Lord Inchcape, Chairman of the P. & O. Company and the dominant figure in British shipping. Inchcape said the shipowners had no intention of being extreme and he welcomed any suggestions that Bruce might have for a settlement.³ Bruce replied that the shipowners should accept Powers' award in both the letter and the spirit and should not challenge the Court's jurisdiction, advice which Inchcape passed on to his agents in Australia.⁴

On 11th December, 1924, Bruce decided to take further action and sent a long and very important cable to Lord Inchcape. After politely suggesting that the agents

1. S.M.H. 5 Dec. 1924, p.10
of the shipping companies lacked impartiality, he stated that Powers' award had removed the necessity for the Bureau. While its establishment in 1917 had been perfectly justified, it was no longer being used to protect the loyalists but to discipline the militant section of trade union leaders. The unions justifiably saw the Bureau as an excrescence on the whole industrial system of Australia, opposed to both its customs and its legally recognized principles. It was quite probable that, in every industry, employers would like to have similar methods of disciplining an unreasonable union, but this was not practicable. Bruce concluded by saying that he was convinced that industrial peace on the waterfront was impossible as long as the Bureau existed and while it remained it strengthened the hand of the extremist labour leaders.\(^1\) Inchcape, who in Labour eyes was the archetypal captain of industry, showed surprising meekness and instructed his agents to be guided by Bruce.\(^2\)

Bruce expected Powers to complete the settlement by making an order relating to pick-up places which would exclude the Bureau. But both the shipowners and the Federation, neither wishing to show weakness by offering to negotiate, asked Bruce to summon a conference publicly.\(^3\) Bruce did

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1. Bruce to Inchcape, 11 Dec. 1924. (C.A.O. A458 F502/2)
2. Inchcape to Bruce, 11 Dec. 1924. (C.A.O. A458 F502/2)
3. Clarence to Bruce, 11 Dec. 1924. (C.A.O. A458 F502/2)
so but refused to take an active part in the proceedings; he disparaged his knowledge of the questions in dispute and insisted that E.J. Holloway, the Secretary of the Melbourne Trades Hall Council, act as chairman. Garran was called in several times during the conference. On 13th December, 1924, an agreement was announced. The shipowners promised to abolish the Overseas Shipping Labour Bureau. The Federation agreed to return to work, to accept as members all men registered at the Bureau until March, 1925, and to refrain from all sectional strikes and sympathy strikes. The overtime strike came to an end in the next few days.

The fact that Bruce summoned the conference which conceded the waterside workers' demand was not regarded favourably by some of his supporters. The President of the Sydney Chamber of Commerce compared the settlement to those brought about by Lloyd George and Hughes, in which the strikers gained everything that they demanded. The New South Wales Premier, Sir George Fuller, said that he regretted that the Overseas Bureau was to be abolished and he promised that preference to returned soldiers would be enforced.

The dispute continued well into 1925. The Bureau men, who had formed a Returned Soldiers and Sailors Waterside

Workers Union, claimed that they had been betrayed and announced that they would not accept the terms of the settlement.¹ The New South Wales Government was openly sympathetic with the new Union and in January, 1925, gave it premises for a new bureau. It stated that it would administer strictly the 1919 Returned Soldiers and Sailors Act. The shipowners were placed in an embarrassing position and had to tell the pick-up officers simply to call for returned soldiers, regardless of their union. The result was that when Federation men were employed there were claims that the Act was being broken and when Bureau men were selected there was the likelihood of ships being declared "black" by the Federation throughout Australia. Inevitably, there were violent clashes between members of the two unions on the wharves.² The dispute ended with a test case in the Central Summons Court. The Returned Soldiers and Sailors Waterside Workers Union charged one of the stevedoring companies with not giving preference to returned soldiers. On 27th February, 1925, the charge was dismissed on the grounds that there was no proof that the Federation men employed were not returned soldiers.³ Immediately the great majority of Bureau men joined the Federation. After a struggle lasting nearly eight years,

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2. Ibid. 13 Jan. 1925, p.9.
3. Ibid. 28 Feb. 1925, p.17.
the Waterside Workers Federation had at last re-established its hegemony on the wharves.

It is difficult to assess the importance of Bruce's role in the waterside workers' dispute. Bruce himself always believed that his intervention had been decisive.\(^1\) Holloway, however, later revealed that the conference had been preceded by informal discussions and that the shipowners had agreed to "bury the Bureau".\(^2\) Holloway, of course, did not realize that Bruce's intervention had begun a week before the conference, with his cables to Inchcape. It is possible that the strike had completely broken down the shipowners' resistance. But it was significant that the day before Bruce cabled Inchcape a conference called by Powers had been abortive. It would seem that the shipowners were really shocked to find that they did not have the support of the Nationalist Prime Minister and when Inchcape sided with Bruce they had no choice but to surrender. The strike was unique in two ways. It was the only time that Bruce decided that the unionists had the better case and it was the only time that his mediation contributed to the settlement of a dispute. This pointed to the weakness of Government intervention: Bruce obviously had much greater influence with the employers than with the

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unionists, but his influence was only effective when he disagreed with the employers. He often said that the Labour leaders had far more power to settle disputes than Government Ministers, and this was true if one accepted his assumption that the unions were almost always in the wrong. In subsequent disputes Bruce often managed to avoid discussing the merits of the dispute, but there was little doubt as to where his sympathies lay.

The settlement of the strike had varied consequences. In some ways the conference called by Bruce was a mistake, for it angered Powers and delighted his critics as being a deliberate snub to the Court, whereas Bruce was actually very much concerned with upholding the authority of the Court. It also created a precedent for governmental mediation which was to be cited in several later disputes. On the other hand, the Waterside Workers Federation made some effort to observe the agreement and in 1925 assisted the Government by leading the union opposition to the Seamen's Union. But within two years the waterside workers had reverted to their militant role and Bruce's hostility to the Federation in 1928 may be partly explained by the assistance which he gave it in 1924, assistance which seemed to be quickly forgotten.

The waterside workers' strike co-incided with growing trouble in the shipping industry which came to a head in
January, 1925. Since 1919 the Federated Seamen's Union had been the most militant union in Australia and in 1925 its activities demanded the constant attention of the Cabinet, coloured all discussions about arbitration, damaged Commonwealth-State relations, provoked emergency legislation, involved the Government in controversial legal proceedings and provided the pretext for a general election. In 1925 industrial conflict overshadowed everything else and the leaders of the small Seamen's Union became as much household names as Nellie Melba, Bill Ponsford, "Boy" Charlton and Bruce himself.

The seamen had taken part in some full-scale strikes, but their militancy was usually expressed in various activities that were given the label "job control", a term that appeared in press headlines almost every day. Job control was usually taken to mean sudden stoppages, either of single ships or all the ships of one company, with the men refusing to sail until the crew was strengthened or improved conditions were granted. At the basis of many of these irritation strikes was the seamen's determination to ensure that they all had a fair share of work by limiting the freedom of the ships' officers to select crews. For instance, seamen frequently refused to accept employment if it meant they were replacing a crew member who had been dismissed. At other times the stoppages were a kind of flexing of the muscles, with no purpose other
than to show defiance of the capitalists whose cargoes they carried or the rich passengers whose surroundings contrasted greatly with the crew's quarters. The sailings of many ships were delayed because one or two of the crew would suddenly walk off, without making any demands, or because a search would have to be made of the waterfront hotels and one or two intoxicated firemen carried aboard to complete the crew's complement.

The Seamen's Union was sometimes depicted as a monolithic organization ruled by two Bolsheviks. In reality it was a divided, undisciplined body. The Sydney and Fremantle branches were the most strike-prone, while the Port Adelaide branch was relatively moderate. The officials of the large Sydney branch frequently challenged the authority of the Federal officials, while the officials of the Victorian branch, most of whom had the name O'Neill, were continually feuding with each other. In the large branches charges of drunkenness, embezzlement and arson were freely made against some of the leaders. The Union as a whole tended to be divided between the firemen and the more moderate seamen. Meetings were frequently stormy and decisions often depended on which ships

happened to be in port. The Union was unique in that comparatively few of its members were Australian-born, a majority being Liverpool-born Irishmen with little understanding and no respect for the arbitration system.\(^1\) The tradition of job control gave irresponsible elements in the rank and file great scope to act independently of their executives. The Arbitration Court recognized this and while Powers' awards ordered an end to job control he was rather reluctant to blame the leaders of the Union for all stoppages.\(^2\)

Conservative politicians and newspapers preferred to attribute every strike and every delayed sailing to the ideas and persuasive powers of the leaders of the Seamen's Union. The President of the Union was Tom Walsh. Nearly 60 years old, Walsh was an Irishman who had come to Australia in the 1890s. He had become an official of the Union in Newcastle in 1907, the General Secretary in 1919 and President in 1921. Married to the suffragette-socialist Adela Pankhurst, he had been a wavering member of the Communist Party and although his membership had lapsed by 1925 he retained his Marxist rhetoric, his speeches proclaiming the necessity for revolution and the futility of the reformism of the Labour Party.

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2. 19 C.A.R. 581, 582.
Walsh had first become well-known in the bitter seamen's strike of 1919, when he was gaol, and in the following years his name was never out of the newspapers for long. Cartoons portrayed him as a wild-eyed, bearded Bolshevik but he was really a rather frail man, who read and wrote on an encyclopaedic range of subjects, and who excelled as an advocate in the Court which he so frequently denounced. By 1924 Walsh had to share his position as the bête noire of the Australian middle classes with another official. Thirty years younger than Walsh, Jacob Johnson (Johansen to his enemies) was a Dutchman who had come to Australia in 1910 and had become Assistant Secretary of the Sydney branch in 1921. A member of the British Socialist Party, Johnson was a phlegmatic man who coldly asserted the necessity for class warfare. Despite his lowly office, it gradually became apparent that he was the most consistent proponent of strikes and job control and a bitter critic of his more conciliatory colleagues. Walsh disliked "the Dutchman", but it was not until 1926 that their

1. Thomas Walsh (1871-1945). In the 1930s Walsh became involved in the New Guard and made frequent speeches attacking communism. In 1939-40 he visited Japan and subsequently spoke and wrote in support of Japan's expansionist policy. He was associated with the Australia First Movement. See D. Mitchell, The fighting Pankhursts, London, 1967.

There had been a decline in the number of irritation strikes by the seamen in 1923, but there was a resurgence in the last months of 1924. The waterside workers' dispute had been about a single and straightforward issue but the seamen were involved in up to a dozen co- incidental but unconnected strikes. In two or three of them they had definite grievances, but these were obscured by the other stoppages, the aims of which were trivial, unreasonable or simply non-existent.

The first and by far the longest dispute arose when the Commonwealth Shipping Line chartered three British vessels manned by crews on wages far below the Australian rates. The Seamen's Union claimed that the chartering had been unwarranted, as the Line had vessels lying idle in the Eastern ports, and in any case the crews should be paid Australian wages. The first of the chartered ships, the *Volumnia*, reached Fremantle in October, 1924, and the Seamen's Union persuaded its crew to leave the ship. The captain prosecuted 23 members of the crew under the Merchant Shipping Act and they were sentenced to two weeks' imprisonment. The *Volumnia* eventually left Fremantle with a volunteer crew in February, 1925, but it was declared "black" in every port, the seamen and the waterside

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workers demanding that the original crew be reinstated. In Sydney its cargo was partly transhipped to the *Eromanga*, which in turn was declared "black", and the ban on the two ships was not lifted until July, 1925. The other two chartered vessels, which reached Australia in November, 1924, and January, 1925, were boycotted temporarily at Fremantle and Port Adelaide, but the *Waterside Workers Federation*, anxious to prevent the shipowners from having any excuse to revoke the December agreement, ordered the ships to be unloaded.¹

A number of minor disputes began in December, 1924. The Seamen's Union put a ban on the Newcastle and Hunter River Company's vessels because it was using seamen to load and unload its cargoes.² In Melbourne a ship was held up because the crew demanded that an engineer be dismissed,³ in Brisbane three ships were idle because the crews claimed overtime pay when sailings were deferred,⁴ and in Fremantle three ships were held up as a reprisal against the waterside workers for working one of the Commonwealth Line's chartered steamers.⁵

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3. Ibid. 16 Dec. 1924, p.9.
5. Ibid. 30 Dec. 1924, p.7.
In January, 1925, two New Zealand ships were idle in Melbourne because the seamen demanded Australian rates, and one of the crews was imprisoned for two weeks for disobeying the captain's order.  

On 1st January, 1925, the position on the waterfront worsened when the Seamen's Union demanded that crews be picked up at the Communist Hall in Sydney and the Union's rooms in Melbourne, and not at the wharves. The Union claimed that men had been victimized on the wharves, but the shipowners asserted that the Union was seeking to restrict the rights of the ships' officers to select the crews. The shipowners suggested as a compromise that the crews be picked up at the Mercantile Marine offices in each capital city port and Powers made an award to that effect on 12th January.  

But the men in Sydney, Melbourne and Brisbane refused to obey the award. The cumulative effect of all these disputes was that by early January, 1925, 47 vessels were held up in every State except Tasmania, including 17 ships in Sydney and 16 in Melbourne.  

The Commonwealth Government first became involved in the seamen's strike in order to fulfil one of its undisputed functions: the maintenance of Commonwealth services. In late

2. 21 C.A.R. 1.
November, 1924, the seamen employed by the Fremantle Harbour Trust went on strike. On 1st December, 1924, frantic telegrams were sent to Bruce from the Chairman of the Overseas Shipping Representatives Association and from the Fremantle Quarantine Offices stating that the seamen had sealed off the port and that Commonwealth officers were being hampered by a lack of police protection.¹ Later reports claimed that mobs were roaming the wharves, casting off the lines of ships attempting to berth, and preventing pilots, quarantine officers and customs officials from going aboard. Efforts to persuade the Western Australian Labour Government to provide police protection had failed. Bruce immediately sent a telegram to Philip Collier, the Western Australian Premier, reminding him that the safeguarding of Commonwealth officers was a direct responsibility of the State Government and demanding that protection be immediately provided.² Pearce was in Perth at the time and reported regularly to Bruce. After two days he found that the trouble was virtually over, with the mails being handled, quarantine officers working without interruption and customs officials using a private launch to board ships.³

As more and more ships were held up in the first week of 1925 pressure on the Commonwealth Government to intervene mounted. Much of this pressure was concerned with communication between Tasmania and the mainland. The Tasmanian Premier, J.A. Lyons, Nationalist politicians, businessmen and shipping officials appealed to Bruce to take action to rescue the hundreds of tourists, woolbuyers and other people stranded in Tasmania and to ensure that the State did not run out of essential supplies.¹ The President of the Hobart Chamber of Commerce called for the suspension of the Navigation Act, so that foreign ships could engage in interstate trade.² Other demands were concerned with the question of governmental authority. One Nationalist backbencher asked Bruce whether he proposed to allow Walsh to run the country³ and other Government supporters raised the same question, although more diplomatically and rhetorically.⁴ The Sydney Morning Herald described the Government's attitude as "remarkable" and accused it of compromising with arrogance and insincerity.⁵ The Argus

declared that the first duty of Government was to maintain the transport services, but the Government seemed indifferent to the fate of the shipping industry.\(^1\) Hughes described the policy of the Government as one of drift, and remarked that only an overwhelming display of public indignation would force it to take action.\(^2\)

The Government was not quite as inactive as it seemed, for at an early stage it took action to deal with the problem of Tasmania. On 6th January, 1925, Bruce told the Commonwealth Shipping Board to divert one of its streamers, which was sailing from Adelaide to Melbourne, to the Tasmanian ports. The Chairman of the Board stated that this would involve the ship in heavy risks, greatly increase expenses, offend the consignees in Melbourne, Sydney and Brisbane, and probably lead to the vessel being declared "black" by the Seamen's Union. But Bruce repeated his order and the Board gave in, after making a formal protest against the Government's interference in the management of the line.\(^3\) The position in Tasmania became more serious when a ship carrying sugar

\(^1\) Argus. 6 Jan. 1925. p.8.


\(^3\) Bruce to H.B. Larkin, Chairman, Commonwealth Shipping Board, 6 Jan. 1925. Larkin to Bruce, 7 Jan. 1925, Bruce to Larkin, 7 Jan. 1925, W. Lewis, Secretary, Commonwealth Shipping Board, to Bruce, 9 Jan. 1925. (C.A.O. A458 G50272).
was held up in Sydney, as it seemed that the Tasmanian jam factories would have to close down and thousands of small fruitgrowers would be ruined. Bruce immediately asked Theodore to arrange for a supply of sugar to be sent to Tasmania and 300 tons were despatched within a day. Bruce also asked Lyons to determine how many people needed to return urgently to the mainland and was told that there were about a thousand.

Until the Federal Cabinet met on 13th January, 1925, there was no consultation between Ministers about the Government's policy towards the strike. A suggestion by H.E. Pratten, the Minister for Trade and Customs, that the Government should suspend the Navigation Act was publicly rejected by Bruce. It was Bruce alone, unassisted by either his Ministers or his departmental officers, who drafted the telegrams and letters to the Tasmanian Premier, politicians and business leaders, and it was Bruce who, on his own initiative, ordered the diversion of the Commonwealth Line steamer. He also took a close interest in the moves.

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that were being made to settle the strike and told Garran to
report regularly on the proceedings in the Arbitration Court.¹
On 12th January Garran told him that it was clear that the
seamen had no intention of obeying any award that Powers
should make, and Bruce decided that the Government should
apply for the deregistration of the Seamen's Union. The
application was made the same day. The counsel for the
Government told the Court that the Government had been reluc-
tant to intervene, but with the whole of sea communications
interrupted it was necessary to do so in the interests of the
public.²

Bruce issued a statement in which he used the same
argument. The paralysis of shipping had reached critical
proportions and the position in Tasmania was very grave. The
seamen were defying the arbitration law and were showing no
regard for the sufferings of workers and their families.³

Cabinet discussions began the next day, with the strike the
first item on the agenda. Garran and Captain J.K. Davis,
the Director of Navigation, were frequently consulted. After
two days it was decided that, in addition to the measures
already initiated by Bruce, the Government should charter a

ship to maintain communications with Tasmania and should prosecute Walsh for inciting to strike.

On 16th January, 1925, the Government chartered the Nairana and advertised in Melbourne for a crew. There were 300 volunteers and no trouble was found in selecting a competent crew. The ship did not carry any cargo, but spent the next two weeks conveying passengers between Launceston and Melbourne. Bruce continued to receive requests to send ships to the smaller northern ports and the Tasmanian Shipping Committee took the opportunity to send long letters enumerating Tasmania's difficulties and calling for the repeal of the Navigation Act. But the Government's action had effectively dealt with the two great problems of the stranded tourists and diminishing food supplies, and by the last week in January conditions in Tasmania were normal again.

Bruce's decision to seek the deregistration of the Seamen's Union was surprising in that he could have safely left it to the shipowners to make the application. (The Commonwealth Steamship Owners Federation did in fact make a similar application a few days later.) It suggests that

he felt that strong action by the Government was necessary to satisfy his supporters and perhaps to intimidate the Union. It was not surprising that he should see in deregistration a solution to the strike, for Powers, Garran and the employers' organizations had all referred to it on various occasions as the most drastic and effective penalty that could be imposed on a union. The case appeared before Powers on 23rd January, 1925. On the previous day the Federal Committee of Management of the Seamen's Union had met and all the officials, including Walsh, had agreed that deregistration would place the Union in an extremely weak position and would leave the way open for the formation of a rival union. But they felt that their hands were tied, as the members in Sydney and Fremantle would not accept the Court's pick-up places and it looked as though deregistration was unavoidable. Nevertheless, the Committee recommended to the branches that the order of the Court be obeyed and Walsh told the Court that the men would return to work under the terms of the award.\(^1\) Powers withheld judgement and after a few days' resistance the branches agreed to obey his award.\(^2\) By the end of the month only two or three ships were still held up and on 6th February, 1925, Powers dismissed the application for deregistration.\(^3\)

3. 21 C.A.R. 16
CITIZEN: "Officer, officer, these dreadful doings have been going on for days, and this is your beat! Why haven't you done something?"

POLICEMAN BRUCE (with deep emotion): "I have, I have! To the very last minute I waited in the hope that a compromise might be effected between the parties, but action became imperative. I have applied to have the ruffian deregistered."
Powers' decision was denounced in many quarters. W. Brooks of the New South Wales Employers' Federation blamed the ineptitude and inactivity of the Court for Australia's industrial troubles,¹ Bavin accused Powers of timidity² and the Sydney Morning Herald, in an abusive editorial, declared that the Court would be held in derision by all honest men.³ Commonwealth Ministers were more discreet. They had little doubt that an opportunity for another application for the deregistration of the Seamen's Union would soon arise and at least their action had brought the strike to an end. In the meantime, if the Union itself could not be penalized, there seemed a good chance that the law could deal severely with some of its officials.

On 14th January, 1925, following the decision of Cabinet on the previous day, Garran ordered three charges to be laid against Walsh, one of which was subsequently withdrawn.⁴ Walsh was charged with having unlawfully urged J. Morris, the General Secretary of the Waterside Workers Federation, and J. O'Neill, the Secretary of the Victorian branch of the Seamen's Union, to strike, this being an offence under both the Crimes Act and the Arbitration Act. Normally

2. Ibid. 6 March, 1925, p.9.
3. Ibid. 7 Feb. 1925, p.16.
it was a difficult charge to prove, as press reports of union meetings could not be used as evidence and no unionist was likely to give evidence against his leaders. But Walsh's offence took place at Fremantle in December, 1924, when he was seeking to persuade the waterside workers to support the seamen's ban on the Commonwealth Line vessels, and it was an easy matter for the Crown Solicitor's Office to obtain copies of the telegrams which Walsh sent to Melbourne.\(^1\) The charge was heard in the Melbourne City Court in February, 1925, and Walsh was found guilty and fined £150. Subsequently, the High Court quashed the conviction relating to O'Neill and upheld that relating to Morris.\(^2\) By then Walsh was involved in further legal troubles and no attempt was made to collect the fine until 1926.\(^3\)

Garran thought that Johnson could be charged with the same offence as Walsh, as officers of the Levuka claimed that he had come aboard and addressed the seamen, ordering them not to sail unless four of the crew were repatriated to their home ports.\(^4\) But the opinion of counsel was that,


\(^{2}\) 36 C.L.R. 464.


while the offence almost certainly took place, the mere facts
that Johnson boarded the ship and that the men subsequently
walked off were not enough, for the Court would require evidence
of what took place at the actual meeting.\(^1\) No charge was
therefore laid against Johnson.

From February to May, 1925, the Commonwealth Attorney-
General's Department kept a close watch on the activities of
the Seamen's Union, recording instances of job control which
could be used in any further proceedings for the deregistra-
tion of the Union. The main instance was the continued black
ban on the *Volumnia* and *Eromanga*, both berthed at Sydney.
Throughout March, 1925, Bruce was touring Western Australia
and South Australia but Deane, the Secretary of the Prime
Minister's Department, sent him detailed reports about the
various shipping holdups.\(^2\) Bruce made it clear that he
expected the Attorney-General's Department to renew the
application for deregistration and G.S. Knowles, who was
acting in Garran's position, had to write several letters
justifying the Department's apparent inaction.\(^3\) He informed

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2. Deane to Bruce, 21 March, 1925, Deane to Bruce, 24 March,
3. Knowles to Deane, 21 March 1925, Knowles to Deane,
   23 March, 1925, Knowles to Deane, 26 March, 1925.
   (C.A.O. A458 F502/2); Knowles to Groom, 24 March,
   1925. (A.N.L. MS 236/1/2334).
Deane that the Union was undoubtedly pursuing a policy of deliberate pinpricks but there was no act which could be relied on to secure its deregistration. Stewart had told him that the shipowners were waiting for evidence for a further application. As they were much more closely in touch with the actions of the Union, but had not yet obtained sufficient evidence, it would be pointless for the Government to institute proceedings. One factor which the shipowners, and presumably Knowles, were keeping in mind was that much would depend on which member of the Court heard the application: Quick condemned the continuance of the Volumnia trouble and referred to deregistration as a possible solution,¹ but Powers had said on several occasions that deregistration was an extreme penalty, which could cause the worst industrial war ever known.²

In the end it was neither Powers nor Quick but Webb who heard the application for the deregistration of the Seamen's Union. In May the Commonwealth Shipping Board applied for the Union's deregistration, on the grounds that it had committed breaches of the Arbitration Act and awards, had practised job control, had acted in a manner inconsistent with industrial peace, had disregarded orders

2. 21 C.A.R. 10.
The application cited the ban on the *Volumnia* and the *Eromanga*, as well as other stoppages. The Commonwealth Steamship Owners Association made a similar application. On 30th May, 1925, the High Court answered several questions submitted by Webb relating to the application. It decided that the acts of deregistration and of cancelling awards were not judicial and were therefore within the powers of a Deputy President. The Seamen's Union decided not to oppose the application for deregistration, as further expenditure on legal proceedings was unwarranted. On 5th June, 1925, Webb, "with great regret", deregistered the Federated Seamen's Union and cancelled its award. He deplored the fact that the fine body of Australian seamen had, through the actions of their officers, been deprived of their status and of the protection of awards, and asserted that their conditions had been obtained through constitutional methods, and not through the methods of Walsh and Johnson. It was

1. Statement setting out grounds on which Commonwealth Shipping Board intends to ask Court to cancel registration of Seamen's Union, 11 May, 1925. (C.A.O. MP401 CL4021); Lewis to Deane, 4 June, 1925. (C.A.O. A458 1502/2).

2. 36 C.L.R. 442

3. 21 C.A.R. 724
the first time that a union had been deregistered in the history of the Federal Arbitration Court.

It is difficult to ascertain what the Commonwealth Government and its advisers hoped would result from the deregistration of the Seamen's Union. It was a definite step towards restoring some of the prestige of the Arbitration Court which was at an extremely low ebb. The very act of deregistration showed that the Court was capable of strong and decisive action and, as a result of that act, the Court would no longer be defied, abused and ignored by the Union. But whether the Union would modify its practices now that it was outside the Court was a very different, and for the Government, more important question. Every shipping stoppage caused loss and inconvenience of varying degrees of severity to varying numbers of Australians. Almost every day the newspapers contained the headlines "Job Control Again", and increasingly the authority of the Government was being questioned. Deregistration was most likely to succeed if a union was divided and if there was a large army of unemployed men. A rival union composed of the moderate elements of the old union would obviously receive favoured treatment from the employers and in time could be registered by the Court, which would almost certainly mean the end of the old union. It was well-known that there were
moderate men in the Seamen's Union who hated the militant leaders, but whether they had enough support to secede and set up a new union was doubtful. Alternatively, the employers, no longer bound by the award, could ruthlessly lower rates and dismiss difficult workers, replacing them with unemployed non-unionists who would be far more manageable. But the seamen were still protected to a large extent by the Navigation Act, and the employment of non-unionists would lead to continual strife on the waterfront. The two barristers who represented the Commonwealth Steamship Owners Association had no illusions about deregistration. Owen Dixon told the shipowners that no action by the Court but only economic pressure would have any real effect on the Seamen's Union and R.G. Menzies stated publicly that registration was of little use unless the union was dissolved. Bruce and Garran may have shared these views but they gave the impression that deregistration was a panacea.

Any hopes that deregistration would weaken the Seamen's Union's propensity to strike were soon disappointed. A week after the deregistration order a ship was held up in Melbourne because its owners would not include in the crew's articles a clause guaranteeing the seamen the conditions

prescribed in the cancelled award.\textsuperscript{1} A few days later the crew walked off a ship in Sydney for the same reason, and predictions began to be made that there would be a crisis in July or August, 1925, when the articles of most of the interstate ships expired.\textsuperscript{2} But the Seamen's Union was impatient and on 30th June, 1925, a stormy meeting of the Sydney branch decided unanimously to stop work on all vessels within a fortnight unless the owners agreed to the revision of the articles.\textsuperscript{3} This decision was endorsed by the other branches and ignored by the shipowners. The strike began on 14th July, 1925, and within two days 50 vessels and 2,500 seamen were idle in all the major ports in Australia. By the end of the month 120 vessels were held up, including 67 in Sydney and 22 in Melbourne. 20,000 men consisting of seamen, waterside workers, other maritime workers and 12,000 miners, were out of work as a result of the strike. Altogether, it was the biggest shipping holdup in Australia since 1917.\textsuperscript{4}

As in January, 1925, the Government was under pressure throughout the strike to take action to safeguard

\begin{itemize}
  \item[1.] S.M.H. 13 June, 1925, p.15.
  \item[2.] Ibid. 20 June, 1925, p.15.
  \item[3.] Ibid. 1 July, 1925, p.9.
  \item[4.] Ibid. 17 July, 1925, p.12.
\end{itemize}
Tasmania's interests, but in this strike it felt that no action was necessary. As early as 30th June Lyons asked Bruce for an assurance that the transport services between the mainland and Tasmania would be maintained, as otherwise the State's fruitgrowers would be ruined.\(^1\) A number of near-hysterical appeals for assistance followed from various Tasmanian producers' organizations.\(^2\) But the Seamen's Union announced that the Tasmanian trade was not to be interfered with, and although three ships were held up in Hobart, the Director of Navigation thought that the fruitgrowers could easily recruit volunteers to man them. Bruce told the Tasmanians that the Commonwealth Government could only assume responsibility for the conveyance of passengers, mails and essential food requirements; it could not "keep the whole of the wheels of commerce and transport going as if normal conditions prevailed."\(^3\) Both Lyons and Walsh suggested that Commonwealth Line vessels could be used to carry Tasmanian produce to the mainland, but this time Bruce refused to give any orders to the Commonwealth Shipping Board.\(^4\) In early August, 1925, Lyons reported that

1. Lyons to Bruce, 30 June, 1925. (C.A.O. A458 J502/2).
Tasmanian stocks of wheat and flour were running low,¹ but the strike ended before it was necessary for the Commonwealth Government to take relief measures.

Whereas the January strike of the seamen caused the Government to take drastic executive action, the July strike provoked it into taking emergency legislative action. The strike began, rather fitfully, in the middle of June, 1925, and on 25th June the Government introduced in Parliament a bill to amend the Immigration Act. By 14th July shipping was at a complete standstill and the next day a bill was brought forward to amend the Navigation Act.

The 1925 Immigration Bill contained a clause enabling the Governor-General to prohibit the immigration of specified aliens, either because the persons were considered undesirable or on account of the economic, industrial or other conditions existing in Australia.² There was little criticism of this clause. But the Bill also provided that the Governor-General could issue a proclamation that there was a serious industrial disturbance in existence and, while the proclamation was in force, the Minister could

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2. This clause had been drafted by the Home and Territories Department long before the seamen's strike. F.J. Quinlan, Chief Clerk, Home and Territories Department, to Garran, 25 May, 1925. (C.A.O. A2863 1925 Immigration Bill file).
order any aliens who he believed had been hindering the transport of goods, the conveyance of passengers or the provision of Commonwealth services, to appear before a board to show cause why they should not be deported. In introducing the Bill Bruce said that half Australia's industrial troubles were caused by alien agitators who introduced doctrines and an atmosphere inconsistent with Australian social principles and ideals. In a more practical vein, Page stressed that strikes and job control were hindering the import of capital into Australia and were preventing the establishment of new industries. He made the valid point that most stoppages occurred in the two industries, coalmining and transport, in which the unions were mostly led by migrants. Groom argued that the Labour Party had expelled the Communists from its ranks and the nation should have the same right, a rather dubious analogy that was repeated by many Nationalists. Government supporters admitted that the Bill gave the Government extreme powers but claimed that public opinion and the need to retain electoral support would prevent it

1. Clause 7 was first inserted in the draft Bill on 24 June, 1925. (C.A.O. A2663 1925 Immigration Bill file).
3. Ibid. v. 110, 8 July, 1925, p.779.
4. Ibid. v. 110, 16 July, 1925, p.1190.
from abusing these powers. The Labour Party and the trade unions attacked the Bill fiercely. They asserted that its purpose was to cripple the unions; that it treated unionists as criminals, while ignoring monopolists and price-fixers; that it discriminated against British-born Australians, some of whom had lived in Australia for decades; and that it violated British justice by being retrospective in its application and by providing for trial by a board of Government nominees rather than by a jury. Many Labour speakers enjoyed naming the distinguished Australians (Hughes was the "alien" most frequently cited) who could be deported if the Bill became law. Finally, they rejected Bruce's notion that at any one time there existed certain homogeneous "Australian ideals" to which all but criminals subscribed. The Immigration Bill was passed by Parliament on 17th July, 1925. Although it was assumed on all sides that it was aimed directly at Walsh, Johnson and perhaps Jock Garden, the Secretary of the New South Wales Labour Council, no attempt was made during the strike to use the new powers which the Government had acquired.

The failure of the Government to put the Immigration Act into force during the July, 1925, strike suggests that its purpose was not to expedite the settlement of that particular dispute but to overcome the wider problem of the
recurring strikes of the Seamen's Union. The Act was a gesture of strength by the Government which would mollify the criticism of its supporters and, hopefully, would deter the Union from embarking on another strike as soon as the present dispute was settled. That it was not an empty threat, as later events showed, merely underlined the fact that it was an act of desperation by a Government which for nine months had to spend much of its time and energies in combating one union. It was a desperate act because, with an election forthcoming, it would inevitably be portrayed by the Labour Party as an attack on unionism and also because, if it was put into operation, it could well provoke a general strike. The Government's willingness to take such risks indicated its deep concern that its inaction was being interpreted as weakness and that the Seamen's Union was holding it up to ridicule.

The Immigration Act also indicated that the Government took the view that strikes were caused, not through a lack of discipline in the unions, as Higgins and Powers had generally believed, but through a lack of democracy in the unions. Under the trade and commerce power the Government could probably have introduced sweeping legislation to regulate the organization and management of the Seamen's Union. Instead, its legislation was directed at the Union's
officials, reflecting a belief that union officials were more militant than the rank and file, that the leaders suppressed the views of the ordinary members and that the latter would welcome their liberation from the Union Tzars. The weakness of the Act was pointed out in Parliament by experienced unionists such as Hughes and Frank Anstey. They did not dispute that small groups generally determined the policies of unions, as with most organizations, but it did not follow that the ideas and attitudes of the rank and file were at variance with those of their leaders. Moreover, as far as the Seamen's Union was concerned, Walsh and Johnson might have had great influence, but they were not the only militant officials in the Union and some of the others were Australian-born. They argued that it was doubtful if the removal of Walsh and Johnson would lead to any marked change in the Union's policies and behaviour.¹

It is fairly certain that the Immigration Act was a product of the Bruce-Garran partnership, an alliance which was very active throughout 1925. Bruce had never hesitated to by-pass Groom and to deal directly with Garran, particularly during a dispute when swift action was necessary. It will be recalled that Garran had advocated deportation as a penalty for aliens who instigated strikes as early as

¹. C.P.D. v. 110, 2 July, 1925, pp.675, 678.
January, 1925,¹ while Bruce, in his repeated references to the need for secret ballots, had shown that he believed that union officials exercised excessive power and influence. Garran's support for the Bill would have been essential, as the constitutional validity of the deportation clauses was by no means certain. In fact, in Parliament Groom appeared to be very unsure of himself in discussing the legality of the Bill, and although the evidence is not conclusive, it may be hypothesised that the Bill represented the triumph of the policies of Bruce and Garran over the doubts of Groom.

In contrast to the Immigration Bill, the Navigation Bill was intended specifically to deal with the July, 1925, dispute. It had only one important provision. Under the Navigation Act Australian coastal shipping had become the monopoly of Australian shipowners and seamen, as the Act required ships engaged in the coastal trade to be licensed, and licences were only given to ships in cases where crew sizes, accommodation and other facilities conformed with the provisions of the Act. The new Bill simply gave the Governor-General power by proclamation to suspend the coastal clauses of the Act if he thought that it was in the public interest. Pratten, who introduced the Bill, did not refer to the current seamen's strike and stated that the Government was merely asking for a reserve power which it hoped that it would never

¹. See above p.68.
have to use. But it was obvious that the Government believed that the power might be immediately required, as the Bill was rushed through Parliament in two days, with the Labour Party opposing it vigorously all the way. Garran had discussions the next day with A.S. Elford of the Commonwealth Steamship Owners Association, but no use was made of the Act during the strike. The reason for this was that the Royal Assent to the Act was needed and it was not received from England until 26th July, by which time negotiations for a settlement were in progress. Bruce wrote to all the Premiers stating that if the conference was abortive the Act would be put into operation and he would rely on the State Governments to inform him of shortages of food and other necessaries and any breakdown in essential services. But two days later the strike was settled. The 1925 Navigation Act had weaknesses which were obvious at the time: it would not help the Australian shipowners in the least and the overseas shipowners would probably refuse to enter the coastal trade, as it would only be for the duration of the strike and it would almost certainly lead to a "black" ban on their other vessels.

1. C.P.D. v. 110, 16 July 1925, p.1230.
2. S.M.H. 17 July, 1925, p.11.
Throughout the seamen's dispute the Government maintained an uncompromising attitude. Following negotiations in early July, 1925, initiated by the new Labour Premier of New South Wales, J.T. Lang, the Commonwealth Shipping Board made an agreement with the maritime unions, excluding the Seamen's Union, whereby the Board would endorse the crews' articles with the terms of the former award, and the unions guaranteed that they would not countenance any action by the Seamen's Union to flout the agreement or to delay shipping.\(^1\)

As a result of the agreement, the Commonwealth Lines' steamers were not involved in the strike. Bruce demanded that the Board give the fullest explanation for its action, and his references to "far-reaching results", "radical departure from the usual conditions governing employment" and to the fact that the Seamen's Union was not a party to the agreement, showed that he strongly disapproved of it.\(^2\) The Board sent a brief reply, stating that its action was taken as a last resort and up to that time the agreement had been most successful.\(^3\) Bruce was probably unconvinced but having made the Board independent of Government control, there was nothing further that he could do.

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1. S.M.H. 7 July, 1925, p.11.
3. Clarkson to Bruce, 10 July, 1925. (C.A.O. A458 J502/2).
The Commonwealth Government, unlike the New South Wales Government, refused to perform a mediating role in the strike. A deputation of trade union leaders saw Bruce on 30th June, 1925, and two weeks later Matthew Charlton, the Leader of the Federal Parliamentary Labour Party, moved that the Prime Minister should convene a conference. On both occasions Bruce said that the Government would not interfere and that it was up to the unions to bring the Seamen's Union into line.\(^1\) The Government had to uphold the authority of the Court and it could not assist a deregistered union to receive every advantage that it had received under the old award. Garran assured Powers that the Government had no intention of following the Hughes practice and setting up a special tribunal.\(^2\) On 22nd July negotiations began between the shipowners and union leaders, presided over by J.M. Baddeley, the New South Wales Minister for Labour. There were predictions that discussions would go on for a fortnight, and this provoked Bruce into telling both sides that every day of the strike increased the number of unemployed and brought greater privation to the community, and

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1. Minutes of deputation of trade unionists to Prime Minister, 30 June, 1925. (C.A.O. A458 J502/2); C.P.D. v. 110, 15 July, 1925, p.1092.

2. Garran to Groom, 20 July, 1925. (A.N.L. MS 236/2/3141).
an immediate settlement was a vital necessity. Nevertheless, the conference took a further week before agreement was reached. The seamen promised to abandon job control and the rotary system of manning ships, while the shipowners agreed to retain fortnightly pay and conceded the Union a monthly stop-work meeting. Branch meetings of the seamen ratified the agreement and by 7th August, 1925, the ships were being manned again.

The seamen’s strike was followed by two weeks of industrial peace. Then another strike began which cast a great shadow over Australian politics until December, 1925. On 20th August, 1925, British seamen on almost all overseas ships in Sydney refused duty because the National Maritime Board in England had reduced their wages from £10 to £9 per month. Walsh and Johnson addressed the men and promised them the support of all Australian unionists. Within a day or two British seamen had walked off their ships in Melbourne and other ports, and at the same time similar events were taking place in South Africa, New Zealand and, on a relatively


2. S.M.H. 1 Aug., 1925, p.15.

small scale, in Britain itself. By 26th August, 1925, 25 overseas vessels were idle in Australia and by 17th September the number had grown to 39. Throughout the strike a few British ships were able to sail, manned either by their original crews or by volunteers, but it was not until November, 1925, that the number of idle ships began to decline. The strikers had the moral and financial support of many Australian unions, the major exception being the Waterside Workers Federation, which was becoming extremely annoyed by the endless succession of shipping strikes and the consequent unemployment for its members.

There was very little that the Commonwealth Government could do to assist the settlement of the strike. On 22nd August, 1925, Havelock Wilson, the veteran leader of the British National Sailors and Firemen's Union, sent a cable to Bruce explaining that both the shipowners and the maritime unions were represented on the National Maritime Board and the wage reduction was confirmed by the Executive Council and the annual general meeting of his Union; it had also been accepted by 50,000 seamen who signed their articles. He asked Bruce to give full protection to the British seamen who were working and to restrain Walsh and other Australian unionists from interfering.¹ Bruce made much of the argu-

ment that the strikers were rebelling against their leaders and were thereby violating one of the principles of unionism.\footnote{S.M.H. 24 Aug. 1925, p.9.}
The strikers replied that Wilson was both an autocrat and a reactionary, who was paid and feted by the shipowners.\footnote{Ibid. 26 Aug. 1925, pp.13-14.}
Bruce admitted that the seamen's wages seemed to be unbelievably low, but throughout the strike he supported the shipowners' argument that the strikers' action was futile, as any changes in rates could only be made by their union in England.\footnote{Ibid. 3 Nov. 1925, p.11, 6 Nov. 1925, p.11.}
Both Powers and Baddeley convened conferences but they were unsuccessful. Australian courts sentenced hundreds of the seamen to imprisonment, which, together with decreasing funds and increasing numbers of volunteers, weakened the strikers' morale. They finally conceded defeat on 30th November, 1925, and the owners agreed to repatriate the men stranded in Australia and to make no further prosecutions.

Throughout the strike the Government's main concern was to ensure that the seamen who refused to strike, the volunteers and the waterside workers should be protected. On 23rd August, 1925, Bruce sent a telegram to all the Premiers asking for an assurance that the seamen who were willing to carry out their contracts should be protected from any...
intimidation. Three Premiers promised to preserve the peace, but all of the five Labour Premiers suspected that Bruce was making political capital out of the strike. Collier said he resented the suggestion that his Government would not do its duty. During the strike there were allegations that the Western Australian and Queensland Governments were not preventing intimidation. On 30th September the shipowners claimed that at Fremantle a large band of strikers had boarded a ship and forced the crew to join them, and said that the Commissioner of Police admitted he could not cope with the situation. Bruce demanded an explanation from Collier, who angrily replied that the report was not true, that police protection had been ample and there had been no disorder, and suggested that Bruce's practice of publishing his telegrams in the press before he had received a reply could easily be misconstrued as political propaganda. Later in October Bruce asked the Queensland Premier, W. McCormack, to provide protection to ensure that ships with refrigerated cargoes at Cairns, Townsville and Bowen were refuelled, but McCormack

replied that there had been no breaches of peace at these ports and the Government would maintain law and order without help from the Commonwealth Government. In many Queensland ports there were threats of violence throughout October, 1925, as farmers and canegrowers left their farms to work on the wharves, either protecting the waterside workers or loading their produce on to the ships themselves. Graziers were attacked at Gladstone, at Townsville strikers damaged a ship and pelted its crew with coal and at Bowen seamen emptied railway trucks of coal. There were very few clashes between strikers and farmers, but the press created an atmosphere of incipient violence which was attributed to the inaction of the State Labour Government.

The role of the Commonwealth Government in the British seamen's strike was therefore a very limited one. But it provided the pretext for the Government to take two measures aimed at dealing ruthlessly with the leadership of the Australian seamen, the power of the Communists in the unions, the long succession of industrial stoppages and the alleged inability of State Labour Governments to cope effectively with the growing problem of law and order.


The British seamen's strike began on 21st August, 1925, and the press gave much publicity to the fact that Walsh and Johnson had addressed the strikers in Sydney. On 24th August the Overseas Shipping Representatives Association told Bruce that it was the extremist leaders of the Seamen's Union of Australia who had instigated the strike and demanded that the Government take immediate action against these fomenters of industrial strife. On the same day Bruce said that extremists such as Walsh and Johnson were undermining the authority of the properly constituted leaders of the British union, and contrasted the industrial peace brought about by Havelock Wilson with the constant strikes and unemployment of the Australian seamen. On the next day Cabinet discussed the strike and after an hour had decided on its course of action. The Governor-General immediately issued a proclamation that there existed a serious industrial disturbance. That evening Garran left for Sydney and on 27th August Bruce announced the names of the members of the Deportation Board. On 31st August Walsh and Johnson were each issued with summons to show cause why they should not be deported.

When Garran went to Sydney he saw Lang and asked for permission to offer the Chairmanship of the Board to

the New South Wales Chief Justice. Lang told him that he had no desire to block the Commonwealth but he did not want the State brought into the dispute at all. He subsequently made his views public, remarking that he was prepared to see that the laws of the Commonwealth were observed, but he could not allow his State or his Party to be identified with a Nationalist attempt to deport its political and industrial opponents. Bruce condemned Lang's failure to guarantee that the necessary police would be provided if any deportations were ordered and immediately introduced a Peace Officers Bill. The Bill, which passed through Parliament in three days, simply empowered the Attorney-General to appoint Commonwealth peace officers with the powers of police constables and officers. It is difficult to avoid the conclusion that Lang was approached because Bruce knew he could not co-operate and it was a good opportunity to publicize the partisanship that he felt Labour Governments were exercising in the enforcement of Commonwealth laws. The members of the Deportation Board (a barrister, an accountant and a former police magistrate) were easily depicted as the willing agents of the Government because they were not widely known. But if Bruce had really wanted a chairman

with the prestige of a Supreme Court Judge it would have been a simple matter for him to have requested the co-operation of the Victorian Nationalist Government.

Garran spent much of the next three months in Sydney attending the deportation proceedings. Groom remained in Melbourne and although Garran reported to him regularly it was Garran and Bruce who marshalled the attack on Walsh and Johnson. Garran and two of his staff worked long nights collecting and collating the evidence of pressmen, shipowners and others, and Garran set out their objective in terms which showed his personal enthusiasm for the task: "Our object is to get a compact, strong and complete case which will not only impress the Board but impress the public as to the shocking nature of these men's past performances and the disastrous consequences if they are allowed to continue. Prosecutions, fines, imprisonment have all proved useless; the only course for the community, for self-protection, is to expel them from the community ...... I think the case will be so overwhelming there should be no doubt of the recommendation. After that there may be trouble and the Government ought to be prepared for any eventualities."¹ The Board began its hearings on 3rd September, 1925, and they continued, with an extensive daily press coverage, until 10th November. The Commonwealth's case was not merely based

on the events that led up to the British seamen's strike, but went back to the 1919 seamen's strike and referred to awards and undertakings made in the Arbitration Court from 1921 to 1925, the deregistration proceedings, the big strikes of 1924 and 1925 and the editorials written by Walsh in the *Australian Seamen's Journal*. The main argument of the defence counsel was that the British seamen were determined to strike and the speeches by Walsh and Johnson did not influence them one way or the other. Every possible delaying tactic was used but eventually the Board refused to hear any more evidence. The Board reported to the Government that Walsh and Johnson had both encouraged the British seamen's strike even if they had nothing to do with its inception. This, together with their past record of hostility to conciliation and arbitration, showed that their continued presence in Australia would be injurious to the public welfare. As neither man was born in Australia, the Board recommended that they should be deported.¹

While the deportation case was proceeding Bruce had taken another unexpected decision. On 18th September he announced that a general election would be held to decide whether the people wanted to be governed by Parliament or by outside agitators. He went on to say that the Labour Party and trade union leaders had consistently championed

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the advocates of revolution, State Governments had refused to co-operate to enforce the law, and the time had come to appeal for a mandate to authorize the Government to take any action necessary to maintain the supremacy of Parliament and law and order.\(^1\) Bruce's policy speech on 5th October had the same theme. The Government would defeat all groups and influences seeking to exacerbate class struggles, and would eradicate both Communist and reactionary attempts to revolutionize Australia's political and economic system. He sought approval for the steps the Government had taken to deport Walsh and Johnson. Turning specifically to arbitration, Bruce said that the Arbitration Act would be amended to extend the use of the secret ballot, thereby reducing the power of union officials, and to give the President and Deputy Presidents judicial tenure, so that they could police the arbitration system.\(^2\)

Throughout the election campaign Ministers concentrated on the disastrous effects of industrial conflict, but paid little attention to the arbitration system which was supposed to prevent such conflict. Page asked whether chaos and industrial unrest were to rule at the will of a

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2. Bruce. 1925 general election policy speech. (A.N.L. MS 1009/26).
few foreign extremists, with a consequent diminution in production and a decline of living standards. The Country Party Ministers tended to be more practical in their approach to industrial unrest, describing its effects on national finance, production and exports, while Nationalist Ministers made heavy use of vague abstractions, such as "insidious doctrines", "the social fabric" and "national ideals". The Government appealed to patriotism or xenophobia: Bruce referred to industrial extremists as "puppets of men overseas" and said that no "dirty, greasy foreigner" should interfere with Australia's industrial system. For the first time Communism was a major issue in an election. Ministers declared that there was no room in Australia for class hatred, class consciousness or class legislation. Garden's boast that the Communists controlled almost all the unions in Australia was frequently quoted, usually with the qualification that of course the actual number of Communists was very small and ninety per cent of Australian workmen were "sane, intelligent and honest men". Government candidates pointed to Communist support of the Labour Party as evidence that the aims of the two parties were basically the same. They also claimed that the holdup of customs and quarantine officers in Fremantle and of mails in Rockhampton, together

2. Argus. 8 Sept. 1925, p.11.
with Lang's refusal to assist the deportation proceedings, showed that Labour Governments were under the control of union extremists.

During the campaign Bruce enlarged on his promises in the field of industrial arbitration. Comprehensive legislation would be introduced to make the obstruction of foreign and interstate trade, interferences with Commonwealth mails, and acts of violence and intimidation against the carrying on of national activities and industries offences under Commonwealth law. The Arbitration Act would be amended to overcome the overlapping of Federal and State awards.¹ With the New South Wales Government committed to introducing the 44 hour week, the question of working hours was becoming a controversial issue in Australian politics. Both Bruce and Page said the subject should not be one for political argument at all and they promised to call a conference of Commonwealth and State Arbitration Court judges to determine the working hours for the whole of Australia, on the basis of the health, efficiency and productivity of the workers.²

Labour candidates rejected Bruce's claim that the question to be decided in the election was whether Communism

was to prevail over constitutional government and the rule of law. But they could not deny that there was serious industrial conflict in Australia, and it was here that they were on uncertain ground. They had no love for Walsh and Johnson, who had often ridiculed the Labour Party, and they made no attempt to justify the strikes of the Australian seamen, beyond asserting that the shipowners were equally to blame. They had to oppose the Government's legislation aimed at these strikes, but could offer no alternative suggestions, and found themselves in the uncomfortable position of defending the status quo. The Labour Party's position was further weakened by the continuance of the British seamen's strike throughout the campaign and by the frequent allegations of violence and lack of police protection in Western Australia and Queensland up to within a few days of the election. Charlton made two specific promises relating to arbitration: a Labour Government would seek the amendment of the Constitution to empower the Government to bring about uniform working hours and would amend the Arbitration Act to abolish cumbersome procedures and to enable a single judge to alter standard hours or wages.¹

The 1925 election campaign was a turbulent one, with both sides appealing to basic fears and principles, and both engaging in an unusually high degree of personal

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vilification. The Government asked for a mandate to govern rather than a mandate to introduce definite measures. The electorate did not object to the vagueness of its promises, for on 14th November, 1925, the Government parties were returned with an increased majority, the Labour Party losing eight seats. The Government now had a majority of 25 in the House of Representatives and 22 in the Senate.

Two days after the election the Deportation Board submitted its report on Johnson. The report on Walsh had been received in late October, 1925, but Bruce decided that, as the election position was so satisfactory, it would be a mistake to introduce a new issue, and the Board's recommendation was therefore kept secret until after the election.\(^1\) Apparently, Bruce contemplated sending Walsh and Johnson out of the country before they had a chance to appeal, but decided that such an action could hardly be taken by a Government which had just been re-elected on a law and order platform.\(^2\) Walsh and Johnson were arrested on 20th November, 1925, and on 1st December the High Court began hearing their appeal against the Board's decision. On 11th December the Court unanimously decided that both men should be immediately

\(^{1}\) Bruce to Pearce, 28 Oct. 1925. (A.N.L. MS 213/5).
released, although it did not give its reasons until a week later. The Court was not concerned with industrial conflict or with the social consequences of the two men's actions but solely with the question of whether the Immigration Act and the deportation proceedings were a valid exercise of the Commonwealth's immigration power. Its judgements were conflicting and complex. All the justices except Higgins held that the Act was not ultra vires but all agreed that a person who came to Australia before Federation, as Walsh had, could not be treated by the Commonwealth as an immigrant. Isaacs and Rich agreed that Johnson was an immigrant but the conviction was quashed, as the summons had not specified precisely the nature of the charge.¹

The High Court's decision came as a shock to Bruce and Garran. Garran's pride as a constitutional authority was hurt and he made caustic references to the justices "sitting up there after the battle". He also resented press and parliamentary criticism of his Department.² Bruce had not overlooked the political advantages of the deportation proceedings but he genuinely believed that Walsh and Johnson exercised great influence over unionists and that their removal would cause a lessening of industrial conflict. He

¹. 37 C.L.R. 56.
². Garran to Groom, 18 Dec. 1925. (A.N.L. MS 236/2/3160).
Walsh and Johnson arriving at the High Court, November 1925.
tended to think in terms of panaceas and in the second half of 1925 deportation had replaced deregistration as the cure for strikes. He probably depended too much on the press for his information about the Seamen's Union, and the press greatly exaggerated the power of Walsh and Johnson and neglected officials like Fleming, Casey and J. O'Neill, who were their equals in militancy. But years later, with the advantage of hindsight, Bruce still regretted that he had failed to rid Australia of Walsh and Johnson.¹

On the same day as the High Court handed down its judgements it was announced that Sir Littleton Groom had resigned as Attorney-General. The co-incidence naturally gave rise to speculation that he had been made a scapegoat for the Government's failure in the Court, and Groom's references to poor health were treated with scepticism.² Actually, Bruce had summoned Groom from Sydney on 5th December, a week before the Court gave its decision, and asked for his resignation. In old age Bruce confirmed that the High Court case had no bearing on the matter, and that no particular action by Groom, but rather Bruce's dissatisfaction with his work generally, was the reason for his dismissal.³

² Quick to Groom, 24 Dec. 1925. (A.N.L. MS 236/2/3505).
³ Bruce to Edwards, 3 June, 1964. (A.N.L.)
who looked back with nostalgia to the days of Deakinite Liberalism,\textsuperscript{1} had few, if any, friends in the Cabinet and he had doubts about the Government's tough policy of prosecution, deregistration and deportation. But he was extremely reluctant to give up office, and Hughes was no longer the only enemy of the Government among the Nationalists in the House of Representatives.

\textsuperscript{1} Groom to Quick, 20 Dec. 1925. (A.N.L. MS 236/2/3292).
On 18th December, 1925, John Greig Latham was sworn in as Commonwealth Attorney-General. His rise to power had been extremely rapid, for he had only been in Parliament for three years and a member of the Nationalist Party for five months when Bruce chose him to be one of the six Nationalist Ministers. His rise did not cease with his entry into the Cabinet. Due to his exceptional talents and the importance of his portfolio in a period of continuous industrial unrest, he was soon acclaimed as one of the few outstanding Ministers. By 1928 the press was referring to the Bruce-Page-Latham Government and it was generally assumed that, should Bruce retire, Latham would succeed him as the Leader of the Nationalist Party.

Latham's abilities and character, his unique position, in some ways at least, within the Cabinet, and his important role in the industrial conflict of the late 1920s, can best be understood by examining his background and early career, which immediately set him apart from most of his colleagues.\(^1\) Born in Melbourne in 1877, the son of an

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extremely devout Methodist tinsmith, he grew up in an environment of puritanism and frugality. Educated at State schools (apart from two years on a scholarship at Scotch College), he won a scholarship to the University of Melbourne and graduated with a Master of Arts in 1899. After teaching in the country for two years, he returned to the University and received his Bachelor of Laws in 1902. But his results in Law did not compare with the success that he had achieved in philosophy and logic, and it was not surprising that from 1903 to 1910 he should hold teaching positions in the latter disciplines, first as a tutor at Ormond College and later as a University lecturer. He was offered the Chair of Philosophy at the University of Adelaide, but declined it as he did not wish to give up his legal practice. In 1910 Latham was appointed a Lecturer in the Law of Contracts and Personal Property, a part-time position which he held until 1920. Both as a student and a lecturer he was actively involved in many University societies and activities, particularly debating and lacrosse (he was captain of the Victorian team), and from the beginning he showed a willingness to hold office in various kinds of organizations.

Latham was called to the Bar in 1904, but his progress in the legal profession was slow and he appeared mainly in Courts of Petty Sessions and the County Court. However, he was making a name for himself in other fields
and showing a capacity for hard work which he retained all his life. He became involved in the Liberal Party organization and was one of the protegees of Alfred Deakin. Deakin encouraged his interest in journalism and in 1907 he began to write articles for the Argus, became the Melbourne correspondent for the London Standard and, together with Walter Murdoch, Bernard O'Dowd and three others, edited a short-lived magazine. But it was as a rationalist that Latham became most widely known in Melbourne. Through his reading of philosophy, psychology, history and anthropology he came to reject the Christian faith and, to his father's horror, consistently opposed all attempts by the Churches to extend their domain. He founded the Victorian Rationalist Society, led a campaign against the establishment of a Faculty of Divinity in the University, and from 1907 to 1914 was secretary of the Education Act Defence League. The League fought a long and successful battle to prevent the Victorian Government amending the Education Act so as to allow unsectarian Scripture lessons to be taught by State School teachers. As the most prominent member of the League, Latham spent much of his free time addressing meetings, writing letters to the press, drafting circulars and generally arousing the hostility of conservative and respectable sections of Melbourne society.

During the war Latham became more involved in national politics. He was active in pro-conscription organizations, through which he became a friend of Bavin. In 1917 he was appointed an Honorary Lieutenant Commander in the Navy (at a salary of his own choosing), assigned to intelligence work at the Navy Office in Melbourne, and in 1918 he was suddenly ordered to leave for the Imperial War Conference as the adviser to the Minister for the Navy, Sir Joseph Cook. Latham's experiences at the Conference and at the 1919 Paris Peace Conference were among the highlights of his life. The work he did at both Conferences was of undoubted importance for the future of Australian defence and foreign relations. He prepared many memoranda for Hughes on the German colonies and the Pacific Islands, and he was co-author of the scheme for classifying mandatory territories which was adopted by the Peace Conference. He was also the British Secretary of the Czechoslovakian Commission. Life in London and Paris was extremely exciting, the days spent at meetings which were changing the course of history, the evenings spent at concerts, plays or in dining and arguing with Haldane, Conan Doyle, Lowes Dickinson, T.E. Lawrence and others, and free week-ends occupied in cycling round the countryside with Garran and Frederic Eggleston. Altogether, Latham was rather overwhelmed by his experiences, by being present at historic occasions and above all by working closely with famous statesmen such as Lloyd George, Balfour, Smuts and Clemenceau.
If Latham suffered from the colonial's inferiority complex in England, he returned to Australia with much greater self-confidence and increased determination to enter politics. He also returned with an intense dislike of Hughes, believing that his autocratic methods and his lack of diplomatic finesse had damaged Australia's interests.¹ Latham founded the Victorian branch of the League of Nations Union and addressed many gatherings on both the League and the Peace Conference. Meanwhile, his legal practice was growing rapidly and he was soon appearing in the High Court and Victorian Supreme Court as frequently as Dixon, Menzies and Sir Edward Mitchell. He was not a jury advocate, but he was involved in a wide range of commercial, tax, patent, estate and arbitration cases and also such famous constitutional cases as the Engineers Case and MacArthur's Case. He was made a King's Counsel in 1922. The previous year he had declined a Supreme Court judgeship on account of his political ambitions.²

Ever since 1907 Latham had considered standing for the Federal Parliament, but his election to the seat of Kooyong at the 1922 elections came as a surprise, as he defeated the sitting Nationalist member. He stood as a Progressive Liberal, supported by the Liberal Union. The

platforms of both Latham and the Union were negative: opposition to the Hughes Government on account of its reckless extravagance, its expansion of the Public Service, its irregular handling of the War Service Homes schemes and of wireless contracts, its arbitration policy and its socialistic economic ventures. During the campaign Latham said that he disagreed with the principles of the Labour Party, while no Nationalist Party principles had yet been discovered. He readily accepted Page's invitation to attend Country Party meetings and he played an extremely important role in Page's negotiations with Bruce, with Page seeking his advice on almost every small point that arose.1 Thus Latham had a most auspicious beginning to his career as a backbencher. His record in the next three years was an impressive one: he was regarded as an expert on foreign affairs and the League of Nations, while his knowledge of law was only matched by the blind barrister, G.A. Maxwell. This expertise was appreciated by the Government in the debates on the Immigration Bill and the Peace Officers Bill, when Latham's speeches were quoted by several Nationalists and when Labour members acknowledged him as the Government's unofficial spokesman on the law.2 Outside Parliament, Bruce sought

Latham's advice about amending the Arbitration Act and incorporated in his policy speech many suggestions made by Latham. With the deposition of Hughes, Latham's antagonism to the Nationalist Party melted away, but he did not join the Party until June, 1925, by which time predictions were being made that a place would soon be found for him in the Cabinet.

Latham was the first practising barrister to be Attorney-General since Sir William Irvine's brief tenure in 1913-14. Like Irvine, he conformed in appearance and manner with the popular image of the lawyer. He was 48, but he looked younger, and the press made many allusions to his youth. He was tall, thin, with a pale complexion, sombre grey eyes and a puritanical mouth. His voice was nasal and monotonous and his speeches, both in Parliament and at election meetings, were invariably described as low-toned, academic with no rhetoric but a pitiless logic as he unfolded his case step by step. He could occasionally be amusing but, like Bruce, his manner was generally formal and reserved; he detested back-slappers and was reluctant to use Christian names, even with his close friends.

In both character and experience Latham was well fitted to be Attorney-General. Even his opponents acknowledged that he was a man of exceptional integrity, although at times he could be moralizing and self-righteous. Another legacy of his Puritan background was his love of hard work, which dismayed some of his Cabinet colleagues. He liked long Cabinet meetings, was irritated by superficial argument, and believed that decisions should only be based on the most thorough study of all the possible consequences of the alternative proposals which were before the Government. His speeches and Cabinet submissions were so thoroughly prepared that every question or criticism could be answered without a moment's delay. He alarmed his officers by reading files on very routine matters. The danger with a Minister who relishes work is that he will become lost in detail, fail to delegate work, and find that he is unable to make swift decisions on really important matters. Yet there is no evidence that this ever happened to Latham. At the Paris Peace Conference he had won the admiration of Sir Maurice Hankey and even Wilson and Lloyd George by his ability to summarize a complicated argument and to set out clear proposals for action. He showed the same ability as a Minister, together with a promptness in handling correspondence which shamed Garran. Moreover, he found time to read widely on the law (during elections he relaxed with

legal periodicals) and on many other subjects which had a bearing on politics. He also continued to practise privately at the Bar, so there could be no questioning of his legal expertise.

In a number of ways Latham was set apart from his Cabinet colleagues. Melbourne University men still referred to him sometimes as "radical Jack". In fact, he had never been a political radical, for he had always been a critic of socialism, was fervently anti-communist and believed in the essential worthiness of the British Empire, British political and legal institutions and the private enterprise system. But there was a common tendency to associate radicalism and rationalism, and before the War Latham had been supported by socialists in his attacks on the Churches. In the 1920s the cry of "Atheist" was raised at elections, and conservatives in Melbourne still felt doubtful about the Member for Kooyong. Moreover, Latham had retained his friendship with academics and writers with left-wing sympathies, a fact which worried his more orthodox colleagues. Latham probably had a weaker sense of party than the other Ministers: after all, he had only been a member of the Nationalist Party for a few months and he had little to do with the Nationalist organization.

2. In fact, at the 1922 elections Latham was branded both as an atheist and as a Roman Catholic.
It was significant that in 1926 Bruce consulted Pearce rather than Latham about Party strategy and the future of the Coalition.¹

Two factors had great influence on Latham's relations with other Ministers and also with employers and unionists. One derived from his training in philosophy and logic. Latham was not a particularly creative or imaginative thinker.² He had, however, a deep belief in the importance of precise language and of following through an argument from clearly stated first principles to its logical conclusion. His speeches often took the form of extended syllogisms, the premise being perhaps the ultimate purpose of government or the theoretical basis of arbitration, and the speech proceeding step by step until finally it reached the details of the bill or proposal. Even when he privately did not agree with the proposal, he still preferred to justify it by returning to a basic principle and to argue that the proposal was the only logical outcome. At the 1922 elections Latham complained that the Federal Parliament consisted largely of men determined to secure certain things rather than to put into action any definite principles.³ This was true of almost all his Cabinet colleagues.

¹ Bruce to Pearce, 9 April, 1926. (A.N.L. MS 213/5).
³ Age. 5 Dec. 1922, p.10.
and also of employers and unions. The result was that Latham frequently became exasperated when men blithely ignored first principles or stubbornly refused to follow through their arguments to their logical conclusion. His relations with union leaders were further aggravated by their inarticulateness and by their outright refusal to discuss certain matters, such as their opposition to piecework. Latham generally practised what he preached and did not hesitate to make radical proposals on the grounds of logic, or to accept suggestions from his opponents if they appeared to be reasonable. Related to this concern for logic and exactitude was Latham's irritation with colleagues who persisted with laws that were not fulfilling their purpose or who cheerfully accepted inconsistencies in the administration of the law. Altogether, Latham was an outstanding example of the rationalist in politics, the man who, in Oakeshott's words, seeks after "the politics of perfection and uniformity."^1

The other factor was that Latham had grown accustomed to achieving power and leadership in a number of fields through his own ability (and luck), without the help of family connections, wealth, business firms or political parties. Self-assured and aloof, he was not conscious of the need for a power base and he did not regard himself as the representative of any class or interest group. He belonged to neither the working class nor to the world of industry and commerce, but

to the intellectual elite, and he shared the intolerance of that elite for the mass of his fellow citizens. A few other Ministers had been to University, but their interests were mainly those of businessmen, doctors and farmers. Latham alone had been associated with a university for over 25 years and he alone mixed almost entirely with academics and professional men. Much of his leisure was occupied with the Melbourne University Council, with meetings of the Round Table group and the mysterious Boobook Society,¹ and with fishing holidays at Khancoban in the Snowy Mountains. The men he met and argued with on these occasions were always the same: academics such as Harrison Moore, Ernest Scott, H.W. Allen, Walter Murdoch and David Rivett, professional men like E.L. Piesse, R.H. Gregory or H.S. Nicholas, and very occasionally a politician or public servant, such as Bavin, Eggleston or Garran. By the 1920s Latham was a wealthy man. In the Courts he had often appeared for large companies and as a result knew something of their problems and difficulties. He

¹ The Boobooks were a group of about thirty men, almost all of whom were graduates of Melbourne University, who dined together once a month. At the first meeting in 1902 O'Dowd read a paper entitled "Democracy and the Poet" and at subsequent meetings the subjects discussed ranged from eugenics to German reparations, from wheat to Japanese-Australian relations. Latham was a member of the Society from its inception until his death, and at one time was Archboobook.
had, however, only the slightest acquaintance with Melbourne's commercial and business leaders and he did not regard himself as being particularly sympathetic to their interests.1 He liked to think that he represented the Universities in Parliament, while men like Bruce and Pratten could look after the employers. He was not hostile towards the employers but he felt sufficiently detached to be critical of them, just as he was critical of the unions. He once asked Murdoch "How many men do you know with out point of view? with our general know-

1. Potts (op.cit. pp.103-109) has argued that Latham entered politics to the right of the Liberal-Nationalist movement and that, unlike Bruce, he was very dependent on the back-
ing of conservative political groupings and business interests. The first proposition is probably correct in that Latham had a laissez-faire attitude towards the role of government in economic development and social welfare, whereas most of his colleagues tended to be more "socialistic" on developmental questions. On the other hand, he took a great interest in social welfare at the electorate level, while the "Latham style" - intellectual, logical, problem-solving, puritanical - had little in common with classical conservatism. Latham always regarded himself as a liberal of the Kingston-Barton-Deakin school, although whether he would really have supported Kingston is doubtful. Potts' second proposition does not follow from the first and is based on very slender evidence. It is unwise to draw far-reaching conclusions from the fact that a barrister represents certain interests in the courts. It would be illogical to argue that Menzies was a left-winger because he regularly represented unions in the courts, or that Latham himself had bouts of radicalism (he appeared for Walsh in the High Court in 1925). The shipowners did not regard Latham as a close ally, for in 1925 they privately expressed the hope that he would give up his retainer. An examination of the whole of Latham's correspondence, with its thousands of references to his friends and interests, suggests that while his sympathies were on the side of the employers, his association with the Liberal Union was very short-lived and he seldom met busi-
nessmen outside the courts.
ledge? What is commonplace to us is often very new to many men.¹ This intellectual arrogance affected his relations with employers, unionists and many of his fellow-Ministers.

Possibly due to his aloofness and intolerance, Latham appears to have had few close friends in the Bruce-Page Government. Pearce and Latham both enjoyed each other's company and Henry Gullett, who entered the Cabinet in 1928, was always one of Latham's closest friends. He had little in common with the Country Party Ministers and he was to become very antagonistic towards them after 1929. Latham's relations with Bruce are the most difficult to define. Latham had the greatest respect for Bruce. Bruce, in turn, said many years later that when Latham joined the Government he realized that at last he had a really intelligent Minister with a first-class brain. He went on to say that he greatly enjoyed working with Latham and many of his actions were influenced by Latham's views.² Yet the two men, who had so much in common, never learnt very much about each other. Latham knew nothing about Bruce's early legal career, while Bruce had not heard about Latham's experiences at the Peace Conference. They both lived for another forty years, they saw each other occasionally, and yet their letters were always forbiddingly formal. It was a

¹ Latham to W. Murdoch, 4 May, 1908. (A.N.L. MS 1009/16)
² Bruce to Edwards, 20 Nov. 1964. (A.N.L.).
purely working relationship.

Similarly, within the Attorney-General's Department, Latham was found to be an aloof Minister, who had little contact with officers other than Garran, Knowles and Boniwell. At times he was irritated by departmental inefficiency, but on the whole his relations with his staff were cordial and he took more interest in their careers than most of them realized. He came to the Department with a high reputation as a barrister and his prestige was enhanced by his subsequent work: on many files there are notes by Latham correcting Garran or other officers on points of law, and many requests for legal opinions were answered immediately by Latham without reference to his advisers. Latham was in an unusual position in that he had known his Permanent Head and his deputy for many years. He had first met Knowles when the latter was an undergraduate, while he had become friends with Garran through the Boobooks and had come to know him extremely well at the Paris Peace Conference. With Latham's appointment as Attorney-General Garran's role in the formulation of arbitration policy declined. Latham had a greater knowledge of arbitration law than Garran, and he had such definite ideas on the subject and such a grasp of detail that Bruce ceased to consult Garran or to summon him.

2. Knowles to Latham, 8 May, 1946. (A.N.L. MS 1009/1).
to Cabinet meetings. But Garran still exercised considerable power: Latham valued his opinion highly, sought his advice on most questions and found that other Ministers were always interested to learn the views of the Solicitor-General.

Latham was not given the opportunity to work his way gradually into his new office, for on the day of his appointment Bruce ordered him to prepare a paper for Cabinet summarizing the decision of the High Court in the Deportation Case. Garran had already asked Dixon to set down his views on the effects of the decision.¹ The judgement of the Court had directly conflicted with the will of both the Government and the people, and it was assumed on all sides that the Government would have to find some alternative way of deporting Walsh and Johnson. Bruce himself said that the Court's decision could simply mean that the Immigration Act would have to be redrafted, but on the other hand it might require an amendment of the Constitution.² When the Court handed down its reasons there was widespread confusion about their meaning, especially as there were three different judgements, and there was much speculation in the press and in legal circles about the proposals that Latham would make to resolve the constitutional difficulties. Latham spent the Christmas of 1925

in the Dandenongs studying the judgements of the Court, and
by the time Cabinet held its first meeting on 5th January,
1926, he had come to some definite conclusions.

Other constitutional authorities had already ex-
pressed their views on the meaning of the Court's decision
in the Deportation Case. In December, 1925, Harrison Moore
and W.K. Fullagar had said they believed that the Government
could pass a law to create a judicial offence under the trade
and commerce power, the penalty for which could be depor-
tation. The submissions of Dixon and Latham were longer
but were in substantial agreement. The Court's interpre-
tation of "immigrant" virtually precluded the use of the
Immigration Act to achieve the Government's objective. How-
ever, the Court was unanimous in holding that the Commonwealth
Parliament could create offences, such as offences of inter-
fering with foreign or interstate trade, and that the punish-
ment for such offences could take the form of deportation.
The justices were not in agreement on whether deportation
could be ordered by a Minister or whether it could only follow
a judicial trial. After hearing Latham's views Cabinet decided

2. Latham, Memorandum for Prime Minister: Ex parte Walsh,
ex parte Johnson, 5 Jan. 1926. (C.A.O. A2863 1926 Crimes
Bill file).
that he should draft an amendment to the Crimes Act to deal with the obstruction of transport and trade or interference with Commonwealth services (as Bruce had promised during the election campaign), and to include deportation as one of the penalties.

The Crimes Bill which Latham introduced in Parliament on 28th January, 1926, was wider in scope than Bruce had suggested, as a large portion of it was concerned with defining unlawful associations and with enumerating the offences that could be committed by persons who joined, contributed money to, or printed or sold publications for such associations. This section was drafted by Garran, who on several occasions in 1925 had urged Groom to introduce an Unlawful Associations Bill so that the Communist Party could be outlawed.¹ There were two other clauses of significance, one dealing with industrial disturbances, the other with Commonwealth services. Clause 30J provided that, while a proclamation was in force declaring that a serious industrial disturbance existed, any person who took part in or aided or encouraged a strike or lockout in relation to the interstate or overseas transport of goods or passengers, or the provision of Commonwealth

¹. Garran to Groom 17 Sept. 1925, Garran to Groom, 19 Sept. 1925. (A.N.L. MS 236/2/3152). The Bill was originally drafted by Garran and Castle in December 1925 and was concerned almost solely with unlawful associations. The clauses dealing with industrial disturbances were drafted by Latham in January, 1926. (C.A.O. A2863 1926 Crimes Bill file).
services, would be guilty of an offence. On conviction a person would be liable to imprisonment for up to a year and, in addition, if he was not born in Australia, the Attorney-General could order him to be deported. Clause 30K provided that persons who, by violence, intimidation or boycott, obstructed the provision of Commonwealth services, or the transport of goods and passengers interstate or overseas, or prevented anyone from offering or accepting employment in relation to transport or a Commonwealth service, should be liable to a year's imprisonment.

In his second reading speech Latham concentrated on describing the activities of the Communist Party of Australia and on giving a learned exposition of the Commonwealth's deportation power. Later he said that the Bill was not directed generally against strikes, which were covered by the Arbitration Act, but was intended to protect the community from interference with vital services. Without such legislation the Commonwealth had no power to handle a crisis such as the British seamen's strike, which could have brought to a standstill the whole economic life of the community. Latham also referred to the interference with Commonwealth services which had occurred in Western Australia and Queensland in 1924 and 1925, and the threats of New South Wales unionists to bring about a general strike if unionists were ever deported.

2. Ibid. v. 112, 18 Feb. 1926, p.1032.
Bruce, who was the only other Minister to speak, stated that the Bill was not an attempt to provide for the settlement of disputes but to deal with extremists who were trying to overthrow constitutional government.\footnote{C.P.D. v. 112, 11 Feb. 1926, p.880.} The opposition of the Labour Party was halfhearted: the Government had a mandate for the Bill, its constitutional foundations seemed firm, and this time there would be no conviction without a court trial. The main criticisms of the Bill were that it was dealing with a mythical problem, as Australia was relatively free from strikes, it discriminated against workers in the transport industries, it was unnecessary as strikers could be prosecuted under the Arbitration Act, and its application would not be automatic but would depend on political action. The bill was passed by Parliament on 12th March, 1926.

In the early months of 1926 the Crimes Act aroused a good deal of controversy, particularly in the trade unions. The New South Wales Labour Council talked of combating it with direct action and condemned Labour parliamentarians for not opposing it with sufficient force.\footnote{S.M.H. 22 Feb. 1926, p.11.} Yet it was not until 1928 that a proclamation was made under Section 30J of the Act, no one was ever deported under that Section, and altogether little use was ever made of the Crimes Act in the settlement of industrial disputes. The problem which the
Crimes Act, like the various Acts passed in 1925, was supposed to resolve had virtually come to an end by 1926. These Acts had been aimed at the Seamen's Union, at stoppages which appeared to have revolutionary rather than industrial objectives, and at the disruption of transport and other basic services. Yet after 1926 the Seamen's Union ceased to be an industrial force. It was not involved directly in another major strike for many years and job control almost faded away. In 1925, 90 interstate vessels had been delayed for a total of 3,138 days, in 1926, 26 ships were held up for 401 days, and in 1927, 32 ships for 146 days.\(^1\) The energies of the seamen became dissipated in bitter feuding between two factions led by Johnson, who remained a militant, and Walsh, who in early 1926 completely lost his revolutionary faith and became more and more conservative. By 1928 Walsh was addressing the Constitutional Association on the menace of communism,\(^2\) and shortly after he was involved in the formation of a breakaway seamen's union.\(^3\) By 1929 only a third of the seamen were members of the old Seamen's Union.\(^4\) After 1925 the major strikes were at least concerned with genuine industrial objectives and the unions' leaders could not be accused

2. S.M.H. 10 July, 1928, p.11.
3. Ibid. 8 Nov. 1928, p.13.
4. See Boraston. op.cit. Chapter 4.
of being alien revolutionaries. Thus the passing of the 1926 Crimes Act marked the end of a distinctive phase in the history of industrial relations with Australia.

The Governor-General's speech on 13th January, 1926, committed the Government to legislation to invest the Arbitration Court with judicial power, to lessen the conflict between Federal and State awards, to give members of registered organizations control of their own affairs and of their officers, and generally to increase the efficiency of the arbitration machinery. The speech therefore merely repeated promises that had been made regularly by the Government during the previous year, and in the debates on the Crimes Bill there was criticism by the Labour Party of the Government's failure to take any steps to amend the many weaknesses of the Arbitration Act. In February, 1926, Bruce reported that the amending Arbitration Bill was not ready, as it involved "a tremendous amount of consideration and research to deal with one of the most difficult problems that ever confronted Australia".

Bruce certainly gave very high priority to the reform of the arbitration system. On 8th December, 1925, only three weeks after the general election, he drafted and sent letters to the Central Council of Employers of Australia and the Commonwealth Council of Federated Trade Unions. He informed

the two organizations that the Government was proposing to amend the Arbitration Act, its objectives being to reduce the length and cost of proceedings, to increase the powers of the Court to enforce awards, to prevent the duplication of Federal and State awards, and to ensure that unionists had full control over their own organizations. Bruce concluded by welcoming any suggestions which would make the Court a more effective instrument for the settlement of industrial disputes.¹

The two letters of 8th December contained no new information about the plans of the Government in the field of arbitration. Nevertheless, they were extremely significant in two respects. Firstly, they indicated a shift in the attitude of the Government to the role of pressure groups in the formulation of its arbitration policy. Ministers had always said they would welcome suggestions when they were drafting new legislation, but they seemed to take the view that it would be rather degrading to request the assistance of private organizations or individuals. For instance, in August, 1925, Bruce strongly denied that the Government had consulted any outside person or organization about its proposed arbitration legislation.² Yet within a few months

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¹ Bruce to L. Smith, Secretary, Central Council of Employers, 8 Dec. 1925. Bruce to C. Crofts, Secretary, Commonwealth Council of Federated Trade Unions, 8 Dec. 1925. (C.A.O. A458 E502/1).
he had changed his attitude, either because he felt that the Government needed more information from the men who were most directly involved in industrial relations, or because he realized that co-operation and agreement at an early stage would lessen their freedom to criticize or thwart the legislation after it was passed. However, the Government's new policy was rather half-hearted. It knew that the two organizations were deluding themselves when they claimed to speak for all Australian employers and unions, yet it seemed to believe, or hope, that their views on arbitration would be shared by the great number of unaffiliated employers and unions.

The two letters were also significant in that they provide evidence of the very important role played by Bruce in formulating the Government's new arbitration proposals, which were announced in May, 1926. The Attorney-General was the Minister responsible for the administration of the Arbitration Act, and it is therefore understandable that writers have assumed that the new proposals of 1926 were largely the work of Latham, the new Attorney-General. However, Bruce took such a personal interest in arbitration that he went to the trouble of drafting the letters himself and he sent them a week before Latham became Attorney-General. Moreover, he was seeking the views of outside organizations when there was already an Arbitration Bill, the product of months of preparation,
printed and ready to be submitted to Parliament.¹

Thus the two seemingly innocuous letters of 8th December, 1925, show conclusively that Bruce was dissatisfied with the 1925 Arbitration Bill and was anxious to reconsider the whole subject of industrial arbitration. Yet Bruce on many occasions committed himself to granting the Court judicial power, reducing overlapping of awards, extending penalties and providing for union ballots. The objects of the Bill were completely acceptable but in one respect it was a conspicuous failure: if passed, it would perpetuate both the division of authority between the Commonwealth and States, with the resulting duplication, inconsistencies, conflict and uncertainty, and also the frustrating constitutional limitations on the exercise of the Commonwealth's industrial power. The failure was serious, but in the middle months of 1925 it was understandable: Bruce would not consider restoring complete industrial power to the States, while the Nationalist and Country Parties, all the employer organizations, and Moore and Dyason strongly opposed seeking complete industrial powers for the Commonwealth. By the end of 1925, however, Bruce was

¹ The Attorney-General's Department had assumed that, with the re-election of the Government, the 1925 Arbitration Bill would soon be introduced in Parliament. The Bill was printed on 2 Dec. 1925. (C.A.O. A2663 1925 Arbitration Bill file.)
far more critical of a Bill which, in the most fundamental matters, preserved the chaotic status quo.

The change in Bruce's attitude in the last months of 1925 can only be explained by the mounting problem of the 44 hour week, a problem which became critical in the first half of 1926. In 1920 Higgins had granted the 44 hour week to the engineering and timber industries. Previously, tribunals had generally awarded the 48 hour week, although some workers, such as the men in the mines and the smelters, were required to work fewer hours because of the hardships faced in their industries. After Higgins' resignation, the Full Arbitration Court restored the 48 hour week, with some exceptions, in the engineering and timber industries and refused all further applications for the 44 hours, on the grounds of worsening economic conditions. In New South Wales a Labour Government had put through legislation for the shorter week in 1920 but it was quickly repealed by the Fuller Government. In June, 1925, Labour returned to power and within a few months had passed a Forty Four Hours Act, thereby redeeming its foremost election pledge. The Queensland Government also introduced the 44 hour week in 1925. Overlapping awards were a grave problem; now the problem was aggravated by Federal awards conflicting with State laws. Whichever prevailed there was bound to be widespread discontent and industrial unrest, as either men working under Federal awards would work
different hours, depending in which State they lived, or else men in New South Wales and Queensland would work different hours, with the unfortunate men under Federal awards working an extra 4 hours. The legislation of the two Labour Governments raised other problems. It seemed inevitable that production costs would be increased in New South Wales and Queensland and, with freedom of interstate trade, this would place industries in the two States at a serious disadvantage if they faced competition from industries in Victoria and the other States. Finally, the New South Wales election showed that the shorter working week was an effective vote-winner and there would soon be pressure on the other State Governments to legislate on the subject. Working hours would dominate every State election and the Nationalist Party would start with a handicap every time. There would be no stability, for the length of the working week would vary according to the party in power, as New South Wales had already shown.

Bruce was therefore faced with the daunting prospect of intense industrial conflict, which in 1925 had been confined to shipping, spreading to all the major industries in 1926 and intensifying as the other three Labour Governments followed the example of the Lang and McCormack Governments. The position would still be serious if the State tribunals, rather than the Governments, began to award the 44 hour week. (The Western
Australian Arbitration Court did so in 1926.) Conflict would be avoided for the time being if the federal Court granted the shorter week, but this would be interpreted, whether justifiably or not, as a surrender to pressure at the State level. The only real solution was a uniform working week for the whole of Australia determined by a single body. During the 1925 election campaign Bruce and Page began to proclaim the need for a conference of Commonwealth and State Arbitration Court judges which would determine the number of working hours on the basis of the health and productivity of the workers and the state of the economy. Bruce still referred publicly to the need for such a conference in April, 1926.\(^1\)

However, there were obvious practical difficulties. Victoria and Tasmania had no arbitration courts and, more importantly, the decision of the conference would only have moral force; the State Governments would still be free to legislate for a shorter or longer working week, either directly or by arbitration laws which would bind the State tribunals. In addition, some of the State arbitration judges were believed to show as

\(^1\) Age. 21 April, 1926, p.13.
little impartiality as Lang himself.¹

There was nothing in the 1925 Arbitration Bill which would prevent the Commonwealth judges meeting the State judges to determine a uniform working week. Bruce's dissatisfaction with the Bill suggests that by December, 1925, he felt that much stronger measures, which would not depend on the goodwill of the State Governments, would be needed to cope with the crisis that was looming over working hours. The events of April and May, 1926, confirmed this belief and provided the background to the detailed proposals which he worked out with Latham and his advisers.

The 44 hour week came into operation in New South Wales on 4th January, 1926. A large number of Federal unions instructed their New South Wales members either to work the shorter week, by staying at home on Saturdays, or to work the usual 48 hours, but to claim 4 hours overtime pay.² This policy caused a great deal of friction and confusion but there

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¹ The arbitrators who were most frequently condemned as Labour partisans were A.B. Piddington, who was appointed sole Industrial Commissioner in New South Wales in April, 1926, and W.J. Dunstan and W.N. Gillies, who were appointed Lay Judges of the Queensland Board of Trade and Arbitration in October, 1925. Dunstan had been Secretary of the Queensland branch of the A.W.U. 1913-25 and Gillies had been Deputy Premier 1921-25 and Premier of Queensland 1925.

was no outright confrontation between employers and unions, pending a decision of the High Court on whether the Federal award or the State law should prevail. On 19th April, 1926, the Court gave its famous judgement in the case of Cowburn v. Clyde Engineering Company. Dixon appeared for the employers and the Court accepted his argument about the true test of inconsistency of laws, rejecting the Whybrow doctrine that the test was whether each law could be obeyed without disobeying the other. The Court declared that a Federal award became part of the law of the Commonwealth. The decision of the Federal tribunal was therefore final and inconsistency depended on the intention of that tribunal. If it entered a field of legislation and showed its intention to regulate the conduct of the parties in respect of the subject matter of the legislation, its award was to prevail over both State laws and awards. If the Federal Court awarded 48 hours, it had thereby shown its intention to regulate the working hours of the parties concerned, and no State authority could grant the same parties 44 hours.

The High Court's decision in the Clyde Engineering case was welcomed by the employers, as it removed the worst form of overlapping. Employees could no longer work under a Federal award and a State award, enjoying the benefits of both. Once they were bound by a Federal award they would have

1. 37 C.L.R. 466.
to relinquish their State award, in so far as it was inconsistent, and the employers quickly realized that if they registered under the Commonwealth Arbitration Act they could almost always ensure that their workers remained bound by Federal awards. The employers bound by Federal awards would also be free from many of the onerous industrial laws introduced by State Labour Governments. Justice Powers, who was very critical of the decision, said that Federal awards would be sanctuaries for the employers and the unions would leave the Federal Court in great numbers.¹ To some extent this was an accurate prediction. At least in New South Wales, employers suddenly became defenders of Federal arbitration, while several unions sought to withdraw from the Federal Court, especially when A.B. Piddington became State Industrial Commissioner. However, the Federal Court allowed very few unions to leave its jurisdiction.

While the Government could see long-term benefits arising out of the Clyde Engineering Case, its immediate effect was to convince the Government that differing working hours made industrial peace impossible. The day after the Court's decision was given union leaders in New South Wales instructed their members to work only 44 hours.² The metal

1. 23 C.A.R. 386.
2. S.M.H. 21 April, 1926, p.15.
trades employers responded by threatening employees who disobeyed their Federal awards with dismissal. On 3rd May, 1926, 5,000 employees were dismissed for not working on the previous Saturday, and as many of them were in key positions, a total of 20,000 men were put out of work.\(^1\) Later in the month there were many dismissals in the motor vehicles industry and at the Garden Island Dockyard. Bruce refused requests by union leaders to convene a conference, but stated that the hours question would be submitted to the reconstituted Federal Court and all parties should be preparing the necessary evidence. Powers, who was due to retire in a few weeks, embarrassed the Government by promising to hear applications for the 44 hour week immediately, but he was overruled by Quick and Webb.\(^2\) The dispute was settled on 28th May, 1926, the Metal Trades Employers Association consenting to a 44 hour week, provided that the employees accepted a proportionate reduction in wages and made no demand for increased rates until the new Court dealt with the matter.

Although Bruce took a strong personal interest in arbitration and decided on his own initiative that the proposed legislation of the Government might have to be drastically revised, he respected Latham's knowledge of arbitration law

\(^{1}\) S.M.H. 4 May, 1926, p.9.
\(^{2}\) The Age. 1 May, 1926, p.17., 5 May, 1926, p.10.
and was certainly influenced by the views of his new Attorney-General. However, Latham's views had been changing over the previous two years and it is doubtful if, by January, 1926, he was committed to a definite policy. He was even wavering on the general principle of arbitration. In a paper written in his University days he had declared his support for State labour regulation, on the ground that it ensured just treatment for employees and for fair-minded employers.\(^1\) In 1922 he took the view of most Melbourne conservatives that arbitration courts should be replaced by conciliation councils and wages boards,\(^2\) and in 1923 he said that an extension of the wages board system would end the constant litigation and the great power of union officials that resulted from the arbitration system.\(^3\) In August, 1925, he stated that workers should be free to bargain with employers; to force them to work at award wages seemed servile and savoured of Russian government.\(^4\) Latham's ideas on the conflict of Federal and State jurisdictions in the field of arbitration were at first

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quite conventional. In 1922 he said that an amendment of the Constitution was needed to give the Commonwealth full powers in the few genuine interstate industries and the States full powers in all other industries. He regretted the decision of the High Court in the Engineers Case, arguing that State Governments should be directly responsible for the manner in which their employees were treated. Holding such views, it was not surprising that Latham should be regarded by Bavin as his closest ally in the Federal Parliament. Yet after 1923 Latham began to drift away from the orthodox States rights position. In 1924 he introduced two deputations from banking, clerical and professional trade unions to Groom. The deputations opposed any plans to abolish compulsory arbitration or to exclude State enterprises from Federal jurisdiction, and asserted that the Federal Court should be able to legislate on all industrial matters. Although Latham confined his remarks to criticizing any attempt to remove the compulsory element from labour regulation, the deputations felt that he was sympathetic with their ideas.

1. Latham to W. Smith, Secretary, Australian Railways Union, 23 Nov. 1922. (A.N.L. MS 1009/24).
In 1925 Latham was impressed by the arguments of his friend Judge Rolin, an experienced State arbitrator. Rolin was very critical of Bavin's ideas and said that Bruce should extend the powers of the Federal Court, even if it meant an amendment of the Constitution.¹

It would therefore be a mistake to see Latham as a lifelong advocate of Commonwealth control of industrial relations,² whose entry into the Government caused a major shift in its arbitration policy. It would seem that by January, 1926, he had come to share Bruce's belief that the powers of the Federal Court should be maintained and that, in view of the impending crisis over the 44 hours week, consideration had to be given to extending those powers. There is no evidence that, at that stage, either man was convinced that the Government should seek an amendment of the Constitution.

Before deciding whether it was both desirable and


2. In 1952, when Latham retired from the High Court, he wrote an article entitled "The arbitration system in need of reform", (S.M.H. 25 Nov. 1952), in which he argued that the Commonwealth Parliament should have power to make laws concerning the terms and conditions of industrial employment. As in 1926, his chief critics were the employers, who revived some of their 1926 arguments, ("it can be imagined how a Labour Government would use that power.").
practicable to seek additional Commonwealth powers the Government had to ascertain the views of both the employers and the unions. The Commonwealth had already failed at three referenda to secure these powers and there was little chance of success if either the employers or the unions were to oppose the proposal. Traditionally, their views on the Federal arbitration system had been diametrically opposed. However, in 1925 there were signs of cracks in the hitherto united front of the employers. Senator E.A. Drake-Brockman, the President of the Central Council of Employers of Australia, stated that he had been reluctantly forced to conclude that the only permanent solution to the chaotic overlapping of awards was to extend Commonwealth powers.¹ In July, 1925, the Australasian Manufacturer, which was published in Sydney, declared that it was essential that wages and working conditions be uniform throughout Australia and that no State have any advantage in these important matters. State industrial arbitration could lead only to confusion and dislocation.²

Following Bruce's letter to the Central Council of Employers, the Government received four detailed submissions:

2. Australasian Manufacturer. v. 10, 11 July, 1925, p.11.
from employer organizations which confirmed that they had become very divided on the subject of Federal arbitration. The Central Council of Employers and the Associated Chambers of Commerce adhered to the traditional view. They approved of the 1923 Premiers' Conference proposals, provided that the jurisdiction of the Federal Court was limited to the shipping, shearing and theatrical industries. The other points that they raised were familiar to the Government: the hearing of cases was too slow, the Act and awards should be rigidly enforced, unions involved in strikes should be deregistered, picketing should be illegal, unions should deposit substantial securities when registering, awards should not apply retrospectively, preference to unionists should be eliminated and the Court should give unrestricted recognition to the principle of payment by results.¹

A very different submission was made to Bruce in February, 1926 by W.C. Myhill, the Secretary of the Metal Trades Employers Association. The Association believed that the Federal Court should regulate industrial matters in all industries, that Federal awards should be made common rules, and that Federal awards should be supreme irrespective of any State laws.² The radical change in the Association's

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2. W.C. Myhill, Secretary, Metal Trades Employers Association of N.S.W., to Bruce, 5 Feb. 1926. (C.A.O. A458 E502/1).
arbitration policy was directly due to the introduction of the 44 hour week in New South Wales and to fears of further attacks on employers by the Lang Government. Myhill had originally drafted a letter stating that the regulation of industry should be left to the States, but pressure from members forced him to change it completely. For instance, the Clyde Engineering Company asserted that the Federal Court was preferable to any State Industrial Commission appointed by Lang, it could remove the anomalies and injustices of different working hours in adjoining States, and the Tariff Board would take more notice of the actions of the Federal Court than of State tribunals.

Bruce and Latham treated the submission of the Metal Trades Employers Association with caution, for it was a predominantly New South Wales body preoccupied with the political and industrial situation in that State. However, when its views were supported by the Victorian Chamber of Manufactures, in April, 1926, the Government decided that employers generally must be swinging around in favour of Federal arbitration. There was less likelihood of a 44 hour week in Victoria than in any other State and it was frequently

1. Draft letter to Prime Minister concerning proposed amendments to Commonwealth Arbitration Act, n.d. (M.T.I.A. Box 68 (c)).

2. B. Taylor to Myhill, 16 Jan. 1926. (M.T.I.A. Box 68 (c)).
claimed that Victorian industries would prosper while their rivals in New South Wales were burdened by the shorter week. Yet the Victorian manufacturers, after a long and detailed study of the question, decided that the Commonwealth Government should have complete authority in industrial matters.¹

From December, 1925, to April, 1926, both Bruce and Latham sought or were offered the assistance of many individuals who had long been involved in industrial arbitration. A deputation was received from the Commonwealth Council of Federated Trade Unions and interviews were held with Justice Higgins, Sir Robert Gibson and S. McKay (both very active in the Victorian Chamber of Manufactures), Senator Drake-Brockman, W.R. Schwilk (the Industrial Officer of the New South Wales Employers' Federation), A.S. Elford (Deputy Chairman of the Commonwealth Steamship Owners Association) and E.J. Holloway and H.C. Gibson (leaders of the Melbourne Trades Hall Council).² In addition, Garran³ and Stewart

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1. Minutes of Victorian Chamber of Manufactures, 22 Feb. 1926. (V.C.M.); F.M. Ashby, Secretary, Victorian Chamber of Manufactures, to Latham, 5 May, 1926. (C.A.O. A432 29/3407).


3. Garran's personal view was that the Commonwealth should have power to legislate on the common rule and all questions relating to wages and working conditions. See his evidence given to the Royal Commission on the Constitution, 28 Sept. 1927.
were naturally consulted, and Bruce and Latham would have taken into consideration the well-known views of the President and Deputy Presidents of the Federal Court. No record was kept of these meetings. Nevertheless, on the fundamental question of the divided control of industrial regulation there can be little doubt of the attitudes of almost all the men consulted. The personal opinions of Sir Robert Gibson and McKay are not known, but they were associated with an organization which favoured Federal control. Every other man whose opinion was sought was convinced that the Commonwealth should have full industrial powers. Some, like Higgins and Stewart, had always taken this stand, while others, such as Drake-Brockman and Schwilk, had only recently come to the same conclusion. Thus while the written submissions to the Government conflicted, the verbal advice was unanimous.

By early May, 1926, when Cabinet met to discuss its arbitration policy, Bruce and Latham had decided to take the advice of their departmental officers and the majority of the organizations and individuals consulted, and to seek an amendment to the Constitution to make the Commonwealth supreme in the field of industrial relations. It was advice

1. W.R. Schwilk to A.H. Moore, President, N.S.W. Employers Federation, n.d. (M.T.I.A. Box 68 (c)).
which both men were eager to accept. Commonwealth supremacy seemed the only solution to the immediate problem of working hours, which in April, 1926, was threatening to lead to a general strike, at least in New South Wales. It also appeared to be the only way to overcome the inconsistencies, anomalies, ineffectiveness and waste that characterized the existing arbitration system, and it must be stressed that Bruce and Latham were unusually preoccupied with the need for Government activities to be logical, rational and effective.

Subsequent events showed that Bruce and Latham erred, not in concluding that a constitutional amendment was desirable, but in believing that it would receive widespread support. They were aware that two of the largest employer organizations still opposed Federal control, but if they had sounded out a wider range of opinion they would have found much more resistance to their proposals. They did not seek the views of the leaders of the Nationalist organization or the State Nationalist Parties. They did not consult the State Governments, perhaps assuming that the whole Labour movement believed in full powers for the Commonwealth. Yet even the Fisher Government had been opposed by a State Labour Government when it sought similar powers in 1911. Above all, Bruce and Latham should have sought advice from outside New South Wales and Victoria, for a referendum had to be carried

in four States. In the smaller States they would have found a great deal of suspicion towards both the Federal Government and the Federal Court among both the employers and the trade unions.

On 5th May, 1926, Bruce told his colleagues that the Victorian Chamber of Manufactures had reversed its long-standing policy and now agreed with the unions that the constitutional restrictions on the Commonwealth's arbitration power should be removed. Greatly encouraged, Cabinet accepted the proposals of Bruce and Latham and within five days Knowles had drafted the necessary legislation. It was presented to Parliament by Bruce on 20th May.

The Constitution Alteration (Industry and Commerce) Bill proposed that the words "extending beyond the limits of any one State" be omitted from Section 51 (xxxv) of the Constitution. It also provided that three new placita be added to Section 51 to give the Commonwealth Parliament power to legislate:

1. On 10th May, 1926, Knowles completed the draft of a Constitution Alteration (Industrial Matters and Essential Services) Bill. Latham redrafted the clause relating to essential services, inserting and then deleting a reference to "revolutionary or industrial disturbance." He finally decided that the clause should be incorporated in a second Bill. Latham also greatly expanded the clause relating to unions and employer associations. (C.A.O. A2863 1926 Constitution Alteration Bill file).
(xl) Establishing authorities with such powers as the Parliament confers upon them with respect to the regulation and determination of terms and conditions of industrial employment and of the rights and duties of employers and employees with respect to industrial matters and things.

(xli) Investing State authorities with any powers which the Parliament, by virtue of paragraph (xxxv) or paragraph (xl) of this section, has vested or has power to vest in any authority established by the Commonwealth.

(xlii) Trusts and combinations (whether composed of individuals or corporations or both) in restraint of trade, trade unions, and associations of employers or of employees for industrial purposes, including the formation, regulation, control and dissolution thereof.

The speeches of Ministers were mainly devoted to enumerating the deplorable consequences of the overlapping of Commonwealth and State jurisdiction and of the limitations of the Commonwealth arbitration power, and to discussing the question of working hours. They all insisted that working hours were an economic question which should be determined by an impartial tribunal, able to hear and evaluate all the evidence relating to the cost and volume of production, the sale of products, imports, the establishment of new industries, unemployment levels, and the health of the workers. It was not a social question to be determined in an atmosphere of political contention. Ministers did not reveal very much
about the new system that would be set up if the referendum was carried. Bruce merely stated that the Federal Court should only deal with fundamental questions such as standard hours and the basic wage, the Commonwealth would be able to appoint commissioners or perhaps lesser courts in the States, and the Commonwealth should be able to legislate for the compulsory auditing of trade union accounts and for the holding of secret ballots.¹ The Labour Party, in spite of its platform, was not enthusiastic about the proposals. Charlton agreed that uniformity of wages and working conditions was an absolute necessity, but there was no reason why the subject could not be dealt with by the proposed Constitutional Convention.² Bruce was naturally anxious to obtain the support of the Labour Party, and in negotiations with Charlton he agreed also to seek an amendment of Section 51 (xx), so as to give the Commonwealth power to legislate for the creation, regulation, control and dissolution of corporations, including corporations formed under the control of the States. Members on both sides were still somewhat critical of the proposals, but only two Nationalists and one Country Party member opposed the passing of the Bill.³

2. Ibid. v. 113, 2 June, 1926, p.2538.
The second Bill, the Constitution Alteration (Essential Services) Bill sought to amend the Constitution to give the Commonwealth Parliament power to legislate "to protect the interests of the public in the case of actual or probable interruption of any essential services."

Ministers were extremely vague about the meaning of the amendment. Bruce stated that in a strike such as the British General Strike, which had just ended, or a coal strike in New South Wales, the Commonwealth Government would be able to do nothing to protect the people. Actually, the Commonwealth Government would only be helpless if the State Government refused to seek its help and there was no violence, and the proposal would appear to have been aimed at recalcitrant State Governments. Pearce referred to the failure of the Western Australian and Queensland Governments to protect Commonwealth officials, although the Crimes Act was supposed to prevent that situation arising again. The Labour Party was completely opposed to the Bill. Both Bills completed their passage through Parliament on 25th June, 1926.

Bruce told Pearce a week later that he was sure there would be overwhelming support for the Government's

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proposals. He did not think that it would be necessary to have an intensive campaign involving large expenditure. It would be sufficient if parliamentarians addressed meetings in their own electorates and there was no need to enlist many other speakers.¹ The campaign was opened on 11th August, 1926, but two days earlier Latham had left Australia to attend the League of Nations Assembly at Geneva. Before he departed he made several speeches in Melbourne, Sydney and Brisbane and prepared some background notes for his colleagues. During the campaign Bruce travelled widely throughout the Eastern States but other Ministers confined their campaigning to their home States.

Much has been written about the 1926 referendum.² For three months traditional political alignments were completely disrupted, with each of the three large parties split and with the employers, the unions and the press hopelessly divided. The Government's industrial proposals were supported by almost all Federal politicians and opposed by nearly all State politicians, regardless of party. Just as Bruce and Charlton were united in supporting the proposals, old enemies, like Robinson and Blackburn in Victoria and Bavin and Lang

1. Bruce to Pearce, 3 July, 1926. (A.N.I. MS 213/5).
2. The most detailed account of the divisions within the political parties and among the major interest groups is A. Wildavsky. The 1926 referendum. Melbourne, 1958.
BANNING THE CHAR(ES)TON.

"Mr. Charleston supports the Government's referendum petition. A defense of the American entertainment, the ban of dancing while the opposition calls the tune."

THE L.P. LADY: "Marriage, devil! I don't mind hookeying in a revolution, but these new-fangled exhibitions I can't stand!"
in New South Wales were united in opposition. New South Wales employers, pastoralists and primary producers welcomed the proposals; Victorian employers supported, opposed or were undecided about them; and the employers in the other States rejected them. The Labour Party's Federal Executive maintained an equivocal position, while all the State Labour Parties condemned the proposals. The Victorian unions supported Federal arbitration, but the New South Wales Labour Council and large unions such as the Miners Federation, the Waterside Workers Federation and even the Australian Workers Union suddenly became defenders of the States. With so many factions, organizations, newspapers and individuals expressing contradictory opinions, often in the most extreme and vitriolic language, about a rather complex subject, it was not surprising that the dominant feeling among the general public was one of intense confusion.

Ministers realized that one of the main criticisms of their proposals would be that they were seeking to destroy Federalism and to bring about unification. They therefore took the initiative and declared that one of their main objects was to decentralize the arbitration system. Bruce said that it was absurd to suggest that there was still State control and decentralization. State authorities worked on sufferance, for it was possible to get any dispute, no
matter how small or fictitious, before the Federal Court. In fact, if the Constitution was not amended, the effect of the High Court's decision in the Clyde Engineering Case would be to make the Federal Court an omnipotent body, as either the employers or the unions could create a paper dispute and have it brought to the Federal Court, and State awards would become inoperative. Under the new system, however, the central authority would deal only with genuine interstate disputes. Ministers stressed that they were asking for concurrent, not exclusive, powers for the Commonwealth. The Government would strengthen the Federal principle by a better distribution of powers between the constituent authorities. State authorities would be strengthened, as they would be invested with Federal jurisdiction and would be safeguarded from interference by outside awards. As Latham wrote on several occasions, the ideal that the Government was seeking was co-ordination without centralization.

In their speeches and propaganda Ministers tried to have the best of both worlds. They gave qualified praise for the Federal arbitration system. Australia was not a

country of perpetual industrial troubles. A large number of citizens were working peacefully under Federal awards. The conflict in the transport and coalmining industries could not be attributed to the Federal arbitration system, for these industries were centres of industrial unrest in almost every country. The pastoral industry was controlled by the Federal Court, yet it was exceptionally peaceful. If the Commonwealth abandoned the whole field of arbitration there would be industrial chaos and anarchy. It was undeniable that there were some genuine interstate industries with which the States could not deal, and attempts to divide industries between the Commonwealth and the States had always broken down.

At the same time Ministers acknowledged many of the weaknesses of the Federal arbitration system but argued that they could only be overcome, not by maintaining the status quo, but by agreeing to the constitutional amendments. Bruce said that the paraphernalia of Courts and summonses, claims and counterclaims and the lack of finality were a grave hindrance to industrial peace. It was true that the Federal system was slow, costly and cumbersome, but these defects arose directly out of its constitutional

1. S.M.H. 1 Sept., 1926, p.15.
limitations. Ministers agreed that it was ridiculous that only the method of arbitration could be used, that the Court could act only if there was a dispute, and that employers whose workers were not unionists or new employers were not bound to pay award rates. These absurdities would no longer exist if the Government's proposals were accepted. The Victorian Government and other critics asserted that the wages board system was preferable to arbitration. Bruce conceded that there was some truth in this assertion, but went on to say that the constitutional changes would enable wages boards, Whitley Councils, shop committees and district boards, as well as arbitration tribunals, to be incorporated within the Federal system.¹ Thus the Government's basic argument was that its proposals would mean that all the advantages of the existing system would be retained, but with none of the disadvantages.

On one issue Ministers found that they had the worst of both worlds. They continued to insist that industrial matters should be regulated not by Parliament but by independent authorities set up by Parliament. Working hours and other industrial questions should not be political footballs but should be settled by trained minds.

¹. S.M.H. 27 May, 1926, p.10.
economic basis. Parliament had neither the time nor the knowledge to legislate on industrial matters. In a private argument with Eggleston Latham denied that to give tribunals powers which Parliament itself did not possess would mean a constitutional revolution, and said that if such powers were given to Parliament the next election would be on questions of hours and wages and "all chance of sound politics would go to the devil". The Government's policy on this issue was opposed by both the Labour Party and some of its supporters, such as Watt, Hughes and Stewart. The Government found itself in difficulties when it tried to conciliate both sides on this issue. Bruce assured the conservatives that Parliament would not be able to legislate on working hours, but Latham confirmed the Labour claim that Parliament would be able to direct that tribunals were to fix hours within certain limits; for instance, not to exceed 44 hours. Critics of the Government claimed that the Ministers themselves were in a state of confusion, and conservatives cited Latham's remarks to show that a Labour Government could

2. F. Eggleston to Latham, 31 May, 1926; Latham to Eggleston, 1 June, 1926; Latham to Eggleston 3 June, 1926; Latham to Eggleston, 14 June, 1926. (A.N.L. MS 1009/1).
dismiss the members of tribunals, make biased appointments and severely limit the freedom of the tribunals.

The Government raised several other points during the campaign. Latham, aware that opponents would refer to the defeat of three earlier referenda, argued that the proposals were quite different to those rejected in 1911, 1913 and 1919. It was the first time that it was proposed to give the powers to industrial authorities rather than to Parliament or to invest Federal powers in State industrial authorities, and the provisions relating to trusts, combines and trade unions were different. Ministers said that it was absurd to argue that they did not have a mandate for their proposals, when that was precisely what they were seeking. They also ridiculed the claim that a future Government would be able to "stack" tribunals, to define the powers of tribunals in a way that would favour one side or the other, or to legislate unions or companies out of existence. Both Federal and State Governments could already abuse their powers in those ways, but the need to retain electoral support kept them in line. Very few references were made to the proposal relating to essential services. Page said that almost every Parliament in the world had power to deal

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2. Ibid. 31 Aug. 1926, p.9.
with interruptions of essential services, but all the Commonwealth Government could do was to strain its deportation powers or to bring out the military forces. Latham alluded to the action of Queensland farmers who took the law into their own hands, and stated that if similar incidents were to occur on a large scale the absence of any Commonwealth power would be a very serious matter.

The Government's arguments had definite weaknesses. Ministers asserted that the detailed structure of the new system was a matter for Parliament to determine, and by keeping all their options open they were able to claim that the new system would overcome every drawback of the existing Court. Some critics found the proposals far too vague. Lang asked how the Government would prevent every case decided by local authorities going on appeal to the Federal Court, and this drew attention to the great practical difficulties of reconciling co-ordination with decentralization. However, few critics of the Government gave serious attention to its proposals. Instead, they portrayed Bruce...

as a Mussolini bent on unification or self-aggrandizement; they told unionists that the Government was seeking to destroy the unions, the 44 hour week, and the benevolent legislation of State Labour Governments; they warned employers that a future Labour Government would use its new powers to reduce hours throughout the country and to cripple companies; or they raised irrelevant issues such as deportation, the Crimes Act, or the Government's unpopular financial proposals. The result was that, while the arguments were too confusing to arouse much interest, most people knew they had something to fear from the proposed amendments.

The referendum was held on 4th September, 1926. There was a large number of informal votes and the Government's proposals were completely rejected, with a majority of 372,000 against the Industry and Commerce amendment and 402,000 against the Essential Services amendment. There were affirmative majorities in New South Wales and Queensland, but every electorate in Victoria, South Australia and Western Australia voted "No" on both issues.¹ Two days after the referendum a disappointed Bruce left for England to attend the Imperial Conference.

A few weeks before the referendum an amending

Arbitration Bill was passed by Parliament. Since 1923 Justice Powers had been warning the Government that he would soon have to give up his onerous Arbitration Court duties and that it was unlikely that any of the High Court justices would be prepared to succeed him.\(^1\) In 1925 he announced that he would definitely retire in June, 1926.\(^2\) In the same month the two-year terms of both Deputy Presidents would expire. The Government had decided that it was essential to confer on the Court judicial powers by appointing its members for life. It hoped that the reconstitution of the Court could coincide with the retirement of Powers and the completion of the terms of Quick and Webb. It would be completely impossible to hold a referendum and to put through a radical amendment of the Arbitration Act in a few months, and it was therefore decided in May, 1926, to reconstitute the Court immediately, while other reforms would have to wait until the referendum had been held.\(^3\)

The 1926 Conciliation and Arbitration Bill contained three main provisions. Instead of the President and the

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3. The drafting of the Bill was completed on 10th May, 1926, the day on which the Constitution Alteration Bill was submitted to Latham. (C. A. O. A 2863 1926 Arbitration Bill file).
Deputy Presidents, the Court would in future comprise a Chief Judge and an unspecified number of Judges, who would be barristers or solicitors of at least five years' standing, and who could not be removed from office except on the ground of proved misbehaviour or incapacity. For the first time it would no longer be necessary for at least one member of the Court to be a justice of the High Court. The Bill contained clauses setting out the salaries and pensions of the judges. Its second object was to empower the Government to appoint Conciliation Commissioners. The third of its principal provisions permitted the Attorney-General to intervene in the public interest in any proceeding before the Court in which the question of standard hours or the basic wage was in dispute. In such cases, any person or organization with an interest in the determination could apply to the Court for leave to be heard and to examine witnesses. Finally, the Bill stipulated that the Deputy Presidents were to continue in office until they had completed any hearings on which they were engaged when the Bill became law.

Latham presented the Bill to Parliament on 21st May, 1926, and it was passed on 23rd June, two days before the terms of the Deputy Presidents expired. The debate was quiet and there was little opposition to any of the proposals.
Some Members regretted that it was necessary for the judges to have life tenure and that only lawyers would be qualified to be arbitrators, but they admitted that it was desirable for the Court to have judicial powers. The debate did give Latham an opportunity to express his strong views on governmental intervention in Court proceedings. The Labour Member, J.E. West, asserted that the evidence of the Attorney-General would have a powerful influence on the judges. In reply, Latham stated that the Attorney-General would merely issue a notice of intervention; he would not become a party or give evidence. The clause was intended to empower the Court to hold test cases on either the standard hours or the basic wage, in which all the available evidence could be presented to the Court, so that its decision could be embodied in all subsequent awards. Latham thus rejected the idea, raised by Moore and Dyason and accepted by Groom, that in view of the effect of awards on the national economy the Government should be able to intervene and give evidence in any proceedings of the Court. Latham’s concern with the economic consequences of awards was outweighed by his conviction that the Government could not intervene without being identified with one side or the other, which not only offended his ideas of government and the law but would

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1. *C.P.D.* v. 113, 18 June, 1926, pp.3312-14. This clause was drafted entirely by Latham.
provoke serious industrial unrest. The clause relating to conciliation commissioners was a further example of the ease with which Latham overrode some of the recommendations of Moore and Dyason. They had opposed Stewart's proposals that the Act should provide for the appointment of conciliation commissioners and committees, and Groom had evidently agreed with their views, but Latham considered that there was an urgent need for at least one conciliation commissioner.

It had been assumed in the press that Quick and Webb would receive permanent appointment under the new Act and there was speculation that Stewart, Garran or Drake-Brockman could fill a third position. Both Quick and Webb told Garran that they were anxious to continue their work. Yet in July, 1926, Latham wrote to them and told them that they would only be required to complete the cases on which they were engaged. No reasons were given for their virtual dismissal. However, some attempt should be made to determine the reasons, especially as the course of arbitration history in the next few years might have been

very different if Quick and Webb had become judges of the Arbitration Court.

There is evidence that "political" considerations had some slight influence on Latham in dismissing the Deputy Presidents. Garran and Knowles, as well as some of Latham's colleagues in Cabinet, echoed the claim of the conservative press that all three members of the Court showed far too much sympathy for the unions and frequently gave in to union pressure. Latham, as a result of his experiences as counsel for the shipowners and other employers, shared this view. Nevertheless, it is very doubtful if he thought that their lack of impartiality was so great as to warrant their dismissal. Most of the criticisms of the Court were directed not at Quick and Webb, but at Powers. It was Powers who had shown hostility to the shipowners, praised Walsh, refused to deregister the Seamen's Union, was critical of Webb for deregistering the Union, defended the union practice of going to both Federal and State tribunals, and completely mishandled the 44 hours dispute. In contrast, the chief criticism of Quick and Webb was that their awards were too generous to the employees, but this was also a criticism of one of the judges whom Latham appointed in their place.

It would seem far more likely that Quick and Webb were replaced because Latham and his advisers believed that they did not possess both the strength and the detachment which their semi-judicial, semi-legislative positions required. Powers, Quick and Webb were far too sensitive to be good arbitrators, and they each seemed compelled to draw attention to their humiliations by indulging in long speeches of self-justification and by engaging in public debate with critical politicians. They were unusually preoccupied with status, and Garran became exasperated when they talked of conspiracies by his officers to deprive them of their telephones or to replace their large tables.¹ Quick always showed the most dignity and reasonableness, and it was quite likely that he was replaced simply on account of his age, as he was over 70. Actually, he remained in the Court until 1930, as his term was extended nine times to enable him to complete the huge and highly complex railway cases. Webb, on the other hand, was the worst offender and Bruce suspected that he was paranoic. In 1924 Webb had written to Bruce: "I am ringed around by a body of men secretly instructed to dishonour, degrade, insult and mortify me. I have the status of a thief in the night, a clerk in the Attorney-General's Department revises my judgements, I doubt if any other person in the community is subject to

¹ Garran to Groom, 14 Dec. 1922. (A.N.L. MS 236/2/841).
more needless suffering".\(^1\) Other Ministers received similar communications in 1925\(^2\) and it was hardly surprising that Bruce and Latham considered him to be unsuitable for a judicial position. Webb pleaded with Latham to reconsider his decision\(^3\) but in October, 1926, he left the Court.

In July, 1926, Bruce announced that G. Dethridge\(^4\) was to be Chief Judge and L.O. Lukin\(^5\) and G.S. Beeby\(^6\) Judges of the Arbitration Court. Dethridge had been a Judge of the Victorian County Court since 1920 and Lukin a Justice of the Queensland Supreme Court since 1910. Beeby was the most widely known of the three and the only one experienced

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in industrial arbitration. He had had a long career as a Labour politician in New South Wales, was the Minister responsible for the 1912 Industrial Arbitration Act, and from 1920 to 1925 was a Judge of the New South Wales Industrial Arbitration Court. There was very little criticism of the appointments. Stewart thought they would work well together and was relieved to find that political considerations had not influenced the selection. All three men had strong personalities. Dethridge had a reputation for both humour and sarcasm, which the press thought were assets in an arbitrator. It was suggested that unionists would find Lukin a tough judge but this would be balanced by Beeby's popularity with the unions.

The new Court met for the first time on 1st August, 1926. Its first case was between the Amalgamated Engineering Union and J. Alderdice, with the Union claiming, among other things, a 44 hour week. Latham intervened on the first day of the hearing, thereby enabling the Court to make a long and exhaustive investigation of the most controversial question facing Australian industry. Latham said that the Government would take no further part in the proceedings. Four days later he left Melbourne on his journey to Geneva.

The period from September, 1926, to November, 1927, proved to be a peaceful interlude for the Commonwealth Government. For the first time for two years industrial relations ceased to be the most serious problem faced by the Government, and it was able to concentrate on other subjects, by far the most important being Commonwealth-State financial relations. The Government managed to avoid becoming involved in any industrial disputes and, as reports of strikes no longer filled the newspapers, optimists in the Cabinet concluded that a new era of industrial peace might be dawning.

The lack of publicity given by the press to industrial unrest in 1926/27 was misleading. It was true that there were only two interstate disputes and that none of the stoppages had a sustained and serious effect on the life of the whole community in the manner of the seamen's strikes of 1925. Nevertheless, there were a great many stoppages throughout Australia; in fact, the number of disputes and also the number of workers directly involved in them during 1927 were not to be exceeded until 1941. The disputes followed the pattern of previous years in that they were mostly confined to the mining and transport industries.
Nevertheless, the two most important strikes in this period took place in other industries. In June, 1927, workmen at the South Johnstone sugar mill, near Innisfail, went on strike when a new manager dismissed a number of employees. The mill, however, continued operating with the aid of volunteers. It was boycotted by cane cutters, but farmers who employed migrant labour continued to supply it with cane. Racialism intensified the hostility between the farmers and the strikers, and there were many clashes, in one of which a striker was fatally shot. Bruce visited South Johnstone and appealed for a speedy settlement, but said that he had no power to interfere. In August, 1927, the dispute widened when railwaymen refused to drive trains to South Johnstone and were suspended. The Australian Railways Union supported the suspended men and on 1st September, 1927, the Queensland Railways Commissioner dismissed all his employees. McCormack, who was alleged to have had a long-standing feud with the left-wing Australian Railways Union, refused to compromise and after two weeks of chaos throughout the State the Union

1. S.M.H. 23 June, 1927, p.11.
2. Ibid. 6 July, 1927, p.15.
3. Ibid. 8 Aug. 1927, p.11.
surrendered. The Labour Premier was extolled by the con-
servative press and denounced by unions throughout Australia.\textsuperscript{1} The South Johnstone strike was settled shortly afterwards by the Queensland Board of Trade.

In July, 1927, there was a smaller strike, but one which had a greater influence on the policy of the Common-
wealth Government and which foreshadowed some of the great strikes of 1928 and 1929. On 1st July, 1927, Judge Beeby
handed down his award for the engineering industry.\textsuperscript{2} It was immediately repudiated by mass meetings of the Amalgamated
Engineering Union because it provided for the extension of the piecework system and because it gave employers the right to choose between the daily and weekly systems of hiring. The Union adopted a policy of irritation strikes and by the end of the month work had stopped in five engineering firms in Sydney and Melbourne.\textsuperscript{3} Neither the conciliatory efforts of Stewart and the Melbourne Trades Hall Council nor the injunctions issued by the Arbitration Court could end the

\textsuperscript{1} S.M.H. 12 Sept., 1927, p.10; Age, 12 Sept. 1927, p.10; Labor Call, 15 Sept. 1927, p.6; Minutes of Melbourne Trades Hall Council, 1 Sept. 1927. (A.N.U. M14).

\textsuperscript{2} 25 C.A.R. 364

dispute. However, the men did return to work in late August, 1927, when Beeby promised to hear immediately an application for a variation of the award.\textsuperscript{1} The Union was successful, as Beeby restored weekly hiring and castigated the employers for "flaunting" his original award as an industrial victory and for trying to enforce a universal return to the old system of daily hiring.\textsuperscript{2} The fears that employers had expressed when Beeby was appointed seemed to be confirmed, and the Victorian Chamber of Manufactures and the Metal Trades Employers Association protested to Bruce about the Court's "instability".\textsuperscript{3}

One reason for the comparative scarcity of large strikes in 1927 was the decision of the Federal Arbitration Court in the 44 Hours Case. After a six month hearing, the Full Court, with Judge Lukin dissenting, granted the 44 hour week to the engineers on 27th February, 1927. Lukin completely opposed the 44 hour week, while Beeby believed that it could be introduced in most industries. Dethridge, in handing down the deciding judgement, declared that, in the case of the engineering industry, the strain, confinement,

\begin{itemize}
\item \textsuperscript{1} S.M.H. 23 Aug. 1927, p.7.
\item \textsuperscript{2} 25 C.A.R. 385.
\item \textsuperscript{3} Minutes of Metal Trades Employers Association of N.S.W., 29 Aug. 1927. (M.T.I.A.).
\end{itemize}
R.R. Garran

L.O. Lukin

C. Powers

G. Dethridge
monotony and concentration required of the employees so affected their capacity or opportunity for enjoyment of leisure as to warrant their hours being reduced to 44. Employees in other industries with similar disadvantages to engineers would also be entitled to a reduction of hours.¹ Thus while Latham had intended that the case should settle the question of hours once and for all, the Court, or more precisely Dethridge, decided that the 44 hour week was still at an experimental stage and that the judgement should not be binding on all subsequent cases.

In the next two years the three judges consistently applied the criteria that they had laid down in February, 1927. Later in 1927 the 44 hour week was awarded to employees in the iron trades and the gas industry, and by February, 1929, it had been extended to carpenters, clothing trade employees, printing industry employees, glass workers, metalliferous miners, flour millers and to some sections of the liquor trades. In some cases, however, Dethridge sided with Lukin and rejected the unions' applications. For example, he considered that the agricultural implement-making industry and the furniture trades were faced with such intense overseas competition that they would not be able to survive if the 44 hour week was granted.²

¹. 24 C.A.R. 755.
The 44 Hour Case was a triumph for the Commonwealth Council of Federated Trade Unions, but within a few months the Council had ceased to exist. In May, 1927, an All-Australian Trade Union Congress decided to establish an Australasian Council of Trade Unions.\(^1\) The A.C.T.U. had no full-time officers for 16 years; several unions, most notably the Australian Workers Union, refused to join it; and trade union power continued to be concentrated in the State Labour Councils.\(^2\) Nevertheless, the A.C.T.U. was the first genuine interstate trade union organization. Unlike the Commonwealth Council of Federated Trade Unions, which it succeeded, it had the full support of Sydney militants like Garden, Beasley and Johnson, although its leaders, W.J. Duggan and Charles Crofts, were Melbourne moderates. The Government recognized from the outset that the A.C.T.U. was the most representative trade union organization in the country, but it was critical of the influence that Garden seemed to exercise and of the Council's affiliation with the Pan-Pacific Trade Union Secretariat at Shanghai. The success of Holloway and Crofts against a formidable array of employers' representatives in the 44 Hours Case

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1. S.M.H. 7 May, 1927, p.15.

convinced many employers that in their relations with the unions they were handicapped by a serious lack of unity. In August, 1927, a meeting of Melbourne businessmen formed an Advisory Committee of Employers under the leadership of S. McKay and J. MacDougall of the Victorian Chamber of Manufactures.\(^1\) In January, 1928, a similar body was set up in Sydney headed by C. McDonald, the President of the New South Wales Employers Federation.\(^2\) Although they were informal organizations and did not survive long (the Victorian Committee was dissolved in 1930), the Advisory Committees of Employers did ensure that there was much greater consultation between leading employers.

The Commonwealth Government devoted little attention to industrial conflict in the latter months of 1926 and most of 1927, but it was forced to spend an increasing amount of time considering the causes and possible remedies for the deteriorating economic conditions of the country. Latham's proposals to amend the Arbitration Act were debated against a background of economic stagnation which was evident in many different industries and which provoked much argument about the national debt, the balance of payments, the tariff, prices, wages and unemployment.

2. C. McDonald, President, N.S.W. Employers Federation, to R.A. Marks, President, N.S.W. Chamber of Manufactures, 19 Jan. 1928. (Woll.83).
Most of the export industries experienced some difficulties in 1926 and 1927. Wool production increased steadily until 1928, with a record clip in 1926/27. However, wool prices had fallen by 37 per cent in 1925/26 and the value of wool exported by over £3m. in 1926/27. A severe drought in New South Wales and Queensland in 1926 resulted in a drastic decline in the production and export of wheat, beef and sugar, exports of sugar falling from £5.3m. to £1.7m. in 1926/27. British wheat prices declined steadily after 1926. The amount of butter produced decreased each year from 1924 to 1927 and exports were halved. The mineral industries, particularly silver and lead, also suffered from a fall in overseas prices. Coal prices continued to rise until 1927, but production and exports declined after 1924, although there was a slight revival in 1926/27. The cumulative effect of these developments was that the total value of exports dropped from £162m. in 1924/25 to £148.5m. in 1925/26, with a further fall of £4m. in 1926/27. In manufacturing, investment fell away sharply after 1925 and the figures of factory employment showed a decline after 1926/27. Conditions in the timber industry deteriorated drastically after 1925 and the boom in the motor vehicles industry ended in 1927. Nevertheless, some industries continued to prosper. The woollen textile
industry revived after the 1925 tariff increases and the consumption of steel remained steady.¹

Turning to the economy as a whole, the most serious problems were increasing indebtedness and continuing import surpluses. By 1927 the national debt had passed £1000m., compared with £313m. in 1913. Half the debt was borrowed from overseas. The overseas interest burden had increased from £20m. to £24m. since 1923. After the prosperous year of 1924/25, Australia did not again have an export surplus which could meet, either wholly or partly, its overseas interest obligations. Imports exceeded exports in value by £3m. in 1925/26, £20m. in 1926/27 and nearly £4m. in 1927/28. The finances of the Commonwealth Government continued to appear healthy, as there were budget surpluses of £3m. in both 1925/26 and 1926/27. However, the surpluses were not really a sign of prosperity, as they resulted from customs receipts exceeding the estimates, which in turn were due to overseas borrowings and to tariff increases. The State governments had enormous budgeting problems. In both 1925/26 and 1926/27 four of them had deficits and in the case of New South Wales in 1925/26 and South Australia in 1926/27 the deficits amounted to over £1m. The deficits were largely caused by the heavy losses incurred by the State railways,

¹ Commonwealth of Australia Yearbook, 1926-28; Forster. op. cit.
with the sole exception of the Victorian Railways. In every year after 1925 the Queensland Railways had a deficit of over £1m., while the losses of the South Australian Railways reached £4m. in 1925/26 and £3m. in 1926/27. Other aspects of the economy caused serious concern. Both nominal wages and prices continued to rise, although in other countries prices were falling. The unemployment figures in 1926 and 1927 were relatively low, reaching 5.7 per cent in the last quarter of 1926. However, by the last quarter of 1927 they had risen to 8.9 per cent and they rose further in 1928.¹

The Government received many warnings about the serious economic situation. Pastoralists in Parliament such as C.L.A. Abbott and W. Killen asserted that the primary industries were in a stagnant condition² and there were predictions that the value of primary produce would fall by £30m. in 1927/28.³ W.L. Baillieu declared that the mining companies would not be able to support much longer the combination of increasing taxation, high production costs and falling metal prices,⁴ and McDonald said that the

³ Australasian Manufacturer. v. 12, 10 Dec. 1927, p.10.
⁴ Age. 29 Oct. 1927, p.23.
slackening of the coal trade had never been so intense and the export trade was heading towards extinction.\(^1\) Opinion was very divided on the state of the economy as a whole. Dyason wrote that, if the increase in population and the change in money values was considered, the external debt was less than in 1894 and 1904 and the external interest burden was less than in 1894 and only slightly more than in 1904. He agreed with Sutcliffe that Australia was not living on borrowed money and it could sustain its burden of debt with comparative ease.\(^2\) On the other hand, Latham's brother Bertram, who was President of the Actuarial Society of Australasia, gave an address in June, 1927, in which he criticized the expenditure of borrowed money on losing investments, such as railways, water supply, irrigation and electricity. The country had to increase its production or reduce its consumption if it was to live within its income and reduce its indebtedness. The Commonwealth Government's budget surplus was not a true measure of prosperity, yet it encouraged it to indulge in lavish expenditure.\(^3\) These criticisms were supported by the Melbourne *Age*\(^4\) and by a

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group of Melbourne employers, businessmen and trade union leaders who wrote to Bruce in June, 1927. They stated that since the Government had come into office imports had exceeded exports by £32m. and the total debt had grown by £108m. When large sums were being borrowed merely to pay interest the country was headed for insolvency.¹

In June and July, 1927, Bruce made several references to Australia’s economic problems, particularly in his address to the Premiers’ Conference and in the Joseph Fisher lecture which he delivered at the University of Adelaide. He admitted that the economic position was causing the Government grave anxiety. However, he strongly defended the Government's loan and tariff policies and the scale of expenditure of both the Commonwealth and the State Governments. Of the total public debt of £1,013m., only £305m., incurred during the War, was a dead-weight debt, represented by no assets, and only a small proportion of the latter debt was borrowed from overseas. For the other £708m. Australia had assets valued at over £800m. In a new country governments had to undertake functions, such as railway services, and developmental projects, such as irrigation, which were not the responsibilities of governments in older countries. Only by the wise expenditure of borrowed money could the

¹ Quoted in 25 C.A.R. 1167.
Government provide for a rapid expansion of population without any decline of living standards. The great majority of government revenues was allocated to obligations and services which were accepted and expected by everyone: debts incurred during the War, defence, pensions, education, health, railways. Although the Government had no intention of increasing the burden on industry by setting up a system of child endowment, it was impossible for it to reduce taxation to such an extent that industry would be stimulated or production costs lessened. Less than half of the customs revenue was derived from duties of a protective character, and even if the Government abandoned its protectionist policy it would still be necessary, for revenue purposes, to raise approximately the same amount from customs duties. Bruce therefore concluded that the Government could not solve the country's economic problems. Only improved efficiency and greater co-operation between all who were engaged in production would save the social system and living standards from disaster.¹

In his lecture Bruce also referred to the "linked policies" of the protective tariff and the basic wage. Originally Australia's exportable surpluses had been very

¹ S.M. Bruce. The financial and economic position of Australia. Adelaide, 1927.
small or were of a character, such as wool, for which there was always a market. However, as exportable surpluses had grown, an acute problem had arisen: the necessity both to maintain a high standard of living and to compete against all-comers in the open markets of the world. There was widespread argument about the relationship between the tariff and wages. The Victorian Chamber of Manufactures asked Bruce to ensure that the vicious circle was unbroken by providing for automatic tariff increases whenever wage increases were granted.¹ This suggestion, which horrified the Chamber of Commerce,² was dismissed by Bruce. The Tariff Board believed that the vicious circle should be broken at all costs. In its 1926 report it criticized Powers' statement that the Arbitration Court was concerned with the cost of living, not with the capacity of an industry to pay certain wages, and employers who found difficulty in paying the wages should have recourse to the Tariff Board. The Board insisted that, unless the unions realized the critical position into which Australia was drifting and the necessity to prevent the gap between British and European wages and Australian wages widening, there would be nothing but economic disaster ahead.³

1. S.M.H. 27 May, 1927, p.12; Minutes of deputation from Victorian Chamber of Manufactures to Prime Minister, 29 May, 1927. (A.N.L. MS 1009/28).
2. Commerce. v.10, 7 June, 1927, p.132.
In 1927 the Board repeated its warning, claiming that the situation was even more serious. Rising costs of production were arresting the progress of the timber, engineering, iron and steel, glassware, clothing and textile industries.¹

The deteriorating economic situation dominated Latham's thinking when, in December, 1926, he began to consider the implications of the referendum defeat. In fact, it caused him to retreat from his centralist position and he quickly revived his old argument that the regulation of almost all industries was a matter best left to the States. His new position was summarized in some notes that he drafted during his stay in London, where he was appearing in a Privy Council case. Instead of the usual references to the overlapping, inconsistencies and waste of the existing system, the emphasis in the notes was on the vicious circle of rising wages, prices and tariffs and the resulting increases in production costs.

Latham argued that there was a tendency for employers and employees to combine to increase profits and wages at the expense of the rest of the community. The object of many customs duties was certainly to make industries more profitable, but it was not intended that they

should also make higher wages possible. There were a number of possible solutions to the tariff-wage problem. For instance, Parliament could legislate to prevent the Court from awarding wages above or below certain limits. Latham did not think that this proposal was either practicable or desirable. It would be preferable to compel the Court to make its awards on the basis of the continuance of existing customs duties, so that it would be forced to consider the capacity of industries to pay the proposed wages. Alternatively, the Arbitration Act could be amended to limit its operation to a few specified industries.

The last solution, with State authorities fixing wages, appealed to Latham for a number of reasons. Like the manufacturers, he realized that a high wage in one or two States, unlike a Federal wage, could not be used to justify an increase in the tariff. State tribunals would have to make their awards on the basis of existing economic conditions. With State regulation there would be variations in wages and conditions, and it would be much more difficult for employers and employees to combine to exploit the public. Moreover, large federal unions would become much less powerful and many would disappear, together with the tendency for local disputes to be magnified into national stoppages. The referendum showed that the people wanted less Federal inter-
ference in industry. It would be possible to make some improvements to the Arbitration Act, but they would not touch the realities of the problem. The only real solution was to restrict the operations of the Federal Court. Latham stressed that the change should not be made suddenly and that its advantages should be widely publicized before any practical proposals were made.¹

It can only be assumed that Latham expounded his ideas to Bruce and other Ministers on his return to Australia. Nevertheless, subsequent events showed that the Government had no intention of taking any action to limit the jurisdiction of the Federal Court. Latham had argued that such action was the only logical course to adopt following the defeat of the referendum proposals. Such was not the view of Ministers who a few months before had asserted that it was impossible to define Federal industries, and that sooner or later greater powers would have to be given to the Commonwealth. They naturally feared charges of inconsistency if they suddenly called for a return to State control. In addition, the Australian National Federation had reversed its arbitration policy and favoured Federal supremacy,² while

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¹ Latham. Some observations upon the tariff and the Arbitration Act, 17 Dec. 1926. (A.N.L. MS 1009/28).
² Australian National Review. 30 Nov. 1926, p.12.
a number of employer organizations had become strong defenders of the Federal Court. Both the Federation and the employers would be embarrassed and perhaps hostile if the Government changed its position. Finally, it was highly likely that Ministers were tired of arguing about arbitration and the easiest course of action was to allow the Federal Court to continue with its existing powers.

Latham returned to Australia in February, 1927, and immediately turned from his reflections on arbitration policy to the perennial and very practical problem of the delays and slowness of the Federal Court. Stewart told him that 149 cases were awaiting hearing, including 41 applications for a 44 hour week.¹ Latham consulted Dethridge² and in April, 1927, it was announced that the Court would be strengthened by the appointment of E.A. Drake-Brockman as a fourth judge and Stewart as the first Conciliation Commissioner.³ As Industrial Registrar, Stewart had often arranged meetings between employers and unions; with his new powers he was able to summon compulsory con-

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ferences and he was to spend far more time away from Melbourne seeking to settle disputes and reporting to the judges on the circumstances surrounding stoppages. He was a popular man and his promotion was welcomed on all sides. In contrast, the appointment of Drake-Brockman aroused a furore in the Labour Party and among the unions, and even Government supporters felt that Bruce and Latham had made an amazing political blunder. Until 1926 Drake-Brockman had been a Nationalist Senator and President of the Central Council of Employers, and it was asserted that a man with such a partisan background was unqualified to hold judicial office. The Labour Party was in no position to criticize the appointment and Crofts' remark that the unions would boycott the Court was an idle threat. Nevertheless, the accusation of "biased appointments" was henceforth part of the standard repertoire of the Opposition. The Government was fortunate in that Drake-Brockman was not involved in any really controversial cases and, ironically, it was the employers and not

3. S.M.H. 18 April, 1927, p.11.
the unions who complained most about his awards.

In June, 1927, Latham announced that the Government was considering amendments that could be made to the Arbitration Act under the Commonwealth's existing constitutional powers. The Government again sought the views of the Central Council of Employers and the A.C.T.U., but no replies were received until August, 1927. By that time Latham and Boniwell had already drafted a Bill and it had been sent to the other Ministers.

The Bill that Latham circulated in late July, 1927, drew heavily on Groom's 1925 Arbitration Bill. Of its 14 substantive clauses, ten had been included in the earlier Bill, although some in a more extended form. They dealt with such aspects of arbitration as the overlapping of awards, retrospective pay, lawyers in the Court, bonds, secret ballots, union rules, deregistration and the expulsion or suspension of union members. Latham added clauses providing for conferences of Commonwealth and State arbitrators, the appointment of inspectors, and the dissolution of deregistered organizations and the distribution or vesting of

their property in voluntary associations of their former members. His most important contribution was concerned with the economic effect of awards. In December, 1926, he had suggested, as an alternative to the limitation of the Court's jurisdiction, that the Court be compelled to consider the capacity of industries to pay the prescribed wages. He now expanded one of the recommendations of Moore and Dyason. The Court should be directed to consider, in making its awards, the "standard of living, the increase or decrease in the productivity of industry and any provisions for family allowances applicable to employees." The first draft of the 1927 Bill did not contain many of the penal provisions of the 1925 Bill. In a covering note Latham wrote that he did not think that the present circumstances required as restrictive a code as in 1925, especially as many of the 1925 provisions would be regarded as a "subservient" imitation of the British Trade Union Bill.¹

The Arbitration Bill was discussed by Cabinet in mid August, 1927. At this meeting Latham expressed in greater detail his belief that the 1925 proposals had been far too restrictive and negative. In fact, he made the radical suggestion that the penal provisions which had been

¹ Latham. Memorandum to all Ministers, 21 July, 1927. (A.N.L. MS 1633/4).
in the Act since 1904 should be repealed. Except in the case of essential public services, which were covered by State legislation, it was wrong to make refusal to work a criminal offence, thereby reducing workmen to a servile status similar to that of workers in Italy and Russia. The penal provisions encouraged lying and hypocrisy among union leaders: officials would arrange a strike, tell the press that a strike would take place unless certain concessions were made, and then swear to the Court that they had nothing to do with it and that the men were acting individually. Furthermore, it was wrong to impose a criminal penalty on a man for simply obeying the order of his union. Turning from the morality to the effectiveness of the penalties, it was impossible to force thousands of men to work on unacceptable terms, and as a result the law was brought into contempt and the power of revolutionary agitators was increased. On the other hand, lockout penalties could readily be enforced and employers therefore fought with their hands tied. Latham referred to the engineers' strike and stated that if the employers were free to lockout, many strikes would not take place. While it was right that employers should be bound to pay award wages, to deprive them of their right to close down their works left them with insufficient control of their own businesses. Latham recommended that all penalties on
strikes and lockouts be repealed.\textsuperscript{1}

Latham's proposal echoed one of the major recommendations of Moore and Dyason and he had certainly made a most detailed study of their report. However, the report merely strengthened views which he had held for many years. For instance, in 1925 he had told Parliament that Sections 6 and 6A of the Arbitration Act, which prohibited strikes and lockouts, were a dead letter and in any case he doubted if there should be legislation of a general character against strikes.\textsuperscript{2} Despite the strength of his conviction and the logic of his argument, Latham found that Cabinet completely rejected his proposal. It is not known if he was supported by any Ministers. The outcome of the August Cabinet meeting was that Latham had to retain and even increase the penal provisions. Cabinet approved of all but two of the clauses in the draft Bill, but some were to be greatly modified or expanded.

In July, 1927, Latham complained that he had received no substantial response to his request to employer bodies and unions for suggestions to improve the Arbitration

\begin{quote}
\textsuperscript{1} Latham. Memorandum to Cabinet: Strike and lockout penalties in Arbitration Act, Aug. 1927. (A.N.L. MS 1633/4).
\textsuperscript{2} C.P.D. v. 110, 9 July, 1925, pp.374-76.
\end{quote}
Act. In the next month or so, however, he received lengthy proposals from a number of organizations, as well as from individuals who claimed to have found the solution to the country's industrial problems. On the employers' side, submissions were received from the Central Council of Employers, the Associated Chambers of Commerce, the Victorian Chamber of Manufactures, the Metal Trades Employers Association, the Commonwealth Steamship Owners Association, the Stockowners Association of New South Wales and the Broken Hill Proprietary Company. In addition, Latham had long discussions with the three most prominent leaders of the employers in Melbourne, McKay, MacDougall and Ashworth, conferred with Schwilk, the Secretary of the New South Wales Employers Federation, received a deputation from the Metal Trades Employers Association, and had a protracted correspondence with its Secretary, W.C. Myhill. It was the third time in


three years that the Government had received suggestions from the employers and the great majority of their proposals were familiar. The most frequent demands were for compulsory union ballots, the creation of conciliation committees, the appointment of inspectors to police awards in place of union officials, an end to retrospective awards and the removal of all restrictions on piecework. They also called for the supremacy of Federal awards, the right to appeal against a decision of a single judge, the right to be assisted by counsel, the complete abolition of preference to unionists, the cancellation of awards or deregistration if awards were disobeyed, the deduction of penalties from employees' wages and harsh penalties against picketing.

Latham, like Groom, rejected on principle the idea that legislation should be based on the submissions of economic pressure groups. However, he differed from his predecessor in his readiness to listen to the arguments of pressure groups and to make modifications, usually of a minor kind, to the Bill that he had already drafted. Predictably, he gave the closest attention to the views of the employer organizations. He tried to co-ordinate them as much as possible; for instance, he sent the suggestions of B.H.P. and the Victorian Chamber of Manufactures to
Schwilk to learn if they had the support of the Sydney employers. Yet considering the number and size of the employers' submissions they had very little direct influence on the 1927 Arbitration Bill. Latham had drafted the clauses on union ballots, inspectors, counsel and deregistration before he received the employers' suggestions, although he was aware that these had always been among the traditional demands of the employers. The final Bill, unlike the first draft, contained provisions for the appointment of conciliation committees and it was probably included in response to pressure from both the employers and from the Arbitration Court. Even so, the employers simply called for conciliation committees and left it to Latham and Garran to draft a long clause setting out exactly the ways in which they would be formed and would operate.

The clause in the final Bill which most definitely originated in Latham's discussions with the employers related to sectional strikes and lockouts. Employers' leaders such as Ashworth, Brooks and Myhill agreed wholeheartedly with Latham that all penalties for strikes and lockouts should be repealed. If this was unacceptable, Myhill urged that

Sections 6 and 6A be amended to deal with sectional strikes by providing that where employees in some factories stopped work, employers in that industry would be able to lock out the rest of the employees without infringing the law. Myhill stated that it was impossible to inflict the penalties on the unions and gave Latham details of the engineers' strike, in which the employers were in a helpless position.¹

As usual, the influence of the unions on the Government's legislation was negligible. The A.C.T.U. sent a submission to Latham in August, 1927,² but the Government rejected all but one or two minor proposals. A deputation from the Council told Latham that the Arbitration Act could be advantageously replaced by the Industrial Peace Act. It also declared that the Beeby award constituted an attack on the conditions of the engineers, and that the metal trades unions would take ballots to decide whether they should withdraw from the Court. Latham replied that he would need much more evidence that the unions wanted their awards terminated and that they really preferred the Industrial Peace Act. The latter Act could well be unconstitutional, tribunals could break down if one side refused

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¹ Garran to Myhill 6 Aug. 1927, Myhill to Garran, 13 Sept. 1927. (M.T.I.A. Box 68 (c)).
² Crofts to Latham, 2 Aug. 1927. (C:A.O. A432 29/393).
to attend meetings, and their rulings would be subject to the same limitations as Court awards.\(^1\) Latham asked the A.C.T.U. on a number of occasions whether it favoured the abolition of all strike and lockout penalties,\(^2\) but it refused to give a definite answer.

As well as consulting the employers and the unions, Latham sought the views of the Judges of the Arbitration Court. Dethridge confirmed his opinion that the strike sections in the Act were practically useless and thought that the unions would be much more cautious if the employers were free to lockout. However, he thought that the penalty clauses should be retained in cases affecting public utilities. Stewart asserted that the suspension of awards, and not de-registration, was the most effective means of securing industrial peace.\(^3\)

By November, 1927, the Arbitration Bill was taking its final shape and Latham submitted five outstanding questions


to Cabinet. In only one case did Cabinet agree completely with Latham's recommendation. It agreed that the Bill should enable lawyers to appear in the Court with the consent of the judge, and rejected Dethridge's suggestion that parties should only be represented by lawyers on questions of law. Two of the proposals were completely rejected, presumably because Ministers thought that they would arouse unnecessary controversy. Latham stated that although the Court had hardly ever awarded preference to unionists, it was bound by Section 40 (2) of the Act to order preference if it would assist to prevent or settle a dispute. If the unionists were to realize the effect of this Section, they could force a preference order in every case. He thought that the Section should contain a proviso, "and the Court is satisfied that preference is desirable and fair between all persons concerned". The other suggestion which was put aside was for the complete or substantial repeal of the Industrial Peace Act. Latham quoted Higgins' criticism of the Act and said that it was indefensible in principle as long as the Arbitration Court existed. If the Act was left on the statute book it would be possible for a Labour Government to appoint tribunals headed by union officials.

The most important question that Latham raised in Cabinet related to the economic effect of awards. He doubted whether Federal awards had entirely destroyed any industries, although the mining and timber industries were sometimes cited. However, there was no doubt that employers in secondary industries had frequently used awards as grounds for claiming higher protective duties. Latham suggested two possible provisions to apply to industries which, in the opinion of the Court, might be destroyed by an award or agreement. The Act could direct the Court not to make an award or certify an agreement if it thought it would imperil the existence of an industry. Alternatively, in such cases the Court could be directed to send the award or agreement to the Attorney-General, who would place it before Parliament, and it would have no effect unless approved by a resolution of Parliament. Latham predicted that either suggestion would be represented as an attack on living standards. Yet no award could fix wages at less than the basic wage, collective or individual bargaining could still operate, and the States could take any relief action. Cabinet did not approve of either of Latham's suggestions and the clause was limited to directing the Court to consider the probable economic effect of an award or agreement in relation to the community in general and the industry or industries specifically concerned.
Latham presented the Conciliation and Arbitration Bill to Parliament on 15th December, 1927. In his prefatory remarks he asserted that it would be a mistake to expect too much from legislation. Far more important was positive cooperation between employers and employees to ensure the success of individual industries and the well-being of the community. Australia was fortunate in that it had not suffered stoppages comparable with the British general strikes of 1920 and 1926, and most of its troubles had been confined to the transport, mining and engineering industries. Nevertheless, there were far too many strikes in Australia. Lockouts, in contrast, were rare, as they were easy to prove. Latham went on to say that the abolition of the Arbitration Court would not solve any problems and would create many new ones. But the continuance of the arbitration system depended on those who appealed to the arbitrator observing his awards and not resorting to direct action when it suited them.¹

The Arbitration Bill was long and complex and covered most of the subjects which had been raised in discussions on arbitration in the previous five years. Several clauses had been foreshadowed in the 1925 Bill or were concerned with grievances which had repeatedly been put forward

by employers. Counsel would in future be able to appear in
the Court with the leave of the judge. Employees would no
longer be able to sue for recovery of wages once six months
had elapsed from the date the payment became due. Awards
would not be policed by union officials but by inspectors
appointed by the Attorney-General, who would have the right
to enter any property where there was a dispute or where an
award was in force, and who would report to the Court or
Registrar on any breach of the Act or an award. The Chief
Judge was empowered to appoint Conciliation Committees, con-
sisting of representatives of employers and employees, with
a paid chairman who would not have a vote. One clause
sought to remedy one of the main complaints of the unions.
Where there were numerous persons with the same interest in
a matter before the Court, the Court could appoint "repre-
sentative respondents" and plaintiffs, summonses and other
documents would only have to be served on the relatively
small number of representative respondents. This proposal,
which had been suggested by Moore and Dyason, would result in

1. 1927 Commonwealth Conciliation and Arbitration Bill.
   Clause 42.
2. Ibid. Clause 28.
3. Ibid. Clause 16.
the applicants, who were usually unions, being relieved of a
great deal of expense and work. The Bill contained two pro-
visions giving guidance to the Court in the making of awards.
Not only was the Court to consider the probable economic
effects of its awards, but it was to ensure as far as
possible that there would be uniformity of hours, holidays
and general conditions in individual industries. In making
this stipulation, the Government was conveying to the Court
its preference for industry rather than craft awards.

Four clauses dealt with the problem of overlapping
Federal and State awards. Two of the clauses had been in
the 1925 Bill. The Court was to consider in every case
whether it would be more appropriate for a dispute to be
referred to a State tribunal. Another clause echoed the
Clyde Engineering Case decision by stating that where both
Federal and State awards "dealt with" the same subject, the
Federal award was to prevail and the Court could declare
that the State award was invalid. Latham added two more
clauses to lessen the problem of overlapping. The Court

1. 1927 Commonwealth Conciliation and Arbitration Bill.
   Clause 22 (amendment to Section 25D)
2. Ibid. Clause 22 (amendment to Section 25A)
3. Ibid. Clauses 17, 25, 29, 32.
would be able to make an order restraining a State authority from dealing with a dispute if the subject of the dispute had been dealt with by the Federal Court. On a more conciliatory level, the Chief Judge of the Federal Court could arrange a conference with a State authority in order to secure coordination between orders or awards.

A number of clauses dealt directly with registered organizations or, more realistically, trade unions. Union rules again had to fulfill a few negative conditions: they were not to be contrary to law or an award, were not to be tyrannical or oppressive, and were not to impose unreasonable conditions on membership. Unlike the 1925 Bill, the rules did not have to fulfill any positive conditions. Unions were to supply the Registrar with lists of their members and statements of their accounts and, furthermore, they were to arrange for an annual audit of their finances by a qualified auditor. If necessary, the Court could order an audit to be taken. An extremely long clause set out the elaborate procedures for holding union ballots and enumerated all the offences that could be committed in connection with the ballot. The Court would be able to order a ballot to be taken either on its own initiative or as a result of a written application by ten or more members of the union. In the latter case, the

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1. 1927 Commonwealth Conciliation and Arbitration Bill. Clauses 18, 19, 44-49, 51, 52.
union would first be given an opportunity to state whether it considered a ballot was necessary.

The most controversial sections of the Bill were concerned with the enforcement of awards. The penalties for strikes and lockouts were to remain, but the fine for individual employees was reduced to £50, while the fines for organizations and employers remained at £1,000. However, there were certain qualifications. If an organization expelled from its membership the officers whose acts had caused it to be convicted, the penalty for the organization would be reduced to £100. There was also a clause aimed at sectional stoppages. The Court could declare that a strike or lockout existed in a particular industry or section of an industry. While a declaration that a strike existed was in force, it would no longer be an offence to engage in a lockout in that industry. Similarly, when a declaration that a lockout existed was made, the employees in that industry would be free to go on strike. As in the 1925 Bill, there were clauses providing for cancellation of awards (less elaborate than in 1925), deregistration, the expulsion of members who committed breaches of the Act or an award, and the imposition of additional penalties on organizations if any of their officers were convicted under the Act.

1. 1927 Commonwealth Conciliation and Arbitration Bill. Clauses 4-6, 8, 10, 32, 38, 39, 54-57.
In its penal provisions the 1927 Bill was not as harsh as the 1925 Bill. Admittedly it created many additional offences: the use of violence, threats, abusive language or boycotts to prevent a person from offering or accepting employment in accordance with an award; the imposition of penalties by a union on members who were obeying an award; the moving of resolutions which insulted the Court or a judge; and the publishing of reports containing orders or incitement to commit a breach of the award. On the other hand, some of the harsh penalties of the 1925 Bill were excluded. The Court would not be able to sentence officers who ordered or advised their members to break an award to six months' imprisonment, it would not be able to order a union to expel certain of its members, and it would not be able to order individual members to pay the fines of an insolvent union. Above all, the 1927 Bill stated that organizations would be liable for the acts of their officers and committees of management, both Federal and branch, but unlike the 1925 Bill, it did not make them liable for the acts of the rank and file.

There was an unusually long break of five months between Latham's second reading speech and the rest of the debates on the Arbitration Bill. Latham's speech was made shortly before Parliament rose for the summer recess. By
the time that it had reassembled, in March, 1928, Bruce had
given an undertaking to postpone further consideration of
the Bill until an Industrial Peace Conference had been held.

Throughout 1927 Bruce had taken little interest in
industrial relations, apart from making occasional references
to strikes in his speeches. He had referred all deputations
and submissions concerning arbitration to his Attorney-General
and had made only casual enquiries about the drafting of the
Arbitration Bill;¹ in fact, he was absent from Melbourne
throughout July, when most of the drafting was done. In
October, 1927, he declined a request by the Victorian Chamber
of Manufactures to convene an economic conference to discuss
such matters as wage-fixation, the price of coal, the decline
of exports and the tariff.² However, on 31st January, 1928,
in a speech at Box Hill, Bruce asserted that an industrial
conference, similar to the one held in Britain in 1927, would
be of the greatest value, and he would be prepared to summon
one if it had the support of both sides. Australia needed a
new spirit of co-operation between capital, labour and
management.³ In the next few days Bruce elaborated on his
proposals. He would prefer to select the delegates himself,

1. Latham to Bruce, 12 July, 1927. (A.N.L. MS 1009/41).
partly to ensure that there were no extremists and also because a conference of representatives of organized capital and labour had failed in 1922. But he soon withdrew that stipulation. Several leaders of both the employers and the unions welcomed the proposal, although the unionists declared that a conference would only have a chance of succeeding if the Arbitration Bill was withdrawn. On 18th February, 1928, Bruce invited several organizations to select representatives to attend a conference. There would be 34 representatives, they were to be men actually engaged in production or in industrial relations and their decisions would not be binding on their organizations. 

Within a week of sending his invitation, Bruce again wrote to the organizations and suggested that the conference be modelled on the League of Nations General Assembly, with a definite agenda and each item referred to a committee for a detailed report which would be finally considered by the whole conference. Most of the employer organizations accepted the invitation, but there was little response from

the unions. Crofts stated that the A.C.T.U. could only participate if the Government withdrew the "coercive and oppressive" Arbitration Bill and if all the workers' representatives were endorsed by the A.C.T.U.¹ In reply, Bruce made a lengthy defence of the Arbitration Bill, claiming that it extended the principle of conciliation, provided for effective government of the unions by the unionists themselves, and embodied the principle that compulsory arbitration depended on obedience to awards by both parties. The Government would not withdraw the Bill, but as a compromise it would withhold further consideration of it by Parliament until the conference had been held. The Government could not accept the other condition of the A.C.T.U.: the Council did not represent all the unions and it could not be allowed to veto the nominations of other organizations.² Later in March Bruce received a reply from the A.W.U. The Union stated that it was not opposed to conferences between employers and employees on specific matters but it refused to participate in purely academic discussions. Measures to deal with unemployment were far

more urgently needed than a conference. Bruce sent a long appeal to the A.W.U., arguing that only a conference would bring about industrial peace, the greatest efficiency and the best possible relations between employers and employees. The appeal failed, both the A.C.T.U. and the A.W.U. refused to nominate delegates, and on 30th April, 1928, Bruce announced that the conference would not be held.

Even if the conference had taken place, it is difficult to imagine it achieving tangible results. Some of the employers and the press were critical of Bruce's failure to enumerate the exact subjects to be discussed. The Age referred to Bruce's "vague, benevolent generalities" and asserted that "the conference will be a monument of garrulous futility unless it is given certain ideas to explore". At first Bruce refused to specify the subject-matter of the conference. The arbitration system had failed to remove industrial disputes from the arena of antagonism to that of reason and conciliation. Australia did not need a new financial, economic or industrial policy but peace in

3. S.M.H. 28 April, 1928, p.17.
industry, a new industrial outlook and a new spirit of cooperation. Duggan had obviously misunderstood the purpose of the conference when he said it should deal with protection, arbitration, banking and social legislation. Bruce's emphasis on "spirit" rather than "policies" irritated the Employers Advisory Committee, which stated that a change of spirit was not needed, as both sides wanted peaceful progress, but they were thwarted by complicated industrial legislation.

Bruce eventually gave in to pressure and suggested that the conference could discuss the present economic position of primary and secondary industries, methods of increasing production, the distribution of the proceeds of industry between capital and labour, the control and management of industry, and ways in which greater security of employment could be guaranteed to all classes of workers.

The proposal for an Industrial Peace Conference was an example of Bruce's tendency to act impulsively, without consulting his colleagues, much less his departmental officers, and of his fondness for panaceas. It was Bruce

alone who drafted all the statements and letters which enlarged on his original proposal, and only once did he seek Latham's views on what he had written.¹ The vagueness of his proposals resulted partly from his failure to enlist the support of officers in the Public Service, who could have supplied him with the drafts of detailed schemes and pointed out weaknesses in his proposal. Instead, Bruce announced the proposal before he had thought out all the implications and practical difficulties, and in the series of speeches which followed he was virtually thinking aloud. In addition, the vagueness reflected his belief that the act of conferring was as important as the subjects discussed, that frank talks would soon reveal the common interests of employers and wage-earners, would break down old prejudices, and would promote the co-operation that was so vital if production costs were to be lowered. Both employers and unions regarded Bruce's attitude as naive: the wide-ranging agenda he had finally suggested could not be divorced from politics, there would be continual references to the Government's policies, and altogether the discussions would reveal the deep divisions between employers and employees and between the Government and the Labour Party.

¹ Deane to Latham, n.d. (A.N.L. MS 1009/28).
After the rejection of his proposal to summon an Industrial Peace Conference, Bruce withdrew and allowed Latham to resume his position as the Government's chief spokesman on industrial matters. The Arbitration Bill, which had been tabled in Parliament in December, 1927, had aroused a great deal of comment, and Latham spent some time in the early months of 1928 studying criticisms of the Bill which had been made outside Parliament.

Latham received detailed critiques of the Bill from the Arbitration Court. Lukin thought that "basic wage" and "standard hours" should be defined in the Act. Beeby disliked the idea of the Court declaring any State laws or awards to be invalid. He believed that the secret ballot provisions would be ineffective, and he was critical of some of the penal clauses. He was not opposed to penalties, however, and felt that arbitration might succeed if only employers would bring breaches of awards to the Court, so that the penalties could be rigidly enforced.¹ The Judges' criticisms did not lead to any significant alterations to the Bill.

¹ Stewart to Garran, 8 May, 1928. (C.A.O. A432 29/3407); Beeby, Comments on proposed amendments of the Arbitration Act, n.d. (A.N.L. MS 1009/28).
The trade unions condemned the Arbitration Bill without qualification. They described it as an unparalleled attack on the basic wage, State labour laws, the unions and on the sacred right to strike.\textsuperscript{1} The Government was prepared for such a reaction. However, Latham was surprised to find that the attitude of employers towards arbitration had been changing since mid 1927, and that they now had little enthusiasm for the Bill. As economic conditions worsened and industrial conflict intensified their old antagonism towards the whole idea of arbitration had been rekindled. In November, 1927, the Central Council of Employers resolved that the compulsory arbitration system had largely failed and the time was ripe for its abolition.\textsuperscript{2} The Advisory Committees of Employers were formed in the following months with the main objective of ending arbitration. They stated that the value of the Arbitration Bill could only be judged by its capacity to remedy industrial strife, abnormal unemployment, decreased output, high production costs, under-population, and a lack of new capital and enterprise. Apart from their ineffective-

\textsuperscript{1} Minutes of N.S.W. Trades and Labour Council Executive, 17 Jan. 1928. (A.N.U. M17/1); Minutes of Melbourne Trades Hall Council, 2 Feb. 1928. (A.N.U. M14).

\textsuperscript{2} 14th annual conference of Central Council of Employers, Nov. 1927. Resolutions. (A.C.E.F.).
ness, prosecutions and penalties merely increased bitterness and industrial turmoil.¹ Some employer organizations suggested further amendments to the Arbitration Bill,² most of which Latham rejected. Their general attitude, however, was summed up by the Metal Trades Employers Association in April, 1928, when it stated that it had no anxiety to see the Government proceed any further in amending the Act. Latham retorted that the Association's reference to the "clear, open economic ring" could only be interpreted to mean the repeal of all laws protecting the workers.³ As the Bill proceeded through Parliament other employers voiced similar criticisms. In June, 1928, McKay said the Act would be more difficult and complicated to administer than the old one,⁴ and a leading

1. F.R. Lee, Secretary, Advisory Committee of Employers, Melbourne, to C. McDonald, Chairman, Advisory Committee of Employers, Sydney, 10 July, 1928. (Woll. 83).

2. Ashby to Latham, 3 Feb. 1928, minutes of deputation from Victorian Chamber of Manufactures to Attorney-General, 28 Feb. 1928. (C.A.O. A432 29/3407); Myhill to Latham, 10 May, 1928, G.H. Boykett, Secretary, South Australian Employers Federation, to Latham, 3 June, 1928. (A.N.L. MS 1009/28).


South Australian employer claimed it represented an evasion of the referendum result and would make manufacturing more difficult and unemployment more widespread.¹

On 1st May, 1928, Latham summarized for Cabinet the main criticisms made by the Court, the unions and the employers.² He did not recommend many substantial alterations to the Bill. He agreed that parties other than the "representative respondents" should be free to give evidence to the Court and that the clause relating to deregistered organizations should be clarified. The secret ballot provisions had received the greatest criticism and Latham admitted that ten members of a union would be able to hold up its business by demanding a ballot on trivial questions. He suggested that the subject-matter of ballots, such as elections or strikes, should be specified in the Bill or, alternatively, that it should stipulate that the matter was to be "of substantial importance". Cabinet accepted the second suggestion. Clause 25D, which was concerned with the economic effects of awards, had also aroused a good deal of controversy. State Government employees had claimed that they would never obtain improvements, as it would always be argued that they would involve increased taxation. Latham

had considered limiting the clause to industries carried on for a profit, but this would have excluded State railways. A few weeks later Latham again asked Cabinet to consider Clause 25D. It was not meant to be an attack on the basic wage principle. Latham, unlike many Nationalists, supported the principles laid down by Higgins in 1909 and in subsequent years. But the Government wanted to impress on the Court that it was to limit itself to industrial matters, and was not to usurp the duty of determining the general economic policy of the country. The ascending spiral of wages and tariffs had to be checked. Cabinet agreed to his suggestion that the clause should carry the proviso that it was not to affect the practice of the Court in fixing the basic wage.

The debate on the Arbitration Bill was resumed on 16th May, 1928, and occupied most of Parliament's time for the next month. The new Leader of the Labour Party, J.H. Scullin, launched his Party's attack by declaring that the Bill was the first serious blow struck by Parliament against the Arbitration Act, and in the following weeks he and his colleagues used every known tactic to block or hinder the passage of the Bill. Actually, the Labour Party had no objections to many of the clauses and its criticisms were concentrated on five or six provisions. They claimed that,

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despite the amendment to Clause 25D, its purpose was to reduce the basic wage and the living standards of the workers. The ballot provisions were not practical, for it would be impossible for the Court to know if the applicants were really members of the union, the ballot would be extremely expensive and time-consuming in large unions, and it would often delay the settlement of a strike. In addition, it was an absurd situation when the law provided that a union was to take a ballot to decide whether or not it should engage in an illegal act. This was a weakness which Latham had privately raised with Bruce in 1925. Labour speakers emphasized that all the clauses concerned with penalties, sectional stoppages and registered organizations were clearly aimed at the unions, not the employers. The penalty for individuals on strike had been reduced to £50 not to make it fair but to make it enforceable. In condemning the clause on sectional strikes they quoted Hughes' criticism that the effect of the clause was that a small fire was to be fanned into a large fire in order to extinguish the small one,\(^1\) and pointed to the consequences of such a policy in the mining industry, where there were always a few small disputes taking place. Although criticism by Labour leaders outside Parliament had caused Latham to make a few amendments to the Bill,

\(^1\) C.P.D. v. 118, 17 May, 1928, p.5054.
only one amendment resulted from Labour criticism during the debate: the Government agreed with Frank Brennan that only the Full Court should be able to interpret or vary an award when its decision would affect the standard hours in an industry.

Bruce, Page and Pearce were the only Ministers apart from Latham to speak during the debate. They argued that it was undeniable that there was something wrong with the industrial relations system, and the Bill was designed to ensure that arbitration should continue and that both sides should observe it. Unions could not have both the arbitration weapon and the strike weapon. Full production was prevented by the obstructive tactics of certain trade union officials who exercised autocratic power. The secret ballot would reduce their power and should be used to determine the unions' policies on piecework, the bonus system and job control, as well as strikes. Penalties had been in the Act since 1904 and the Bill actually reduced certain penalties. Against some opposition from Nationalist backbenchers, Latham stated that State instrumentalities would not be exempt from the control of the Federal Court, at least for the time being.

The 1928 Conciliation and Arbitration Act became law on 22nd June, 1928. Despite its broad scope, it did
not make a profound impact on industrial relations in Australia. The provisions relating to sectional stoppages and the secret ballot were to be utilized in 1929, the former with much more success than the latter. But until the late 1930s no conciliation committees or inspectors were appointed, no unions were deregistered, no union audits were ordered, and no conferences were held between Commonwealth and State tribunals. The unions prosecuted in 1928 and 1929 were charged under clauses which had been in the Act since 1904. Clause 25D would have been important if Powers had still been on the Arbitration Bench, but Dethridge, Lukin and Beeby had always shown a keen awareness of the economic consequences of their awards. Moreover, many of the provisions of the Act were to be repealed within two years by a Labour Government.

Nevertheless, the Government had at last passed the comprehensive arbitration legislation which it had been promising since 1923. Nationalist supporters acclaimed Latham as the architect of the Act, and there was no doubt that his performance during the long sittings in Parliament had been outstanding. Arbitration was a subject in which the Labour Party showed far more fervour and expertise than the Government parties. Yet Latham with his patience, detailed knowledge of both the law and the practice of
arbitration, and his quick mind, was able to withstand the Labour attack. As the Australian National Review wrote "He demolished the Opposition arguments one by one; there was no heat, no sarcasm, just cold, unanswerable logic."\(^1\) Charles Hawker told Latham "Even from the dead print of Hansard one can feel you gathering a moral ascendancy. At the end your opponents were clamouring for your decision on points of law and accepting your dicta in the absolute confidence that besides being of the highest technical merit they were always scrupulously clear and fair."\(^2\)

Latham and Boniwell were certainly the architects of the 1928 Arbitration Act in the sense that they drafted the Act and worked out all the complex provisions relating to conciliation committees, secret ballots, and penalties. Yet Latham's contribution to the Act was far less significant than Hawker and other admirers imagined. Most of the substantive sections of the Act had been inherited from the 1925 Bill and originated in proposals made some years before by many individuals and organizations, including Moore, Dyason, Powers, Stewart, Bruce, Garran, and the various employer bodies. Moreover, on the three most crucial questions

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Latham's arguments failed to convince his colleagues in Cabinet. They did not agree that the defeat of the 1926 referendum proposals and the deteriorating economic situation necessitated a far more limited role for the Commonwealth in industrial relations. They did not think that it was possible for legislation to do more than direct the Court, in a very general way, to consider productivity and other economic factors when it made its awards. Above all, they could not accept Latham's views that the penalties in the Act were unjustified on the grounds of both principle and effectiveness and that they should therefore be abandoned. Thus Latham's outstanding performance in Parliament can only be compared with some of his successes as a barrister: he was defending with the greatest conviction legislation that, in many respects, he privately opposed.

Latham's failure to influence the other Ministers may have been partly due to a conflict in his own personality. His liberalism and his perception of the needs of industry led him to believe that Australian industry was suffering from too much regulation by governments and courts. Yet, as a lawyer and outstanding draftsman, he instinctively tended to see the solution to industrial problems in the extension or modification of legislation. Latham's rather ambivalent attitude towards the efficacy of legislation was shared by
his colleagues; they did not really think that amendments to the Act could do much to prevent worsening economic conditions, but they did believe that tough penal clauses could lessen industrial conflict. The great disputes of 1928 and 1929 were certainly to demonstrate the ineffectiveness of much of their legislation and were to place Latham in the unhappy position of implementing a policy that, in 1927, he had keenly opposed.
CHAPTER 5

THE GREAT DISPUTES

In the second half of 1926 and throughout 1927 an extremely large number of industrial disputes occurred in Australia, yet they failed to make a strong impression on the general community. Strikes received comparatively little publicity, as the great majority were short-lived, quiet affairs which affected only a small number of people in one city or locality. In 1928 and 1929 industrial conflict continued unabated, but it was of a decidedly different character from that of the previous two years. The number of disputes and the number of men directly involved in them dropped sharply, a trend which was to continue until 1934. There has always been a correlation between worsening economic conditions and diminishing industrial unrest, for the simple reason that men are reluctant to risk losing their jobs when there is a huge army of unemployed eager to replace them. However, when disputes did take place they were long, bitter and violent, for the employers realized that conditions were right to destroy the power of the unions and the men fought desperately to save their jobs and their living standards. In 1929 strikes were, on an average, six times longer than
in 1927 and nearly 4.5 million working days were lost. (In only two other years has the figure of 3 million ever been exceeded.) Three of the major stoppages in the last two years of the Bruce-Page Government were in the transport industry and therefore threatened the welfare of the whole community. After June, 1928, the people of the capital cities became increasingly accustomed to huge marches and inflammatory speeches by the strikers, jeering pickets lining the streets, brutal assaults on strike-breakers, clashes between large mobs of strikers, volunteers and the police, and bombing and shooting. As in 1925, Ministers were confronted every day with reports and evidence of industrial conflict, and it was not surprising that Bruce should have become, in his own words, completely obsessed with the need to end this conflict.\(^1\)

In 1924-25 intervention by the Commonwealth Government in industrial disputes had taken three forms. Firstly, the Government took action to maintain essential communications with Tasmania and to prevent interference with Commonwealth services. Secondly, it summoned a conference of the parties to one dispute, when the Arbitration Court had failed to obtain a settlement. Thirdly, it sought by deregistration, prosecutions and emergency legislation to destroy the power and reverse the policies of the union which it held to be

\(^1\) Bruce to Edwards, Oct. 1964. (A.N.L.).
completely responsible for a succession of strikes. In the great disputes of 1927-1929 the Government only once felt that there was a need to resort to either of the first two forms of intervention. However, in each of the five large disputes it took steps to intervene against the side which it believed to be responsible for the stoppage. This represented both a continuation and a change from its 1925 policies. In 1925 Ministers had often argued that drastic action was needed because the strikes had political, not industrial, objectives, the union leaders being revolutionaries who saw strikes as a means of destroying the Australian social system. Yet in 1927-1929 stoppages, however unjustified, were undoubtedly concerned with genuine industrial objectives and there was no suggestion that the leaders of the unions were revolutionaries. In 1925 Ministers also asserted that Government action was necessary to prevent or end a complete holdup of transport which would have catastrophic effects on the whole economy. The same argument was put forward in some of the disputes of 1927-1929, but it could not be used to justify the Government's intervention in the timber or coalmining disputes. Thus it is apparent that in 1927 the Government did not simply decide that the penal provisions should remain in the Arbitration Act, to be utilized by either the employers or the unions. It also decided that when there was evidence that one side or the other had committed a major breach of the Act or of an award the Government itself should take legal action.
In the two years after the British seamen's strike of 1925 there was only one industrial stoppage in which the Commonwealth Government seriously considered taking punitive measures. On 19th November, 1926, the Sydney branch of the Waterside Workers Federation commenced an overtime strike as a protest against the registration by the Federal Court of the Permanent and Casual Wharf Labourers Union, a small rival union that had been formed in Sydney in 1917.¹ The strike quickly extended to other ports, where it was associated with a demand for increased overtime rates. Within a week work on the wharves had decreased by a third and, with the wool season at its height and wheat exports about to commence, the Federation was condemned by the press and by producers' and employers' organizations.² By 14th December, 1926, the overtime ban was still in force and Bruce and Latham, reading newspaper cables in London, became exasperated with Page's inactivity. Latham cabled "Presume you will proceed under Section 30 (J) of the Crimes Act".³ In a longer cable Bruce told Page that reports indicated that the strike was of the character specifically dealt with at the 1925 election, and that, in view of the Government's undertaking at the election,

it was essential that it take every action possible within constitutional limits and that the law of the Commonwealth be enforced. He trusted that Page would handle the position so that, if a general industrial upheaval ensued, the Government would be ensured of public support.¹ To Page's relief, the strike was settled on the same day that he received Bruce's message. The incident illustrated Bruce's autocratic attitude towards his Ministers, even when he had only a scanty knowledge of the problems which faced them. It also revealed his willingness to risk a long and costly stoppage for the sake of punishing an organization which had resorted to direct action.

Judge Beeby had ended the overtime strike by promising to hear the Waterside Workers Federation's claims for preference of employment and increased overtime rates within a month. In February, 1927, he granted higher rates and in May, 1927, he upheld the Federation's appeal against the registration of the Permanent and Casual Wharf Labourers Union. At the same time Beeby was becoming extremely annoyed at the practice of branches of the Federation in introducing and enforcing domestic rules which conflicted with the terms of its award. For instance, several branches enforced their

¹ Bruce to Page, 14 Dec. 1926. (C.A.O. A1606 G26/1).
own rules on the maximum number of wheat bags that could be placed in a sling. The most celebrated local rule related to pick-up times. Waterside workers had traditionally attended the pick-up places for two or three hours in both the morning and afternoon. Since 1922, however, one branch after another had adopted a policy of boycotting the afternoon pick-up. In 1927 the single pick-up came into force in Sydney. It was true, as the Federation argued, that pick-up times were not set down in the award, but they were supposed to be determined by Boards of Reference in each port, and not by unilateral action by the Federation. In March, May and October, 1927, Beeby refused to proceed with the hearing of the Federation's application for a new award until branches abandoned their practice of creating local disputes.

The Federation became resentful when the hearings of its claims were repeatedly postponed and when the shipowners refused to make any concessions. On 20th November, 1927, its Committee of Management ordered an overtime ban on all vessels in order to force the Court to hear its claims.\(^1\) For the first time there was close co-operation between the overseas and the interstate shipowners, and on 25th November their two organizations told the Federation that after 30th November work would only be given to men who observed

\(^1\) S.M.H. 21 Nov. 1927, p.11.
all the terms of existing awards and agreements, including the two pick-ups. The Federation refused to give in and on 1st December, 1927, work on the wharves came to a complete standstill. Within a day or two 50,000 men were unemployed, for apart from the 20,000 wharf labourers, the great majority of coalminers, storemen and packers, trolley and draymen and other waterfront workers had to cease work. The stoppage was comparable with the seamen's strikes of 1925, as 60 interstate and 50 overseas vessels were idle. It was the fourth year in succession that there was a shipping holdup precisely at the time when primary products had to be exported.

There was general, although not complete, agreement that the Commonwealth Government should intervene in the strike but, predictably, the kind of intervention that was requested differed greatly. Labour leaders declared that Bruce should take the initiative and bring the parties together in conference. As early as 23rd November Lyons pointed out to Bruce that the strike would be disastrous for Tasmania, as it would lead to the closing down of the Zinc

Works, severe losses to the fruit trade, and interference with the tourist traffic. The Tasmanian Parliament had no power to deal with the dispute and Lyons asked Bruce to urge the Arbitration Court to attempt a settlement as soon as possible. In a reply drafted by Latham, Bruce stated that he understood that the Court declined to hear the Federation's claims while it used direct action and retained domestic rules inconsistent with its award. He had no intention of asking the Court to abandon an attitude which was so obviously right. The Federation was completely responsible for the strike. Lyons should either use his influence with the Federation to end the strike or should prosecute it for an offence under the Arbitration Act.

The Government maintained the same attitude when the subject was debated in the Federal Parliament on 1st December, 1927. Charlton stated that not one conciliatory move had been made by the Government to bring the parties together or to intercede with them separately. Bruce replied that it would be wrong for any government to interfere in a dispute when one of the parties had acted in contempt of the awards and decisions of the Court. He did not agree

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1. Lyons to Bruce, 23 Nov. 1927. (C.A.O. A458 AF502/2).
that industrial disputes had to be settled on any terms to keep industries in operation.¹ Latham asserted that it would be impossible to maintain the arbitration system if an organization that resorted to direct action gained more than an organization that obeyed its award.² It should be pointed out that, in this particular dispute, mediation by Ministers would have been more difficult than in earlier strikes, as all the Ministers were in Canberra, a day's journey from the centre of the strike. Senator McLachlan, one of the Honorary Ministers, did visit Melbourne and spoke to Stewart, Holloway and some of the shipowners, but he stated that he was merely seeking more information and the Government had no plans to intervene.³

Actually, the Government did intend to intervene, although not in a conciliatory role. On 28th November, 1927, a group of Tasmanian parliamentarians asked Bruce to use his powers under the Crimes Act to end the strike. Bruce replied that he was not prepared to interfere until he saw the effects of the shipowners' ultimatum.⁴ However, the

2. Ibid. p.2422  
same day Latham ordered C.W. Crowley, the Deputy Crown Solicitor in Melbourne, to ascertain whether there was sufficient evidence to support a prosecution under either the Arbitration Act or the Crimes Act.\textsuperscript{1} A day later Crowley reported that he had seen Elford and other shipowners and they, in turn, had requested the assistance of their agents in every State. He had also visited one of the stevedoring companies, but although it had useful evidence it would not allow it to be used against the Federation in Court proceedings, as its foremen would be victimized.\textsuperscript{2} While Crowley was waiting for evidence from the shipowners, a search was being made by the Investigation Branch of the Attorney-General's Department for telegrams from the Federation's Secretary to the branches.\textsuperscript{3} The Government took the unusual step of asking Parliament to affirm its support for any action that the Government might take, in co-operation with the States, to maintain law and order and to ensure the continuation of essential services. The resolution was passed on party lines, although Hughes and Stewart were critical of the Government's uncompromising policy and Maxwell refused

\begin{enumerate}
\item Latham to Garran, 28 Nov. 1927. (C.A.O. A467 16A/41).
\item Knowles to H.E. Jones, Director, Investigation Branch, 28 Nov. 1927. (C.A.O. A467 16A/41).
\end{enumerate}
to vote in favour of the Government having a blank cheque.¹

As in 1926, the waterside workers' strike ended before the Government had time to institute legal proceedings. From the beginning the Government had been afraid that the Court, and especially Beeby, might give in to union pressure. On 28th November Stewart told Garran that no application had been made to the Court by any of the parties to the dispute,² and he later assured Crowley that he would not preside over a conference and the judges were not contemplating any action.³ On 6th December Crowley reported that he had sufficient information from the shipowners, together with 25 telegrams sent by the Federation's Secretary, to justify a prosecution.⁴ However, on the previous day Dethridge asked Beeby to hear the Federation's plaint and on 7th December the Court was told that the overtime strike had ended. In his judgement Beeby said that the Federation was to compel its members to obey the decisions of Boards of Reference and was to order the abandonment of local rules. He made an interim award stipulating that the times and places of pick-ups should be those prevailing in January, 1927. No more interim awards

would be made and in future the pick-up times would be decided by the Court, and not by Boards of Reference.¹

The strike was regarded as a victory for the Union, as Beeby's award meant that only the Sydney branch had to revert to the two pick-ups. The Commonwealth Steamship Owners Federation lamented that "everything pointed to an early victory for the shipowners when, as was feared would be the case, the Arbitration Court intervened".² The press was very critical of the settlement, the Sydney Morning Herald asserting "Without penalties for its conduct, without loss of forceful gains, with only assurances no more binding than earlier ones, the Waterside Workers Federation is restored to an especially favourable standing in the Court."³ Once again the employers vented their anger on Beeby, claiming that he "would probably go down as the man who struck the last blow needed to reduce compulsory arbitration to a heap of ruins."⁴

The Government's role in the 1927 waterside workers' strike had been negligible, but it had established a pattern

of response that was to be followed in four subsequent disputes. In three of these it not only expressed its complete sympathy for the employers but took legislative or legal action against the strikers.

Unlike the strikes of the waterside workers, the marine cooks' strike took a long time to develop into a nation-wide stoppage. Early in March, 1928, the cooks on the Huddart Parker steamer *Ulimaroa* refused to work unless an extra cook and scullery man were employed. The Company refused the demand and the ship was laid up indefinitely in Sydney.¹ In April the cooks walked off the other six Huddart Parker vessels for the same reason. The Commonwealth Steamship Owners Association took the dispute to the Arbitration Court and on 4th May Dethridge suspended the award of the Marine Cooks, Bakers and Butchers Association.² A week later the shipowners stated that if the cooks did not work under the conditions of the suspended award they would cease to employ members of the Union. They also introduced a new issue by insisting that their agents have freedom of selection and that the Union abandon the roster system of employment.³

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2. 26 *C.A.R.* 449.
On 14th May the shipowners began to dismiss crews and by 5th June, 1928, all interstate vessels were idle.

The marine cooks' strike recalled the seamen's strikes in that it was widely held that their alleged grievances were extremely trivial and that the dispute had been engineered by an autocratic union official. In reality, the basic cause of the strike was not trivial, for the Marine Cooks Union had been preoccupied for many years with the high level of unemployment among its few hundred members. In the early 1920s it had refused to admit new members and the demand for an extra cook for each ship was made in the hope of reducing the number of its unemployed members.¹

The roster system was considered to be the only way of spreading employment evenly among the cooks. The dominant figure in the Union was its founder, J.H. Tudehope, who was Secretary from 1913 to 1963. Although he had a reputation as a strong upholder of arbitration, Tudehope calmly ignored the Court's decisions and antagonized the whole trade union movement by thwarting the conciliatory efforts of the A.C.T.U., the Waterside Workers Federation and other maritime unions. In early May, 1928, a meeting of maritime unions placed the dispute in the hands of the A.C.T.U. Emergency Committee,

¹ See Boraston. op.cit. Chapter 3.
but Tudehope ignored invitations to participate in its discussions.\textsuperscript{1} Later in May informal negotiations took place between the shipowners and the Waterside Workers Federation, but the Federation withdrew when Tudehope repudiated its authority to mediate.\textsuperscript{2} On 7th June, 1928, Duggan admitted that the A.C.T.U. had no disciplinary authority over any unions that refused to recognize it\textsuperscript{3} and this was the signal for Bruce to intervene.

There had been few attempts to persuade the Government to play a mediating role in the strike. On 15th May Bruce had told Parliament that he would not take any action unless the Union brought itself completely under the jurisdiction of the Court.\textsuperscript{4} Later he said that Tudehope did not have the confidence of the rank and file, and the secret ballot provisions of the forthcoming Arbitration Act would take care of such officials in the future.\textsuperscript{5} On 8th June, 1928, the Labour Premier of Victoria, E.J. Hogan, asked Bruce to use his influence to bring about a compulsory conference of the shipowners and the cooks, under the chairmanship

\begin{enumerate}
\item S.M.H. 16 May, 1928, p.15.
\item Ibid. 28 May, 1928, p.11, 30 May, 1928, p.15.
\item Age. 8 June, 1928, p.9.
\item C.P.D. v. 118, 15 May, 1928, p.4820.
\item Herald. 22 May, 1928, p.5, Age, 23 May, 1928, p.11.
\end{enumerate}
of Dethridge. Bruce passed on Hogan's suggestion to the Court, but insisted that the Government had no intention of controlling or influencing the discretion of the Court.\(^1\)

As was expected, Dethridge refused to convene a conference until the cooks returned to work.

From the very inception of the strike the Government had considered the possibility of prosecutions. In March, 1928, Latham had instructed the head of the Investigation Service in Sydney to forward any information he found about the Ulmaroa dispute, but not to enlist the assistance of either shipowners or unionists\(^2\). The stipulation had made the task difficult and no evidence had been collected which could be used in legal proceedings. Crowley encountered similar difficulties in Melbourne.\(^3\)

By early June the strike involved all interstate ships and the Government decided to take drastic action. On 6th June Latham ordered his officers in Melbourne and Sydney to keep a close watch on the strike and to report every incident that could be used against the Union. He informed them that the Government intended to prosecute Tudehope and any other

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members of the Union who had breached the Crimes Act. Two days later the Governor-General issued a proclamation that there existed a serious industrial disturbance prejudicing or threatening overseas or interstate trade. Bruce sent telegrams to all the State Premiers stating that his Government intended to use all its powers to ensure that there was no interference with the resumption of transport services and asked for their co-operation. At the same time he asked the shipowners to take whatever steps were necessary to resume the running of the ships.

The Government thus broadcast its intention to attack the marine cooks with the extensive powers it possessed under the Crimes Act. On 11th June the Governor-General made a further proclamation, suspending Section 43 of the Navigation Act which required all vessels on the coastal trade with more than 25 people aboard to carry one certified cook. In the next two days a few vessels left Sydney, Melbourne and Adelaide, either with volunteer cooks

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2. Commonwealth Gazette. 8 June, 1928.
5. Commonwealth Gazette. 11 June, 1928.
or no cooks, and it was apparent that the strike was collapsing. On 12th June Garran reported that a large number of affidavits had been collected from both shipowners and cooks, and while there was no evidence of threats or boycotts, they had sufficient evidence to prosecute Tudehope. A summons had been prepared. However, Latham delayed taking action and on 14th June the cooks capitulated. The roster system was abandoned and the cooks guaranteed to assist the owners' agents when they selected galley staffs.

The Government had good reason to believe that the threat of prosecutions, with up to one year's imprisonment as a penalty, had brought the strike to an end, although it would seem that the suspension of the Navigation Act was sufficient for that purpose. It must be assumed that Latham did not prosecute Tudehope in case it prejudiced the settlement of the strike. However, two months after the cooks returned to work Jacob Johnson was convicted of an offence which was committed during the strike. Late in June, 1928, the Crown Solicitor received affidavits from the shipowners in Sydney, signed by a number of seamen, that Johnson had boarded a vessel and used intimidation to prevent the crew

from sailing without a cook.¹ On 10th July Latham ordered
evidence to be collected against Johnson² and on 26th July
he was charged with an offence under Section 30K of the
Crimes Act. He was tried in the Sydney Police Court and
sentenced to six months' imprisonment. Later there were
allegations that Johnson was convicted on the basis of false
evidence as a result of a conspiracy between the Walsh
faction of the Seamen's Union, the shipowners, the Investi-
gation Branch and the Crown Solicitor's Office. A Royal
Commission in 1931 reported that the allegations were un-
founded.³

Two weeks after the marine cooks returned to work
Beeby handed down his proposed award for the waterside
workers. His judgement contained one of the most sustained
indictments of a union ever made by an arbitrator. He
believed that the attitude of the Waterside Workers Federa-
tion had changed during recent years. The Court could no
longer leave anything to undertakings or understandings,

¹. G.A. Watson, Deputy Crown Solicitor, to Sharwood,

². Knowles to Sharwood, 11 July, 1928. (C.A.O. A432
29/437).

1931. (Commissioner: Judge G. Beeby). (C.A.O.
A452 31/1597). This report was never made public.
but was forced to lay down the exact terms and conditions of employment and to prescribe strict penalties for breaches of awards. In the new award all references to "prevailing customs" would be omitted. The Federation had adopted a policy of blatant defiance of the Court. Sectional stoppages had continually been occurring as a result of demands for restrictive conditions not authorized by the Court, attempts to enforce local rules that conflicted with the award, refusals to accept decisions of Boards of Reference, demands for excessive rates for onerous or unpleasant work, and a policy of "fair division of work among members". The Federation's general attitude was that it should have control, without responsibility, of the stevedoring industry, and that the high rates awarded to casual employees should be maintained while all the disadvantages of casual employment were eliminated.\footnote{26 C.A.R. 867.}

The provisional award made by Beeby was condemned by the waterside workers largely on account of five of its clauses. It removed the limit on sling loads; it empowered foremen to transfer workers from one hatch, hold or sling to another, instead of employing a new gang; it enabled seamen to load and unload mails; and it differentiated between
night shifts and overtime, men commencing work in the evenings receiving lower rates than men who worked continuously through the day into the night. Above all, the two pick-ups would be restored at all ports. In addition, Federation officials complained that refusal to offer for work, and not only refusal to continue work, would constitute a strike and also that the Federation would be liable for the misdeeds of its branches and members.¹

Despite protests from the Federation, Beeby made his award final on 21st August, 1928, stating that it would come into operation on 10th September, 1928. It was generally assumed that yet another shipping holdup was about to take place. Beeby himself was later to tell Latham that he knew when he made the award that there would be a strike, but he was convinced that the power of the arrogant faction that controlled the Federation had to be broken. He hoped that a strike would result in a re-organized Union, from which the unreasonably militant element would be excluded.² Although the Federation's Committee of Management was characteristically indecisive about the action which should be

taken when the award came into force, 26 of the 47 branches declared categorically that the Beeby award was unacceptable. On 6th September, 1928, 74 delegates arrived in Melbourne to attend the Federation's Conference, and on the next day they decided that the award should be repudiated and that members should work under the conditions prevailing in November, 1927. The Federation sought a conference with the shipowners, but the request was rejected on 10th September. On the same day the waterside workers in most ports refused to attend the afternoon pick-up, and on 11th September work ceased altogether. One of the most famous strikes in Australian history had begun.

It is extremely difficult to unravel the sequence of events that made up the 1928 waterside workers' strike. The weak leadership of the Federation completely lost control and, as Duggan sarcastically remarked, Bruce's objective was achieved: the rank and file controlled their own affairs.

1. S.M.H. 8 Sept. 1928, p.17.
5. Herald. 21 Sept. 1928, p.3.
Conditions at every port differed, a few branches did not strike at all, some returned to work after a few days, others resumed work only to go on strike again a few days later, the nominal control of the strike was transferred from one conference or organization to another, and even after the strike ended flare-ups continued for another six months. The strike can be divided into two phases, the first ending about the 22nd September and the second on 19th October. The second phase was brought about largely through the actions of the Commonwealth Government.

The strike began on 10th September and by 13th September 65 vessels were held up in 10 ports throughout Australia. Beeby declared that a strike existed in the stevedoring industry, thereby leaving the shipowners free to lock-out all the waterside workers. The Federation's Conference reaffirmed its rejection of the Beeby award on 13th September but on 15th September, the last day of the Conference, it decided to order all branches to return to work under the new award, asserting that its former resolution had served its purpose for the time being. For a day or two it appeared that the strike was ending, especially as the Sydney and

1. 26 C.A.R. 1041.
Melbourne Wharf Labourers Unions resumed work. However, other branches ignored the Conference's order, and on 21st September the Committee of Management in despair handed over "control" of the dispute to the A.C.T.U. By that time the Federation was already faced with the threat of large numbers of volunteers seeking work on the wharves. There were over 1000 volunteers at Port Adelaide, while at Newcastle the waterside workers accepted the Beeby award for a few days rather than lose their jobs to strike-breakers. At Townsville and Innisfail farmers came in from the surrounding districts and loaded the ships.

The reaction of the Commonwealth Government to the strike was influenced by three factors. No stoppage could be more serious than a shipping holdup, for it would soon spread to other sections of the transport industry and also to the coalfields, and if it continued indefinitely coal reserves in many cities would be depleted and all secondary industries would be affected. Moreover, shipping holdups meant that primary products could not be exported, and so threatened the financial stability of the country. Secondly, while many strikes had violated awards or been directed against specific sections of an award, this was the first time that a union had

calmly repudiated a whole award and declared that it would continue to work under the old award. A union that took this action was beyond the pale; the Government could not negotiate with it, for any concession it made would condone an action that transgressed the principle of arbitration.

Finally, the strike was not an isolated event, for it was the fourth interstate strike perpetrated by the same union in four years and only once did it have a genuine grievance. Added to the endless local disputes that had been taking place, the record of the Waterside Workers Federation was so damning that the Government concluded that its main task was not to obtain a speedy settlement of the strike but to take punitive action against the Federation.

Labour parliamentarians were later to contrast the tireless work of Scullin and Hogan in trying to reach a settlement with the inaction of Bruce and Latham. However, the contrast was unfair. The Federation had to accept the Beeby award and there was no room for negotiation or compromise. Holding this view, the sensible course of action for the Government was to leave the task of persuasion to the Labour politicians, who naturally had far more influence with the Federation's leaders. The Government did delay taking

punitive action and it did send written appeals to the Federation to end the strike. As early as 7th September, the repudiation of the Beeby award by the Federation's Conference could have resulted in its immediate prosecution by the Government. Yet the Government waited. On 11th September Bruce wrote to the President of the Federation stating that the Government could not remain inactive if there was a serious dislocation of transport services; in fact, it would be forced to use every means in its power to protect the interests of the whole community. He had told the shipowners to take any action under the award that was necessary to carry on the transport services and he called on the Federation to accept the award.¹ On 13th September Bruce replied to the Federation's request that he convene a conference between the shipowners and the Union. If the Government took such action it would be a party to an unlawful act. He made a final appeal to the Federation to obey the law and to carry out its undertaking to observe all the terms of the new award.²

While Bruce was making his appeals, the branches of the Crown Solicitor's Office and the Investigation Service in

each State were devoting all their time and resources to obtaining evidence against the Federation. On the first day of the strike Latham had spoken to the leaders of the Commonwealth Steamship Owners Association who had asserted that it would be preferable for the Government, rather than the owners, to prosecute the Federation. On 11th September Bruce told the State Premiers that the Government would prosecute those who interfered with the transport services and, if the strike continued, it would issue a proclamation under the Crimes Act. He asked for their co-operation, particularly by protecting the men who were prepared to carry on the marine transport industry. On the same day Garran ordered his officers in each State to confer with the local shipowners and to ascertain if there was any evidence of a breach of either the Arbitration Act or the Crimes Act, particularly by officials of the Federation. The task was difficult, as the officials were acting most discreetly. However, by 14th September the Crown Solicitor had definite evidence that J. Cadden, the Secretary of one of the Melbourne branches, had addressed a large gathering of waterside workers and told them that they were not to work under the

new award. In addition, he had obtained a copy of a letter from the Federation to the shipowners notifying them that the award had been repudiated and a search in the Post Office had located the telegrams in which branches were instructed to continue working under the terms of the old award.\(^1\) Dixon advised the Government that the evidence was sufficient to secure a conviction under the Arbitration Act, although not under the Crimes Act, and summonses were served on the Federation on 17th September.\(^2\) Latham believed that more evidence was needed and became irritated with the obtuseness of his officers. On 19th September he complained to Garran that they were getting nowhere and reminded him that it was no use quoting statements by officials that members would not work; there had to be evidence that the officials had ordered or urged members not to work.\(^3\) Latham's fears were unjustified. The case was heard in the Melbourne City Court on 21st September and the Federation was convicted of striking and fined the maximum penalty of £1000.

In the first few days of the strike Bruce and Latham had intended, if possible, prosecuting individual officials as well as the Federation as a whole. However, they changed their minds after 15th September when it became clear that the rank and file were acting on their own initiative and were defying their leaders. Dozens of affidavits were received from the Commonwealth Steamship Owners Association and the Investigation Service, but when Garran told Knowles to examine them on 19th September he stressed that the Government was only interested in offences committed by the Federation, not by individuals. Affidavits continued to be made by the agents of the shipowners and the stevedoring companies, and by early October, 1928, 183 of them had been received by the Attorney-General's department. Latham showed only a casual interest in them and after 21st September his officers were only marginally concerned with the strike. It was pointless seeking to prosecute the Federation again and, unlike the Seamen's or Marine Cooks Unions, there were no strong and militant officials who could be held responsible for the strike. The most militant leaders were in Sydney, where the strike lasted only three or four days.

Latham, unlike many of his colleagues, did not believe that prosecutions and penalties hastened the settlement of strikes or even acted as a deterrent against further stoppages. He felt that other means had to be used if there was ever to be peace on the waterfront. Long strikes usually ended when the numbers of volunteers became so large that the strike ceased to have much effect on the operations of the employers. But when strikes were over the volunteers were usually driven away or absorbed by the unions. There had been very little unrest on the Sydney wharves after 1917 because the shipowners had ensured that a significant proportion of the wharf labourers were non-unionists. It occurred to Latham that the Government could ensure that similar conditions existed at all ports. At an early stage in the strike he ordered his officers to draft a Waterside Workers Bill.¹ The Bill was designed to empower the Government to make regulations prescribing the terms and conditions of employment of waterside workers, providing for the licensing of waterside workers, preventing and settling disputes on the waterfront, and setting out penalties for breaches of the regulations. The Government did not intend submitting the Bill to Parliament until after the strike had ended, especially as an election was due in November, 1928, and

¹. Confidential draft of Waterside Workers Bill. (C.A.O. A467 16A/41).
Parliament would be dissolved in a few days. However, Pearce persuaded his colleagues that it would be politically advantageous for the Government if the Bill could be passed immediately. It was also decided to widen the Bill to make it applicable to all transport workers. It had only one substantive clause which stipulated that the Government could make regulations for the engagement, licensing, protection and discharge of transport workers and for prohibiting the employment of unlicensed persons as transport workers.

Bruce, as the Acting Minister for Trade and Customs, presented the 1928 Transport Workers Bill to Parliament on 20th September. In his second reading speech the next day he dwelt on the serious economic position of the country, with both Commonwealth and State Governments faced with deficits and with growing unemployment in the secondary industries. The export season was about to commence and only increased exports of primary products could enable Australia's financial position to be maintained. The Bill was an emergency measure to protect the men who were prepared to offer for employment. Latham forestalled any attacks on the legality of the Bill by referring to a High Court decision of 1914, when it was held

that the Commonwealth Parliament, under its trade and commerce power, could legislate with respect to the conditions of employment in the marine transport trade. He also stated that the people would not tolerate the continuance of the expensive arbitration system if an important section of labour treated awards with contempt.\(^1\) Page revealed the main motive of the Government when he said that the Bill would enable maritime unions to remove the small but extremist minorities that dictated their policies. He blamed the drastic decline of coastal shipping, especially passenger shipping, since 1913 on the tactics of the waterside workers and the seamen.\(^2\) Some of the supporters of the Government assumed that the Bill was either a reserve or temporary measure, but they were quickly enlightened by Ministers.\(^3\)

Labour parliamentarians expressed qualified support for the waterside workers' strike by defending the single pickup and by attributing much of the trouble in the industry to the intransigent shipowners. They claimed that the Bill gave the Government unlimited powers and would aggravate the dispute.

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2. Ibid. p. 7137.
3. Ibid. pp. 7115, 7155, 7224.
The Transport Workers Bill was passed on 22nd September, 1928, after an all-night sitting. Parliament rose the same day. The Act ushered in the second phase of the waterside workers' strike. On 25th September the regulations under the Act were gazetted. They gave the Comptroller-General of Customs power to appoint licensing officers at any ports, only licensed waterside workers would be permitted to work on the wharves at those ports, and licences could be cancelled if a worker refused to obey a lawful order, committed a breach of the award, or was convicted of an offence under Commonwealth or State law or under the regulations. Bruce announced that the regulations would apply to Melbourne, Brisbane, Port Adelaide, Fremantle, Newcastle and some of the Queensland ports.¹ From 1st October, 1928, only licensed workers were employed at these ports.

There was such anarchy within the Waterside Workers Federation that it is impossible to say when the strike would have ended if the Transport Workers Act had not complicated the issue. In the last ten days of September the numbers of volunteers on the wharves were mounting, with over 2000 at Melbourne and over 1000 at Brisbane and Port Adelaide. On 24th September the position of the volunteers was strengthened

¹. S.M.H. 27 Sept. 1928, pp.11-12.
when Dethridge suspended the preference clauses of the waterside workers’ award in respect of eight ports.\(^1\) Even militant union organizations were advising the strikers to return to work.\(^2\) However, a settlement of the strike was deferred for weeks through the action of the Government in putting the Transport Workers Act into operation. On 24th September a conference of maritime unions urged the waterside workers to resume work under the Beeby award but not to apply for licences, and it reaffirmed its decision on 3rd October.\(^3\) In Melbourne the Act caused an extension of the strike, as the members of the Melbourne Wharf Labourers Union, who had been working since 15th September, saw no reason why they should have to be licensed. The result was that, despite the large numbers and alleged efficiency of the volunteers, much of Australian shipping remained idle. As late as 10th October only 20 of the 80 interstate vessels were being worked.\(^4\) Gradually, however, as more and more volunteers received licences, the waterside workers realized

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1. 26 C.A.R. 1097.
that they were defeated. 1600 licences had been issued at Melbourne on the first day and by 17th October 4400 volunteers were enlisted at that port alone. No regard was paid to the amount of work available: 2900 licences were granted at Port Adelaide, although there was only sufficient work for 1500 men. Faced with permanent unemployment, the men surrendered. The Port Adelaide branch took out licences on 4th October, the Fremantle branch on 8th October, the Brisbane branch on 18th October and the two Melbourne branches on 19th October.

In the second phase of the strike the main task of the Government was the setting up of the administrative machinery necessary to implement the Transport Workers Act. This was the task of the Marine Branch of the Department of Trade and Customs, and most of the decisions were taken by its Secretary, Louis East. Although Bruce was nominally the Minister responsible for the Act, East referred questions of policy to Latham and a close partnership developed between the two men which continued, with a break, until 1934. Latham's own officers had very little to do with the later stages of the strike.

1. L. East, Secretary, Marine Branch, Department of Trade and Customs, to L. Cameron, Secretary to Attorney-General, 10 April, 1929. (C.A.O. A432 29/1563).
Bruce was urged on several occasions not to put the Transport Workers Act into operation. In late September both Crofts and Hogan told him that the regulations would frustrate all their efforts to reach a settlement and suggested that only volunteers should be licensed. Bruce replied that the strike had continued for so long and had such serious effects, that there could be no further delay. He told Crofts that the assurances of the A.C.T.U. were worthless, as it had urged defiance of a Commonwealth law. In early October Collier asked that Fremantle be exempted from the provisions of the Transport Workers Act and a deputation from the conference of maritime unions requested that the whole Act be suspended.¹ Bruce summarily rejected both requests.

As the number of volunteers grew, the resistance of the waterside workers took two forms, both of which received the close attention of the Commonwealth Ministers. At the official level, there were repeated attempts to persuade other transport unions to boycott cargoes handled by non-unionists. In September the Australian Railways Union, the Storemen and Packers Union, and the Amalgamated Road Transport Workers Union refused to become involved in the strike.²

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² Rechter, op.cit. p.59.
October the Central Strike Committee asked the Carters and Drivers Union to boycott the Melbourne wharves, but it declined. Only the seamen acted in sympathy with the waterfront workers. In Melbourne the crews of seven ships walked off when volunteer wharf labourers came aboard and soon 600 seamen were on strike. On 10th October Elford asked that the manning provisions of the Navigation Act be suspended, so that the shipowners could employ volunteer seamen. At Latham's suggestion, Bruce wrote to the Sydney branch of the Seamen's Union, stating that the Government could not allow the loss, suffering and unemployment to continue but would first appeal to the Union to man all interstate vessels. A few days later work was resumed.

The second form of resistance was practised by sections of the rank and file. After 23rd September there were continuous reports of violence at the various ports. Volunteers were fired at in Melbourne and stoned in Brisbane, whilst at Port Adelaide 5000 unionists attacked volunteers

and stoned police, who responded with a baton charge. On 28th September the homes of two foremen stevedores in Melbourne were bombed and there were six more bomb attacks on the homes of volunteers and foremen in the next two months. The worst violence occurred after the strike had ended. In Newcastle hundreds of strikers hurled stones and bricks at volunteers. In Melbourne on 30th October volunteers were pushed on to railway tracks and others were thrown into the sea and stoned. A few days later 1500 unionists threatened to board ships on which volunteers were working, but were dispersed when police fired into the mob, fatally wounding one man, and then made several baton charges. Although there were reports of violence in several ports, Commonwealth Ministers concentrated on the position in Melbourne. On 24th September Bruce told Hogan that, before deciding if action by the Commonwealth was necessary, he would like an assurance that the Victorian police were taking measures to prevent further serious assaults on volunteers. A few days later Latham and Pearce had discussions with Victorian

1. S.M.H. 28 Sept. 1928, pp.11-12.
2. Ibid. 17 Oct. 1928, p.15.
Ministers about police protection. 1 Yet at that stage the worst assaults had taken place at Port Adelaide and it was significant that the Nationalist Premier of South Australia was allowed to deal with the situation without pressure from the Commonwealth. In late October Latham told Bruce that the Victorian Government was not doing its duty, and he suggested that Bruce publicly raise the possibility of a Commonwealth Waterside Police Force if the situation did not improve. He believed that far more licences should be cancelled and that perhaps absolute preference of employment should be given to volunteers. 2 His criticisms were silenced a day or so later when the Victorian Police fired on the strikers.

During the waterside workers' strike the Government had to make a choice between doing everything to facilitate a settlement, thereby keeping the loss of export sales to a minimum, or taking action that would prevent any further shipping holdups occurring for many years to come. It chose the latter alternative and it achieved a complete victory. The "Dog Collar Act", although it committed the Government to a new field of administration with many attendant problems,

1. Herald. 28 Sept. 1928, p.3.
meant that it permanently exercised a firm control on the activities of the wharf labourers. The Waterside Workers Federation was not to recover from the strike for over ten years: its membership fell from 20,000 to 12,000, branches seceded or disappeared, and a large proportion of its members gradually realized that they would never find jobs on the wharves again. The 1928 strike became part of the mythology of the waterfront and the hatred that it engendered against the volunteers, the shipowners and the Government was to last for decades. But its most immediate result was that the Federation had been defeated and the principle of arbitration had been upheld.

The waterside workers' dispute was followed by three months of comparative peace. However, by the end of 1928 there were unmistakable signs that Australia would be burdened by another interstate strike, this time in an industry where there had been no large stoppages for over ten years. The Commonwealth Government played a less active part in the 1929 timber workers' dispute than in the transport strikes of the previous year. Moreover, a lockout commenced on the New South Wales coalfields in March, 1929.

1. Rechter. op.cit. p.111.
2. A.E. Turley, Secretary, Waterside Workers Federation, to A. Brown, Secretary, Brisbane branch, W.W.F., 4 April, 1929. (A.N.U. T62/8).
and the attention of Ministers was divided between the two stoppages. Nevertheless, it was the timber workers' strike that highlighted the great problems of economic depression, the vulnerability of the arbitration principle, the refusal of the trade unions to accept any decline in living standards, and the increasing violence associated with industrial unrest. Even if the Government had remained completely detached, the strike would still have formed much of the background against which the debate on the future of arbitration took place.

The main issue in the timber workers' strike was the 44 hour week. In 1922 the Arbitration Court had altered Higgins' award of 1920 by restoring the 48 hour week to the timber-cutting and log-sawing sections of the industry, but allowed the other sections to retain the 44 hour week. Generally speaking, this meant that timber workers in the country worked longer hours than the men in the cities. In 1927 the Timber Workers Union applied for a new award and among its claims was a 44 hour week for the whole industry. The timber merchants responded by seeking a 48 hour week for the whole industry. On 18th December, 1928, the Full Court announced its decision on the hours question. The three judges all dismissed the Union's claim, as the bush mills were faced by intense overseas competition and wages made up a high proportion of their production costs. Beeby believed
that the city timber yards should retain the shorter week, as the slight financial advantages that would accrue from extending working hours would be more than offset by the consequent industrial conflict. Dethridge, however, sided with Lukin in emphasizing the extremely precarious position of the industry, with profits as low as 2 per cent, and the majority decision was that the 48 hour week should prevail throughout the timber industry.¹

The new working week came into operation on 1st January, 1929, but Lukin did not deliver his final award until 23rd January. He elaborated on his earlier remarks on the deteriorating conditions in the timber industry since 1924. In the country the position had never been worse and in the cities conditions were only slightly better. This situation resulted from the general economic depression, high production costs, the depletion of the better classes of timber, the use of substitutes, high freight charges, and increased imports. Lukin agreed with the Tariff Board that the industry could not bear further wage increases or improved labour conditions. His award contained some slight improvements, but they were outweighed by reductions of the basic wage in the country and most of the margins for skill,

¹. 27 C.A.R. 396.
reductions in the wages of boy employees, and an increase in the ratio of boys to adults.¹

Lukin's proposed award was made available to the Timber Workers Union in December, 1928, and as early as 3rd January, 1929, it was "repudiated" by the Sydney branch.² Leaders of the A.C.T.U. and the Labour Councils feared that the award heralded a general return to the 48 hour week, and there were numerous conferences on the policy that the timber workers should follow. In January the timber workers in the cities refused to do any Saturday work but, until the award was finalised, the employers merely deducted a sum from their wages. At the end of the month the timber merchants announced that all employees who refused to work the extra four hours would be instantly dismissed.³ On 30th January, 1929, 2000 timber workers in Melbourne were dismissed, followed by a similar number in Sydney two days later. On 1st February Lukin declared that a strike existed in the timber industry and by 5th February 9000 men were idle.⁴

The timber workers' strike resembled the 1928 waterfront workers' strike in that it arose from a complete rejection

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¹ 27 C.A.R. 577.
² S.M.H. 4 Jan. 1929, p.11.
⁴ Age. 6 Feb. 1929, p.10.
by a union of its new award and its demand that the conditions prescribed by the old award be maintained. Such a demand was unprecedented, although for years there had been predictions that there would be a crisis if ever the Court tried to deal with deteriorating economic conditions. In other respects the two strikes differed considerably. The timber workers' strike was not so widespread and it soon developed into two strikes. The men in South Australia, Western Australia and Tasmania only stopped work for a few days, and in general the strike was confined to Sydney, Newcastle and to much of Victoria. Both employers and unionists in Sydney acted independently of their counterparts in Melbourne. The strike was extremely long and involved a large number of men. In Melbourne alone there were 15,000 men out of work as a result of the strike in May, 1929,¹ and the strike in Victoria was not settled until late June. In Sydney the employers stated that as far as they were concerned the strike was over in late July, 1929,² but it was not until October that the die-hards expressed their willingness to return to work.³ Unlike the waterside workers' leaders, the officials of the Timber Workers Union did not reverse

1. Age. 7 May, 1929, p.9.
2. S.M.H. 30 July, 1929, p.11.
3. Ibid. 17 Oct. 1929, p.11.
their decision to strike after a few days, but they, too, were moderates who consistently pursued a policy of "confinement". Wherever possible they sought to make agreements with individual firms where the conditions of work were acceptable, and the result was that there were several "white" mills and yards. In addition, there were men who refused to become involved in the strike and after April many strikers drifted back to work. Consequently, the shortage of timber was not disastrous and this weakened the effectiveness of the strike. Paradoxically, it was the employers who sought to extend the strike, and thereby force a showdown with the Union, by causing the building workers to become involved. Finally, the two strikes differed in that the timber workers, at least in Victoria, did not have to admit complete defeat. The conference called by Sir Robert Gibson that settled the strike in Victoria decided that the reduction in the country basic wage should be halved and it also decided that there should be an investigation into the financial position of the industry, so that there was a remote possibility that the 44 hour week would be restored.


2. S.M.H. 25 June, 1929, p.11.
In two important respects the waterside workers' and the timber workers' strikes were similar. In both stoppages the employers sought the assistance of non-unionists, and among the tens of thousands of unemployed there were large numbers of men who were willing to risk the assaults and derision of the pickets. In Sydney many firms were able to continue operations on a restricted scale throughout the strike with the help of volunteers. In Melbourne there was a general call for volunteers in early June which was an important factor in bringing about a settlement a fortnight later. The protection of volunteers was a major concern of governments and employers, especially as violence and intimidation continued throughout the strike. There were no bombings and few shootings, but there were numerous assaults, widespread picketing, and several attacks on trucks carrying "black" timber, with the timber hurled on to busy city streets. The press reported cases of arson and many incidents involving the notorious "basher gangs". In addition, thousands of men marched through Sydney and Melbourne, demonstrated outside the Arbitration Court, burnt effigies of Lukin and listened to fearsome speeches by Jock Garden.

The timber workers' strike was the first strike since 1924 that had the wholehearted and passionate support
of the whole Labour Movement. Scullin denounced the Luiin award\(^1\) and Theodore marched with the strikers and encouraged them to defy the award. The A.C.T.U. took over the leadership of the strike at an early stage and at least 60 unions gave financial assistance to the timber workers. All made the same declaration: if the strikers were defeated there would be a general onslaught by governments, courts and employers on the living standards of the working class.

Up to 1929 the Bruce-Page Government had only become involved in shipping strikes, which affected the whole community, and there was no necessity for it to have taken any action in the timber workers' strike, the economic and social effects of which were limited. It could well have left it to the employers to take legal proceedings against the Union under the Arbitration Act. Yet Latham declared emphatically that it was impossible for the Government to stand idly by and allow a Court award to be repudiated by mass action, and his colleagues agreed with him. They differed, however, on the action that should be taken. In a submission written on 22nd January, 1929, Latham revived the Moore-Dyason argument of 1925 and his own argument of

\(^1\) C.P.D. v. 120, 1 March, 1929, p.663.
1927 and asserted that cancelling awards or deregistration were much more effective penalties than the usual criminal penalties. It was difficult to obtain legal evidence that a strike had been brought about by a Union, witnesses were victimized, and it was useless to prosecute individuals when 20,000 of them had committed the same offence. The Arbitration Court was most congested and it was desirable that unions which were not prepared to accept the arbitration system should be excluded from it. Latham therefore suggested that the Government appeal to the Timber Workers Union not to violate the principle of arbitration and warn it that, should it do so, it would face the loss of its award and deregistration.1 The persistency with which Latham adhered to his belief in the ineffectiveness of penalties was matched by the stubbornness with which his colleagues held to the opposing view, for once again he was overruled by Cabinet.

The result of the decision of Cabinet was that the intervention of the Government in the early stages of the strike followed the pattern established in the 1928 strikes. This time it was Latham, not Bruce, who called for an end to the strike. On 7th February, 1929, he wrote to Crofts and to

the Timber Workers Union, stating that both the law and the principle of arbitration rested on the unqualified observance of awards by both sides. Any party that appealed to the jurisdiction of the Court by filing a plaint was in honour bound to carry out the Court's award. It was unreasonable to expect that awards would always satisfy both sides or that they would always conform with the principles laid down by one side. Latham appealed to the union leaders to honour the principle of arbitration and to serve the cause of industrial peace by ordering a return to work in accordance with the award.¹ On 12th February Crofts replied that the Government was responsible for the strike; the implication was that the award would have been different if the Court had not been directed by the 1928 Act to consider the economic effects of its awards. He said that the Government could end the strike by calling off the attack on the workers' standards and the 44 hour week.²

Three days before he made his appeal to the Timber Workers Union Latham had ordered the Crown Solicitor's Office

to collect evidence which would prove that the Union had committed a breach of the award. The task was again found to be difficult: after several days the Deputy Crown Solicitor in Melbourne reported that although he had received many affidavits from the Timber Merchants Association there was no evidence that Union officials had ordered or encouraged members not to work. However, on 12th February, 1929, there were press reports that officials had told the men at Warburton to defy the Lukin award. The Deputy Crown Solicitor sent an officer to the town and, after a good deal of trouble, he collected sufficient evidence to prosecute the Union.

A few days earlier Latham himself had seen reports that Holloway had stated that the best way to defeat bad laws was to ignore them and the Lukin award should therefore be disobeyed. Latham ordered an investigation and the Deputy Crown Solicitor found that Holloway had actually handed the statement to reporters and there could be no doubt about its accuracy. Latham and Garran discussed the possibility of

prosecuting the newspapers for publishing an incitement to break an award, but in the end summonses were served only on Holloway and the Union. On 1st March, 1929, Lukin fined the Union £1000 for committing a breach of its award by striking. On 7th March Holloway was fined £50 with costs by the Melbourne City Court for an offence under the War Precautions Act Repeal Act in that he encouraged a breach of a Commonwealth law. Neither fine was ever paid.

The prosecution and conviction of Holloway, the most respected and fairminded of all union leaders, caused a furore in the Labour Movement. Nevertheless, until well into April, 1929, the Government continued to seek evidence for prosecutions. Officers of the Investigation Service attended strike meetings and sent detailed reports to Latham. They found that he was less concerned with inflammatory speeches than with the activities of the pickets. Victorian timber merchants told him that they were afforded greater protection under Commonwealth law than under State law, and Latham urged Victorian Ministers to enforce the Commonwealth

law. However, the Victorian police insisted that State laws were adequate and the assistance of the Commonwealth Arbitration Act was not required. In Sydney Latham's own officers told him that a close watch was being kept on the pickets but they seemed to be adhering to the peaceful policy of their Union. On 28th March, 1929, Latham wrote to the New South Wales and Victorian Chief Secretaries informing them that the Commonwealth Government was prepared to prosecute where there was evidence of intimidation. Violence, intimidation and the boycotting of goods were offences under the Arbitration Act and the whole object of picketing was to intimidate the men who were working. If the police took action to prevent pickets assembling the strike would come to a speedy end.

Both Ministers assured Latham that action had been taken whenever there was violence or intimidation, but most of the pickets were peaceful and loitering was only an offence if pedestrians were annoyed or obstructed. Latham became exasperated with the whole situation. Timber merchants

1. W.P. Heathershaw, Under Secretary, Victorian Chief Secretary's Department, to W.W. Alcock, Manager, Timber Merchants Association of Victoria, 23 March, 1929. (A.N.L. MS 1009/37).
3. Latham to S.S. Argyle, 28 March, 1929; Latham to M.F. Bruxner, 4 April, 1929. (C.A.O. A467 16/40).
4. Argyle to Latham, 4 April, 1929; Bruxner to Latham, 9 April, 1929. (C.A.O. A467 16/40).
petitioned him with demands for protection against interference with customers, the stone-throwing and abusive language of the pickets, and threats made to the families of volunteers. Yet State Ministers and officials claimed that reports of violence were exaggerated and that their powers were sufficient. Latham told Bruce that the strike illustrated the dangers arising from the dependence of the Commonwealth on the States for the enforcement of its laws; it was frightening to consider what the position would have been if Labour had been in power in New South Wales and Victoria.

The Government's arbitration policy suffered from one incident in the strike. On 25th February, 1929 Lukin ordered the Sydney and Melbourne branches of the Union to hold a secret ballot on the question of resuming work. Voting ended on 3rd April and showed that 5318 members opposed a resumption, while only 732 supported it. Less than 50 per cent of the members voted and there was evidence of

2. Latham to Bruce, 4 April, 1929. (A.N.L. MS 1009/37); Latham to A.B. Bruford, 26 Sept. 1929. (A.N.L. MS 1009/45).
3. 27 C.A.R. 839.
some malpractices during the poll. Latham ordered investigations to be made into the ballot but they were fruitless.\(^1\) There had been allegations that hundreds of ballot papers had been burnt in a public demonstration in Sydney, but the police believed that in reality only a very small number were burnt, and in any case, they presumably belonged to supporters of the strike.\(^2\) Latham had stressed before the ballot was held that a vote against resumption would not make the strike legal, but would merely show that the rank and file supported their officials.\(^3\) This was precisely what the ballot did reveal and Ministers could no longer attribute all strikes to the machinations of extremist leaders. There was to be no more talk of the virtues of the secret ballot.

After mid-April, 1929, the Commonwealth Government gradually assumed a more detached position in relation to the timber workers' strike. Events in the coalmining dispute had caused it to be much less enthusiastic about the effectiveness of prosecutions and penalties. In public it did not

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2. Cameron to Stewart, 9 April, 1929. (C.A.O. A467 16/40)

3. S.M.H. 4 April, 1929, p.11.
change its stand. In May Bruce said that the only proper course was an unconditional return to work and the use of constitutional methods to rectify any injustice. He added that one of the most significant developments in the strike has been the acts of sympathy by other unions. ¹ In private, Latham admitted that it was unrealistic to expect a compromise by either side, prosecutions would not settle the strike, and it had to be fought out on the economic plane. ² He had discussions with the leaders of both sides, but it was Sir William McPherson, the Victorian Premier, and Sir Robert Gibson who convened the conferences that settled the strike in Victoria. The strike was settled on the economic plane, the principle of arbitration had again been upheld, but the active intervention of the Commonwealth Government in the early stages of the strike, especially the prosecution of Holloway, was ultimately to prove to be one of the Labour Party's electoral assets.

Like the timber industry, New South Wales coalmining was faced with major problems in the second half of the 1920s. ³

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1. Age. 18 May, 1929, p.21.
2. Latham to Tancred Brothers, Sydney, 9 May, 1929. (A.N.L. MS 1009/37).
Some of the problems were common to the industry in all countries: the increasing use of substitute sources of energy, such as oil and hydro-electricity, and the easing off in the consumption of coal by the gas industry and by railways and shipping. Most of the industry's difficulties, however, resulted from conditions peculiar to Australia. Unlike other countries, prices and wages had been continually spiralling upwards. Before the War Australian coal had been comparatively cheap, but from 1918 to 1928 its price increased by 138 per cent, compared with 9 per cent in France and 46 per cent in Britain. The price of Australian coal reached its peak in 1928, whereas overseas prices had been declining since 1920-21. High prices had resulted in the industry being greatly over-capitalized, with many small collieries being worked intermittently. On the northern field 24 collieries accounted for 80 per cent of the output, while 98 collieries produced only 6 per cent of the output. Prices had been increased with every wage rise and wage rates had risen by 130 per cent between 1914 and 1928, compared with 82 per cent in Australian industries generally. High wage rates had encouraged the migration of British miners and there was a surplus of at least 4000 men in the industry. Yet actual earnings were generally low: 50 per cent of miners received less than the average wage-earner and 25 per cent less than the basic wage.
This was a result of intermittency, with the average number of days worked in the mines falling from 227 in 1920 to 168 in 1928. Another result of intermittency was a fall in Australian production from 13.75m. tons in 1924 to 11.6m. tons in 1928. Intermittency, falling production and high unemployment on the New South Wales fields were largely due to the loss of markets, both in Australia and overseas. In 1913 Australia had exported 17 per cent of its coal output, but after the War it lost most of its New Zealand and South East Asian markets and the proportion exported declined to less than 5 per cent. Within Australia the output of Queensland and Victorian coalfields was increasing, and the New South Wales industry received a further blow in 1928 when the South Australian Government awarded a large coal contract to a British firm, whose price was 7 shillings a ton less than the New South Wales price. It was agreed on all sides that these grave problems could only be overcome by reducing the price of coal.

Colliery owners had been predicting disaster for several years, but it was not until the middle of 1928 that the desperate plight of the industry was widely publicized. The New South Wales Government had the greatest interest in a solution to the problem, especially as it was anxious to reduce expenditure on both the railways and on unemployment relief
in the Newcastle district. In July, 1928, Bavin, who had succeeded Lang as Premier, declared that the only hope of retrieving the position lay in the substantial reduction in the price of coal, and temporary sacrifices would be essential if disaster was to be avoided.\(^1\) In August, 1928, he had discussions with Bruce, Page and Latham and he subsequently made a proposal that was to be revived many times in the next year or so. The price of coal at Newcastle averaged 25 shillings per ton and Bavin proposed that the price should be reduced by four shillings. The State Government would meet two shillings of this reduction, provided that the employers and the miners each met one shilling. The proposal would necessitate a 12½ per cent reduction in the miners' wage rates and, on Bavin's estimate, a 50 per cent reduction in the owners' profits. In addition, Bruce announced that the Commonwealth Government was prepared to pay a bounty of one shilling per ton on New South Wales coal exported to other States and overseas. The assistance given by both Governments would only be for one year.\(^2\)

The miners had been fearing such a proposal for a long time. In August, 1927, they had been undecided on whether

\(^1\) Age. 24 July, 1928, p.10.
\(^2\) Ibid. 15 Sept. 1928, p.21.
to join the owners in deputations to the Federal and State Governments about the industry's difficulties.¹ In June, 1928, the President of the Miners Federation predicted that the owners would soon make an onslaught on the miners, and he urged the Federation to support the Coal Industry Tribunal, which would be its only defence.² In September, 1928, the Federation rejected the Bavin plan.³ The owners had asserted that the plan would result in increased business for the collieries and therefore, even if wage rates were lower, actual earnings would be higher. But with so many of its members already receiving less than the basic wage, the Federation could not accept any scheme involving wage reductions.

In January, 1929, Bavin had discussions with the Federation's leaders, but their attitude remained the same.⁴ In February they journeyed to Canberra and asked Bruce for a royal commission into the coal industry, including a study of prices, profits, over-capitalization, the watering of stock, freight charges, exports and by-products. Bruce agreed that an enquiry was justified but it would be a year or more before any action

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¹ Minutes of General Council of Workers' Industrial Union of Australia (Mining Branch), 16 Aug.-20 Aug. 1927. (A.N.U. E165/2).


³ S.M.H. 26 Sept. 1928, p.17.

⁴ Ibid. 23 Jan. 1929, p.15.
was taken and something similar to the Bavin scheme was needed at once.\footnote{S.M.H. 15 Feb. 1929, p.13.} Meanwhile, the Northern Colliery Owners Association had denied that it was contemplating drastic action.\footnote{Ibid. 1 Feb. 1929, p.13.} Yet on 15th February its members presented 10,000 miners with notices of dismissal and on 1st March, 1929, the longest mining stoppage in Australian history commenced.\footnote{For accounts of the lockout see Gollan. \textit{op.cit.} Chapter 9, and Rechter. \textit{op.cit.} Chapters 4-8.}

The events of the 1929 lockout were remembered for decades in the Newcastle and Maitland districts, but it was not until the Scullin Government had come into power that they demanded the close attention of the Commonwealth Government. There was never any likelihood of a critical shortage of coal. In order to ensure continued financial support for the locked out men, the Miners Federation followed a policy of confinement and the dispute did not spread to the western or southern coalfields. In addition, there were several "unassociated" mines on the northern field, the owners of which were not members of the Northern Colliery Owners Association, and they were not involved in the lockout. Being a lockout, the problem of volunteers did not arise and there was comparatively little violence. The only clashes occurred when
pickets accused enginedrivers and other craft unionists, who were still employed on maintenance duties in the closed mines, of engaging in mining work.\(^1\) There were long marches, fiery speeches and occasional assaults, but it was not until December, 1929, that the situation became dangerous. In the later stages of the lockout there were numerous conferences and hearings in the Arbitration Court, but it was only in May, 1930, that hunger and the inflexibility of the owners forced the miners to accept reductions of 12\(\frac{1}{2}\) per cent in contract rates and sixpence per day in day wages.

As soon as he heard that a lockout was to take place, Latham realized that it would be damaging to the Government's reputation and its arbitration policy if no action was taken against the colliery owners, as it would be open to the charge of bias in the administration of the law. However, the legal position was unusually complicated, as employment in the mining industry was regulated by an award of the Coal Industry Tribunal, appointed under the Industrial Peace Act. The Act incorporated provisions of the Arbitration Act and there was considerable disagreement on whether these provisions included Section 28, which stipulated that awards were to remain in force unless terminated by the Court. In February,

\(^1\) S.M.H. 30 May, 1929, p.11., 11 June, 1929, p.11., 29 June, 1929, p.15.
1929, Garran had discussions with the Secretary of the Coal Industry Tribunal on the question of the duration of the Tribunal's awards, but on 5th March he was told by Latham to leave it to the Court to decide the matter. Latham ordered Garran to institute a prosecution for a lockout against a leading colliery owner, whose mines were believed to be payable, and he suggested John Brown, the owner of the Pelaw Main and Richmond Main Collieries.

In the next two weeks Latham, Garran, the Crown Solicitor and two leading Sydney barristers debated the two legal questions that were in dispute. Latham believed that the prosecution would fail, as the Court would hold that the miners' award had expired and that the action of the owners did not come within the terms of Section 6A of the Arbitration Act. The barristers held the opposite opinion. The second question was whether the owners' action would be held to be a lockout. There was no evidence that the mines had been closed in order to force the men to accept alterations in the terms of their employment, for the dismissal notices

2. Latham to Garran, 5 March, 1929. (A.N.L. MS 1009/38).
contained no conditions or qualifications. A prosecution would have to be based on the alternative definition of a lockout, namely, that the refusal to give work had been "unreasonable". Latham considered that little evidence would be needed to prove that charge: if conditions were onerous for the employers the reasonable course would have been to apply to the Tribunal for a variation of the award but, as this was not done, the closure was prima facie unreasonable.\(^1\) Once again, counsel disagreed with Latham; they believed that it would have to be shown that the mines had been profitable, for the closing of an unprofitable mine would not be unreasonable.\(^2\) On 12th March an officer of the Investigation Service was sent to Newcastle and he found a good deal of evidence that Brown's mines were profitable. For instance, at the end of 1928 Brown had told some of his employees that he wanted the mines worked continuously and that he could sell all the coal that was produced. Counsel thus considered that a prosecution was warranted. Latham did not believe that even if there was a conviction it would help to settle the lockout, but the essential thing was for the Government to show its impartiality by taking action.

against an employer. On 21st March he told Garran to issue a summons as soon as possible and not to wait until there was a conclusive or even a strong case for Brown to answer. The following day Latham announced to a surprised House of Representatives that Brown would be prosecuted under the Industrial Peace Act and the Arbitration Act.

The case was listed for hearing at the Central Police Court at Sydney on 10th April, 1929. On 29th March Bruce and Bavin conferred with the leaders of the Northern Colliery Owners Association and Bavin later saw officials of the Miners Federation. On 3rd April Bavin announced that Bruce and he would summon a conference of representatives of the owners and miners to see if a settlement to the dispute could be reached. Three days later Bruce telephoned Latham in Melbourne and told him that, if there was to be a full discussion on the financial state of the industry, it would be necessary to withdraw the prosecution of Brown. Latham retorted that it was hard to see how such an action could be justified, either in principle or politically. The problem would only be overcome if the miners requested, or at least

2. C.P.D. v. 120, 22 March, 1929, p.1727.
3. S.M.H. 4 April, 1929, p.11.
agreed to, the withdrawal. In fact, Bruce could decline to go on with the conference if the miners did not give their consent to the withdrawal. Bruce said he would see what could be done and Latham did not hear from him again for five days. Bruce did not seek the miners' approval but simply announced, when he opened the conference on 8th April, that the Government was not proceeding with the prosecution. He stated that an impending Court case would inhibit discussion and a conviction would do nothing to help the people who were suffering, nor would it secure the opening of the mines. The next day he ordered Garran to apply for a withdrawal of the prosecution. When Latham read of Bruce's actions in the press he sent telegrams appealing for a public statement by Bruce that the prosecution had been abandoned with the concurrence of the miners. Bruce ignored his appeal. The conference broke down on 18th April: the Miners Federation


2. C.L.A. Abbott, who was Minister for Home Affairs, wrote many years later that Latham advised Bruce to obtain in writing the agreement of the unions to the withdrawal of the prosecution. Bruce told the Cabinet that he had forgotten to do this. C.L.A. Abbott. Family background. p.323. (A.N.L. MS 1674).


4. Latham to Bruce, 9 April, 1929, Latham to Bruce, 10 April, 1929. (A.N.L. MS 1009/38).
insisted that the mines should be opened at the rates which were prevailing before the lockout, while the owners demanded wage reductions on an even larger scale than Bavin had proposed.\footnote{S.M.H. 19 April, 1929, p.11.}

The Bruce-Page Government took little interest in the subsequent course of the lockout. On 7th May, 1929, after consultation with B.S.B. Stevens, the Acting Treasurer of New South Wales, Bruce announced the terms of reference of a Royal Commission into the coalmining industry. The Commission, headed by Justice Davidson, began its investigation in June. Bruce was criticized for showing no further interest in a settlement of the dispute, but he insisted that while the inquiry was proceeding the Government would take no action to open the mines.\footnote{C.P.D. V. 121, 23 Aug. 1929, p.278.} In September, 1929, the Commission confirmed Bavin's estimate on the size of the owners' profits, but the Miners Federation once again rejected the Bavin scheme and stated that it would not accept any reduction of wages.\footnote{S.M.H. 3 Oct. 1929, p.11.}

Parliament was not sitting when the John Brown prosecution was withdrawn and the incident only gradually became one of the principal weapons of the opponents of the Government. The Miners Federation considered that the pro-
secution was a side-issue and made no protest when it was withdrawn, although its Secretary later suggested that it had been assumed that the proceedings would only be suspended while the conference was in progress.¹ Scullin and Crofts quickly realized that the Government had placed itself in an awkward position and asserted that it was not the first time it had shown remarkable leniency towards rich law breakers, and the Government should remit the fine paid by the Waterside Workers Federation.² Labour leaders contrasted the Government's attitude towards Holloway, who for nearly 20 years had been settling industrial disputes, with its attitude towards Brown, a miserly millionaire who lavished care on his racehorses but who had nothing but contempt and abuse for his miners.³ It was not until 15th August, 1929, that the Labour Party was able to move a censure motion against the Government, on the grounds that it had shown in the administration of the law that it unjustly discriminated between the rich and the poor. Bruce said many years later that he believed

1. Herald. 12 April, 1929, p.4.
2. Ibid. 9 April, 1929, p.4.
3. For details about John Brown (1851-1930), reputedly the wealthiest man in Australia, see Melbourne Punch. 3 Sept. 1925, p.29, Herald. 22 March, 1929, p.1, S. Encel. Equality and authority. Melbourne, 1970, p.389. The article in Punch asserted that Brown was a typical Forsyte, but this was being rather unfair to the Forsytes.
if Scullin had not been absent from the House the Government would have been defeated on this motion and would have had to resign. However, Theodore performed poorly and antagonized independent Nationalists like Maxwell by claiming that the Government had been "bought" by the mineowners.¹ The motion was defeated on 22nd August by four votes.²

The Government had made itself vulnerable because in earlier stoppages Ministers, and especially Latham, had made speeches and statements in which moral overtones were very pronounced. There had been continual references to "principle", "justice", "honour", "sanctity of the law" and "the public welfare", and an ideal concept of impartial government had been set up which the Government failed to attain in practice. In the mining lock-out the Government was biased in both its attitudes and its actions. There was nothing extraordinary about this, for industrial disputes involved fundamental ideas and interests, and it would be surprising if Ministers could view them with complete detachment. Governments could refrain from intervening in disputes, but often their very lack of action indicated where their sympathies lay. In 1924 Bruce had felt that a union had the

better case and he called a conference which would grant the union its claim and end the stoppage. He succeeded and there was very little criticism of his actions. In 1929 the situation was similar except that this time he gave in to pressure from the employers. However, his intervention failed and he exposed himself to widespread condemnation. Yet even Theodore admitted that if the conference had succeeded there would have been little criticism.¹

Nevertheless, Bruce had committed a political blunder, as the colleagues who defended his motives frankly admitted. There was some truth as well as spite in Hughes' remark that knowing the parties, anyone who thought that the conference was likely to be effective was a fool.² Bruce and some of his colleagues appeared to be slow to realize the change in the nature of industrial disputes between 1925 and 1929. The timberworkers' and coalmining stoppages did not have flimsy pretexts, but were concerned with fundamental questions: the ability of industries to survive with high costs and diminishing markets on one side and the ability of families to live on wages far below the basic wage on the other. Both sides were desperate and they were not going to

¹ C.P.D. v. 121, 15 Aug. 1929, p.11.
² Ibid. p.43.
be stopped by courts or conferences but only by economic pressures. In the waterside workers' strike the Government had forced the strikers to submit to economic pressure, but in the other two stoppages it had to leave it to time.

Thus the Government finally accepted Latham's argument that penalties would not settle industrial disputes. It was obvious that, except in an emergency involving essential services, it would not again be able to penalize a union merely for striking and it would have to remain much more detached during strikes. However, Latham's views prevailed not because of the logic of his argument but through circumstances which he found personally humiliating. In fact, he told Bruce that he nearly resigned but did not think that it would be fair to his colleagues.¹ He was upset that Bruce should ignore his advice and that he should bypass him and give instructions directly to the Solicitor-General. Latham was influenced by the English ideal that in legal proceedings the Law Officers should be free from directions from their political colleagues.² More importantly, Latham, for whom


principle and logic were almost obsessions, had to acknowledge
great inconsistencies and contradictions in the Government's
policies and actions. The Government had claimed that it was
not concerned with the grievances of the unions but only with
the illegal act of striking: in contrast, it showed great
sympathy for the problems of the colliery owners and uttered
no criticism of their illegal action. The Government had
always said that a return to work must precede talks and that
to summon a conference would be implicitly to defy the autho-
rity of the Court: in April, 1929, it reversed its policy.
Latham had often asserted that it was easy to prove a lockout:
he now had to contradict himself at great length. Finally,
Ministers had bracketed strikes and lockouts, thereby indica-
ting the impartiality of the law: the John Brown case re-
vealed that all strikes were illegal, but only "unreasonable"
lockouts were illegal. Yet Latham would have been saved
these humiliating admissions if, as late as January, 1929,
Cabinet had accepted his advice and discarded its policy of
penalties. It was not surprising that in April, 1929, he
felt thoroughly disillusioned with politics.
On 17th November, 1928, the Bruce-Page Government was returned to power at a general election. Seven seats were lost by the Nationalist Party and one by the Country Party, but the Government still had a comfortable majority of ten in the House of Representatives.

The 1928 election was extremely dull. As Eggleston said, Bruce "made no great promises, but neither did he admit any great difficulties and he had no policy to meet the adverse economic situation."¹ He repeated the arguments which he had first propounded in early 1927. The Government could not solve the country's economic problems. When employers and employees finally recognized their common interests and mutual dependence, a new spirit would emerge in industry which would lead to a reduction of production costs and therefore to a lower cost of living. Only greater efficiency, not Acts of Parliament, would bring about decent living conditions. Wage reductions would achieve nothing. At a time when exports

were falling, to reduce the purchasing power of the Australian consumers would only exacerbate the position.¹

As in 1925, the election was held in the shadow of a great strike. However, industrial arbitration was but one of several issues raised during the campaign. Latham was the only Minister to devote whole speeches to the subject of industrial legislation and industrial conflict. He asserted that there would be chaos if the Federal Arbitration Court was abolished without substituting another form of conciliatory machinery. The employment conditions of some workers, such as shearers, waterside workers, seamen, theatrical employees and journalists, could only be regulated on a Federal basis. Both employers and wage-earners wanted uniform labour conditions, yet this objective would never be achieved if the Federal Court was abolished, leaving six State tribunals to make conflicting awards for every industry. There were 149 unions registered in the Federal Court and only a very small proportion had taken part in any recent strikes. Latham defended the 1928 Arbitration Act, especially its conciliation and secret ballot provisions. At the same time, the Government would consider amending the Act in accordance with any recommendations made by the forthcoming Industrial Conference, which was being

¹ S.M.H. 8 Nov. 1928, p.13.
organized by the Victorian Chamber of Manufactures.¹ During the campaign various Ministers referred to the firm action taken by the Government in the maritime strikes and appealed to the voters to endorse both the principle and the provisions of the Transport Workers Act.

The Government claimed that neither the Labour Party nor the A.C.T.U. had any industrial policy. The A.C.T.U. had threatened to call a general strike if the 1928 Arbitration Act was passed, and it had urged unions to withdraw from the Federal Court. The unions had ignored both resolutions and it was obvious that the vast majority of their members supported the Federal arbitration system. The A.C.T.U. had advocated a kind of compulsory conciliation, which was a contradiction of terms. Both the A.C.T.U. and the Labour Party were so divided that they could not come to a decision on the question of strike and lockout penalties. In every dispute the Labour Party, in Latham's words, "stood quivering, with folded hands, imploring the Government to do nothing to protect the people, because any action would be "provocative"."² Industrial unrest had culminated in murderous attacks on law-abiding citizens, yet all Scullin could suggest was a conference

1. Latham. Notes for speech to be given at Prahran. (A.N.L. MS 1009/33).
with the forces of disorder. As in 1925, Ministers claimed that the Labour Party was controlled by the Communist "element", and they castigated the A.C.T.U. on account of its affiliation with Moscow or, more precisely, the Pan-Pacific Trade Union Secretariat.

Within a few weeks of the 1928 election Bruce had made several changes in the Cabinet and in Government departments. Two new Ministers were appointed, one of whom, H.S. Gullett, had been a severe critic of the Government's financial and tariff policies. He had equally strong views on industrial conditions, especially on the 44 hour week.¹ Latham was given the new portfolio of Industry and was to be assisted by a new Honorary Minister, Senator J.E. Ogden.² The name of the Department was misleading and Bruce himself sometimes referred to it as the Department of Labour, which was more accurate. Ogden was supposed to bring into the Cabinet a deep knowledge of trade unions. He had been a member of various Tasmanian Labour Governments before his election to the Senate in 1922. Like many of his colleagues in Tasmania, he had been

extremely moderate and in 1925 he had parted with his Party by supporting Bruce's attack on the Seamen's Union. The press assumed that, as Latham would still be Attorney-General, he would leave the administration of the new Department to Ogden. However, Latham did not have a high opinion of Ogden's abilities and this, together with his love of hard work and his intense interest in arbitration, made it most unlikely that he would occupy a figurehead position.

In December, 1928, Bruce set down for Latham the functions of the Department of Industry. It would administer the Arbitration Act, the Industrial Peace Act and the Arbitration (Public Service) Act, and would take care of the administrative problems of the three arbitration tribunals, the Conciliation Commissioner and Conciliation Committees. Most of its staff would consist of inspectors who would police Commonwealth awards. It would appoint the Australian delegations to the International Labour Organization and ensure that its conventions and decisions were implemented. Finally, the Department would work in conjunction with the proposed Economic Research Bureau in investigating and reporting on complex problems, such as the coal crisis. Bruce added that he did not intend increasing the number of Arbitration Court

judges or conciliation commissioners in the immediate future.\footnote*{1}{Bruce to Latham, 12 Dec. 1928. (A.N.I. MS 1009/55).}

The Department of Industry was stillborn. In January, 1929, the positions of Secretary and Clerk in the new Department were advertised, but no appointments were made. It was several years before any industrial inspectors were employed by the Commonwealth. The establishment of the Department had coincided with a ruthless economy campaign by the Government, and Latham had to admit that the appointment of inspectors was not a matter of vital urgency. Ogden, with no advisers and little personal authority, was confined to writing an occasional memorandum or speech during the industrial disputes of 1929.

Another administrative change made by Bruce was of some significance. In December, 1928, the Prime Minister's Department took over the administration of Australia’s external territories. Bruce announced that, as a consequence, he had decided that Deane and J.G. McLaren, the Secretary of the Department of Home Affairs and Territories, should exchange positions.\footnote*{2}{Herald. 8 Dec. 1928, p.4.} Thus, after eight years as the Prime Minister's chief adviser, Deane moved out of the inner circle and, although he was only 38, he was never again to occupy a position of
power within the Government.\textsuperscript{1} His fall was not due to differences over policy but to his disrespectful attitude towards Bruce, his cavalier approach to his work and his reputation for high living, which in the small town of Canberra could not be concealed.\textsuperscript{2} He was not a policy-maker, but he had an intimate knowledge of politics and was skilled in predicting how a proposal would be received. Deane's advice could have been valuable in 1929, if Bruce had cared to listen to it. His successor, McLaren, was an extremely orthodox public servant: loyal, hard-working, careful, but a ponderous thinker and a man who would not presume to comment on, much less criticize, major Government policies.

The 1928 election results were deceptive. In the early months of 1929 a succession of crises revealed that the Government's parliamentary majority was extremely slender, with two or three of its erstwhile supporters becoming very

\begin{enumerate}
\item Deane's fall from power was swift. In April, 1932, the Department of Home Affairs was merged with the Department of Works and the Department of Transport to form the Department of the Interior. H.C. Brown was made Secretary. Deane was not consulted and he was quoted as saying of the move: "It is clear unadulterated dirt". He was made a member of the War Pensions Entitlement Appeal Tribunal, his Minister being his old master, W.M. Hughes. Deane resigned in 1936 because of ill-health and died in 1946.

\end{enumerate}
critical and increasingly ready to vote with the Opposition.\footnote{1}{The principal rebels were Hughes, Stewart and A.E. Mann. In February, 1929, an Opposition motion that a determination of the Public Service Arbitrator (which the Government wished to disallow) be printed was defeated on the casting vote of the Speaker, Sir Littleton Groom. In August, 1929, the Opposition’s censure motion, arising from the John Brown incident, was defeated by four votes, with Hughes, Stewart, Mann and W.J. McWilliams voting with the Opposition.}

The last and greatest crisis concerned the future of the Commonwealth arbitration system. The maritime and timber-workers strikes and the coalmining lockout formed an essential part of the background to this event. But there were other factors that also influenced the Government’s policies: its new involvement in industrial relations on the waterfront, the worsening economic situation, and the changing attitudes of employers and unions towards Federal arbitration.

The Government’s continued interest in conditions on the waterfront, long after the 1928 waterside workers’ strike had ended, was a result of the emergency legislation that had been passed during the strike. The Transport Workers Act contained only one section, worded in the most general terms, and during the election campaign Bruce promised that a new and more detailed Bill would be submitted to Parliament.

Three days after the election Louis East was asked to give his views on the regulations that had been issued under the Act.\footnote{2}{Garran to E. Hall, Comptroller-General of Trade and Customs, 20 Nov. 1928. (C.A.O. A467 16A/41).}
Most of his suggestions were accepted by Latham\(^1\) and a new Transport Workers Bill was passed by Parliament in March, 1929, after a most uninspired debate.

Latham always believed that the Transport Workers Act was responsible for peace on the waterfront.\(^2\) The Act ensured that "unsuitable" workers were forced to leave the wharves, and, more importantly, it enabled a large force of non-unionists to retain employment indefinitely. At Melbourne and Brisbane the volunteers made up a majority of the work force and at the smaller Queensland ports they had a virtual monopoly of the work. The principle of protection of the volunteers formed the basis of Latham's approach to the problems of the waterfront. On almost every occasion he defended the intransigence of the shipowners and he resisted all moves to increase the amount of work allocated to unionists. His inflexible stand was best illustrated by his failure to support the efforts of R.L. Butler, the South Australian Premier, to secure agreement on a definite ratio between the number of unionists and volunteers employed at Port Adelaide. Latham told Butler that it was essential that the Waterside Workers Federation should not regain control of

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the transport services,^ and he confided to Bruce that any
attempt to limit preference to the original volunteers would
lead to violence, as every volunteer driven from the wharves
would be replaced by a Federation man. ² ² He was rather
relieved when Butler's suggestions were rejected by both the
shipowners and the unions.³ Latham believed that the National-
ists in Queensland and South Australia were too ready to com-
promise with the Federation,⁴ and he was convinced that the
Commonwealth Government should continue to regulate waterside
labour.

Despite his unforgiving attitude towards the Fede-
ration Latham was genuinely concerned about the harsh working
conditions on the wharves and hoped that relations between
unionists and volunteers could be improved. He went down to
Port Melbourne and watched the men being selected, and later
told Bruce that ideally the Government should erect shelter

1. R.L. Butler to Latham, 13 June, 1929, Latham to Butler,
   20 June, 1929, Latham to Butler, 16 July, 1929. (A.N.L.
   MS 1009/36).

2. Latham to Bruce, 20 June, 1929. (A.N.L. MS 1009/36).

3. Appleton to Latham, 19 July, 1929. (A.N.L. MS 1009/36);

4. Latham to R.E.M. King, 26 April, 1929. (C.A.O. A432 29/372);
for the men at all the pick-up places.\(^1\) Although the shipowners claimed that the volunteers were efficient and worked in harmony with the unionists,\(^2\) he decided that the Government itself should investigate conditions on the waterfront. In December, 1928, and January, 1929, an officer of the Investigation Service, R.W. Yates, surveyed the work of the waterside workers at five major ports. Yates was not the most objective of men\(^3\) and his report contained an unqualified denunciation of the shipowners and the volunteers. He asserted that a large proportion of the volunteers were "physical degenerates", whose loading rate was far inferior to that of the unionists. The shipowners regarded the men as beasts of burden and, by allocating work almost entirely to incompetent volunteers, had reduced many decent old workers to destitution. Harmony on the wharves depended entirely on the permanent presence of hundreds of police.\(^4\) Despite the manifest bias of the report, Latham seems to have accepted its accuracy, merely commenting that if the owners were dictatorial and

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3. In 1931, in the report of the Royal Commission on Jacob Johnson, Judge Beeby was to castigate Yates, dismissing another of his reports as "reckless and biased". By that time Yates had left the Public Service.
harsh, the Federation had been arrogant and insensitive to the interests of the public.¹

In his report Yates dealt with the evils of the pick-up and put forward a scheme for self-regulation in the stevedoring industry. The Transport Workers Act would be extended to all ports and would be administered by labour committees, consisting of representatives of the shipowners and unionists. The number of licences would not exceed the normal requirements of the port and work would be allocated on a rotation basis. Latham was most impressed with these ideas, for he considered that only the decasualization of waterfront labour would bring industrial peace. In April, 1929, he submitted an amended version of Yates' scheme to the Federation² and he later sent it to the shipowners, the volunteers' organizations and the Marine Branch.³ Their reactions varied: the owners were surprised but dubious,⁴ the volunteers were enthusiastic but made unacceptable conditions,⁵ and East and the licensing officers dismissed the

scheme as unworkable. The Federation at first showed interest, but in July, 1929, it told Latham that it opposed the extension of the Transport Workers Act to all ports and the inclusion of the volunteers' representatives on the labour committees. A disappointed Latham announced that the system of engaging waterfront labour would have to remain unchanged.

The attempt in 1929 to reorganize the stevedoring industry was an interesting example of decision-making within the Government. It showed that the few public servants with a good knowledge of a subject, such as East or Yates, could completely bypass their departmental heads and exercise a major influence on the Minister's policies. This was particularly the case when a Minister was anxious to push through hasty reforms. Despite his restrained manner, Latham, like Bruce, could act with surprising impulsiveness; for instance, he publicized Yates' scheme without waiting to consult East and the officials who would have to administer it. Latham's prolonged interest in the problems of the waterfront was a significant factor in the Government's deliberations on the

future of arbitration. If the volunteers were to be protected and if his schemes to decasualize and rationalize the industry were to succeed, it was essential that the Commonwealth should continue to control labour conditions in the shipping industry. In addition, Yates' scheme and the reaction of the unionists suggested that industrial peace would be promoted, not by regulation by tribunals, but by greater self-regulation by the parties in industry.

The success of the Government in subduing the waterside workers was partly due to the continuing economic depression and the consequent decline in the volume of shipping.¹ The instability of the economy which had caused Bruce and his colleagues a good deal of anxiety in 1927 had, in several respects, worsened by the beginning of 1929. The unemployment position had become critical. The proportion of unionists unemployed, which in 1927 had been 6 per cent, had risen to 11 per cent by the end of 1928. There was a slight improvement early in 1929, but by the middle of the year the figure had reached 12 per cent.² The overseas interest burden continued to rise, while the national income continued

1. By the end of 1929 a fifth of the interstate fleet was idle.

2. In Queensland the unemployment rate was relatively low, but in South Australia it had reached nearly 18 per cent.
to fall. The proportion of exports committed to overseas interest payments had grown from one sixth to one quarter since 1921. Since 1926 the value of exports had remained fairly steady. There was again an import surplus of £3m. in 1927/28, even though there had been a dramatic decline in imports. An export surplus was finally achieved in 1928/29. Yet the rapid decline in imports meant that customs revenue also declined and in 1927/28 the Bruce-Page Government was, for the first time, faced with a budget deficit of over £5m. There was a further deficit of over £2m. in 1928/29. The majority of State Governments had deficits in both years.

As has been seen, the coal industry was faced with formidable problems and the textile, timber, building and other secondary industries were in a similar position, with a slack market and growing unemployment. The steel industry had to curtail its production in 1928. Investment in capital equipment in industry had become negligible. Yet the export industries were increasing their production and there were many people who agreed with Eggleston's comment of March, 1929, that while Government finance was in an

1. Australasian Insurance and Banking Record. 22 Oct. 1928, pp. 863-64.
ominous position, the basis of the economy was sound.¹ The amount of wheat produced and exported was exceptionally high in 1928/29 and in the same year there was a record wool clip. The exports of other primary products remained steady until 1929, with butter exports increasing substantially.² However, the total value of Australian exports was not increasing, and this pointed to the grim fact that overseas prices were falling. Metal prices had been declining steadily and the value of Australian metal exports in the 1925-29 period had fallen from £24.5m. to £17.9m. In the same period wheat prices dropped by 40 per cent. Wool prices drastically declined in the last quarter of 1928/29, with the result that, despite its record production, the value of Australian wool exports was £5m. less than in the previous year. Australia's economic position had become really critical.

As late as August, 1929, Page stated, "That sooner or later we should enter upon a period of some depression was inevitable. This condition is merely a passing phase of our economic life".³ He had been saying the same thing for over twelve months and he had decided not to increase taxation or

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2. Commonwealth of Australia Yearbook. No. 23 (1930) p.526
curtail expenditure, in spite of the Government's deficit. Overseas borrowing, he argued, was not the cause of the adverse balance of trade; the main cause was the industrial unrest that had interfered with production.\(^1\) In the early months of 1929 there were signs of recovery. Due to the substantial decline in imports, overseas competition was less intense and the balance of trade was extremely good. The trading banks were seeking new business for the first time for some years. The unemployment level had fallen. The rains had been good, the harvest was outstanding, and wool and wheat prices had not yet fallen sharply.\(^2\) In March, 1929, Page told Parliament that while industrial disputes were reducing the purchasing power of the Commonwealth, it would seem that the country was no longer in the trough of the depression, and he was hopeful that another deficit might be avoided.\(^3\)

Since 1927 Bruce had been declaring that Australian industries would overcome their problems if they reduced

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3. C.P.D. v. 120, 18 March, 1929, p.1356.
their production costs. As he opposed wage reductions, this meant that industries had to increase their efficiency. This was the theme of his addresses at employers' dinners and the employers became most resentful of his sermons. They believed that high production costs resulted from compulsory arbitration, heavy taxation and either excessive or insufficient tariffs. A Government with a deficit was unlikely to reduce taxation, and tariffs divided the employers. The employers therefore turned to arbitration as the scapegoat for all the ills of Australian industry.

It will be recalled that Latham first became aware of a shift in the employers' stand on arbitration in the early months of 1928. Several of their organizations told him that they no longer specifically opposed Federal arbitration or State arbitration; they now opposed all forms of compulsory arbitration. One writer has suggested that the employers' resolutions calling for an end to arbitration had a theatrical quality and should be treated sceptically.¹ Such assertions are difficult to refute. Nevertheless, even if certain employers were making gestures instead of advancing policies, their performances were remarkably sustained, for their determination to dispense with the arbitration

system was as evident in their private letters and discussions as it was in their public statements. It was natural that, at a time where there was a large labour surplus, collective bargaining should have many attractions for employers. Some, like Ashworth and McDonald, openly called for wage reductions, \(^1\) most asserted that longer hours and an extension of piecework were essential and others believed that the abolition of complicated and conflicting awards would, by itself, end so much litigation, argument, resentment, small stoppages and waste that production rates would soar. Whatever their reasons, most employer organizations made it perfectly clear to the Commonwealth Government that they found arbitration intolerable. The Central Council of Employers, the Associated Chambers of Manufactures, the Associated Chambers of Commerce, the Australian Mines and Metal Association and the Metal Trades Employers Association all shared this view. The Advisory Committees of Employers were formed expressly to secure an end to arbitration, and McDonald stated that their aim was to create an atmosphere that would make legislators realize that they would have to do away with all forms of compulsory arbitration. \(^2\) W. Brooks asserted that arbitra-

\(^1\) **Age.** 9 Feb. 1929, p.24.

\(^2\) Minutes of meeting of presidents of employers' associations, Sydney, 23 Jan. 1928. (Woll.83).
tion had been responsible for the loss of millions of pounds by the railways, the failure of the Commonwealth Shipping Line, and the loss of the export trade in coal.¹ Yet not all employer bodies condemned arbitration: the Commonwealth Steamship Owners Association, the Graziers Federal Council and the New South Wales Chamber of Manufactures continued to support the Federal Arbitration Court.

In 1923 and 1924 the employers had been very critical of Federal arbitration but had defended State arbitration. In 1928 and 1929 the State systems were also criticized. The Victorian Employers Federation asserted that wages boards were just as compulsory as the Arbitration Court; moreover, their chairmen usually lacked the impartiality and analytical minds of the judges.² The New South Wales Employers Federation believed that arbitration was at the root of all industrial ills, and it rejected any compromise whereby either the Commonwealth or the State would retire from the field of arbitration.³ The Victorian Advisory Committee of Employers argued that there was no logical reason why anything should replace the arbitration system although, as a concession to political and public opinion,

employers should be prepared to put forward an alternative system.¹ Other organizations, such as the Australian Mines and Metals Association, held the same view, although as a compromise they were prepared to continue with State arbitration.²

Related to the refusal to differentiate between the Federal and State systems was the diminishing concern with the evils of overlapping awards. Employers had not completely ceased to bemoan the effects of overlapping. McDonald insisted that conflicting Federal and State industrial legislation was becoming more acute every day.³ In March, 1929, the New South Wales Employers Federation referred to clashes between Federal awards and the State Factories and Shops Act and the Workers Compensation Act, and also between the Federal basic wage and the Family Endowment Act. In addition, men working alongside each other worked different hours and received different rates of pay.⁴ Overlapping was still a serious problem and always would be, as long as both the Commonwealth and the States regulated industry.

Nevertheless, the problem was slowly becoming less acute, and this was apparent in the deliberations and resolutions of the employers. The employers admitted that the worst form of overlapping had ended with the Clyde Engineering Case. In addition, the years of criticism by the employers and the provisions of the 1928 Arbitration Act were showing results and both Federal and State tribunals were making genuine attempts to mitigate the problem. In 1928 the Federal Court issued its first order restraining a State tribunal from hearing a case.\(^1\) In the same year, in the Hotel and Restaurants Case, Dethridge laid down the criteria that were to determine whether the Court should hear an application or whether it should refer it to a State authority.\(^2\) His successors were to make frequent use of this judgement. In the 1930s and 1940s overlapping became a comparatively minor problem, especially as State authorities were increasingly directed to grant the same rates as were provided in the corresponding Federal awards.\(^3\)

1. 25 C.A.R. 1370
2. 26 C.A.R. 489
While the employers were divided in their attitude towards Federal arbitration, the trade unions adopted an ambivalent position. The A.W.U. always tended to favour the Federal Court. In contrast, the A.C.T.U. Congress in July, 1928, resolved that all unions should hold ballots on the question of withdrawing from the Federal Court. One union, the Amalgamated Society of Carpenters and Joiners, obeyed the resolution. In February, 1929, the A.C.T.U., as a compromise decided that unions should withdraw their claims from the Federal Court and should not appear before the Court. Once again a single union, the Amalgamated Road Transport Workers Union, requested that it be allowed to withdraw its claim, but Lukin refused its request. Thus the unions' resolutions of hostility towards arbitration should be treated sceptically. In fact, many leaders insisted that they supported the arbitration system created by Higgins, but it had been perverted by the amendments of the Bruce Government and was now administered by a prejudiced Court. This was apparently the attitude of thousands of the rank and file unionists, for although they refused to withdraw from the Court they were willing to give generous financial assistance to the Timberworkers Union in its defiance of the Court.

2. Ibid. 11 Feb. 1929, p.11.
Any hopes that the employers and the unions might reach agreement on the subject of arbitration were quickly dispelled early in 1929. The Industrial Conference called by the Victorian Chamber of Manufactures finally began its deliberations in Melbourne in December, 1928. Many prominent leaders of the unions and the employer organizations were present and the press went into rhapsodies about the constructive speeches made by both sides and the general atmosphere of goodwill. But when the conference resumed in February, 1929, the timberworkers' strike and the impending mining lockout embittered relations and the speeches were much more provocative and uncompromising. Predictably, the conference broke down after a few days. The only matter on which there was substantial agreement concerned the Commonwealth Arbitration Act: it was felt that its penal clauses were not conducive to industrial peace. A sub-committee of the conference met Bruce and Latham in April, 1929, and discussed the objections to the penal clauses.

3. Ibid. 17 April, 1929, p.18.
Other people besides the employers and the unionists took a strong interest in industrial arbitration, especially in its economic consequences. In New Zealand academic economists were in the vanguard of the opposition to arbitration and A.H. Tocker visited Australia in 1928 and gave lectures on the subject, financed by some of the employer organizations. Latham read and annotated one of his addresses. However, Tocker was unable to arouse much support among the small group of Australian economists. D.B. Copland said that it was absurd to attribute all the country's troubles to arbitration. Copland believed that industry was over-regulated and favoured a system of self-regulation by means of works committees. The lack of support for Tocker's ideas was evident in an address given by R.C. Mills to the Industrial Conference in February, 1929. He asserted that the tariff and wage regulation were in danger of becoming scapegoats for Australia's industrial sins. Industrial regulation had abolished sweating, had been moderately successful in minimizing industrial disturbances, but had effected little if any improvement in living standards. Like most economists, Mills believed that

1. Lecture delivered by Prof. A.H. Tocker at King's Hall, Sydney, 2 February, 1929, on compulsory arbitration. (A.N.L. MS 1009/28).
Australian wage rates were too rigid; the Court should pay less attention to the cost of living and should consider economic factors, particularly the level of unemployment in different industries. At the same time a policy of wholesale wage reductions was likely to defeat its own ends, as it would lessen the demand for commodities.¹

It was not until the 1930s that academic economists began to influence Government policy-making. Bruce and his Ministers took much more notice of the views of four leading British industrialists who visited Australia in the second half of 1928. The British Economic Mission was appointed by the British Government, at Bruce's request, to report on the development of Australian resources and any other matters of mutual economic interest to the two countries. In its report, completed in January, 1929, the Mission rejected the notion that Australia was heading for economic disaster. However, it was extremely critical of the arbitration system. It referred to the vicious circle of ascending wages, tariffs and prices, and declared that Australia's most urgent task was to break the circle by bringing down the costs of production without lowering living standards. The Mission catalogued

the familiar weaknesses of the arbitration system: it was slow and expensive, it occupied a disproportionate amount of management's time, it engendered a spirit of antagonism, it created a vast maze of conflicting decisions, and it assigned the task of determining complicated economic and industrial questions to men whose only training had been in the law. The intrinsic faults of arbitration would be intensified unless an end was put to the overlapping of Commonwealth and State jurisdictions and unless the Court was directed, without qualification, to consider the economic effects of its awards. Thus the Mission was implicitly criticizing Latham's belief that the basic wage should be sacrosanct. It considered that the Court's wage-fixing methods constituted one of the worst features of arbitration. With wages based on the cost of living, the worker received no rewards if production was increased and consequently he had no interest in bringing down the cost of living or in greater efficiency.¹

The employers, unions, economists and the British Economic Mission tended to praise or condemn the whole idea and practice of arbitration, even though it was usually Federal arbitration that they had in mind. In contrast, some of the State Governments maintained the position that they had taken

in 1923: the complete abolition of arbitration would not be acceptable to a majority of the electorate, but the abolition or drastic limitation of the powers of the Federal Court was a matter of urgency. The State Governments believed that if the railways were not regulated by the Federal Court, they would have some hope of balancing their budgets. However, they were not solely concerned with State instrumentalities, for they believed that the problem of overlapping jurisdictions was as serious as ever.

Bavin had always been the most vocal proponent of this view. In March and April, 1929, he called conferences of the seven largest employer organizations in New South Wales to consider the whole subject of arbitration. Bavin told them that the Federal system was the main cause of the expense and confusion arising out of the chaotic conditions of industrial law. It was agreed that if arbitration was to continue, industry had to be relieved of the evils arising out of duplication, and also that State employees should be outside the jurisdiction of the Federal Court. But the conferences then became deadlocked: the Chamber of Manufactures believed that the Federal Court should regulate all private industries;
Bavin was convinced that the Federal Court was the source of their trouble, but did not think that a case had been made for entirely scrapping arbitration; and the Employers Federation argued that all forms of arbitration were equally obnoxious. In March, 1929, Bavin met the Premiers of Victoria, South Australia and Tasmania. They agreed that the duplication of Federal and State tribunals was causing widespread unemployment and that the Federal Court had deprived the States of control over their own finances. Bavin urged all the Premiers to meet and discuss the matter before the forthcoming Premiers' Conference. The Victorian Ministers shared Bavin's views wholeheartedly, the Attorney-General stating that the Commonwealth Arbitration Act should be repealed immediately. Bavin left Sydney on an overseas trip in April, 1929, but his actions had ensured that arbitration would be one of the main subjects to be discussed at the Premiers' Conference in May. History was repeating itself: as in 1923, Bavin was forcing the Commonwealth Government to commit itself to a definite arbitration policy.


3. Herald. 24 May, 1929, p.3.
From 30th April to 17th May, 1929, the Commonwealth Government held a series of Cabinet meetings. The chief business on the agendas was the timberworkers' strike, the mining lockout, and the Premiers' Conference that was to take place at the end of May. The invitations that Bruce had sent to the Premiers on 17th April had not included industrial matters among the possible subjects for discussion. However, Bavin and the other Premiers were anxious that the subject should not be avoided, and consequently it was listed on the agenda that was circulated on 10th May. The Federal Cabinet therefore had to make a quick decision on whether it should maintain, modify or discard the arbitration policy adopted in 1927.

Two written submissions provided Ministers with a basis for their discussions. Ogden had prepared a paper on the function of the Department of Industry, in the course of which he referred to the Arbitration and Industrial Peace Acts. He believed that an amended Arbitration Act would provide the best method of dealing with industrial disputes. The Government should seek to persuade the States to abolish their arbitration machinery. This would end the irritating

1. Bruce to Premiers of all States, 17 April, 1929. (C.A.O. C.P. 317/3).
2. Bruce to Collier, 10 May, 1929. (C.A.O. C.P. 317/3).
and costly overlapping and conflict of awards, and would give
greater security to the employers and satisfaction to the
workers. State tribunals could be created which were respon-
sible to the Federal Court, and the Court could then confine
its attention to genuine interstate disputes. Thus Ogden
believed that the Government should revive its policy of May,
1926, and he evaded the obvious objection that, with the well-
known views of most of the Premiers, Federal supremacy could
only be achieved by means of another referendum.¹

The second and more important submission was written
by Latham on 28th April, two weeks after the John Brown prose-
cution was withdrawn. The whole paper reflected his dis-
enchantment with the Government's arbitration policy, his
despair over the succession of huge industrial stoppages, and
his disgruntled attitude towards his colleagues, who for two
years had stubbornly rejected his arguments relating to the
penal provisions of the Arbitration Act. The submission began
with a long quotation from his 1927 memorandum on strike and
lockout penalties. Latham declared that he adhered to its
recommendations, as subsequent experience had entirely con-
firmed his views. The Waterside Workers Federation had been
fined, but it had not been the fine which brought the strike

¹ J.E. Ogden. Memorandum: Department of Industry, April, 1929. (A.N.L. MS 1009/42).
to an end. The Timber Workers Union had also been convicted, but its fine had not been paid and, if anything, the conviction had extended the strike. Thousands of members of both unions had committed offences by striking, but they had not been prosecuted. Even greater numbers of men were encouraging the strikers and giving them financial assistance, without any fear of prosecution. The law had already been brought into contempt and mass prosecution would only make the position worse. The withdrawal of the Brown prosecution had given new strength to the Opposition, disheartened Government supporters, made the timberworkers more uncompromising and rendered the penal provisions unenforceable. The Government had to realize that in the present economic situation strikes and lockouts were inevitable. If the Court reduced wages there would be strikes, while if it maintained wages there would be lockouts. When the issues were really serious, the Court and its penalties would be completely ineffective.

Latham then turned to the Government's future policy. Federal regulation of industry had gone too far. With State
regulation, disputes would be smaller and federal unions would fragment, and would cease to threaten the authority of parliamentary government. But Latham did not advocate the abolition of the Federal arbitration system. He merely reaffirmed his suggestions of January, 1929: the strike and lockout penalties should be repealed and unions that engaged in strikes should be deregistered. If this proposal was adopted, perhaps six unions would be placed outside the Federal system and the remainder would give up striking and work in accordance with their awards. Federal arbitration would only work if it was limited to industries where there was definite support for arbitration. The Government would have to decide how serious a strike should be to justify deregistration, and whether the Court or the Government itself would make all deregistration orders.¹

There are no other written records of the arguments and suggestions which were put forward at the Cabinet meetings. By 17th May, 1929, a decision had been reached and reports soon appeared in the press that the Government was planning a

1. Latham. Memorandum for Cabinet: Industrial legislation and penalties, 28 April, 1929. (A.N.L. MS 1009/28). Parts of this memorandum were quoted in the Sun, 14 Aug. 1929, p.12, and were used by Theodore in the John Brown censure motion debate.
drastic revision of its arbitration policy.\textsuperscript{1} However, the exact nature of its proposals was not revealed until 28th May, 1929, when Bruce opened the Premiers' Conference in Canberra.

In his speech to the Premiers, Bruce dwelt on the serious economic difficulties facing Australia. The prices of staple commodities had fallen, exports of primary products had become unprofitable, and the outlook for most secondary industries was bad. For the first time since the War, the Commonwealth Budget had a deficit. Yet increased taxation could defeat its own end by reducing the volume of production. The basic cause of the country's economic troubles was not its indebtedness but the high cost of production. Legislative safeguards of wages and working conditions were essential. But the duplication of Commonwealth and State arbitration powers was not only unsatisfactory in principle but was responsible for much economic waste and for a lack of understanding between employers and employees. Industries could not be categorized as "Federal" or "State" and this left two solutions to the problem. The States could refer full industrial powers to the Commonwealth. If they refused, the Commonwealth Government would be forced to recommend to Parliament that it repeal the Federal arbitration laws, thereby

\textsuperscript{1} S.M.H. 18 May, 1929, p.11.
giving the States full industrial powers. The only exceptions would be the shipping and waterside industries, which the Commonwealth could completely regulate under its trade and commerce power. As everyone expected, five of the Premiers immediately declared that they could not recommend to their respective Parliaments that full industrial powers be granted to the Commonwealth.

The decision of the Commonwealth Government to make no further use of its arbitration power must rank as one of the most dramatic and far-reaching reversals of policy in Australian political history. Some attempt must be made to determine who made the decision, why it was made, and what it was hoped would be achieved under the new system of industrial arbitration.

1. S.M.H. 29 May, 1929, p.16.
2. Proceedings of Premiers' Conference, Canberra, May, 1929. pp.9-14. The Queensland Nationalist Government was hesitant and in June, 1929, it proposed that a conference of Commonwealth and State wage-fixing authorities be called to work out uniform principles of wage-fixation, standard hours, the statistics on which determinations should be based, and subjects which should be regulated by parliaments. Latham opposed a conference of judges, as State Parliaments could reject their suggestions and thereby place the judges in an embarrassing position, and he suggested instead a conference of Premiers and Ministers for Labour and Industry. See A.E. Moore to Bruce, 15 June, 1929, draft reply by Latham, 1 July, 1929, Bruce to Sir William McPherson, 16 Aug. 1929. (C.A.O. A432 29/1945).
All the evidence indicates that it was Bruce who suggested to his colleagues that the Federal arbitration system should be brought to an end. Only five Ministers would have had either the authority or the courage to make such a radical proposal: Bruce, Page, Pearce, Latham or Ogden. Page had never made any important suggestions about industrial relations and the pastoralists' organizations, which were his main source of information outside the Government, were relatively satisfied with Federal arbitration. Pearce had said only a few weeks before that if the Arbitration Court was abolished they would revert to the bad conditions of the early 1890s.¹ He was regarded, at least by his colleagues, as the most astute politician in the Cabinet and he would not have made such a remark if, at the same time, he was privately working for the abolition of the Court. The memoranda of Latham and Ogden, both written in April, 1929, give the impression that they had taken it for granted that Cabinet would reject any suggestion to end Federal arbitration. Thus, by the process of elimination, it must be concluded that it was Bruce who astonished the other Ministers by proposing that they leave the field of arbitration to the States.

Even Bruce, who often treated his Ministers in an autocratic manner, could have been overruled by the rest of

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¹ S.M.H. 12 Feb. 1929, p.10.
the Cabinet on such a fundamental question. He always insisted that the Cabinet was unanimous over the new arbitration policy. Yet it took numerous meetings over two weeks before the decision was finally made,\(^1\) and it is likely that initially there was a good deal of opposition. Ogden had expressed his unqualified support for full industrial powers for the Commonwealth. Another new Minister, C.L.A. Abbott, who was a leading spokesman for the pastoralists, urged Cabinet to retain the Federal Court.\(^2\) Other Ministers, while believing that Bruce's proposal had much intrinsic merit, believed that it would have dangerous political consequences for the Government.

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The great difficulty in tracing the origins of a major policy decision is illustrated by the fact that Abbott, a Cabinet Minister, was not sure who had first put forward the idea to abolish the Federal Arbitration Court, although his guess was that it was Pearce. Abbott wrote that Bruce, Page and Pearce were the real decision-makers and Pearce was "undoubtedly the power behind the throne". Abbott addressed his arguments to each of the three men, but "the Prime Minister looked at me with friendly sympathy, but shook his head", Page "grinned and popped another piece of chewing gum in his mouth", and Pearce "listened courteously, with his hand behind his ear, but was immovable". Ogden was the only other Ministerial critic of the Government's proposals mentioned by Abbott.
It conflicted directly with Latham's advice, given two years before, that a change to State control should not be made suddenly and that the public should be educated to appreciate the advantages of the change long before any practical proposals were made.¹ It is apparent, from some of Bruce's letters written just before the Premiers' Conference, that the Cabinet had been greatly concerned about the political dangers of the new policy. For instance, Bruce told the leaders of the National Federation that there was a strong possibility that the Government would be defeated on account of its decision to withdraw from arbitration.² As an election was not due until late in 1931, the remark suggests that Bruce felt that he would not be able to count on the full support of his own Party and that another election would have to be held fairly soon. If the supremely confident Bruce had such doubts, it was hardly surprising that several of his Ministers would only agree to the proposal after long consideration.

The speech of Pearce and the submissions of Latham and Ogden showed that Bruce's suggestion was quite unexpected, and that it had not been seriously discussed by Cabinet before 30th April, 1929. It is pointless to ask who initiated the

¹ See above, p. 222.
² Bruce to E.H. Willis, 25 May, 1929. (A.N.L. MS 1009/39).
new policy; men had been calling for the abolition of the Federal Court for twenty years, and Ministers had been threatening to take such action since 1920. However, it is reasonable to ask whether pressure from any individuals or groups was finally decisive in April, 1929, in moving Bruce to take action. Deane was no longer Bruce's chief adviser and McLaren refused on principle to criticize Government policies. The same applied to J.T. Heathershaw, the Secretary to the Treasury. The only public servants whose views on arbitration were valued by Bruce were Garran and Stewart. It is most unlikely that Bruce would have consulted Garran without Latham's knowledge and, in any case, there is no evidence that Garran had altered his view that full industrial powers should be given to the Commonwealth. Stewart still believed fervently in the superiority of the Federal system; in fact, he came dangerously close to opposing publicly the Government's new policy.\(^2\) Bruce's letters to the leaders of the National Federation indicate that he had not consulted them, a fact which was later to arouse some

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2. Stewart supplied Groom, one of the rebels, with a good deal of information which he hoped could be used against his own Minister's policies. See Stewart to Groom, 17 Sept. 1929, Stewart to Groom, 18 Sept. 1929, Stewart to Groom, 3 Oct. 1929. (A.N.L. MS 236/2/3680).
Employers, of course, had been telling Bruce for over a year that arbitration should be abolished, and he was certainly influenced by their hostility towards the Federal arbitration system. However, he appears to have had little contact with any employers in April, 1929, apart from MacDougall, with whom he discussed the penal clauses of the Arbitration Act. Two of the most influential business leaders, W.L. Baillieu and S. McKay, were overseas in 1929 and the only other man who Bruce may possibly have consulted was Sir Robert Gibson. Thus it would seem fairly certain that Bruce was acting under the pressure of events, and not under pressure from individuals or organizations.

It is a much more difficult matter to determine the reasons for the change in the Government's arbitration policy. At the Premiers' Conference Bruce referred to the financial depression and the overlapping of awards, two problems which the Commonwealth Government shared with the States. It was apparent later that there were other reasons, and some historians have been sure that 'there were reasons which were

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1. Herald. 24 Sept. 1929, p.7. Bruce referred rather proudly to the fact that in both 1926 and 1929 his decisions had been in direct conflict with the official policy of his Party. Latham felt that it was unwise to emphasize that the Government, in its policy-making, paid no regard to the Party organization. See Latham to Sir Arthur Robinson, 1 Oct. 1929. (A.N.L. MS 1009/45).
never admitted. As far as is known, Bruce never set down at any length his motives in reversing the arbitration policy. This has forced historians to take either of two approaches. They have followed Collingwood's dictum and tried to re-enact the thoughts of the Ministers faced with certain definite problems. That is no easy matter, for the historian's own interests usually colour his assessment of the problems. Thus economists have argued that Bruce was mainly concerned with Australia's financial difficulties, while lawyers have insisted that he was troubled by the inadequacies of arbitration law. The other approach is to examine the proposals themselves and to assume that they were the logical outcome of the Ministers' diagnosis of the problems. Thus historians have been sceptical of the emphasis that Bruce placed on overlapping awards, on the ground that State control would not end overlapping. Yet it is a risky assumption. Men confronted with a huge problem, with questions of power and authority at issue, and with very little expert assistance, cannot be expected to make a completely logical decision or to be aware of all its implications.

Fortunately, there are a few private letters that shed some light on Bruce's motives. On 25th May, 1929, he told Sir David Gordon: "The financial position is becoming
more and more serious and arbitration is becoming a farce". ¹ On the same day he told Archdale Parkhill: "Unless we take some action the Government will become the laughing stock of Australia". ² Leaving aside the financial position, it could be argued, by linking the letters with Bruce's speech, that arbitration was becoming a farce because the problem of overlapping awards was becoming more serious. However, Latham's memorandum of 28th April would not substantiate this argument. Latham had asserted that arbitration was a farce because huge interstate stoppages took place in direct defiance of awards and, despite all the penal provisions of the Arbitration Act, any action that the Government had taken had been futile. He had not mentioned overlapping awards, for the problem had no bearing on the great stoppages of 1928 and 1929. Overlapping might be serious, but it was hardly making the Government "the laughing stock of Australia".

It was therefore the great stoppages, not the overlapping of awards, which made the situation critical and which impelled the Government to take action. In May, 1929, two of the stoppages were at their height and Ministers' minds were full of reports of the tens of thousands of men who were

idle, the marches and the pickets, the violence on the wharves and in the streets, the ineffectual prosecutions and the John Brown incident. The Cabinet felt that it was being humiliated because it could do nothing at all about the thousands of men who were breaking the law by striking, and because it could only appeal, often vainly, to the State Governments to enforce Commonwealth laws against picketing and intimidation. Ministers were not likely to talk publicly about their virtual helplessness or their declining authority and prestige, but their constant references in private to "contempt for the law", "futile action" and "farcical situation" show that these concerns were very much in their minds. In the case of Latham they were always the chief considerations. In all his submissions and letters in 1929 there was hardly any mention of the economic depression or the overlapping of awards; instead, there was a preoccupation with the unions' defiance of the law and with the Commonwealth Government's inability to enforce its own laws. As late as October, 1929, by which time the economic position was extremely grave, he was still obsessed with the question of law and authority. "Unless the proposal of the Government succeeds I think it will have to be necessary to consider taking a big step towards unification, because if industrial matters are to be handled by the Commonwealth I cannot see how they can be
satisfactorily handled without passing over to the Commonwealth the general responsibility for the maintenance of law and order."¹

It would seem that, more than anything else, a crisis of authority forced Ministers to change their arbitration policy in May, 1929. Yet if that had been the only question it would have been sufficient to adopt Latham's suggestion and repeal the penal clauses and deregister unions that went on strike. The radical policy that was in fact adopted pointed to two contradictory reasons that were also in the minds of different Ministers. Although the new policy had come as a surprise, Latham welcomed it: he had been arguing for over two years that State control would reduce the power of the unions and would eliminate interstate strikes. Thus Latham and possibly other Ministers believed that the new policy would lessen large-scale industrial conflict. There was some force in his argument, as the waterside workers' and timberworkers' strikes would not have been so devastating if the Beeby and Lukin awards had only been State awards. On the other hand, genuine interstate strikes were very rare and stoppages within one State could be just as harmful, as the mining lockout showed. The other reason

influenced those Ministers, particularly Bruce, who were not convinced by Latham's argument. They believed that the only real solution to industrial conflict was supremacy for the Commonwealth, provided that there were no constitutional limitations on the means that the Government could use to deal with industrial matters. In other words, they adhered to their views of 1926. They believed that the State Governments would soon find themselves faced with chaos and strife on a grand scale. They would bear the full brunt of the attacks of the large, militant unions, disputes would constantly arise because the discrepancies in labour conditions between the different States would be multiplied, and industries in some States would find themselves at a disadvantage as a result of interstate competition. The time would come, therefore, when the States would be most anxious to offer full industrial powers to the Commonwealth.¹ Thus some of the Ministers were following a most devious policy: they advocated a policy that they believed would cause even

1. The main source for this hypothesis is a speech that Bruce made on 4 June and it must therefore remain rather tentative. But a number of people interpreted the speech in this way and Bruce did not correct them at all. See S.M.H. 5 June, 1929, p.15; Bailey to Latham, 8 Oct. 1929. (A.N.L. MS 1009/39). "It is quite possible that the wary and cynical Prime Minister hopes, by submitting the Premiers to the acid test of proving their superior ability, to cover them with ridicule and make them unwittingly demonstrate the necessity of Commonwealth control of all industrial legislation." Australasian Manufacturer. v. 14, 8 June, 1929, pp.11-13.
greater industrial unrest in order to achieve the long-term objective of a single Commonwealth arbitration system.

These considerations which influenced Ministers to varying degrees were obscured in public speeches by the incessant references to the overlapping of awards. It is impossible to be certain as to how much was rhetoric and how much reflected a genuine concern with a long-standing problem. It has been seen that the decision of the High Court in 1926, the legislation of the Commonwealth Government in 1928, and the concern and efforts of the Federal Arbitration Court had resulted in an easing of the problem, although this only became apparent very gradually. Bruce should have realized that the employers were no longer obsessed with overlapping awards. Latham had not mentioned overlapping in his memoranda and Bruce himself had shown little concern with the subject since early in 1928. It would seem that Bruce deliberately exaggerated the seriousness of the problem because he knew it was a question that preoccupied the Premiers. Nevertheless, overlapping was not a trivial matter. When both Federal awards and State labour laws and awards were in force in the same factory, resulting in different wage rates for similar work, different hours, and innumerable differences in working conditions, there was bound to be resentment, minor stoppages and litigation, confusion and misunderstandings. All these
factors had a detrimental effect on productivity. Bruce, as a businessman, keenly appreciated the difficulties and loss resulting from overlapping awards, as did the British industrialists who were in the 1928 Economic Mission.

The Government's proposed solution, although it might mitigate the problem, supports the suggestion that the overlapping of Federal and State awards did not occupy such an important place in the thinking of Ministers. State tribunals were in a position to co-ordinate the awards of related classes of workers, and they would ensure that their awards did not conflict with State industrial laws. There would be complete harmony of working hours in each State, and differing hours had hitherto caused more unrest and waste than any other factor. It had been completely impossible for the Federal Court to try and reconcile its awards with State laws and awards. Under the new system there would be resentment and perhaps stoppages if there were large discrepancies in the wages paid to the same class of workers in different States. However, Ministers were probably correct in claiming that workers were far more concerned with differences within the same factory than with differences between the States. Thus the advantages accruing from the new policy should not be airily dismissed. On the other hand, if overlapping had
been the most important question the Government would have paid more attention to the problem of migratory workers. Even the most ardent opponents of Federal arbitration acknowledged that the seamen, shearers and perhaps theatrical employees should come under Federal control. Yet only the maritime industries would still be regulated on a Federal basis. There was bound to be trouble with the shearers, especially as the Queensland and New South Wales rates would almost certainly be different. Thus, for the migratory workers overlapping and confusion would increase under the new order. ¹ Perhaps, once again, Bruce hoped that increased conflict would make the States more accommodating.

In his letters Bruce referred to the two problems of overlapping awards and the deteriorating financial position. In both cases it is difficult to assess just how much importance Ministers attached to the problem. The weaknesses and instability of the national economy had caused the Government concern since early in 1927, and some writers have attributed the new arbitration policy solely to the Government's desperate need to prevent the financial position worsening. Yet it must be remembered that the Government only commenced its consideration of the future of Federal arbitration in April, 1929, and

¹ This was admitted by Latham. See Latham to Bruce, 21 Aug. 1929. (A.N.L. MS 1009/39).
in the early months of 1929 it appeared that the worst stage of the depression might be over. The unemployment figures were falling, the balance of trade was extremely favourable, the harvest had been good, wool and wheat prices had not yet dropped sharply and Government revenue looked much healthier than earlier in the financial year. By May, 1929, the position was much worse, but this was not immediately apparent, for employment and trading statistics took some time to collate. Page seemed very optimistic about the economy in March, 1929, and Latham made only one reference to economic difficulties in his Cabinet submission in the next month. In assessing the various factors that influenced Ministers' thinking, attention must be paid to the urgency of each problem. Every day the Government was compelled to face the seriousness of industrial conflict and the partial breakdown of law and order. In contrast, it was much easier for the Government to postpone consideration of the economic problems in the hope that unemployment would continue to decline and a deficit would be avoided. Ministers all had ideas about industrial disputes and understood the advantages and disadvantages of the various courses of action open to them. The economic depression was much more intangible, had much wider ramifications, was part of a world-wide development and seemed, to many Ministers, completely insoluble. It is hard to separate
the different factors that influenced Bruce in April, 1929, but it would seem that the great industrial stoppages and the challenge to the Government's authority were decisive. However, the state of the economy was an important consideration and by September, 1929, it had probably become the chief concern of Ministers, with the exception of Latham.

Bruce claimed that, by overcoming the problem of the duplication of the Federal and State arbitration systems, production costs would be considerably lowered. Duplication and inconsistencies undoubtedly caused inefficiency and wastage of resources and Bruce was justified in believing that State control would reduce costs. However, it was hard to imagine that the reduction would be so marked as to have an appreciable effect on the national finances. It must again be concluded that Bruce had given only a partial explanation of the purpose of the new policy.

The economist Pigou wrote in 1937: "Until recently no economist doubted that an all-round reduction in the rate of money wages might be expected to increase the volume of employment".¹ Some writers have assumed that Bruce

adhered to the orthodox economic ideas of those pre-Keynesian times, and that his new arbitration policy was primarily designed to open the way for general wage reductions. Yet Pigou's statement was too categorical. In Australia men like Beeby and Mills argued that to reduce the workers' purchasing power would merely worsen the economic position, and this was a view consistently propounded by Bruce. He may have privately thought otherwise, but it is difficult to see why, if he thought that a catastrophe was imminent, he would wish to conceal his real views. He did not lack courage and he was not faced with an impending election. Bruce's views would have carried a good deal of weight in the Arbitration Court, but in fact it received no guidance from the Government. This was surely a strange policy for a man determined to bring down wages. In all their private correspondence with Nationalist backbenchers, Party officials and the employers, Bruce and Latham insisted that it was not their intention to bring about a general lowering of wages. Bruce was still maintaining this attitude when he was no longer in Parliament.

Admittedly, the Government was worried that its proposal would be regarded as an attack on the wage-earners. A few days before the Premiers' Conference Bruce and Latham wrote to conservative newspapers, employer organizations and the National Federation appealing to them not to "greet the announcement with paeans of joy and triumph" at the "supposed return to the clear economic ring". Different meanings can be read into these letters, but the most likely one is that the Government did not wish to be associated with a policy of wage reductions until it was convinced that such a policy was essential. This conclusion does not overlook the undeniable fact that the Government believed strongly that lower wages were necessary in a few specific industries, such as coalmining.

The new arbitration policy supports this conclusion. The Government was not abolishing compulsory arbitration and restoring collective bargaining, for the State Governments were committed to retaining their arbitration systems. This meant that any wage reductions would only take place slowly.

and, while this would lessen the probability of industrial conflict, it would delay the effect that they might have on the economy. If Bruce had been mainly concerned with wage reductions it would have been wiser for him to have kept the Federal Court.¹ Dethridge and Lukin were more likely to lower the basic wage than were most of the State arbitrators, and their decision would immediately have affected the wages of 420,000 workers.

While Bruce and Latham appear to have still believed that wage reductions could be avoided late in 1929, it is quite probable that other Ministers had come to hold the contrary view at an earlier stage. The whole Cabinet was certainly united in holding that the Federal Court had over-regulated industries and that employers must have much greater freedom to extend payment by results. In June, 1929, Bruce stated explicitly that the only way by which both wages could be maintained and costs reduced was to remove all restrictions on piecework.² Employers had told Ministers that State awards were much less detailed and complex than Federal awards. Latham hoped that the State tribunals, in dealing with the occupations that had previously been controlled by

2. S.M.H. 18 June, 1929, p.10.
the Federal Court, would restrict their attention to wages and hours, and would leave it to the employers and workers to determine the working conditions. He termed this policy self-government in industry, although in reality it would have restored to the employers much of their old power to control conditions. Gullett openly called for a return to the 48 hour week and other Ministers probably shared the same view. Thus it is clear that the Government believed that the new policy would increase productivity, not only by eliminating overlapping, but also by freeing employers from the minute regulation of their businesses by judicial tribunals.

Two other factors influenced the Government's new arbitration policy. Bavin had persuaded the State Governments to present a united front, and had thereby forced the Commonwealth Government to commit itself to a definite policy. The Government had to forestall action by the Premiers, as if it adopted a policy after the Premiers' Conference, it would have been accused of giving in to pressure from the States. The result was that, considering its many implications, the new policy was determined hurriedly and there was no time to

subject it to the analysis of the few experts within the Public Service or to sound out opinion in the parties, interested organizations or the press. Arguments were not coordinated and the press soon pointed out that while Bruce was deploring the overlapping of awards, Latham was preaching on the law and its enforcement, and Gullett was talking about piecework and the 48 hour week. Another result of Bavin's agitation was that the proposals were first announced at the Premiers' Conference and not in Parliament. Apart from the Whips, the members of the Federal Nationalist and Country Parties knew nothing about them until the morning of the Conference, when they all received telegrams summarizing the proposals. A few backbenchers were upset by the lack of consultation; at least in 1926 they had discussed the Government's referendum proposals before they were made public. Maxwell was the most annoyed and declared that he would not feel bound by a policy that had never been discussed with the Party.  

The other factor was Latham's close association in 1928 and 1929 with the problems of employment on the waterfront. It would seem that he made his support for Bruce's

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proposal conditional on the exemption of the shipping and stevedoring industries from the general reorganization of arbitration. He had no desire to see all his work wasted, the Transport Workers Act repealed, the volunteers abandoned to the dubious care of the State Governments, and his plans for the reorganization of the industry completely nullified. Latham argued that, in any case, the Commonwealth had all the powers it needed to control the two industries and it offered a solution to the awkward problem of the future work of the four Arbitration Court judges, who all had life tenure. These arguments won over Latham's colleagues, even though the exemption of the waterside workers from State control was rather anomalous.

It has been shown that on different occasions the Government, and especially Bruce, put forward panaceas that were to solve the industrial problems of Australia. The new arbitration policy was a panacea on a vast scale, for Ministers believed that it would restore the Government's authority and also respect for the law, eliminate interstate stoppages, overcome overlapping awards, reduce costs of production, promote harmony and self-government in industry, ensure the extension of piecework, and ultimately pave the way for the granting of complete industrial powers to the Commonwealth.
Different reasons influenced different Ministers, and a factor that may have carried little weight in May, 1929, was perhaps a major consideration by September, 1929. Attention has been concentrated on the ideas of Bruce, who first raised the proposal in Cabinet, and Latham, who had given far more thought than anyone else to the Government's industrial policy. But even with these two men there can be no certainty about their motives when they made the momentous decision to abolish, after 25 years, the Federal arbitration system.

In June and July, 1929, Ministers made numerous speeches explaining their new arbitration policy. They asserted that both sides were profoundly dissatisfied with a system in which arbitration was the only method of settling the terms and conditions of employment. Ideally, federal arbitration should only have been used in cases where better methods had failed. Duplication had deprived industrial regulation of the essential element of certainty, and this had strengthened the power of agitators and extremists. In addition, it was imposing a greater financial burden on Australia than the Federal income tax, which raised £10m. per annum. Another referendum on the question of full industrial powers for the Commonwealth would be most expensive and would have no chance of success, in view of union hostility towards arbitration. Only co-operation between the parties in industry
could overcome the present difficulties. Bruce was critical of the Court's method of fixing the basic wage, as the workers' conditions would never improve as long as the cost of living criterion was used. Wage reductions would alienate the workers at a time when their co-operation was essential. But the workers would have to accept payment by results if there was to be both high wages and increased productivity.¹

The attitudes of the employers and the unions to the Government's proposal were to some extent determined by political considerations. With the very real possibility of the Government being defeated on the arbitration issue, the great majority of employer organizations voiced their support for the proposal and all the unions opposed it. The support of many employers was genuine, for if they believed that compulsory arbitration was the source of all their troubles, the abolition of the Federal Court could be seen as the first step towards their objective of a free collective bargaining system. A few employer bodies had doubts. The graziers' organizations were most dubious about the advantages of regulation by the States, but in the end the Graziers Federal

Council supported the Government. The New South Wales Chamber of Manufactures was very divided and, although it expressed qualified approval for the Government's policy, it also gave financial support to the Labour Party at the 1929 election. The real attitudes of the unions towards State industrial regulation are impossible to determine. The immediate reaction of the General Secretary of the Waterside Workers Federation was one of delight but when, a day or so later, Scullin announced that the Labour Party would oppose the new policy with all its resources, he felt it was his duty to join in the general condemnation of the Government. This was probably the attitude of many other union leaders, as they had lost their liking for the Federal Court. It will be recalled that even the A.W.U. had opposed the 1926 referendum proposals and could be a strong defender of State arbitration when it suited its purposes.


THE POLITICAL DIVORCE COURT.

THE JUDGE: "Now, look here, I believe you're a hound. You ill-treat her; you turn her out of doors; you've got another woman; and yet you resist giving her her freedom."

THE RESPONDENT: "Yes, your Honor, but she is so handy. Many's the time, your Honor, I've got more out of the other lady simply by threatenin' to go back to this one."
After the Premiers' Conference the initiative in working out the details of the future arbitration system passed to the State Governments and the employers. On 27th June, 1929, the New South Wales Minister for Labour and Industry convened a conference of leading employers and Government officials to consider the arbitration machinery that would be most acceptable. The conference continued at intervals until late September, 1929. The Employers Federation made repeated attempts to gain support for the "Utopian State" of freedom from regulation, but the Minister insisted that the Government would not consider abolishing arbitration, except in the rural industries. The conference finally agreed that there should be a tribunal to fix the basic wage and standard hours, and that boards in each industry would determine labour conditions. The chairmen would not have a vote and the agreements would have the force of law. In Victoria the Chamber of Manufactures organized a number of conferences of employers. They decided that there should be a tribunal, headed by a Supreme Court judge, to determine the basic wage, that a conciliation

committee should regulate each industry, and if no agreement was reached the chairman could either act as arbitrator or refer the matter to the Minister for Labour. In September, 1929, meetings were held between New South Wales and Victorian employers in an attempt to reach agreement on a common arbitration policy. However, the meetings were suspended when it appeared that the Commonwealth's proposals might be defeated.

While the State Governments and employers were debating the whole subject of arbitration, the Commonwealth Government was concentrating on the future regulation of the shipping and stevedoring industries. Within two weeks of the Premiers' Conference Latham had outlined his proposals to Cabinet. He suggested that the Arbitration Act should be amended by repealing the strike and lockout penalties and by limiting the jurisdiction of the Federal Court to both disputes and matters in the shipping and stevedoring industries affecting interstate or overseas trade. He also believed that the Commonwealth should provide arbitration machinery that could be utilized voluntarily by both sides in all industries, regardless of whether there was an inter-

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1. Minutes of special committee of Victorian employers convened to consider questions arising out of the system of compulsory arbitration, 19 June, 1929 - 24 July, 1929. (V.E.F.).

2. H.B. Sevier, President, New South Wales Chamber of Manufactures, to Tulloch, 11 Sept. 1929. (M.T.I.A. Box 54).
state dispute in existence.\textsuperscript{1} Cabinet rejected the latter proposal and it also decided that Latham should draft a new Act, instead of amending the Arbitration Act.

By the end of June, 1929, Boniwell had completed the first draft of the Maritime Industries Bill and he and Latham spent much of July checking and revising its numerous clauses. It had two purposes. It completely repealed the 1904-1928 Conciliation and Arbitration Act and the 1920 Industrial Peace Act.\textsuperscript{2} Awards and agreements made under both Acts would continue in force until 30th June, 1930, and the Federal Arbitration Court would continue to interpret and enforce its awards until that date. The second purpose was to regulate labour conditions in the maritime industries, and this was to be achieved through a three-tiered structure. At the base there would be several Maritime Industries Committees. They would consist of representatives of both the employers and the employees, and would be chaired by either a Judge, Conciliation Commissioner or Industrial

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\item Latham. Memorandum for Cabinet: Industrial policy, 10 June, 1929. (C.A.O. A432 29/1945).
\item Latham had always been critical of the Industrial Peace Act. Shortly after the 1928 election he made some notes on the Government's legislative programme for the next three years, and the repeal of the Industrial Peace Act was listed for the September-November, 1929, session. (A.N.L. MS 1009/42).
\end{enumerate}
Registrar. The Chairman would have a casting vote. The determinations of the Committees would be common rules in the branch of the industry concerned and would remain in force for three years. The Committees would not be able to hear verbal evidence. They would be required to consider the probable economic effects of their determinations. Except in the cases of Committees chaired by a Judge, all determinations would be submitted to a Judicial Board of Review, consisting of the Chief Judge and other Judges. The Board would consider the public interest and the state of the economy, and it could disallow or vary determinations. The third tier of the new system would be a Maritime Industries Court, which would have the power to interpret determinations and to deal with offences. The present Judges of the Arbitration Court would all be appointed Judges of the Maritime Industries Court. Finally, the Government could appoint conciliation commissioners and inspectors, whose duties would be confined to the maritime industries. The Bill represented a rather unsatisfactory compromise between Latham's conflicting objectives: to reduce the legalism of arbitration, to promote greater self-regulation in industry, to protect the public interest and to provide continued employment for the four Arbitration Court judges.
The draft Bill was sent to Dethridge and the comments of the Judges were received by Latham on 8th August, 1929. They pointed out that there was a danger of overlapping awards in the stevedoring industry. "Maritime industry" was defined as an industry concerned with the transport of passengers or goods in relation to overseas or interstate trade. The problem was that many waterside workers were employed on both interstate and coastal vessels. The Judges suggested that the Arbitration Court be retained to deal with employees who worked on intrastate vessels and who could not be regulated by the proposed Committees.¹ Latham replied that the Government had given much thought to this problem, but it was determined to make no further use of the arbitration power with all its constitutional limitations. The terms of the Committees' determinations could easily be incorporated in either State awards or voluntary agreements so as to apply to all maritime workers.² The Judges also made several suggestions about the powers and functions of the Judicial Board of Review, most of which were included in the Bill.

Neither the employers nor the unions had any influence on the form of the Maritime Industries Bill. Latham continued his curious habit of first drafting a bill and then inviting suggestions from interested organizations. In this case he did not seek the views of the shipowners and the maritime unions until the end of July, 1929, only three weeks before it was intended to introduce the Bill in Parliament. The shipowners submitted a rather elaborate scheme consisting of District Panels, which would regulate conditions in the six branches of the industry in each port, National Panels and a National Maritime Board, with representatives from each of the six National Panels. The chairman on each Panel would not have a casting vote and, if no agreement was reached, the matter would be referred to an independent arbitrator. No strike or lockout could take place until the relevant National Panel or the Board had considered the dispute. Latham told the shipowners that the scheme was too cumbrous for legislative adoption. He did not intend dealing with strikes and lockouts, as they

were fully covered by the Crimes Act and the Transport Workers Act. In contrast, the maritime unions suggested a very simple scheme. There should be a Council if Industrial Representatives for each branch of the industry, with three representatives from each side and a chairman. A quorum would consist of two thirds of the members and the agreements would be legally binding on all parties. Latham replied that the idea of a quorum was unacceptable, but he believed that the Bill would provide for a system that was in accord with their suggestions. However, when the Bill was made public the unions objected strongly to the idea of Judicial Boards of Review, one official declaring that it would have been easier "to pay the salaries of Dethridge and Co. for life and allow them to enjoy a permanent holiday".

Bruce introduced the Maritime Industries Bill in Parliament on 23rd August, 1929. His arguments were presented in a very logical form: reduced production costs required the co-operation of the parties in industry; co-operation was prevented by the duplication of control in


industry; full industrial powers to the Commonwealth would require another expensive referendum, with almost no chance of success; the States had refused to grant the powers to the Commonwealth; therefore the Commonwealth had no alternative but to vacate the field of industrial relations. Federal arbitration had been a failure, for there had been no conciliation, the unionists had not gained control over their own organizations, and awards had proved to be unenforceable. The Government's proposals would not destroy uniformity of industrial conditions, for there had been no uniformity. Even the A.W.U. had sought State awards if they were more favourable than Federal ones. Instead of judges thrusting awards on to men, there should be round-table conferences, where the union representatives would appreciate the difficulties facing industry, and could modify their claims. Bruce spent little time on all the provisions of the Bill relating to the maritime industries.¹

Ministers were well aware that their past statements that the abolition of the Federal Court "was unthinkable", or "would solve no problems", or "would result in industrial chaos" would be eagerly quoted by the Opposition. Latham sought to forestall such attacks by quoting comments by Bruce

¹ C.P.D. v. 121, 23 Aug. 1929, p.280.
and himself over the previous two years that arbitration could only continue if both sides obeyed the awards. He claimed that circumstances had changed since 1926. The huge strikes, A.C.T.U. resolutions, and the widespread support for the timber workers, showed that there was no longer any loyalty to arbitration, as a principle, in the trade union movement. He supported Bruce's remark that there had always been a lack of uniformity: in five of the States there were more State awards in force than Federal awards. The repeal of the Industrial Peace Act would be a blessing, as it had only functioned when it suited both parties.¹ Page pointed out that the 700,000 men working under State awards did so voluntarily, as they could have easily created interstate disputes if they had wished to come under the Federal Court. He persisted in attributing unemployment largely to the tactics of the labour leaders.²

The leaders of the Labour Party approached the Bill with genuine hostility towards its objectives and growing confidence that it would bring about the downfall of the Government. Theodore declared, quite justifiably, that the Bill involved the most sweeping change in statutory law ever

². Ibid. v. 121, 5 Sept. 1929, p.612.
proposed in the history of the Commonwealth. Due to the caprice of one man, 140 awards and 260 registered agreements were being treated as "scraps of paper". He denied that industrial disturbances were becoming more numerous in Australia, or that they were more serious than in other countries. Admittedly, the overlapping of craft awards caused confusion, but abolishing the Federal Court would not solve the problem.\(^1\) Brennan asserted that the need for federal authority in industry was much greater than in 1901, yet the Government wished to scrap the work of a generation of statesmen.\(^2\) The speeches that attracted the most attention were not those of the Labour Members, whose attacks on the Bill were predictable, but those of about ten "waverers" in the Government Parties. Hughes and Mann had been expelled from the Nationalist Party a few weeks before\(^3\) and their unqualified opposition to the new arbitration policy was soon apparent. Hughes rejected Latham's claim that conditions had changed since 1926. The defects of the arbitration system were not new. The States could not control national industries or deal with major disputes.\(^4\) As the

\[ \text{1. C.P.D. v. 121. 5 Sept. 1929, p.612.} \]
\[ \text{2. Ibid. 28 Aug. 1929, p.367.} \]
\[ \text{3. S.M.H. 23 Aug. 1929, p.11.} \]
\[ \text{4. C.P.D. v. 121, 5 Sept. 1929, p.396.} \]
days passed tension mounted, lobbying increased and there were numerous "counts" of expected supporters and opponents. On 7th September, 1929, the second reading was carried by three votes, with Hughes, Mann, Stewart and Maxwell voting with the Labour Party. Three days later, in the Committee stage, Hughes moved an amendment that the Bill should not be proclaimed until it had been submitted to the people, either at a referendum or at a general election. Marks and McWilliams joined the rebels, Groom abstained from voting, and the amendment was carried by one vote. Hughes and Groom had been among the strongest supporters of Federal arbitration since 1901, but they were also motivated by a common desire for revenge against the upstart Bruce, who had brought their Ministerial careers to an end.¹

The defeat of the Government in Parliament was followed by two days of uncertainty and wild rumours. Then, on 12th September, 1929, Bruce announced that Parliament would be immediately dissolved and a general election would be held."
Ministers insisted throughout the election campaign that the only issue was the industrial policy of the Commonwealth Government. Understandably, most of their ideas and arguments had already been expressed in Parliament or in public speeches following the Premiers' Conference. Federal arbitration had failed, due to the defiance of awards by the unions, the constitutional limitations on the Commonwealth's arbitration power, and the existence within each State of two independent arbitration systems. Federal arbitration had stimulated class hatred and industrial warfare. The overlapping of awards destroyed all finality and all sense of absolute justice. In no other fields of government was there the problem of overlapping jurisdictions. There would be a weakening of respect for all laws if the Federal industrial laws, which could not be enforced, were not repealed. Under the new system the Federal Parliament would be free to deal with national questions without being constantly interrupted by industrial discussions. The States were willing to accept their new obligations and there was no suggestion that all industrial regulation should be abolished. Finally, Ministers consistently denied that the Government's policy would open the way for wage reductions.  

THE STABLE BOY: "Crikey! if I can only dope Arbitration, the favorite, the Bosses' outsider will win hands down."
Despite Bruce's assertion that there was only one issue to be decided, the Government's opponents raised several other questions: the John Brown incident, the Government's financial administration, Page's amusements tax and the difficulties of the film industry, and changes in Public Service arbitration. The main newspapers, with the notable exception of the Age, continued to support the Government, but most pressmen who were covering the campaign claimed that it was clear from the outset that the Government was doomed. The Labour Party was united and well-led, it exploited to the full the widespread grievances against the Government, and it made some rash promises that were to prove embarrassing later, when the depression worsened. In addition, the Government was faced with effective campaigns by Hughes and some of the other rebels, who had large personal followings and who were not opposed by the Labour Party. The election took place on 12th October, 1929, and the Government was overwhelmingly defeated. It lost 18 seats, including those of five Ministers. The most astonishing result was the defeat of Bruce himself by Holloway. On 21st October, 1929, Scullin became Prime Minister
and a few weeks later Latham was elected the Leader of the Opposition.¹

There were several issues in the campaign which aroused strong feelings among large numbers of people, and it is not possible to state with certainty that the Government was defeated on account of its arbitration policy. In fact, the seats that it lost were mostly rural and semi-rural, and in these electorates it is doubtful if arbitration was a major issue.² Nevertheless, Ministers

1. Bruce returned to England shortly after the election. He was re-elected to the Federal Parliament in 1931 and was a Minister in the Lyons Government from 1932 to 1933. He was a High Commissioner in London from 1933 to 1945 and represented Australia in the British War Cabinet. Latham was Leader of the Opposition from 1929 to 1931, when he stood down in favour of Lyons, who had left the Labour Party. Their new party, the United Australia Party, was victorious at the elections in October, 1931, and from 1931 to 1934 Latham was Deputy Prime Minister, Minister for External Affairs, Attorney-General and Minister for Industry. He represented Australia at the 1932 Disarmament and Reparations Conferences and in 1934 was the leader of the Australian Eastern Mission. He did not contest the 1934 elections and in 1935 he was appointed Chief Justice of the High Court, a position he held until 1952. In 1940-41 Latham was Australia's first Minister to Japan. Until well into his eighties Latham held office in numerous organizations: he was Chancellor of the University of Melbourne 1939-41, Vice-President of the Australian Red Cross Society 1944-61, President of the Australian-American Association 1951-61, President of the Australian Association for Cultural Freedom 1954-1961, and President of the Australian Elizabethan Theatre Trust 1954-61.

attributed their defeat to their industrial policy. Bruce said that the reason was clear: the fear of reduced wages and a lower standard of living.¹ Latham agreed with him. He said that the Government could have avoided dealing with the critical economic and industrial situation, but there were four or five men who were determined to break the Government, regardless of the issue.² Ogden and some of the backbenchers believed that the John Brown incident had been the greatest hurdle.³ All subsequent Commonwealth Governments accepted Bruce's verdict and arbitration became one of Australia's settled policies. No other Government was to submit the industrial laws to such detailed scrutiny or was to make such radical proposals to eliminate the inconsistencies and anomalies of the arbitration system.

In fact, never again was a Commonwealth Government to devote so much time, energy and thought to the problems of industrial relations for such a large proportion of its period in office.

CONCLUSION

The 1920s was a period of industrial conflict and the Bruce-Page Government was preoccupied to the point of obsession with trying to reduce this conflict. Yet, despite the priority that it gave to the problem, its role in industrial relations was rather limited. In a few days the High Court was able to do more to mitigate the difficulties caused by overlapping awards than the Government was able to do in its seven years in office. The decisions of the Arbitration Court and the Coal Industry Tribunal had far more influence than the Government's legislation on the working of the arbitration system and, consequently, the ideas and policies of Powers and Hibble, Dethridge and Lukin, were of more practical significance than those of Bruce, Groom or Latham. None of the Government's legislation had the far-reaching effects of Deakin’s Arbitration Act of 1904, Hughes’ Industrial Peace Act of 1920, or Lang’s Forty Four Hours Act of 1925. The State Governments were involved in numerous industrial disputes, while the attention of the Federal Government was concentrated largely on mining and maritime stoppages. Even in some of the large interstate disputes it was the State Governments, the Chambers of Manufactures and the A.C.T.U. that took decisive steps to bring about a settlement.
The role played by the Bruce-Government in industrial relations was occasionally successful, frequently ineffectual, and ultimately disastrous. Its two attempts to transform the structure of arbitration, in 1926 and 1929, were completely rejected by an unsympathetic electorate. Ten Bills relating to industrial regulation and industrial conflict were drafted in less than five years. Eight were passed by Parliament, but only three of them — the 1926 Arbitration Act and the 1928 and 1929 Transport Workers Acts — fulfilled the objectives of the draftsmen. The Government's major contribution to industrial legislation, the 1928 Arbitration Act, despite four years' preparation, discussion and debate, made a very limited impact on the actual operation of the arbitration system. The Government intervened in a relatively small number of disputes and only in the waterside workers' strike of December 1924, the seamen's strike of January 1925, and the marine cooks' and waterside workers' strikes of 1928, did its intervention lead to a settlement of the disputes. The ultimate test was the relationship between policy and power, and while the Government's industrial policies contributed to its great election success in 1925, they were a major factor in its downfall in 1929.
The Government's failure was partly due to the weakness of its policy. In the first place, the transformation of the arbitration system could only be brought about with the support of the majority of the electors. Yet the two policies that always determined the Government's whole approach to industrial relations alienated a large part of the electorate. The Government believed that the Commonwealth and State arbitration systems should be rationalized and harmonized and secondly, that unions should be forced to observe the awards of the Arbitration Court. Neither policy was new, but in the past non-Labour governments had been complacent about the duplication and inconsistencies that arose from the division of the arbitration power, while Labour governments had been complacent about the continuance of strikes. Bruce always believed that the rationalization of the arbitration system would only be achieved when the Commonwealth was supreme in the field of industrial regulation. From February 1925 to May 1929 he ignored or dismissed all appeals to restrict the jurisdiction of the Federal Arbitration Court, thereby antagonizing many of the Nationalist Party's traditional supporters, especially in the smaller States. At the same time, the Government pursued an uncompromising and hard-line policy towards the militant unions and many working class people accepted the charge that it was
a class government intent on destroying the unions. The result was that in both 1926 and 1929 most voters found a reason for rejecting the Government's far-reaching proposals.

Another fundamental weakness also caused a decline in popular support for the Government. Its natural bias in favour of the employers eventually turned into blatant partisanship. It was inevitable that Ministers should equate the interests of the community with the interests of the employers, and that they should hardly ever show any real concern for the interests of the employees. In drafting legislation they sought to alleviate many of the problems of the employers: the overlapping of awards, retrospective awards, the Court's criteria in fixing wages, legal representation in arbitration cases, union militancy, union opposition to piecework, and preference to unionists. Yet some Ministers, particularly Latham, had an intense belief in the ideal of the impartiality of the law. They believed that the 1904 Arbitration Act was essentially a pro-union law which had brought enormous benefits to employees; events since 1916 had shown that the law could be exploited by the unions, and therefore it was necessary to restore the balance by putting through amendments that favoured the employers. Similarly, they considered that their bias in many of the major disputes was based on a detached study of the points
at issue. They genuinely believed that most of the strikes were unjustified and that it was the duty of any government to prevent the complete disruption of communications and the export trade. It is pointless to criticize bias - impartial government is a myth - and the appointments to the Arbitration Court in 1926 showed that the Government did resist pressures from its own side. No government controlled by employers would have appointed Beeby or even Dethridge. But in January 1929 the Government made a serious mistake. The action of the timberworkers might be unjustified but it did not affect interstate or overseas communications and there was therefore no reason why the Government should take action against the strikers. Yet it prosecuted the Union and Holloway. A few weeks later it withdrew the prosecution of John Brown. Its bias in favour of the colliery owners was understandable but its inconsistency was bad politics and a large part of its arbitration policy had to be abandoned.

A genuinely conservative government would have recognized that its role in industrial relations was necessarily limited. Bruce and Latham expressed the conservative view in their speeches, but their frequent legislative and administrative intervention suggested that, like Hughes, they believed that industrial unrest could be mitigated by governmental action. In 1923 and 1924 the Government did nothing,
but from 1925 to 1929 its policy was continually changing as it tried to cope with intensifying industrial conflict and worsening economic depression. 'The greatest question facing us all' was, at different times, the overlapping of awards, the Seamen's Union's challenge to constitutional authority, the 44 hour week, economic recession, high production costs, union defiance of the Arbitration Court, the violence and picketing of strikers, the coal crisis and the need for less regulation and more co-operation in industry. As the question changed, so did the solution: the definition and delimitation of Federal industries, the deregistration of the Seamen's Union, the deportation of its officials, secret ballots, increased strike penalties, the removal of the constitutional limitations on the Commonwealth arbitration power, the revision of the Court's criteria for wage-fixation, the prosecution of striking unions, an industrial peace conference, the protection of non-union labour, payment by results, the repeal of the penal clauses, and finally the dismantling of the Federal arbitration system. Bruce and Latham, who both practised a syllogistic style of reasoning, presented many of these solutions as panaceas and, when they were tried and failed, the authority of the Government suffered. Ministers were extremely vague about the long-term effects of some of their proposals and, with each abrupt change of policy, it
became increasingly obvious that they did not know how to deal with the enormous problems that had arisen.

To some extent the weaknesses and vagueness of the Government's policy resulted from the concentration of government decision-making in the hands of a very small number of men. Industrial regulation and industrial conflict affected the lives of almost the whole population, yet employers, trade unions, political parties, the press and even public servants had very little direct influence on the decisions of Ministers.

As pressure groups both the employers' organizations and the unions were failures. The unions exerted indirect pressure by striking and the mineowners forced Bruce to withdraw the Brown prosecution. But pressure in the form of submissions, deputations and meetings was largely ineffectual. The unions took it for granted that no benefits could be extracted from a Nationalist Government and, instead of seeking concessions, made extreme demands that were inevitably rejected. The relationship between the employers and the

1. The tone of the private discussions and correspondence of the employers, the unions, and of Commonwealth Ministers in 1927-29 was remarkably similar. It was one of fatalism and impotence: each group felt that it must act in a certain way, but that there was no hope of changing the course of events nor of averting the impending economic disaster.
Government was more complex. Consultations were frequent and several of the employers' major demands, voiced over a period of ten or more years, formed an important part of the Government's arbitration policy. Yet the employers' submissions rarely had an immediate effect on legislation. Groom did not seek the views of the employers at all in 1925 and Latham had drafted most of the substantive clauses of the 1927 Arbitration Bill and the 1929 Maritime Industries Bill before he received any submissions. Some decisions, such as Latham's plans to reorganize employment on the waterfront or Bruce's proposal to give the States control of arbitration, were announced before there had been any consultation with interest groups. In several strikes Government officials worked closely with employers in collecting evidence against the strikers, but this co-operation did not affect the Government's overall policies. Latham found employers to be illogical, inconsistent and unrealistic, although they sometimes gave him information that would support the policies that had already been decided on by Cabinet. However, it was only in 1926 that employers decisively influenced the formulation of policy: by dramatically reversing their stand on arbitration they encouraged the Government to seek an amendment of the Constitution.
Other interests and organizations outside the Government were even more ineffectual. The press, and particularly the Argus, naturally influenced Ministers' interpretation of certain events, such as the activities of the seamen in 1925. In 1925 and 1929 it contributed to the widespread feeling that the authority of the Government was being challenged. But there is no evidence that Ministers took much notice of editorials, except at elections and during the referendum campaign. The Nationalist Party organization occasionally criticized the Government, but generally it did its best to keep in step with the Government's changing policies. It was not consulted by Bruce in either May 1926 or May 1929 about the future of the arbitration system. Only occasionally were either Nationalist backbenchers or Labour parliamentarians able to persuade the Government to modify its policies. Many Nationalists believed that the jurisdiction of the Federal Court should not extend to State instrumentalities, but Ministers were always unresponsive on this question. Even after the 1928 election, when his majority was much diminished, Bruce took no steps to ensure the support of the waverers among the backbenchers. In 1926 he needed the backing of the Labour Party and agreed to Charlton's request that the referendum proposals be extended. In 1928 Latham made two important changes to the
Arbitration Bill following criticisms by Labour Members. But the Labour Party was never able to force the Government to mediate in disputes.

Public servants played a minor role in Government policy-formulation. The officials in the Prime Minister's Department made no attempt to question, much less change, the Government's arbitration policies. In the great strikes Ministers frequently consulted Garran but while his views may have influenced the Government's strategy, they did not lead to any changes in its general policy. In 1925 he worked very closely with Bruce, who accepted his arguments concerning the deregistration of the Seamen's Union, the deportation of Walsh and Johnson, and the need for greater penalties for militant unions. After 1925 Garran's power declined. He was no longer Bruce's closest adviser, most of the arbitration bills were drafted by Latham, Knowles and Boniwell, and Latham mainly sought Garran's opinion on legal rather than industrial questions. In fact, Latham often bypassed Garran and dealt directly with Boniwell and Stewart. Stewart and East were the public servants with the greatest knowledge of industrial relations and many of their proposals (and those of Powers and Dethridge) were incorporated in legislation. But Stewart's long submissions were studied carefully only if they accorded with the thinking of Ministers. For instance,
his views carried weight in 1926 but were completely disregarded in 1929. Latham valued East's knowledge of the waterfront, yet he did not consult him before announcing his ideas on the reorganization of waterfront labour. Thus the experts found that working with Bruce and Latham could be very frustrating. On the one occasion that the Government decided to review the whole arbitration system it enlisted two men from outside the Public Service. However, most of the original ideas put forward by Moore and Dyason were rejected and their report was important chiefly because it summarized ideas and facts drawn from a wide range of sources.

It is easy to exaggerate the contrasts in the abilities and achievements of the two Attorneys-General. Groom's achievements in the field of industrial regulation were negligible. He was responsible for the 1925 Arbitration Bill, but none of its clauses can be attributed to his own ideas. He simply did his best to co-ordinate the proposals of Garran, Powers, Moore and Dyason. He did not intervene in the seamen's disputes of 1925; he made hardly any public statements on industrial unrest and it is probable that he opposed the policies of deregistration and deportation adopted by Cabinet. His successor had a far greater knowledge
of the law, he worked tirelessly to familiarize himself with every weakness in arbitration law and all aspects of large disputes, he questioned the basic premises of the Government's policies and presented his conclusions to Cabinet in a disconcertingly logical way, he personally drafted much of the Government's industrial legislation, he handled most of the negotiations with employers and unions, he was the most prominent Government figure in every industrial dispute, and he made hundreds of speeches to Parliament and the public. Within a short time most of the community was aware of this austere, inflexible, legalistic and self-righteous man and it was natural that employers and union leaders should regard him as one of the few strong Ministers and the man who determined the Government's industrial policy. Latham was indeed responsible for many of the provisions contained in the arbitration bills and for the Government's role in several disputes. Nevertheless, some of his colleagues believed that he was too inexperienced and was too ready to return to first principles and to advocate drastic reversals of policy. In 1927 they could not accept his arguments that the Federal arbitration power should be severely limited, that arbitration awards should be related far more closely to productivity and the tariff, and that the strike and lockout penalties should be repealed. In 1929 Latham was again thwarted when
he opposed both the prosecution of the Timber Workers Union and the withdrawal of the John Brown prosecution. Some of the most significant decisions were therefore taken by either the Prime Minister or the Cabinet against the advice of the Attorney-General.

The role of Cabinet was negative: it vetoed Latham's most original proposals. The role of the Prime Minister was positive and dominant. Bruce left most of the problems concerning industrial regulation to Latham, but he took a deep interest in industrial conflict and time and again he took the initiative in this area. He alone decided on the action that ended the maritime strikes of November 1924 – January 1925 and it was he who determined the Government's policy in the seamen's strikes later in 1925. Without consulting Latham he decided to call an Industrial Peace Conference in 1928 and, despite Latham's protests, he resolved to withdraw the prosecution of Brown. Above all, it was Bruce who, in December 1925, took the first steps to seek greater industrial powers for the Commonwealth and it was he who, in May 1929, suggested to his colleagues that the Federal arbitration system should be abandoned. It was to be expected that the Prime Minister would play a major role in these events but Bruce's propensity to act alone, to ignore the views of his closest colleagues, and to make the
most hurried decisions, created many problems for the Government. The frequent and confusing changes in emphasis in the Government's arbitration policy was largely due to the fact that Bruce did not obtain sufficient information, ideas and advice from his Ministers and officials.

Another government might have been more efficient in its decision-making and might have had more realistic policies. But no government could have overcome the intense conflict that took place in the transport, mining, timber and building industries between 1928 and 1930. In 1925 Bruce's Government did not really know what to do to bring to an end the job control of the Seamen's Union. It feared that its authority was being challenged, it made a few dramatic gestures, the electors applauded, and meanwhile the challenge of the seamen collapsed. The stoppages of 1928-29 were of a different character. Every union felt that its interests were involved, thousands of strikers knew that defeat would mean unemployment and hunger, and employers feared that any concessions would drive them out of business. It was an elemental struggle in which laws and prosecutions were irritants that had no bearing on the final outcome. Latham realized this at an early stage, but the other Ministers again believed that their authority was at stake and that they had to be seen to be doing something. Paradoxically,
their actions weakened their authority and they eventually
gave up. They had always declared that governments could
not solve Australia's economic problems. They now made it
clear that they could do nothing to end two of the largest
stoppages that Australia had known. Virtually paralyzed,
the Bruce-Page Government came to an end.
A Note on the Unpublished Sources

The official files of Commonwealth Government departments, and especially those of the Attorney-General's Department, were the most important single source used in this thesis. However, these files were far less helpful than I had expected. Most of the files created by the Prime Minister's Department in the 1920s appear to have been preserved. But the main series of Attorney-General's Department correspondence files (A432) only commences in 1929. The reason for this is that in 1929 the Department decided to destroy most of its files and only a few hundred files of the 1901-1929 period have survived. This terrible decision means that it would be almost impossible to write a history of one of the original Commonwealth departments, or to make a study of the official career of Sir Robert Garran. I was fortunate in that the files on some of the great strikes of the 1920s can be found in another series (A467). But for many major events, such as the Walsh-Johnson prosecution and the 1926 referendum, I could discover almost nothing in the official files. Even in 1929 there are disturbing gaps. In Latham's papers there is a copy of the John Brown prosecution file, which was just as well as I never found the original
file. (In 1972 there was a year's delay between requesting and receiving a file, which made any systematic search for a particular file impossible.)

Even when files did exist, the amount of information that they contained was often disappointing. The lawyers in the Attorney-General's Department were surprising unmethodical and often failed to sign or date memoranda and notes. The files are very good when they deal with the interpretation of laws, with investigations for breaches of laws, or with litigation. But they tell very little about policy-making. This was partly because most public servants of the 1920s took it for granted that their task was to administer, not initiate, policy. But it was also due to the well-established fact that most important decisions of Ministers and their advisers are made during or as a result of conversations of which no record is ever kept. This was especially true of the 1920s, when departments were very small and unbureaucratic, but it is still the case with 'high policy' today. (Although there is now a Cabinet Secretary, it is understood that he keeps a record of decisions, not of the actual discussion and arguments put forward by different Ministers.)

To some extent I overcame the limitations of official files by making use of the extensive records of several employer and employee organizations and the private
papers of five of Bruce's Ministers. I learnt more about the reasons behind the 1926 referenda proposals from the archives of the Metal Trades Industry Association and more about the Government's 1929 waterfront policy from the archives of the Waterside Workers Federation than I did from the Government's own records. I was also fortunate in that throughout their lives the two Attorneys-General, Groom and Latham, as well as Page, carefully preserved their papers and ultimately deposited them in the National Library. In contrast, it seems that Bruce did not keep many papers from the 1920s. However, it matters little, as his papers are now in the Commonwealth Archives Office and, although Bruce directed that they were to be opened in 1968, the Archives has decided that they should remain absolutely closed. It is rather curious that, on the question of access to historical records, Australian politicians are far more liberal than Australian archivists. Consequently, I was very relieved that the papers of the other Ministers were entrusted to the National Library, which has carried out their 'open access' directions, as otherwise I would have had to abandon the thesis.
I Official Records

(i) Departmental Files

Files held in the Commonwealth Archives Office, Canberra,

Attorney-General's Department

Appendices to Moore-Dyason Report. CP 103/11
Bill files. A2863
Correspondence files. A432
Special files. A467

Prime Minister's Department

Correspondence files. A458
Correspondence files, secret and confidential. A1606
General correspondence files. A461
Notes of deputations. CP362/2
Proceedings of deputations. CP317/5

Files held in the Commonwealth Archives Office, Melbourne.

Attorney-General's Department

Crown Solicitor's Office, Melbourne
Common Law files. MP401/1

(ii) Official Publications

Commonwealth Arbitration Reports. 1923-1929.
Commonwealth of Australia Yearbook. 1923-1931.
Commonwealth Parliamentary Debates. 1903-1929.
Royal Commission on the Coal Industry. Reports. 1929, 1930.
Tariff Board. Annual report. 1924-1929.
II Private Papers and Records

(i) Personal Papers

All the collections are held in the National Library of Australia.

Abbott, C.L. Aubrey. Papers. MS 1674
Cook, J.N. Hume. Autobiography. MS 601
Garran, Sir Robert. Papers. MS 2001
Groom, Sir Littleton E. Papers. MS 236
Higgins, Henry B. Papers. MS 1057
Holloway, Edward J. Autobiography. MS 2098
Hughes, William M. Papers. MS 1538
Latham, Sir John G. Papers. MS 1009
Page, Sir Earle C.G. Papers. MS 1633
Pearce, Sir George F. Papers. MS 213
Walsh, Thomas. Papers. MS 2123

(ii) Records of Organizations

Central Council of Employers of Australia
Records held by the Australian Council of Employers' Federations, Melbourne.
Minutes of annual conference, 1924-1928.
Reports of executive, 1924-27.

Victorian Employers' Federation
Records held by the Victorian Employers' Federation, Melbourne.
Minutes of council, 1924-30.
Minutes of executive, 1924-29.

Associated Chambers of Manufactures of Australia
Records held by the Associated Chambers of Manufactures of Australia, Canberra.
Minutes of annual meetings, 1922-29.

New South Wales Chamber of Manufactures
Records held by the New South Wales Chamber of Manufactures, Sydney.
Minutes of council, 1924-29.
Minutes of executive, 1927-29.
Records held by Wollongong University College.
Correspondence files, 1924-29
Reports of Industrial Officer, 1926-29.

Victorian Chamber of Manufactures
Records held by Victorian Chamber of Manufactures, Melbourne.
Minutes of council, 1925-29.
Metal Trades Employers Association of New South Wales
Records held by the Metal Trades Industry Association of Australia, North Sydney.
Secretary's annual report, 1925-30.
Minutes of council, 1925-29.
Correspondence files, 1923-29.
Minutes of conference with Minister for Labour and Industry, June-July, 1929.

Commonwealth Steamship Owners' Federation
Records held by Commonwealth Steamship Owners' Association, Melbourne.
Secretary's annual report, 1924-29.
Minutes of council, 1924-29.

New South Wales Trades and Labour Council
Records held by Australian National University Archives (M17).
Minutes of executive, 1925-29.
Minutes of council, 1925-29.

Melbourne Trades Hall Council
Records held by Australian National University Archives (M14).
Minutes of council, 1924-29.

Workers' Industrial Union of Australia (Mining Department)
Records held by Australian National University Archives (E165).
Minutes of council, 1924-29.
Proceedings of second Miners' Convention, June 1928.

Federated Seamen's Union of Australasia
Records held by National Library of Australia (MS 2123).
Minutes of committee of management, Jan.-March 1925.

Waterside Workers Federation of Australia
Records held by Australian National University Archives (T62).
Minutes of committee of management, April-May 1929.
Correspondence files, 1924-29.
Circulars sent to all branches, 1925-29.
III Newspapers and Periodicals

Age, 1925-29.
Argus, 1914-29.
Australasian Insurance and Banking Record, 1928-29.
Australian Manufacturer, 1925-29.
Australian National Review, 1925-29.
Canberra Times, 1928-29.
Commerce, 1925-29.
Employers' Review, 1928-29.
Herald (Melbourne), 1925-29.
Industrial Australian and Mining Standard, 1925-29.
Labor Call, 1925-29.
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Pastoral Review, 1928-29.
Round Table, 1923-30.
Sun (Sydney), 1925-29.
Sydney Morning Herald, 1923-29
Victorian Chamber of Manufactures. Gazette, 1924-29.
Worker, 1925-26.

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Ross, B.D. "Attempts to establish a common rule in interstate industry". *Australian Law Journal*, v.4 (1930) pp.73-76.


V Theses