TRADE UNION AND STATE
IN AUSTRALIA

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A Thesis submitted for the degree of
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Australian National University

May 1958
This Thesis is wholly my own original work.

[Signature]
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## PART I

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# ABBREVIATIONS

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<td>C'wealth</td>
<td>Commonwealth</td>
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<tr>
<td>N.S.W.</td>
<td>New South Wales</td>
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<td>Vic.</td>
<td>Victoria</td>
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<tr>
<td>Qd.</td>
<td>Queensland</td>
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<td>S.A.</td>
<td>South Australia</td>
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<tr>
<td>W.A.</td>
<td>Western Australia</td>
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<td>Tas.</td>
<td>Tasmania</td>
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## Statutes

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<tr>
<td>Lab. &amp; Ind.</td>
<td>(Vic.) Labour and Industry Act 1953.</td>
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<td>Ind. Arb.</td>
<td>(W.A.) Industrial Arbitration Act 1912-52</td>
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<td>Wages Bds.</td>
<td>(Tas.) Wages Boards Act 1920-51.</td>
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## Organizations

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<tr>
<td>A.A.T.U.C.</td>
<td>All Australian Trade Union Congress</td>
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<td>A.C.T.U.</td>
<td>Australian Council of Trade Unions</td>
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<tr>
<td>A.E.U.</td>
<td>Amalgamated Engineering Union</td>
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<tr>
<td>A.L.D.C. Committee</td>
<td>Australian Labor Day Celebrations Committee</td>
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<tr>
<td>A.L.P.</td>
<td>Australian Labor Party</td>
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<tr>
<td>A.R.U.</td>
<td>Australian Railways Union</td>
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<td>A.W.U.</td>
<td>Australian Workers Union</td>
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<td>B.W.I.U.</td>
<td>Building Workers Industrial Union</td>
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<tr>
<td>C.B.U.</td>
<td>One Big Union</td>
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<tr>
<td>P.L.P.</td>
<td>Parliamentary Labor Party</td>
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<tr>
<td>Q.C.E.</td>
<td>Queensland Central Executive (A.L.P.)</td>
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<tr>
<td>T.H.C.</td>
<td>Trades Hall Council</td>
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<tr>
<td>T. &amp; L.C.</td>
<td>Trades and Labor Council</td>
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<tr>
<td>T.U.I.C.</td>
<td>Trade Unions Industrial Council</td>
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<tr>
<td>W.W.F.</td>
<td>Waterside Workers Federation</td>
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## Sources

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<td>Appeal Cases (England)</td>
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<td>All E.R.</td>
<td>All England Law Reports</td>
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<td>A.R. (N.S.W.)</td>
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<td>C.A.R.</td>
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Ch.D.(or Ch.) Chancery Division Law Reports (England)
C.L.R. Commonwealth Law Reports
C.P.S.A.R. Commonwealth Public Service Arbitration Reports
C.R. Central Reference Board (Coal Industry Tribunal Reports)
G.G. Government Gazette
G.L.R. Gazette Law Reports (New Zealand)
I.G. (N.S.W.) New South Wales Industrial Gazette
I.I.B. Industrial Information Bulletin (Commonwealth)
K.B. King's Bench Division Law Reports (England)
L.J.K.B. Law Journal Reports, King's Bench (England)
N.Z.L.R. New Zealand Law Reports
Parl. Debs. Parliamentary Debates
Q.I.G. Queensland Industrial Gazette
Q.J.P. Queensland Justice of the Peace (Journal)
Q.J.P.R. Queensland Justice of the Peace Reports
Q.S.R. Queensland State Reports
S.A.I.R. South Australian Industrial Reports
S.A.S.R. South Australian State Reports
S.C. Session Cases (Scotland)
S.R. Statutory Rules (Commonwealth)
S.R. (N.S.W.) New South Wales State Reports
V.L.R. Victorian Law Reports
W.A.A.R. Western Australian Arbitration Reports
W.A.I.G. Western Australian Industrial Gazette
W.A.L.R. Western Australian Law Reports

Note: The abbreviated legal method of reference is used throughout for case citations, and also for references to parliamentary debates, papers and articles. Thus: 36 C.A.R. 451 stands for Commonwealth Arbitration Reports, volume 36, page 451. The titles of cases are cited only where a quotation is used or where the case is considered to be of sufficient importance in the context. All statutes, other than those noted above, are cited in full in the text.
This Thesis is concerned with the present relationship between trade unions and the state in Australia. It is argued that the relationship can be understood adequately only in terms of the relations existing in each of three areas - legal, administrative and party-political. The first involves the law affecting trade unions; the second, the unions' role in government administration; and the third, their role within a political party with which they are closely linked. An analysis of the relations established in each of these areas is the main purpose of the Thesis.
The question of the relationship between trade unions and the state was discussed at some length by W. Milne-Bailey in his Trade Unions and the State, published in 1934. At the time Milne-Bailey's book appeared, the state-trade union relationship in Australia probably represented among political democracies one extreme of the spectrum on which the situation in the United Kingdom, with which he was primarily concerned, was the other. Simply stated, the most obvious point of contrast was between an Australian trade union movement subject to a high degree of legal regulation and a British trade union movement comparatively free from such regulation. This is no less true today, and gives the Australian situation a significance in its own right. Apart from this consideration, however, there are two more general grounds justifying further study of the state-trade union relationship. In the first place, Milne-Bailey omitted to consider a crucial element in the relationship as it exists in both Australia and the United Kingdom - the effect of close ties between the trade unions and a single political party. In the second place, since he wrote there have been many developments which have fundamentally affected trade unionism's standing in relation to the state.

This Thesis attempts to analyse the nature of the relationship between trade unions and the state as it exists in Australia today. More broadly, it aims at making a contribution to the empirical data necessary for an understanding of the pluralistic character of the modern state as a group of groups.

The Thesis is divided into five Parts. Part I is concerned with problems of definition and with establishing the background to the Australian situation, including the nature and development of trade union
organization and the courses of action open to Australian trade unions for
the achievement of their aims. In the succeeding three Parts, which form
the body of the Thesis, the relationship between the state and trade
unions is discussed in terms of each of its three major aspects. Part II
thus deals with the legal framework, Part III with the administrative
framework, and Part IV with the party-political framework, these terms
being defined in Chapter 1. The total relationship, it is contended, can
be understood only in terms of the nature of the relations established
within each of these three areas. Part V contains a brief conclusion. A
number of tables containing data referred to in the text are appended,
together with eight appendices summarizing legal provisions which are
also referred to in the text. With a few indicated exceptions, no material
is included that has appeared since the end of 1957.

The Thesis does not attempt to deal more than incidentally with the
future trend of the state-trade union relationship. Nor does it consider
the question of trade union (or state) 'responsibility', the special
problems facing trade unions in state-owned industries, or a number of
questions relating to the effect of the relationship on the activities
and internal organization of the unions. Finally, no attempt is made to
set out a view of the relationship that should exist; but it is hoped that
the Thesis may provide an empirical basis for discussion of this problem.

--- oOo ---

A great deal of the material contained in the Thesis was obtained
through interviews. Among those interviewed were leading officials of the
Federal and all State central trade union organizations, the Federal
Executive and all State branches of the Australian Labor Party, and the Federal and all State government departments primarily concerned with labour matters. In addition, many officials of individual unions were interviewed, a large proportion of them in the course of the Congress held by the Australian Council of Trade Unions in September 1957. In all cases the interviews were conducted on the understanding that information given or views expressed would not be publicly attributed to the person concerned. Thus it is not possible to refer to the source of some factual material, but wherever possible this was checked - in the absence of available documentary support - over a number of interviews with different persons. For the same reason, views expressed in the course of interviews and quoted in the text of the Thesis cannot be attributed to specific persons. In some cases, items of information were given on the understanding that they would not be disclosed, and these have influenced opinions advanced in the Thesis.

The material obtained through interviews and through the access given to the minute books of central union organizations, and other trade union and Labor Party documents, was invaluable for the present work. The ready cooperation extended without exception by trade union, Labor Party and government officials, to one who is neither a unionist, a Party member nor a public servant, is deeply appreciated. It is not possible to name all those to whom gratitude is owing in this respect. I can only thank, as their representatives, Mr A.E. Monk and Mr H.J. Souter, President and Secretary, respectively, of the Australian Council of Trade Unions;

1 The spelling of 'Labor' is that adopted by the Party; it is also preferred by Trades and Labor Councils. It is used here in all titles where it is customary; otherwise, as in the case of 'labour movement' or 'Minister for Labour', the traditional English form is used.
Mr F.E. Chamberlain and Mr J. Schmella, Federal President and Secretary, respectively, of the Australian Labor Party; and Mr H.A. Bland, Secretary to the Commonwealth Department of Labour and National Service.

I am indebted to Professor L.C. Webb for advice throughout the course of the work, to Dr D.W. Rawson for his comments on the final draft, and to Professor G. Sawer for help in relation to a number of the legal problems involved in Part II.

The work was made possible by a Research Scholarship provided by the Australian National University.
PART I

INTRODUCTORY
CHAPTER 1

DEFINITION

The relationship between British trade unions and the state, it is claimed, has passed through three phases, 'hostility, toleration and finally, partnership'. The Australian trade union movement has been viewed as now being 'on the brink of the transition from the second to the third phase' of 'co-operation or partnership'. The 'phase' approach may be convenient and useful in broad terms, but it must also assume a simplicity that does not in fact characterize the phenomena dealt with. For instance, in the absence of a precise definition of 'co-operation or partnership', it is arguable that because of their activities within the various systems of industrial arbitration, Australian trade unions have cooperated with the state since the early years of this century. Similarly, Labor governments have been commonplace in Australia since before the first world war, and the unions have usually been eager to cooperate with them. Moreover, if cooperation is equated with trade union participation in bodies such as the Australian Ministry of Labour Advisory Council, set up by a non-Labor government, does the recent withdrawal of the union representatives from that body necessarily signify a regression to the second phase?

A more fruitful approach to the question of the total relationship between trade unions and the state is to examine the separate elements composing that relationship, rather than attempting to fit it into any particular category. The initial problem in a study of these elements is

1 Allan Flanders, Trade Unions, 149.
2 E.L. Wheelwright, 'Trade Unions and the State' (June 1953), 25 Australian Quarterly 26.
3 See Chapter 5 below.
one of definition; not, as in the 'phase' approach, of the various types of relationship which may exist, but of the parties to the relationship and the areas in which there is inter-action between them.

--- ooo ---

It is difficult to give a completely satisfactory definition of the term 'trade union'. The Webbs suggested that it meant 'a continuous association of wage-earners for the purpose of maintaining or improving the conditions of their working lives'. To the student of modern trade unionism, however, this is open to the initial objection that it excludes the large body of organized salaried employees, and for this reason wider definitions have been formulated - though there are difficulties even in their application.

Trade unionism in the more inclusive sense than that implied by the Webbs can be said to be legally defined in Australia because registration under appropriate statutes is almost universal in the case of Australian employees' organizations, though this is not so in the United Kingdom. But definition on these lines is inadequate where the trade union is something more than an industrial bargaining unit - that is, where its purposes extend beyond those specified in the Webbs' definition. It is from

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5 See J.D.M. Bell, 'Trade Unions', in The System of Industrial Relations in Great Britain (Flanders & Clegg, eds.), 128-130, for a discussion on this question.
6 The Acts concerned are chiefly industrial arbitration measures, under which the trade union, as it is usually known and statutorily defined by English and Australian trade union Acts, is variously entitled 'industrial union' (N.S.W., Qd. and W.A.), 'organization' (C'wealth) and 'association' (S.A.). There is in Australia, as in the U.K., no statutory compulsion for trade unions to register. It may be noted that a union can be unregistered within the State in which it operates, and thus constitute an unregistered union where the State's jurisdiction is concerned, but be registered in the C'wealth jurisdiction as a branch of a Federal union.
7 See B.C. Roberts, Trade Union Government and Administration in Great Britain, 18.
this standpoint that trade unionism is commonly regarded; and it is in this
sense that trade unionism, viewed in itself as a 'movement' or as part of a
wider 'labour movement', is of greatest social and political significance.
Here the term 'trade union' is given a more restricted application while the
purposes of the organizations it denotes are broadened.

To most of us ['trade union'] denotes an essentially working-class,
or even manual working-class organization, representing the claims of
the employed against the employers in matters of wages and working
conditions, but somehow not restricted in its outlook and activities
to these things, being, indeed, generally associated with socialist
ideas and movements in both industry and politics.8

This 'common-sense understanding' of the nature of the trade union
fastens on the characteristics that give trade unionism, in the United
Kingdom and Australia at least, an importance beyond the comparatively
narrow field of industrial relations. It recognizes, in short, that to a
large extent trade unions today, as in their origins, are not only industrial
bargaining units but are also 'organizations of the underprivileged in
society ... vehicles of social protest, a brotherhood'.9 They are thus
typified as organizations whose members have a community of interest,
including but not confined to economic interests, which is based on the
recognition by themselves and others that they are members of a single social
class, the working-class.10 In so far as common membership of a single social
class is the criterion of trade union organization, a number of employees'
associations registered under Australian industrial legislation are excluded.
These are primarily associations of salaried or supervisory employees. They

8 Bell, op. cit., 128.
9 Ibid., 130.
10 See D.W.Rawson, 'The Frontiers of Trade Unionism' (1956), 1 Australian
Journal of Politics and History, 199-201, for a fuller discussion of
this point.
cannot correspond in membership to a single social class because their members tend to regard themselves as part of a class, the middle-class, that includes not only employees but also employers and self-employed. The members of associations of this nature are unlikely to see in their associations an appropriate means of achieving objectives beyond their interests as employees. Although the role of 'industry's opposition' is fundamental to all employees' organization, such organization is not invariably characterized by the assumption of broader social and political aims extending beyond the relations of employees with their particular employers.

This distinction is vital. But it is easier to draw in conception than in practice. There is a possible line of division according to affiliation with central union organizations, with the Labor Party, or in the existence of some permanent and formal ties with other unions, on the view that such ties signify recognition of common interests outside particular industries and in this way separate trade unions as distinctive working-class organizations from 'employees' associations'. It has been estimated on this basis that about two-thirds of the registered employees' organizations in Australia, containing nine-tenths of organized employees, could be regarded as trade unions. This approach has become less useful with the formation of an Australian Council of Salaried and Professional Associations, which promises to be an active body but with the limited aims characteristic of 'employees' associations'. Nor is a precise distinction possible in terms of white-collar and other organizations, because, apart from the mixed membership of some, there are a number of white-collar

11 H.A. Clegg, Industrial Democracy and Nationalization, 22.
13 Even before this there existed a Salaried Employees Consultative Council in N.S.W. and a Council of White Collar Workers in Vic., but they do not appear to have been very active.
organizations with a long record of affiliation with central union bodies and the Labor Party.

However, despite these difficulties, it can be stated safely that manual workers make up the great bulk of the total membership of associations legally defined as trade unions by statutory registration. Moreover, their unions not only most commonly use unionism's characteristic weapon, the strike, but politically as well as industrially constitute the hard core of labour organization, and exhibit a class sentiment that conditions their approach to general social and political questions. It is beyond this core that the outlines become blurred and categorization difficult. 14

For present purposes it is enough to note that, even if the division cannot be determined precisely, there are two kinds of employees' organizations - one including organizations functioning as little more than economic interest groups, the other including those with broader interests and aims which may be regarded, and regard themselves, as part of a greater trade union movement. At times the distinction must be ignored because of its difficulty in application, as in the discussion on the development of union membership and organization, the available figures covering all registered organizations. 15 At times the distinction is not important, as is the case in most of the discussion below on industrial law - though here it is significant in relation to the effect of the law concerning

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14 In the last twenty years it is apparent that white-collar employees have increased their share of the total trade union membership in Australia, though by no means enough to shake the dominance of manual workers in this respect: see Brian Fitzpatrick, The Australian Commonwealth, 69-70, for an analysis of available figures on this point.

15 The figures used by Fitzpatrick (see note 14 above), while sufficient for his purposes, are not detailed enough to allow an accurate distinction to be made between manual and white-collar employees in the total membership of Australian employees' organizations.
strikes. Recognition of the distinction is vital in the examination of the administrative and, especially, the party-political frameworks.

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A definition of the state sufficient for the purposes of the present work does not need to be philosophically exhaustive but merely relevant to the context. The following statement is, therefore, primarily aimed at setting out the assumptions which are to be taken as underlying the notion of the state for the limited purposes of this study, rather than presenting an argument for their general validity. This involves answering two questions.

In the first place, there is the question of what the term 'state' stands for here. The state is a group of people. It is, further, an organized group in the sense that some one or body of its members are regarded in some way as speaking and acting for - that is, making decisions binding on - the group as a whole. In the modern state this body of decision-making members is found in certain recognizable institutions. The institutions of government, as they may be called, are the visible manifestation of the organized group, and in one form or another are essential to the group's continued existence. The men in these institutions take the final decisions on particular matters affecting the group at a given time. It is natural that the term 'state' should commonly be held to cover not only the group represented by the institutions of government, but also the institutions themselves. Moreover, it is only by using the term in this way that an empirical study like the present can usefully be carried out.

In the second place, there is the question of the distinction between the state and other organized groups found in modern society, since we are
concerned with the relationship between the state (as a group) and one other type of organized group, the trade union. The feature of the state as an organized group is equally a characteristic of these other groups. The state's basic structure, then, does not set it apart. Nor, as Max Weber has pointed out, is it sociologically distinguishable in terms of ends, because there is no task which the state cannot find competence to undertake and no task which at all times and in all places can be held exclusive to the state. The distinctive mark of the modern state is found in the means available to it - the state's claim to 'the monopoly of the legitimate use of physical force within a given territory'. The focus here is monopoly of physical force, but the reference to territory implies a further significant if less distinctive feature. The qualification for membership of the state is territorial. As a result, membership is not a matter of individual choice. This compulsory element accompanying membership of a state-group is not strictly speaking a distinguishing characteristic, but it is important because it means that the members of all other organized groups operating within a state's territory are at the same time members of the state-group, and are subject to decisions emanating from its institutions of government.

The view of the state set down here has two consequences of importance. In the first place, the Austinian conception of legal sovereignty is

16 From Max Weber: Essays in Sociology (Gerth & Mills, eds.), 78. It is to be noted that this distinction is restricted to the modern state. As Weber indicated elsewhere, physical force has not always been a successfully-claimed monopoly of the state: see Max Weber on Law in Economy and Society (Rheinstein, ed.), 17.

17 The compulsory element is not invariably peculiar to membership of the modern state; although it is more rarely and less uniformly associated with other organized groups, particularly in relation to the sanctions available for its enforcement.
irrelevant, and questions concerning the nature or seat of sovereignty are thus avoided. It follows that in the case of a federal state, like Australia, the vexed question of the unity or divisibility of sovereignty does not arise. All that needs to be recognized is that the state power is exercised by and through the institutions of government (merely more numerous than in the case of a unitary state) found at both Federal and State levels, each set of institutions having exclusive use of the state power in their respective constitutionally-defined territories and areas of activity, and none (in the first instance at least) being dependent on any of the others for the delegation of that power.

In the second place, the Kelsenian conception of the state as law is also irrelevant. Law here is no more than the announced body of norms of conduct to which all members of the state-group are expected to conform. The law of a given state spells out the formal terms of the relationships of members among themselves, and between each member or group of members and the institutions of government. Not all norms are law, however, even though they may be generally accepted by members as socially valid rules of conduct. They take on the status of law only after they have been approved by competent persons in the institutions of government, and after the process of approval has followed recognized procedures. Further, the power to make law includes the power to alter existing law. Law in these terms is neither autonomous nor immutable.

Up to this point the description of state-law is equally applicable to the law of other organized groups. In both cases, too, norms embodied as law are backed by certain defined or implicit sanctions, the exercise of which is vested in each group's institutions of government. However, state-law is distinguished by the fact that it can be enforced by the sanction peculiar to
the state, physical force. But obedience to the law is not invariable. Men formally bound to obey may find it preferable, and consider it possible, to ignore legal obligations at times. On the other hand, those in the institutions of government with the power and formal duty to enforce the law may also find it expedient at times to decline full exercise of their power. Law is not self-enforcing.

While the law sets out the terms on which the state power will be used at a given time, both the law itself and its administration may be altered, as we have seen, by appropriate decision within the institutions of government. For this reason, the relationship between the state and an individual member or group of members is not exclusively a function of the terms of existing law. Equally important is the ability of the individual or group to influence the making, alteration and administration of the law—in other words, their ability to influence the decisions and actions of the men operating the institutions of government. A relationship of this kind is therefore determined not only by the legal framework setting out its formal terms, but also by the ways in which and the extent to which the individual or group can at a given time influence, or hope to influence, decisions on law-making and administration at a point where those decisions are formulated and made within the institutions of government. Since the categories of both law-making and law-administration are reducible, in terms of our definition of the state, to the single category of the exercise or administration of the state power, this aspect of the relationship may be designated the administrative framework.

The legal and administrative frameworks represent the minimal field for study of the relationship between the state and another organized group. In relation to certain states and certain groups, however, the field clearly
requires extension. This is so in the case of the Australian state and the Australian trade union movement. The men who directly control the institutions of government at the highest level in Australia arrive at this position by means of a process that is a combination of popular selection from the state-group as a whole and restricted selection within those organized groups we know as political parties. The latter stage, as the selection process operates at present, is almost as invariable as the former.

Selection within a party is usually conditional on the acceptance by the member concerned of the party's policy - that is, the way in which the party proposes that the state power should be used. As a result, where the men selected within a party are also selected within the state-group as a whole, the way in which they exercise the state power can be expected, broadly speaking, to reflect the policy of the party. Thus influence brought to bear through the party may have its product in the policies followed by men who have graduated through the party to key positions in the institutions of government. Influence in this context is, of course, aimed at achieving the same sort of results as influence exerted within the administrative framework. But it is distinguished by the fact that it has at once greater limitations (it can hope to be effective only when the party's nominees control the institutions of government) and greater potentialities (it may be backed by the threat of sanctions available to the party as an organized group against its member-nominees). Thus a third dimension, the party-political framework, is added to the relationship between the state and other organized groups, a dimension that is of particular significance in the case of Australian trade unions because of their long and close association with one of the great Australian political parties.
Union recognition that the state is ultimately unchallengeable came in Australia with the defeat of the great strikes of the 1890's. This provided the lesson, later given British trade unions by the failure of the 1926 General Strike, that at the point where the full weight of the state is thrown against striking unions, they must inevitably suffer defeat - unless they are prepared to embark on outright revolution.

Not that all Australian trade union leaders since the 1890's have abandoned the notion that strikes can succeed even against the opposition of a determined government. The later spectacular failures of direct action in these circumstances, as in the transport strike of 1917 and the 1949 coal miners' strike, were attributed by these leaders less to the weight of the state power than to the unions' lack of organization and unity. Thus the Secretary of the Trades and Labor Council of Queensland, reporting on the decision of the Australian Council of Trade Unions (A.C.T.U.) to end the national waterfront strike of 1956, could assert that the A.C.T.U. Interstate Executive was 'in a commanding position and should have been prepared to challenge the Government and the shipowners, in order to break through on the margins issue'.

However, a truer reflection of general union opinion was given at the A.C.T.U. Congress of 1957 in response to a proposal from the Amalgamated Postal Workers Union that the 'full weight' of the A.C.T.U. should be thrown behind the union in its long-standing wages dispute with the Federal Government. The A.C.T.U. President spoke against the proposal, pointing out

1 Minutes, Trades & Labor Council of Qld., 22/2/1956.
that if the trade union movement, through the A.C.T.U., was drawn into a strike called by the union, then it would be involved in a head-on collision with the Government from which the movement would probably take twenty years to recover. The President's point was accepted by Congress. This attitude has also been implicit in the A.C.T.U.'s approach to waterfront strikes in particular during recent years. But the relationship between the state and the trade unions has more positive features than those stemming from the realization that the unions cannot fight the state.

The circumstances of Australia's foundation as a British colony from the beginning led to a dependence on state action in many fields which, in the United Kingdom, were regarded as properly the province of private effort. In Australia, therefore, there has long been a climate of opinion in which state intervention is readily accepted and is often expected. From the early stages the state was involved directly in industry as an employer on a large scale, and the scope and variety of public enterprise has gradually increased. Moreover, increasing emphasis has been placed on the state's social welfare activities, and on its responsibility for economic planning. These developments are not merely a reason for the tendency of Australian unions to look to the state for help in achieving their aims; they are to a large extent a result of that tendency, which early found expression in the unions' entry into party-politics through the medium of the Labor Party.

The state's growing activity along these lines alone justifies a national trade union leader's remark that the 'three great bodies concerned with industry in Australia are Governments, employers' organizations and

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2 W.K. Hancock, *Australia*, 68-73.
3 At June 1957 nearly 27 per cent. of the total civilian work force were employed by government authorities: *Quarterly Summary of Australian Statistics*, No. 228, 93.
trade unions'. But there is more to it than that. The state in Australia has played a major part in the regulation of industrial relations generally for more than fifty years. Its concern with private industry, and with those sectors controlled by public corporations, is therefore both closer and more direct than in the United Kingdom where, it is claimed, a 'tradition of minimum intervention by the state' has resulted in 'the most autonomous system of industrial relations' found among the world's industrialized nations. In the United Kingdom the state provides mediatory and arbitral machinery which the parties can utilize if they wish, but it normally intervenes on its own initiative in the industrial bargaining process only as a last resort. In Australia, on the other hand, statutory provision for compulsory arbitration machinery with an almost universal coverage means that the state intervenes in the bargaining process as a matter of course - not merely in order to help the parties reach agreement, but very often in order to decide and to enforce the detailed terms of the relationship between the parties. Intervention by the state in this way and at this level has important consequences for the state-trade union relationship.

Trade unions, like many other organized groups, concern themselves with a wide variety of public questions but are primarily interested in a specific set of questions. Unions and their leaders are thus to be found expressing views on topics as diverse as hydrogen bombs and opera houses. But it is with questions of economic policy that they are chiefly concerned; and within the economic sector itself there is a narrower range of matters that is the focus of their attention. These are roughly delimitable under the heading of industrial matters, matters which directly and immediately

affect the conditions under which unionists work and their organizations operate. While union leaders are intensely interested, for example, in budgetary, immigration and general industrial development policies, their closest attention is most consistently given to the conditions of employment of their members and the nature of the machinery (including the unions themselves) by which those conditions are determined. These are, in brief, the short-term questions of how much can be gained or preserved for their members on the job and the ways in which this can best be achieved, whether the 'much' relates to wages or leisure or to union freedom of action.

Through the Australian compulsory arbitration systems, the state is therefore almost invariably involved in disputes over precisely those questions in which unionists are most interested and on which they have the strongest feelings. Moreover, since the arbitral authorities deciding such questions are statutory bodies, the nature and extent of their powers can be altered by legislatures, which can, indeed, directly determine the questions themselves. Given this connection between the state and the unions' central problems, Australian trade unions are necessarily concerned with state action at a lower level than is usually the case in the United Kingdom or the United States, where the unions have looked to the state chiefly for the protection of their organization and have insisted that the terms of industrial bargains are primarily for their own determination. By contrast, the responsibility of the state in Australia is regarded as extending beyond the regulation of the general economic and legal environment in which the unions operate to the determination of the specific rights and rewards of trade union members. Thus the 'four-pronged programme' of trade union aims given in 1945 is at all

points related to state action.

Those giving their labour to industry ... are entitled to share in the proceeds of production, and it is the job of the nation to see that it is made possible. We therefore seek full employment ... progressive reduction of hours as individual production increases ... a successive raising of the standard of living as fast as the national income rises, and a general utilisation by the government of taxation revenue to enable the biggest measure of social services to be provided for the people ... 

In addition, the working of industrial arbitration in Australia established the principle of the 'key-bargain' rather earlier than was the case in the United Kingdom and the United States, as well as ensuring that the precedents established by the bargain are extended to other industries with greater speed. More important, as a result of the emphasis on test cases, it has greatly widened the bargaining unit by directing attention beyond particular industries to the economy as a whole. This is most evident in standard hours and basic wage cases before the main Federal tribunal, where union advocates must argue from a national rather than an industry standpoint. In these circumstances, the condition of the national economy is not merely a factor of general concern which affects in different ways various industries and the concessions their workers can obtain. It is a consideration that is of direct and uniform concern to most unions and their members, and it is often one that carries more weight in the

7 F.J. Clarey, A.C.T.U. President, 'Industrial Relations After the War', in Australia's Post-War Economy (Melville & others), 260.
8 Kenneth F. Walker, Industrial Relations in Australia, 368.
9 Ibid., 365.
10 Thus, within the terms of reference set down by the Arbitration Commission, the unions' advocate in the 1956-57 basic wage case argued that the 'capacity of the economy' was such as to allow the payment of an increased basic wage in the light of the following factors: the level of employment, of investment, of production and productivity, of overseas balances, of company profits, the condition of overseas trade, the competitive position of industry, the volume of retail trade, and the trend in the level of prices. Transcript of Proceedings, Basic Wage Case 1956-57, 4-5.
11 An effect and symptom of this is seen in the emphasis placed by many union leaders on approaching union problems on a national basis rather than at the plant or industry level: see, e.g., L.C. Webb, in Unions, Management and the Public (K.F. Walker, ed.), 88.
determination of individual unions' claims than the economic position of their own industries. 12

The effect of compulsory arbitration apart, the national economy, and hence state action, looms larger in trade union thinking to the extent that the unions are involved in political activities. Australian trade unions have been closely linked with the Labor Party for nearly seventy years. This has been at least as important as compulsory arbitration in persuading them to look beyond their own industries in industrial matters and to have strong opinions on a wide variety of economic and social problems, as well as ensuring that they rely heavily on state action as a means of solving those problems.

The state-trade union relationship is not explainable solely in terms of union reliance on the state. There is also a line of dependence running from the modern democratic state to the trade union movement, largely as a result of the wide responsibilities the state has assumed for the total economic welfare of the nation. The experiences of two world wars and the problem of maintaining social welfare and full employment policies at a time when the 'siege economy' is an endemic feature of national life has led to a situation where the state in Australia cannot afford to ignore the trade unions - especially since the fulfilment of these policies ensures the unions' strength.

There is much to be said for the view that the establishment of the

12 The relative unimportance of specific industries in this context is exemplified by the approach of arbitrators to the question of margins which, added to the basic wage, constitute the award wage rate for particular industries or crafts. Here the arbitrator looks to the comparative skill or disagreeableness involved in jobs in one industry as against others, a procedure that diverts attention from the question of the particular industry's prosperity.
Australian Ministry of Labour Advisory Council in 1954 indicated a growing recognition of the interdependence of Governments, employers and unions and of the need to seek solutions of our problems through joint efforts and mutual confidence.\textsuperscript{13} It does at least seem clear that this was an element in the attitude of the non-Labor government that suggested the Council's formation.\textsuperscript{14}

The state may be ultimately unchallengeable by the unions. Nevertheless, in a political democracy it cannot crush every questioning of its authority. This is particularly so when the questioner happens to be an organized group with the present industrial and social power of the Australian trade union movement. In such circumstances, those exercising the state power find it expedient not merely to tolerate the movement but to seek a measure of cooperation from it – at least up to the point where questioning is converted into challenge.

\textsuperscript{13} H.A. Bland, The Work of the Australian Ministry of Labour Advisory Council (ronoed), background paper at the Summer School of the Australian Institute of Political Science, January 1957, 2.

\textsuperscript{14} See Chapter 10 below.
CHAPTER 3
ORGANIZATION

The story of the organization of the Australian trade union movement is a story of a growing strength in numbers and a developing centralization of authority. It begins with the formation in the 1830's of a few small unions of skilled workers. These were in most cases less trade unions, as the term is understood today, than mutual benefit societies. But some did carry out the function of bargaining with employers on the question of wage rates; and there were also a number of temporary combinations formed from time to time for the same purpose. Most of the early attempts at union organization failed to survive the effects of an economic downswing in the early 1840's and, in New South Wales, the enactment of a repressive Masters and Servants Act. It was not until the gold discoveries of the following decade brought with them prosperity and a flood of new immigrants that unionism was able to take strong root in Australia.

1. The Structure of Unionism by 1900

The development of unionism that began among skilled town workers in the 1850's, and accelerated during the 'sixties and 'seventies, was early reflected among unskilled town workers and those in the mining and, somewhat later, in the pastoral industries. Organization was confined in most cases to single colonies, but by 1900 a few unions of an inter-colonial character had been formed, usually by amalgamation or federation of unions established separately in different colonies. The process of centralization begun in this way was also evident in looser forms of federation, where groups of

1 J.T. Sutcliffe, A History of Trade Unionism in Australia, 13; also Lloyd Ross, 'The Role of Labour in Australia (ed., Grattan), 237
3 Sutcliffe, op. cit., 17; Walker, op. cit., 175-6
4 Sutcliffe, op. cit., 30-1; Walker, op. cit., 175
5 Sutcliffe, op. cit., 63
unions covering employees in the same industry formed associations to facilitate common action. In Adelaide, for example, there were in operation by 1891 a Maritime Labor Council, a Building Trades Council and an Iron Trades Council. Similar union groups were to be found in the main centres of the other colonies - an association of building unions being formed as early as 1875 in Melbourne.

At the same time, the formation of permanent central union organizations covering unions regardless of industry was encouraged by the financial weakness of most unions, which limited their ability to conduct strikes without outside help, and by the need felt for some means of impressing the general interests of unionists on governments. The Melbourne Trades Hall Council, set up in 1856 with very limited functions, was in 1874 given extended powers in keeping with these needs. Similar bodies, usually known as trades and labour councils, were founded in the other main centres: 1871 in Sydney, 1883 in Brisbane and Hobart, 1884 in Adelaide and 1892 in Perth.

A desire for some form of coordination on an even wider basis was evident in the meeting of an Inter-Colonial Trade Union Congress in 1879. The second Congress was not held until five years later, in 1884; but thereafter five more followed in rapid, if irregular, succession up to the seventh Congress of 1891, each of them being progressively more representative. The Congresses gave greater impetus to moves to federate individual unions on an inter-colonial basis, particularly in the case of New South Wales and Victorian unions. They also led to discussion of schemes for creating a national federation of all unions - though the one scheme that went further than

6 S. O'Flaherty, The Labor Party in South Australia, 10
7 Walker, op. cit., 176
8 Sutcliffe, op. cit., 64
9 Walker, op. cit., 176
10 Sutcliffe, op. cit., 47-8
11 Souvenir, Amalgamated Engineering Union, 25th Anniversary, 1945, 360
the proposal stage, the Queensland-initiated Australian Labor Federation, failed to take root. The seventh Congress, however, was followed by a re-direction of energy from industrial to political organization, which turned union leaders' attention to the colonial rather than the national sphere. The fact that the next Congress was not held until 1898 was symptomatic of this shift of attention. The poor attendance at the Congress was largely a result of economic conditions which had weakened the unions' financial position, but it is not unlikely that it was also symptomatic of the concentration on political rather than industrial action. The foundation of the Australian Commonwealth in 1901 was the main, but not the only, reason why union leaders began seriously to consider once more the question of organization on a national scale.

2. Union Membership and Union Structure

The membership of the Australian trade union movement, as shown in Table 1, increased with remarkable rapidity from the turn of the century. In terms of the proportion of unionists to the total number of employees the greatest advance took place in the years up to 1916, this being the period when industrial arbitration was established at both the Federal and State levels. The result of this growth is that unions today represent the great bulk of employees, and their membership constitutes a significant section of the total population.

The organizations into which unionists are grouped vary greatly. Unions formed on a craft or industrial basis rub shoulders with those combining features of both. The Australian trade union movement has emerged little changed from the controversy, a stage common to most union movements, on the

12 Sutcliffe, op. cit., 97
13 Ibid., 125-9
14 For other reasons, see Chapter 4
relative merits of craft and industrial organization. The size of unions varies from organizations with a handful of members to the Australian Workers Union with a claimed membership of 200,000.

Apart from its membership, the most important change in union organization since 1900 has been the trend towards Federal organization. This trend was given impetus by the development from 1907 of the Commonwealth arbitration system, with its requirement that a dispute had to be of an interstate character before it could fall within the jurisdiction of the Federal tribunal. Organization on an interstate basis was not new; it had earlier been carried out with notable success by the Australian Workers Union. But, as Table 2 shows, it has been most extensively applied since 1907. In some cases Federal organization has been little more than a formal procedure enabling a number of similar State unions to invoke Commonwealth industrial powers, the unions acting independently in most other matters. In others, the Federal body exercises a determining influence over its State branches in relation to the whole range of union activity. The Australian Workers Union and the Amalgamated Engineering Union, both established as interstate unions before the Federal arbitration system was set up, are examples of strong Federal organizations, which include a number formed directly under the spur of the Federal arbitration system. Their power structure contrasts with federations like the Australian Railways Union and the Australian Meat Industry Employees Union, in which the State branches have in practice considerable autonomy.

The role of State branches of Federal unions is frequently enhanced by the fact that sections of the union's membership come under the awards of State industrial tribunals; sometimes the whole of a State branch's membership

15 Sutcliffe, op. cit., 166
is affected in this way, a situation that is most common in Queensland and Western Australia. Apart from their activities within the respective State arbitration systems, where they are on the same footing as the substantial number of unions still confined to single States, Federal union branches are constantly involved in matters of an intra-State character. Thus even in the case of strongly centralized Federal unions, the branch officials have a wide field of activity which is often untouched by the Federal body.

3. Coordinating Bodies

Inter-union organizations functioning on an industry basis are common. Usually they operate at the State level, but there are notable examples linking Federal unions - the Metal Trades Federation being perhaps the most advanced. Industry groups formed on a more or less permanent basis are usually symptomatic of a militant outlook among the unions concerned: thus they operate in strike-prone industries where coordination is important because of the reliance on direct action rather than industrial arbitration. The metal, building, transport, maritime and coal-mining industries have the longest record of this type of inter-union combination. The permanence of these groups is usually a function of their success, and a heavy strike defeat often leads to at least their temporary abandonment. The Combined Mining Unions Council, for example, died after the 1949 coal miners' strike was smashed, as also did the Metal Trades Federation in Western Australia following the failure of the 1952 metal trades strike in that State.

The most important coordinating bodies at the State level, however, are the trades and labour councils which rival all other groups in permanency and extent of membership. A number of councils operate in each State, with
the exception of Western Australia where, as shown below, the structure of the central organizations are somewhat different. The main councils are those in the capital cities. The metropolitan councils not only represent the largest memberships through their affiliated unions but, except in Tasmania, are formally the parent bodies of the relevant district or provincial councils, which operate under a charter granted by the metropolitan body and in most cases are entitled to representation at its meetings. In Tasmania, the Hobart Trades Hall Council has no formal control over the four provincial councils in the State. A Tasmanian Trades Union Council, set up in 1940 on the model of the Australian Council of Trade Unions, functioned sporadically and ineffectively until disbanded twelve years later. In 1957 a more modest body, the Tasmanian Trades Hall Councils' State Executive, was formed to coordinate the councils' activities, one of the provincial councils refusing to take part in it.

The metropolitan councils meet frequently, usually at fortnightly or weekly intervals. Delegates from each affiliated union are entitled to attend. In Queensland the metropolitan council has for more than thirty years convened an annual Trade Union Congress attended by delegates from affiliated unions throughout the State and from the twelve provincial councils. This practice is not followed in other States, even though delegates from provincial councils rarely attend regular meetings of the metropolitan bodies.

In Western Australia there have been no separate organizations since 1906, when this role was assumed by the nine district councils of the State Branch of the Australian Labor Party and the State Executive of the Party. Since 1947 a Trade Unions Industrial Council has operated within the Party structure as the counterpart of the metropolitan trades and labour council
in other States.  

Affiliation with the Party automatically entitles unions to representation on the Industrial Council.

The leaders of trades and labour councils do not usually favour industry groups of unions operating outside the councils' structure, but they may encourage their formation within that structure. The most complete example of this is found in the constitution of the Labor Council of New South Wales, which provides for the formation of a number of industry groups (one of which, the Australian Workers Union, is a 'group' in name only) with elected officers and each with the power to elect one member of the Council's Central Executive. In recent years, the Trades and Labor Council of Queensland played a leading part in establishing a State Maritime Group, after ensuring that it would be linked with the Council.

The formal power of the various metropolitan councils to control affiliated unions is limited to the extent that their only sanction is expulsion. But major disputes are usually handled by a council's disputes committee on the understanding that it carries sufficient weight to ensure that financial and other help may be cut off from unions flouting its authority. The extent of the councils' influence has in the past varied considerably; but it is apparent that the growing power of the Australian Council of Trade Unions within the union movement, which is discussed below, is reflected at the State level in relation to the role of the metropolitan councils.

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The question of a central union organization that could coordinate the activities of the unions in all the colonies was raised at every Inter-Colonial Trade Union Congress after the first. In the early stages the proposals

1 See Chapter 4.
2 Rules, Labor Council of N.S.W., rr.5,6.
4 See Sutcliffe, A History of Trade Unionism in Australia, 195-202
made were sketchy. It was not until the seventh Congress of 1891 that a
detailed scheme was adopted, an almost identical plan being endorsed by the
eighth Congress of 1898. Although this plan for an Australian Labor Federa-
tion was at different times put into effect in Queensland, New South Wales
and Western Australia, it never reached the stage of inter-colonial operation.
A proposal for a body with a less elaborate structure and claiming less exten-
tive powers was approved by the first interstate Congress held in 1902,
but failed to gain general acceptance despite its re-endorsement by the suc-
ceding Congress of 1907. A further Congress in 1913, which as in 1907 con-
sisted only of trades and labour council delegates, produced yet another and
even more unpretentious scheme for a body with the pretentious title of the
Federal Grand Council of Labor, on which representation was for the first
time confined to the trades and labour councils. The Grand Council showed
some signs of life compared with its still-born predecessors, but these were
soon extinguished beneath the controversy aroused by the movement for na-
tional trade union unity through amalgamation rather than federation.

The proposals for One Big Union derived their support from a growing
belief in the vital need for united industrial action. But despite the
enthusiasm the O.B.U. campaign aroused among industrial unions, it faced the
tacit, if not always outspoken, opposition of the craft unions and those,
particularly the Australian Workers Union, that were wedded to political
action. This opposition proved too great, and the proposals for One Big
Union were eventually abandoned, despite their endorsement by the All Aus-
tralian Trade Union Congress of 1921.

5 Ibid., 152-3
6 Ibid., 204-6
7 Ibid., 174-6,208-9
8 V.G.Childe, How Labour Governs, 193-4
Before the final collapse of the One Big Union campaign, many union leaders had turned again to the idea of federation. The first effective inter-union organization at the Federal level was formed in the early 1920's. This body, the Commonwealth Council of Federated Unions, consisted of delegates from affiliated Federal unions. It was to act 'in an advisory capacity' on questions relating to Federal industrial legislation, and to coordinate union submissions in major cases before the Federal Arbitration Court. By 1926 forty-eight unions were affiliated with the Council. But hopes for a body with more extensive powers were not discarded. In June 1925 a conference of trades and labour council representatives from all States adopted the constitution of a Commonwealth Industrial Disputes Committee, which was to consist of two delegates from each State council, and to have the power 'to deal with all disputes extending, or likely to extend, beyond the limits of any one State'. However, a resolution carried at a similar conference in 1926 indicated that the Disputes Committee had not been set up. The question of national organization was not considered at an 'All Australian' Trade Union Congress held in Sydney later the same year and composed almost wholly of representatives from New South Wales unions. But a more representative and momentous All Australian Trade Union Congress was convened the next year on the initiative of the Melbourne Trades Hall Council, which visualized the Congress as a means of fulfilling 'the oft-expressed desire that some more complete form of organisation from an Australian viewpoint should be adopted'. From this Congress, held in May 1927, issued the Australasian

10 From list on letterhead in Minutes, United Trades and Labor Council of S.A., 4/6/1926
12 Minutes, Interstate Conference of Trades and Labor Councils, June 1926
13 Circular issued by Melbourne Trades Hall Council, 27/1/1927
Council of Trade Unions

The A.C.T.U. was first formed as a 'temporary body', the 1927 Congress deciding that a further Congress should be held in 1929 in order that a 'definite Constitution' could be adopted 'setting up the A.C.T.U. as a permanent institution in the industrial movement'. In November 1927 the first meeting was held of the new body's Full Executive (now known as the Interstate Executive). Determination to make the A.C.T.U. succeed where its predecessors had failed was also evident in the convening of a widely representative All Australian Trade Union Congress in 1928 which approved 'machinery clauses for handling industrial disputes.' The 1929 Congress duly approved a permanent constitution for the A.C.T.U.

The formation and survival of the A.C.T.U. in the difficult early years of its existence contrast markedly with the abortive beginnings or rapid decay of each of its predecessors. The difference was due to a number of factors, the most important of which were probably the nature of the A.C.T.U's structure and of the economic and political environment into which it entered.

The structure of the A.C.T.U. was both less elaborate than many of the previous schemes and on a more representative basis than others. There was no attempt to create new intermediate inter-union bodies at the State level. Each metropolitan trades and labour council functioned as a State Branch, was automatically represented on the A.C.T.U. Executive, and had the power to approve or reject all Executive decisions. While gaining the powerful support of the metropolitan councils in this way, the A.C.T.U. did not rely solely on the councils. Provision was made for the affiliation of individual Federal unions and their direct representation at the biennial Congress, the

14 The term 'Australasian' was altered to 'Australian' in 1947.
15 Secretary's Report, A.C.T.U., March 1930
16 Official Report, All Australian Trade Union Congress, July 1928
supreme policy-making body.

The A.C.T.U.'s claim to national representation was from the start somewhat marred by the omission of the biggest of the Federal unions, the Australian Workers Union (A.W.U.), and the central union organization of Western Australia, the State Executive of the Australian Labor Party. The omission of the A.W.U. was the more serious. The A.C.T.U. made a number of attempts in 1927 and 1928 to secure the A.W.U.'s affiliation, until the union refused even to discuss the matter.17 though in 1930, for the first and last time, the A.W.U. sent delegates to a conference of Federal unions convened by the A.C.T.U. Since then, however, the A.W.U. has consistently refused to affiliate. On the other hand, in 1957 the union affiliated with every metropolitan trades and labour council except the Hobart Trades Hall Council, having affiliated with the Queensland Trades and Labor Council the previous year after a break of sixteen years. It is thus represented on five of the six State branches of the A.C.T.U. The Western Australian State Executive's rejection in 1927 of an invitation to affiliate with the A.C.T.U. was regarded as less serious than the A.W.U.'s stand on the matter. No further attempt was made to secure Western Australian affiliation until after the second world war; the State Executive of the A.L.P. became the State Branch of the A.C.T.U. in 1950. Despite these omissions, however, nearly all of the industrially-strong Federal unions were affiliated from the beginning, including the watersiders', seamen's, timber workers', coal miners', meat workers', engine drivers', and the most important of the metal workers' unions. By September 1957 ninety-five unions were affiliated with a total membership of

17 Minutes, A.C.T.U., Executive Council, April 1928, 7
18 Minutes, A.G.T.U., Conference of Key Unions, September 1930.
well over one million. The only omissions of any significance were the A.W.U. and the Amalgamated Society of Carpenters and Joiners, a minority building union covering three States.

The structure of the A.C.T.U. was important to its survival. But of equal importance was the Commonwealth's increasing role in economic affairs, by comparison with the States'. This, together with the growth of Federal union organization, made it more obvious than ever that the 'disjointed State Labor Council system' was inadequate when it came to making the union voice heard at the Federal level. These considerations were to become of mounting importance with the realization that the union movement had to be prepared to negotiate on a wide scale with non-Labor Federal governments, as well as merely expressing views on their policies. In addition, the difficulty of exerting pressure on Federal Labor parliamentarians through the Party machine was to gather support for the A.C.T.U. as a means of bringing the weight of the unions directly to bear on Federal Labor governments. Above all, the immediate effect of the economic depression of the 'thirties was to weaken the industrial strength of individual unions and, thereby, to increase their need for mutual support.

But while these factors ensured the survival of the A.C.T.U., they did not guarantee it effective power over its constituent organizations. 'Its powers were few, its funds small; it had no full-time officers, no permanent office even. The real power remained with the State Labor Councils, which met regularly and had a permanent staff'. At the beginning of the second

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19 *Executive Report, A.C.T.U.*, Sept. 1957, 59-60. Not all these unions were Federal organizations; the A.C.T.U. allows a State union to affiliate if it covers an industry or occupation not already covered by a Federal union operating in the State concerned.

20 *Souvenir, Amalgamated Engineering Union, 25th Anniversary, 1945, 365.*

21 See Chapter 10.

22 See Chapter 14.

23 *Souvenir, op. cit.*, 364.
world war it could still be said, as it had been said in 1930, that, des-
pite its direction of a successful campaign against the pre-war institution
of a 'national register', the A.C.T.U. 'still has to prove itself as an
effective power'. In time, the proof was forthcoming. It appeared, in
stages, with greatest precision and clarity in changes in the A.C.T.U.'s
organization.

The Full Executive met infrequently and irregularly during the 'thirties.
Most of the work between Congresses was carried out by the Emergency Committee,
composed of the executive officials and the two Executive members from the
metropolitan trades and labour council of the State in which the Committee
was meeting. After the 1943 Congress, the Interstate Executive, as it was
now better known, began meeting regularly at quarterly intervals; and since
about 1952 special meetings additional to the quarterly ones have become
increasingly frequent. During the 'thirties, expense was kept to an abso-
lute minimum by making no provision for full-time officials. The Secretary
throughout this period, C. Crofts, retained his full-time position as Secret-
ary of the Federated Gas Employees Union. The 1943 Congress created the
position of full-time Secretary; and in 1949 added the Presidency as a paid
office. In 1954 a Research Officer was added, and effect was given to a
1951 Congress resolution directing the publication of a quarterly journal
for distribution to affiliated bodies. In the same year, after operating
since 1943 from offices first in the Sydney and then in the Melbourne Trades
Hall, the A.C.T.U. set up its permanent headquarters in its own building in
Melbourne. These are tangible signs of a development in the A.C.T.U.'s
stature within the trade union movement; they also indicate the comparatively

25 W.K. Hancock, Australia, 216.
recent occurrence of that development.

As its first Secretary recalled in 1945, the main functions the A.C.T.U. was formed to carry out were 'to organise the presentation of the trade union case in relation to major issues such as the basic wage, standard hours, etc., and to provide a Federal machinery for unified action in industrial disputes'. From the beginning, its ability to carry out these functions was hampered by 'great difficulties arising from want of finance and lack of authority'. Nevertheless, A.C.T.U. officials did play a leading, if not dominant part, in the formulation and presentation of major cases before the Federal Arbitration Court during the 'thirties. From time to time its authority in this respect was challenged. The 1932 Congress was obliged to call on unions to refrain from making applications on major matters to the Court without the consent of the A.C.T.U.; and as late as 1949, the Amalgamated Engineering Union forced the Interstate Executive to increase its original basic wage claim to one preferred by the union. Since then, however, the A.C.T.U. has played the leading part in formulating major union claims and has had complete control of the submissions made in support of them. But the unions' acceptance of the A.C.T.U. as the body best-fitted to handle their claims in the most important arbitration cases was natural enough, given the character of the arbitration system, once the A.C.T.U. had established itself as a reasonably representative organization. Such acceptance entails no significant curtailment of the independence of individual unions. On the other hand, for the A.C.T.U. to take over the direction of industrial disputes and (a function to which its first Secretary did not refer in the statement cited above) to assume the role of the unions' representative in negotiations with

Federal governments clearly does involve some encroachment on union independence.

The inability of the A.C.T.U. to obtain recognition as the authoritative union spokesman from either Labor or non-Labor Federal governments during the second world war is described in a later chapter. Its inability to control its stronger affiliated unions was as evident in this context as in the case of industrial disputes. In 1942 a trade union delegate pointed out: 'It was farcical to suggest that the A.C.T.U. had control over the organisations that were affiliated'. So far as militant unions like the Waterside Workers Federation and the Miners Federation were concerned, he continued, 'No matter what the policy of the A.C.T.U. was, in connection with disputes affecting these organisations they did what they liked and decided upon their own terms of settlement in all disputes in which they were involved'. The change which has occurred since the war in the attitude of these unions is the crucial determinant of the A.C.T.U.'s present position as the authoritative organ of the trade union movement, in fact as well as in name.

The defeat of the coal miners' strike of 1949, following drastic measures taken by the Federal Labor Government, was the turning-point. The A.C.T.U. opposed the strike on the ground that it was Communist-engineered for political rather than industrial ends; and, without expressly approving them, it did not protest against the Government's strike-breaking measures. For those union leaders who still believed direct action could succeed when it came to a head-on collision with government, the lesson of the 1949 strike was clear. In a major struggle the strongest union could no longer afford to

29 See Chapter 10.
31 Ibid.
ignore the views of the great bulk of the trade union movement, which were reflected by and large in the attitudes of the A.C.T.U. leadership. Even a Labor government was able to take the severest action against a strike which did not have the general backing of the union movement since, at a time when the unions' industrial strength was greater than ever before in peacetime, it was assured that such action would evoke no wider industrial repercussions.

That the leaders of the Miners Federation had absorbed the lesson was demonstrated two years later in the course of a dispute involving the Federation. Faced with an ultimatum from the A.C.T.U. President that its members should resume normal work under terms negotiated by the A.C.T.U. or lose the A.C.T.U.'s support, the Federation accepted the direction. The miners' President, opening with a significant reference to the 1949 strike, explained the Federation's decision in these terms:

... during that time [1949] they had been isolated from the rest of the trade unions, with the consequence that they were defeated ... But during this present dispute, the Miners deliberately prepared so that they would not be isolated from the rest of the trade unions ... Therefore, the Miners Central Council had to look at the position squarely: continue the dispute, be isolated by the ACTU from other trade unions - or - call off the one-day per week stoppages... 33

With some variations, the same pattern has been repeated in the case of industrial disputes involving the Waterside Workers Federation. The complementary lesson to that of the 1949 miners' strike was provided by the success attending the A.C.T.U.'s leading part in the waterfront strike of 1954 and in the subsequent negotiations with the Menzies Government on the Government's proposals to change the method of recruiting waterside workers. Moreover, the A.C.T.U.'s authority in this field survived even the Interstate Executive's direction of February 1956 that the watersiders should end their strike begun

33 Minutes, Trades and Labor Council of Qd., 14/3/1951
the previous month with the A.C.T.U.'s approval. This was one of the Executive's most controversial decisions in recent years - but it was obeyed, despite widespread union support for the strike's continuation.

As these examples indicate, the A.C.T.U. since 1949 has in fact carried out, for the first time, its original function of providing 'a Federal machinery for unified action in industrial disputes'. This function has been reflected in the increasing role of its officials in the negotiation of composite agreements, covering the members of a number of unions, with Federal government departments and instrumentalities. More recently, the A.C.T.U.'s coordinating procedures have been extended to negotiations for agreements with private firms in certain industries.

There are signs that the trend to greater centralization of trade union activity, which is implicit in the A.C.T.U.'s developing authority, is also beginning to have its effect on the organizational structure of the trade union movement. The industry groups of Federal unions originally represented a serious threat to such authority as the A.C.T.U. had. However, with the development and acceptance of the A.C.T.U.'s coordinating activities, the need for such bodies has tended to diminish. During 1957, for example, the A.C.T.U. convened meetings of the unions concerned in well over a dozen industries to consider industry problems - in addition to meetings of various unions affected by a single issue. The industry groups themselves have not only shown a greater readiness to keep in line with A.C.T.U. policy, but in some cases have moved to link themselves with the A.C.T.U.'s structure. This process has reached its most advanced stage in the case of the building industry unions: a permanent Building Industry Unions Sub-Committee was set up in 1957 under the auspices of the A.C.T.U. with the intention of working through the combined building unions' groups at the State level. Moves in
a similar direction have come from the metal trades and transport groups. There is little doubt that the trend will develop further as a result of the 1957 Congress decision providing for six members of the Interstate Executive to be elected on an industry group basis, instead of by the metropolitan trades and labour councils whose Executive representation is now reduced to one member each.

The enhanced authority of the A.C.T.U. as, in a union official's terms, the 'mouth-piece and spearhead' of the Australian trade union movement has also had its effect on the A.C.T.U.'s standing in negotiations with Federal governments. The Menzies Government has shown an increasing inclination to conduct its dealings with the trade unions solely through the A.C.T.U. But it may be noted here that it is a policy which was very much less in evidence before the defeat of the Federal Labor Government in 1949. To a large extent the difference is a product of three factors.

In the first place, Communist influence within the A.C.T.U.'s policy-making body, Congress, was strong during much of the Curtin and Chifley Labor governments' terms of office, and Labor ministers were therefore inclined to regard the A.C.T.U. with some reserve. On the other hand, during most of the Menzies Government's period of office Communist influence was reduced to comparatively minor proportions; and even since September 1957, with four Communist members of the Interstate Executive, Communist officials do not play as decisive a role in A.C.T.U. affairs as they were able to during the war years.

In the second place, there is a smaller political obligation on non-Labor than on Labor ministers deliberately to restrict, in favour of the A.C.T.U., the ability of individual unions to consult with them.

34 See Chapter 10.
Finally, Labor recognition of the A.C.T.U. was hampered by the hostility of the unaffiliated Australian Workers Union. The Menzies Government has less need to placate the A.W.U. in this respect because the strength of the A.W.U. lies in its great influence within the Labor Party machine; industrially, it is much less important than many smaller A.C.T.U.-member unions.

The Menzies Government's greater ability to put into effect the natural preference of any administration for dealing with a single representative organization in place of a multitude of sectional groups has undoubtedly enhanced the standing of the A.C.T.U. But such a policy can be adequate only if the central organization with which a government wishes to deal is initially able to secure its members' compliance with its decisions. Thus the determining factor in the A.C.T.U.'s present commanding position in the trade union movement, and it is a position that a future Labor government will have to reckon with, is the change in the attitude of the leadership of the most powerful and militant unions.

Perhaps the most striking illustration of what this change has meant is given by the contrast between the defensive report of the A.C.T.U.'s first Secretary in 1930 and the confident tone of the report presented by its third Secretary twenty-five years later, in 1955. In 1930:

Delegates might be reminded that many attempts have been made over a period of years to establish a body capable of speaking for the industrial movement of the Commonwealth as a whole and it may be claimed that the A.C.T.U. is the nearest approach to such a body yet set up. From its inception, despite its many drawbacks, it has been acknowledged by Governments, Wage Fixing Tribunals and Employers as the mouth-piece of the industrial movement when matters of an interstate character were involved. This has been accomplished without in any way lessening the influence or interfering with the work of the State Trades and Labor Councils. 35

In 1955:

No longer is the A.C.T.U. regarded merely as a force to co-ordinate working class thought. It is required to speak and act authoritatively upon matters at national and international levels. It is recognised by the political, commercial and cultural institutions of the Commonwealth, and is accepted as an integral part of community life. As such, the work and responsibility of the A.C.T.U....must continue to expand...36

1. Unions-in-Politics

The skilled workers' unions founded in Australian cities between 1820 and 1850 devoted much of their resources to acting as benefit societies. By the end of the period, however, they were making increasing use of the strike in order to obtain wage concessions from employers. At the same time, mainly through the independent action of individual unionists, union views were pressed at political meetings and in political associations of various kinds. Organized attempts to influence governments were occasionally made by way of demonstrations and petitions. From the late 1870's, when unionism began to cover a substantial and increasing number of semi-skilled and unskilled workers, there were signs of a change in this pattern. Direct action was primarily relied on for the achievement of the chief union aim, the maintenance of wage rates. Political activity was usually regarded as outside the area of union methods. But, as Gollan points out, the drive towards closer union organization and the inevitable extension of union aims to include employment conditions and economic policy generally, gradually forced the unions into the political arena. 'Up to 1885 the trade unions were moving slowly towards political action in spite of their protestations that they were unpolitical'.

Mainly during the 'eighties, but as early as the 'fifties in Victoria, 'working class representatives' were occasionally elected to parliament in New South Wales, Victoria, Queensland and South Australia, frequently with

2 Hancock, Australia, 199-200; and see K.F. Walker, 'Australia', in Comparative Labor Movements (ed., Galenson), 174
union endorsement and financial support. But direct parliamentary representation was initially incidental to the central union bodies' efforts to obtain favourable legislation by direct pressure on the existing parties and government leaders. Nevertheless the matter soon came to the forefront. It was discussed and approved at the Inter-Colonial Trade Union Congresses of 1884 and 1886, and the parliamentary committees formed in Sydney, Melbourne and, later, Adelaide showed increasing interest in it as a means of supplementing their pressure group functions. The Secretary of the South Australian Trades and Labor Council indicated the increasing emphasis placed on activity in this field when he commented, after seven of nine endorsed candidates had been returned in the elections of 1887, 'the Council bids fair to become a powerful factor in determining the choice of Parliamentary candidates'. The process was to be hastened by the experiences of the unskilled and semi-skilled workers' unions organized on a large-scale during the 'eighties.

Up to 1890 these unions, particularly the miners and the shearsers, had successfully used industrial action to obtain collective bargaining agreements with employers. But by 1890 the deteriorating economic situation had stiffened the employers' resistance. The first fruit of their resistance was the maritime strike that began in August 1890 and involved the pastoral, mining and transport industries. The unions were defeated on this occasion, as they were in the later struggles of the shearsers in 1891, the Broken Hill miners in 1892 and the shearsers again in 1894. A vital factor in their defeat, as the unions recognized, was the action taken by the governments concerned. Moreover, ' whilst we have no cause for

4 These tactics were especially successful in Victoria where good relations existed between the unions and governments: see Overacker, The Australian Party System, 44-5.
5 See June Phillip, '1890 - The Turning Point in Labour History?', Historical Studies: Australia and New Zealand, 151; also Lloyd Ross, The Role of Labour, in Australia (ed., Trattan), 240.
6 S.O'Flaherty, The Labor Party In South Australia, 9.
gratitude to the government', the Labor Defence Committee wrote after the 1890 dispute, 'we have no reason for believing that the opposition, had it been in office, would have acted more fairly'. This, added to the shortcomings revealed in industrial action, was the catalyst that precipitated the full-scale intervention of the unions in parliamentary politics.

The rule that trade unionism must steer clear of politics, was a golden rule when there was so much work to be done within our present industrial environments. But that time...is rapidly drawing to an end and ere we can radically improve the lot of the worker we must secure a substantial representation in Parliament.

The 'golden rule' had previously held only to the extent that the unions had made no more than half-hearted attempts to form their own political party. The project was now, however, to be embarked upon with determination. The form it took was to extend the political structure centred on the unions into the electorates.

The seventh Inter-Colonial Trade Union Congress of 1891 recommended that the new political organization should be established on a national scale, but in the event its formation was carried through independently in each of the colonies. In New South Wales and Queensland, the central union bodies had already begun to organize political branches early in 1891. The combined unions in Victoria and South Australia continued to nominate their own parliamentary candidates for a time, no permanent political branch organization being set up until later in the decade. The correspond-

7 Quoted by Gollan, op. cit., 165
8 Quoted by Sutcliffe, A History of Trade Unionism in Australia, 82n.
10 Gollan, 'The Labour Movement and the Commonwealth, 1880-1900', op. cit., 169
11 See Oversacker, op. cit., 63-75. The title, 'Australian Labor Party', was not officially adopted until 1918, when the Party's Federal Conference applied it nationally. Before then, a variety of names were used. The term 'Labor', as later adopted, is used in the present discussion.
ing structure was formed in Western Australia and Tasmania following federation.

From the time of the first and resounding success of the new organization in New South Wales, when thirty-six of its candidates were elected at the 1891 elections, it was clear that even as a minority group Labor parliamentarians could hope to influence governments. Up to 1900, with one minor exception, Labor did not form a government of its own, and it was rarely able to do so during the first years of the new century. But Labor parliamentary groups were often able to hold the balance between government and opposition parties. The tactic of 'support in return for concessions' was most frequently practicable and most effectively employed in New South Wales and later in the Federal Parliament. Its effectiveness in the local parliaments declined after the Commonwealth's foundation in 1901 and the transfer to the Federal sphere of the tariff question which had been the chief issue dividing the non-Labor groups.

In New South Wales, non-Labor governments retained office only with the support of the Labor group for six of the ten years between 1891 and 1901, but never again under these conditions after July 1901. Victorian Labor filled the same role for a total of nearly five years between 1891 and June 1902. The balance of power tactic was less in evidence in Queensland, where the Labor group constituted the official Opposition as early as 1896; but in 1893 and again between 1903 and 1906, Labor members took part in a coalition government, while in 1908 they kept a non-Labor government in office for eight months. In South Australia Labor members maintained the Kingston Liberal Government in office from 1893 to 1896, joined an

12 See Maurice Blackburn, 'The Labour Party', in Trends in Australian Politics (ed., Duncan), 3-4
13 These dates, and those following in relation to the other States, are extracted from tables in Everett M. Claspy, An Atlas of Political Parties in Australia and the United States.
eighteen month-old coalition government in 1899, and between 1905 and 1909 led a coalition government. In Western Australia, after a late entry into parliament at the end of the 1890's, Labor formed a minority government in 1904 without ever having been able to follow a balance of power policy. The adoption of parliamentary aims was also tardy in Tasmania, where Labor members supported a non-Labor government for over a year between 1903 and 1904 before forming a minority government of their own in 1909.

The tariff question remained to divide the non-Labor groups in the Federal Parliament for some years after federation. Labor formed only one minority government during the seven years between May 1901, when the first Parliament met, and November 1908, when the formation of the first Fisher Labor Government was followed by the fusion of the non-Labor groups. But for all except seven months of this period, Labor was able to enforce a 'support in return for concessions' policy. 'Throughout these years it was Labour that was responsible for the tempo and direction of social legislation'.

This policy had advantages, but it was recognized as a preliminary to full control of the government machine. The Federal Labor Conference decision in 1908 that the Commonwealth parliamentary group should no longer enter into 'alliances' was an expression of this. But in any event moves by the non-Labor groups to unite in the face of Labor's rising electoral strength made abandonment of the balance of power tactic inevitable. Thus Labor became the official Opposition in the Federal Parliament in 1909. In Queensland it had filled the same position since 1896; in Western Australia since 1901; in New South Wales since 1904; in Victoria since 1906; and in South Australia and Tasmania Labor was the official Opposition by 1909.

15 Evatt, Australian Labour Leader, 222
The five years from 1910 were the years of Labor's triumph. By the end of 1915 there were majority Labor governments in the Commonwealth and five of the six States. The first in the Commonwealth, New South Wales and South Australia were elected in 1910; Western Australia followed suit in 1911, Tasmania in 1914 and Queensland in 1915. Only Victoria was omitted, and here Labor had to wait until after the second world war.

But the years of triumph were also years of disillusion for many. The battle for power through the ballot box had been won. In the process, however, the demands of the electoral system had forced the moderation of union policies at the political level, and Labor governments soon made it plain that they were prepared to go neither as far nor as fast to satisfy union aspirations as had been hoped.

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It has been claimed that from the start the unions regarded party-political action as merely a temporary expedient enabling the 'protection of their past gains' until such time as they recovered their industrial wind. But between 1890 and 1900 at least, there seems little reason to doubt that unionists in the eastern mainland colonies were inclined to regard party-political action as something more than this. It was natural that the disastrous failure of the strike weapon should be followed by a search for a substitute. It was equally natural, especially in a period of economic depression, that once the substitute was found, the hopes shattered by the failure of industrial action should be transferred wholeheartedly to it. Thus: 'Political action was welcomed by the Labour Movement in 1890-91 as a panacea, as a simple and single recipe for the regeneration of society'.

The consequent 'tendency unduly to decry industrial weapons and exalt

political' may not have lasted in so extreme a form once experience had 'sobered those labour optimists who saw in organised battalions of working men voters an instrument for subjugating capital'. Yet even to the sobered optimist, the favourable legislation obtained over this period, and later, by Labor parliamentarians who were not in office, not only gave a promise of what could be gained from political action but clearly achieved more than merely the protection of past union gains. In these ten years 'political action secured for trade unionism not only the recognition but even the favour of the State... [and] secured for working men advantages which they could not have won by the most triumphant direct action'. So it seemed to the historian, and so it may well have seemed to many trade unionists. Moreover, by the time the relatively slow advance of State Labor to government office became tedious, the early success of Federal Labor in 1904 'seemed little less than a portent - an indication of almost magical ability and success on the part of Labor within the Federal arena'. Added to this was the less creditable but doubtless significant influence of politically ambitious union leaders whose interests lay in fostering the view that 'the parliamentary arena was the battleground whereon questions vitally affecting the interests of Labour should be settled'.

On the other hand, while there was probably widespread acceptance of political action as being at least the principal means of achieving their aims, the unions had less reason to be content with the instruments at their disposal. They had largely provided the initial impetus necessary to launch Labor's political machine, but it was soon apparent that the machine was to be something more than their creature. In New South Wales and

18 Victor S. Clark, *The Labour Movement in Australasia*, 63
19 Hancock, op. cit., 203
20 W.A. Holman, quoted by Evatt, op. cit., 220
Queensland in particular, where the unions had launched into political action earliest and with greatest vigour, they had soon lost ground in the organization to the parliamentarians and the political branches.\footnote{22 See Childe, How Labour Governs, 55-7; Overacker, op. cit., 69-70; Gollan, \& The Trade Unions and Labour Parties, 1890-4, op. cit., 34} In 1906 an observer was able to state in general terms that the political organization 'has not superseded trade unions, though it has made them subsidiary to party organisation'. The 'lessening power and prestige' of the unions after 1890 occurred not only in relation to their position in the industrial community but also in relation to the political machine to which they had primarily given birth.

At the same time, Labor's parliamentarians had emerged as individuals with interests and ideas of their own that did not always coincide with those of their supporters outside parliament, and often varied among themselves. The young party devoted a great deal of energy to struggles with its parliamentarians over their acceptance of the party pledge and the disciplined action that it implied.\footnote{23 Clark, op. cit., 63}\footnote{24 Evatt, op. cit., 134} Equally important in the long-run was the question, also involved in these struggles, of the parliamentarians' responsiveness to the policies advocated by the party organizations and by their steady supporters in the unions. Here again, the parliamentarians were often prepared to put political advantage or their own convictions before union wishes. By 1915 it was abundantly clear that the adoption of a party platform and its application by majority Labor governments were two quite different things. Union reactions to the comparatively cautious legislative programmes of Labor governments were all the more extreme because of the great hopes that had been placed in Labor's achieving control of government.\footnote{25 See Overacker, op. cit., 54-62, 68-9, 73}\footnote{26 See, e.g., Childe, op. cit., 57; Overacker, op. cit., 70-1}
'Perhaps', Childe commented, 'their supporters did not appreciate the difficulties that confronted their representatives, but they certainly had cause to be disappointed.'

These considerations added fuel to the growing distrust of politicians. The successive desertions of the Queensland Labor leaders Kidston and Kerr inspired a presidential denigration of the breed in general at the 1907 State Conference:

Once you allow the politician to boss the show, he will give away everything to save himself, because he believes himself indispens­able to the show, and in fact ends by becoming the show himself, and making a holy show of the rest of us. 28

Union distrust was evident in the reception given the early wartime propos­al, emanating from Labor political quarters, for the establishment of an Australian Trade Union Federation - a 'cunningly devised scheme by a few wily politicians to hobble, bind and shackle the unions? The unions' attitude, and their position up to 1915 in the New South Wales party machine at least, is further illustrated by the history of the proposal for a rule debarring parliamentarians from membership of the State Executive. The proposal was rejected by the 1910 Conference but carried by that of 1916, for which the unions, goaded beyond endurance, had settled their differences and formed a tightly-organized 'industrial section' which enabled them to dominate proceedings.

The increasing conflict between the politicians and the bulk of the unions up to 1915 cannot be explained wholly in terms of a 'revolt against politicalism'. Union leaders' motives varied. For many, the conflict arose less from a belief in the futility of political action than from a

27 Childe, op. cit., 33
28 Quoted by Childe, ibid., 24-5
29 Ibid., 113
30 See Overacker, op. cit., 116-7
31 Childe, op. cit., 114
belief that control of Labor's parliamentary representatives was not close enough, or that Labor had the wrong political leaders. In these cases the aim was to dominate the party machine in order to control or replace the politicians. Nevertheless, the failure to achieve the more radical union aims by parliamentary methods clearly led many unionists to conclude that the methods themselves, and not merely the politicians, were at fault. To those union leaders initially unaware of the compromises necessary, and temperamentally unsuited to accept the devious procedures involved, it seemed that the promise of political action had been false. Labor governments often appeared to act no differently from other governments, and Labor or parliamentarians often appeared more ready to condemn than to support union claims.

So long as the economic situation was unfavourable there was little to be done. But once the unions were in a sounder industrial position, the rising distaste for political action manifested itself not only in resort to direct action, but also in more determined moves to unify the trade union movement. For many unionists the formation of the first Australian Industrial Workers of the World clubs in 1907, and the 'wobblies' doctrine of industrial action by a closely-organized trade union movement, provided a ready-made 'ideal of emancipation alternative to the somewhat threadbare Fabianism of the Labor Party'. For others, however, disillusionment with political action did not mean its abandonment. But it did mean an increasing awareness of unionism's need to put its own house in order as a means of supplementing, if not supplanting, the activities of the politicians - a trend that received its greatest impetus from the politicians' disregard of union opinion on the conscription issue in 1916.

32 Ibid., 172
2. The Reaction to Party Politics

The split in the Australian Labor Party (A.L.P.) over conscription produced among the unions two reactions which were to some extent contradictory.

In the first place, the unions, united on a non-industrial issue to an extent rarely evident before or since, exerted their combined weight on and within the A.L.P. to discipline Labor's political leaders. In the process, they enlarged their influence within the Party machine. Added to the re-assertion of their traditional allegiance to the Party, this was enough to ensure that they would continue, at least for a time, to rally strongly to the standard in the name of solidarity - apart altogether from the motives of those union leaders who spied the prospect of a political career in the newly-vacated places in Labor's parliamentary representation.

This change of attitude was brought out in the report of a sub-committee of the Tasmanian Workers Political League, the name of the State Party at that time. The sub-committee had been appointed in July 1916 to discuss with unions a 'closer unity' scheme modelled on the Western Australian Labor organization. Its report, presented in January 1917 a few weeks after the conscription referendum, referred to the unions' initially cool reception of the proposal, and gave some reasons:

It was plain that large and increasing numbers of unionists were inclined to regard political activity as comparatively unimportant. There was dissatisfaction with the attitude of some members of the Parliamentary Labor party towards questions affecting the unions, and there seemed to be a good deal of disappointment at the general results of the Labor Government's term of office. There is evidence that this attitude was fast developing into active hostility to the Labor party. 1

But this was before the conscription split. The subsequent change in the Tasmanian unions' attitude to closer organization, so the sub-committee 1  

Hobart Daily Post, 12/1/1917
claimed, was a direct result of the anti-conscription campaign:

The referendum fight...clearly showed both the industrialists and the political unionists that in time of real Labor danger the active co-operation of the two sections was not only possible, but natural and very necessary. It was also made plain by the numerous defections of hitherto trusted Labor Parliamentarians that the danger to Labor was even greater than had been supposed, and likely to be of such continuous nature as to require the very closest and most permanent solidarity possible between all sections of the working-class movement. 2

At the same time, it was inevitable that the performance of Labor parliamentarians in the conscription dispute should reinforce earlier suspicions, with the result that 'an implicit distrust of politicians was permanently introduced into the party machine'. 3

The second reaction was a tendency on the part of many union leaders to regard the conscription dispute as final confirmation of the futility of political action; and to turn their attention more determinedly to industrial action and organization. Those who shifted in this direction joined with others wedded to industrial action on more doctrinaire grounds. Ernest Scott saw the increased industrial conflict of the later war years as flowing at least partly from the 'violent psychological reactions' resulting from the 'intense bitterness of feeling evoked during the two conscription campaigns'. 5 Moreover, the spectacular success of the coal miners' strike in November 1916, and the subsequent success of a number of smaller strikes, 'inspired a general belief in the efficacy of direct action' which was only brought into question with the failure of the great transport strike of September 1917. 6

2 Ibid. The reference to 'political unionists' as opposed to 'industrialists' indicates a division of attitude among the unions which is always present. Its existence is implicit throughout the present discussion, and is discussed below.

3 Rawson, The Organization of the Australian Labor Party, 1916-1941, 190

4 See Greenwood, 'Australia at War 1914-18', in Australia: A Social and Political History (ed., Greenwood), 282

5 Scott, Australia During the War, Official War History, vol. XI, 665, 683

6 Childe, How Labour Governs, 178
On the other hand, while many unionists may not have regarded industrial action with any great favour – particularly after the transport strike – or were in no position to use the strike effectively, they did regard political activities with increased indifference once the crisis had passed. The Tasmanian unions, for example, were industrially much weaker than their counterparts in the mainland States. As we have seen, they had accepted the scheme for closer organization with the political machine under the spur of the conscription crisis. But the joint organization, the Tasmanian Labor Federation, set up in January 1917 was formally dissolved barely a year later, after the unions withdrew on the ground that the Federation had approached industrial questions in terms of political considerations. The Federation's President, a member of the State Parliament, noted at the winding-up conference that 'there seemed to be some difficulty between the political and industrial arms of the movement', and plaintively announced that 'he could not understand why there should be any such antagonism by the industrial section towards the politicians'.

Union leaders who saw salvation in industrial action and many of those who, while less certain that salvation lay in this direction, were at least disillusioned with political action, found common ground in the belief that the union movement should be more tightly organized – the industrial actionists blaming lack of organization for the failure of the 1917 transport strike. During the greater part of the 'twenties unionists were primarily concerned with the question of closer union organization. Thus the All-Australian Trade Union Congress, convened by the A.L.P. Federal Executive in 1921 for the purpose of discussing relations between the unions and the Party, concerned itself not with this question but with proposals for the formation of One Big Union. Union leaders were not of one mind on either

7 Hobart Daily Post, 9/5/1918
8 Rawson, op. cit., 43
the need for unified industrial organization or the form such organization should take. But, especially in the years when the A.L.P. was licking its conscription battle wounds, the contrast between the apparent stagnation of Labor's political wing and the hopeful struggle to unify the trade union movement turned many union leaders away from political activities.

Many of the most important union officials in New South Wales had walked out of the A.L.P. in 1919 [when the A.W.U. secured control] and, so far from anxiously trying to get back, were devoting their time either to union activities, or in some cases, to the negotiations which produced the Communist Party of Australia. In other States, the unions remained attached to the A.L.P. but without any particular enthusiasm.

However, it is equally apparent that the bulk of union leaders did no more than flirt with the idea that they should withdraw from political activities altogether. Labor governments might often be unsatisfactory, but they were not entirely worthless. The leftward trend in A.L.P. policies, notably the adoption of the socialization objective, was attributable largely to those union leaders who were at the same time trying to re-shape and strengthen the trade union movement itself. And control of the A.L.P. machine was something the same leaders considered worth fighting for, as was shown in the bitter struggles waged during the 'twenties and 'thirties for control of the New South Wales Party machine. On the industrial side, national unity of a sort was achieved with the formation of the A.C.T.U. in 1927, and there was hope that the great Federal unions might achieve a coherence of purpose at the industrial level which had previously been lacking. Through the A.C.T.U. the unions could also hope to reduce the dominant position enjoyed by the political wing, and particularly by the Federal Parliamentary Labor Party, in the formation of Labor policy at the Federal level.

9 See Chapter 3
10 Rawson, op. cit., 43
11 See Greenwood, op. cit., 289
since 1901. But these advances were still for the future; and although less faith was placed in the efficacy of political action, there was still more than a grain of truth in the assertions of an American observer writing in 1928.

There is no question that the political machinery is the more important prize to capture; no question that the step so commonly taken from union official to Parliamentarian is considered a promotion; no question that the debates in the Party conventions are regarded more seriously than those in trades councils and trade union congresses; and little doubt also that the ordinary workman expects to gain more by the triumph of his Party than by the closer organization of his union.

Events in the succeeding decade, however, were greatly to lessen the force of this statement.

The record of State Labor governments during the 1920's had not been altogether unsatisfactory from the union point of view. Nevertheless, at the All-Australian Trade Union Congress of 1927, at which the A.C.T.U. was formed, a number of speakers echoed the view that 'in New South Wales, Queensland and South Australia, we had the political sections whose views were as wide apart from the Industrial Movement as the two poles'. In New South Wales and Queensland, Labor governments were in office at the time. The South Australian Labor Government had been defeated at the polls a month earlier 'due entirely', J.S. Garden suggested, 'to the feeling existing between the Labor Council and the Parliamentary Party' - the bad feeling that did exist being testified to in forthright terms by South Australian delegates to the Congress. In Victoria relations formed while the Party was out of power were 'a little more happy'. Events during the depression

12 See Crisp, The Australian Federal Labour Party, 1901-1951, 188; Childe, op. cit., 43
13 Carter Goodrich, 'The Australian and American Labour Movements' (1928) 4 Economic Record 196-7
15 Ibid., 8.
16 Ibid., 8, 10.
17 Ibid., 10.
years were to poison still further the relationship between political and industrial wings, and to dash even the mildest union hopes in the usefulness of political action.

The union leaders who in 1930 ‘recognized an unfortunate tendency on the part of Labor Parliamentary Parties to sink principle for expediency’ saw final confirmation of their view in the reception most Labor governments gave the Premiers’ Plan, the anti-depression policy adopted by the Premiers’ conference of June 1931. Proposing wage-reductions for government employees and cuts in social services expenditure, the plan was ‘substantially the policy of Labour’s opponents’. It was formally accepted by the four Labor governments of the Commonwealth, New South Wales, Victoria and South Australia that were in power at the time, and conscientiously put into effect by all except J.T. Lang’s Government in New South Wales. In the eyes of many unionists, Lang’s stubborn resistance stamped him as the only one of Labor’s political leaders who had ‘managed to preserve an independent and defiant working-class point of view’. His dismissal from office by the State Governor for acting in defiance of the law, and the electorate’s endorsement of the Governor’s action, constituted the most disastrous example of the shortcomings of political action for union leaders, the great majority of whom opposed the Premiers’ Plan.

The near-adulation unionists showered on Lang because of his stand on the plan and his previous record as Premier, ensured him the support of most of the New South Wales unions in his five-year fight against the A.L.P. Federal Conference decision of 1931 to depose him from leadership of the State Party machine. Earlier, in 1927, widespread union support had enabled him

18 Minutes, A.C.T.U., Conference of Key Unions, September 1930, 13
20 Ibid., 362
to gain almost absolute control of a State Parliamentary Labor Party that was anything but united behind him. By 1936, however, Lang's personal power within the Party machine had materially diminished the unions' role. When he began to encroach on the unions themselves, their support turned to opposition, and they opened the long and bitter campaign necessary to break his grip. Union distrust of parliamentarians again appeared justified, this time in a quarter where it had been least evident. 'After this disheartening experience the union officials seem to have lost hope of finding any cut and dried way of controlling the politicians'.

3. Political Action Re-interpreted

During the depression and the lean years that followed, the hopelessness of using the strike weapon on any significant scale was plain to all but a minority of union officials wedded to industrial action on doctrinaire grounds. The view that purely industrial methods were the only way 'to deal with economic questions between employer and employee' may have made sense in 1927. It did not make sense in the 'hungry thirties'. In 1931 and again in 1934 the A.C.T.U. Congress rejected proposals for an immediate general strike. 'The best thing that could be done', as one delegate put it, was 'to carry on as best we could and gain strength rather than dissipate our energy in a General Strike that would fail'. At the same time, the recommendation of the 1934 Congress to the 'whole wage-and-salary class to unconditionally select, and the enfranchised to elect, only wage-class candidates in every constituency to the administration of Government', was clearly no answer to the immediate problems of a trade union movement faced with

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21 Rawson, 'The Organization of the A.L.P.' (A.N.U.) Seminar paper), 7
1 Minutes, All Australian Trade Union Congress, May 1927, 10
2 Minutes, A.C.T.U. Special Congress, February 1931, 34
3 Minutes, All Australian Trade Union Congress, October 1934, 27
non-Labor governments everywhere except in Queensland, Western Australia and Tasmania. Something more was necessary if the unions were to hope to function adequately. Political Labor, except in Queensland, was only sporadically and temporarily in office; industrial Labor was continually in office. And the unions always faced governments whose policies, whatever their political colour, played a major part in determining the rights and rewards of trade union members.

Political action by the unions, in the sense of free pressure-group activity whatever the nature of the government of the day, is as old as trade unionism. It was an early feature of Australian trade unionism. But, as Maurice Blackburn ruefully remarked, this was before Australian trade unions embarked on 'independent political action' and created their own party. Particularly in the Labor Party's formative years, the prevalent union attitude was to expect no cooperation from non-Labor governments, and to give none. Union aspirations were to be realized when political Labor controlled the State machinery. In the meantime, the unions were often able to exert indirect pressure on non-Labor governments where Labor politicians held the parliamentary balance of power. At the least, those same politicians gave them a voice in parliament. Even when experience had tempered the hopes placed in party-political action, the doubt remained whether independent negotiation with non-Labor governments was compatible with allegiance to the Labor Party, a doubt which it was in the interest of Labor politicians to encourage. Moreover, the very fact of that allegiance tended to harden the attitude of non-Labor government leaders against union approaches. Especially at the State level, approaches were made and received, but they

4 See Webb, The History of Trade Unionism, 46ff.
5 See Section 1 above.
6 Blackburn, Trade Unionism (Victorian Labor College), 13
were much less common and usually more formal than was to be the case after the second world war.

It was during the 'thirties that union leaders in general showed signs of reaching towards a new view of political action, a view that seemed to provide the only way out of the dilemma arising from the unions' inability to use effectively either direct action or Labor's political machine as a means of ameliorating their problems. The A.C.T.U. Congress of 1934, faced with a non-Labor Federal government and a need to secure a number of vital amendments to legislation, turned down a general strike proposal and called for greater support for Labor's parliamentary candidates. But as far as immediate action was concerned, the Secretary, C. Crofts, suggested that 'influence could be brought to bear on Members of Parliament, both Labor and anti-Labor'. Another delegate agreed cautiously that 'it was possible to force antagonistic Governments to do something'.

Crofts' suggestion was revealing in its emphasis on individual parliamentarians rather than on the government itself: the A.C.T.U. no longer concerns itself with individual parliamentarians rather than cabinet ministers. In more general terms, these views indicated that at least some union leaders were facing the fact that political action, if it was to be utilized on as wide a scale as possible, meant more than merely biding time until a swing of the electoral pendulum sent Labor to the government benches. The attempt to influence a non-Labor government could and should be made, even if there was only a faint hope of extracting concessions from such a government. This change of attitude was inevitable once it became completely clear that, Queensland apart, Labor could not hope to monopolize the government benches. Moreover, even if non-Labor governments could be expected

7 Minutes, All Australian Trade Union Congress, October 1934, 28. My emphasis
8 Ibid
to concede little in the way of new legislation or new policies, there was a field in which some cooperation could be expected with more justification.

Favourable legislation and policies established under Labor governments were often accepted by succeeding non-Labor governments. But acceptance was not always enough. The question of administration was of equal importance. The distinction is of importance even in relation to a Labor government. The President of the A.C.T.U., A.E. Monk, was to show that the unions recognized it when he pointed out to the Curtin Labor Ministry in 1942 that the unions' "quarrel was not with policy; it was a quarrel with the administration of that policy." Recognition of the importance of this distinction led naturally to the conclusion that the unions should seek regular channels through which they could make their views heard on the daily questions of administration. Only acceptance of this conclusion could have been behind the resolution, clearly union-inspired, that was carried by the A.L.P. Federal Conference in 1936 when a non-Labor Federal government was in office; 'on the appointment of any Board, Commission or Trust by Parliament, it shall be the duty of the Labor members to press for adequate representation of the trade union movement, with due regard to the rights of the union or unions concerned'.

In similar vein, the A.C.T.U. had suggested to the Scullin Labor Government in 1930 the formation of an Economic Council including union representatives, and with the functions of conducting a survey of the Commonwealth's economic resources and allocating credit for their development. But more significant was the demand made directly to a non-Labor government by the All Australian Trade Union Congress in 1937, and reaffirmed in 1939: 'Adequate representation for the organised workers upon

10 Quoted by Crisp, The Australian Federal Labour Party, 1901-1951, 286
any body that may be established to deal with wages, hours, or prices, and
Social Insurance and National Economy*.

The impetus to acceptance of a policy of this nature initially came from the almost complete breakdown during the 'thirties of the usefulness of party-political action to the unions and the parallel effect of economic depression on their industrial strength. But the fact that a fundamental and more lasting change in union attitudes was involved was to be revealed in the even more vigorous assertion of the same claims after the advent of a world war and, later, economic prosperity had greatly enhanced the trade union movement's industrial strength. 13

4. The Current Scope of Union Action

The industrial strength of the Australian trade union movement has probably been greater in the years since 1939 than ever before in its history. Where necessary, it has used that strength to enforce its claims by direct industrial action. At the same time, largely because of the unions' industrial strength, non-Labor governments have shown a new readiness - even eagerness - to obtain the cooperation of the union movement. 1 For their part the unions have been prepared to consult with such governments on a scale undreamt of before the 'thirties. 2 This has not involved the unions renouncing their traditional allegiance to the A.L.P. The choice, as viewed by most union leaders, is not a matter of exclusive alternatives. It is not, as has been suggested, a question of the trade union movement substituting 'the role of the unattached pressure-group and uncommitted adviser of successive Governments of all political colours' for 'its traditional role of

12 Minutes, All Australian Trade Union Congress, March 1939, 16
13 See Chapter 10.
1 For a full discussion on government attitudes, see Chapter 10.
2 For qualifications to this broad statement, see Chapter 10.
3 Crisp, The Australian Federal Labour Party, 1901-1951, 296
backbone and conscience of the Labour Party—any more than it was, in
the long-run, a question of the unions substituting party-political for
industrial action after 1890. To most union leaders it is a matter of
combining both methods of political action, party-political and independent
pressure-group.

No central union organization has more actively promoted closer liaison
with a non-Labor government than the A.C.T.U. with the Menzies Federal Gov­
ernment; but the A.C.T.U. can still call for

the widest possible unity in action between the Trade Union Movement
throughout Australia and the Federal and State Australian Labour Par­
ties...as a base for organisation in action to drive the Menzies Gov­
ernment and anti-Labour Governments in the relevant States, out of
office. 4

In September 1955 A.C.T.U. officials accepted an invitation from the Liberal
Prime Minister to discuss the current economic situation; while in Canberra
for this purpose, they conferred on the same question with the Leader of the
Labor Opposition and officials of the A.L.P. Federal Executive.5 Union
deputations to ministers in the Menzies Government have not uncommonly in­
cluded Labor parliamentarians and A.L.P. officials; and unions seeking
concessions from non-Labor governments quite often put their case at the
same time to corresponding parliamentary Labor parties and A.L.P. executives. 7

In the same way, there is no question of substituting political action
for industrial action, or vice versa. On the one hand, most union leaders
recognize now (if they did not before the 1949 coal strike) that there are
limits to the effectiveness of direct action—the most significant limit
being set by the point at which a government decides to throw its full
weight against striking unions. Moreover, to union leaders who rail against

3 Crisp, 'The Australian Federal Labour Party, 1901-1951, 296
4 Minutes, All Australian Trade Union Congress, September 1955, 27.
5 Sydney Morning Herald, 20/9/1955
7 This policy was carried out on the widest scale in recent years during the
A.R.U.'s campaign for representation on public transport bodies.
the procedures of industrial arbitration but firmly support its purpose of laying down minimum working conditions binding on employers, the suggestion that they should give up political for industrial action means abandoning the method by which they may at once preserve industrial arbitration and shape the arbitral structure closer to their wishes.

On the other hand, concentration exclusively on political action would, in the eyes of many union leaders, involve abandoning the means by which concessions over and above the minimum standards established by legislation and industrial tribunals have been gained from employers. This attitude is not confined to unions able to use the strike weapon effectively. These unions are commonly recognized as filling the role of 'pace-setters', their strike successes frequently being reflected in concessions granted by employers, or by industrial tribunals for the sake of uniformity, to unions that are less able or willing to resort to direct action on their own account.

It is often asserted, especially by American observers struck with the contrast between the free political status of American unions and the close institutional ties linking Australian unions with the A.L.P., that the Australian trade union movement is concerned almost exclusively with party-political action. In this way, it is claimed, union aims are achieved.

The unions can use their power in the Party to alter the social services as they deem necessary. The wages and arbitration courts... can be indirectly controlled by political action. Therefore, the unions by means of their Labor Party can have an effective voice in practically all the various means used to divide the nation's output...[and] through the Labor Party and its influence upon law-making and law-administration, they can get organizational security and can largely insure that their members will receive fair and just shares of the national income.  

8 Kuhn, 'Why Pressure-Group Action by Australian Trade Unions?', (September 1952) 24 Australian Quarterly, 67
ment of union aims was as simple as this statement implies, then it would indeed be true to say that 'political action through the Party makes achievement of union goals so easy...that the union members get what they want too easily' — and it would not be surprising that the unions should channel all their activities through the A.L.P. But the connection is not so simple. Parliamentary Labor is frequently out of office, and therefore incapable of carrying out union wishes. When it is in office, it has never responded automatically to those wishes, and no two Labor governments have shown a uniform response. In addition, the unions themselves are often divided on the way in which their potential power in the Party machine should be used and on the kind of policies Labor governments should adopt. The most that can be said, therefore, is that Australian unions place greater reliance on party-political action than do American unions, a fact that has not precluded their taking other courses of action open to them in order to gain their ends.

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It has been said that 'reliance is usually placed on the efforts of the trade unions [i.e., industrial action] in a period of business upswing, whereas, in the days of contraction, hopes and expectations are generally directed to the energies of the labour parliamentarians [i.e., party-political action]' 10. This is broadly true, but it is also an over-simplification. In the first place, it ignores the possibility of unions acting politically as independent pressure-groups. Their views can be expected to carry greatest weight with non-Labor governments in times of economic buoyancy, but even in less auspicious circumstances they are unlikely to be lightly brushed aside.

In the second place, the statement overlooks the importance of the

9 Ibid.
10 Foenander, Better Employment Relations, 212
nature of the specific issue involved in determining the unions' choice of methods. Thus, in the prosperous post-war period, the unions placed their reliance in turn on the most appropriate of each of the three methods open to them in order to achieve three different aims. The 'break-through' on the continuation of the war-time wage-pegging policy was achieved in 1947 by determined strike action on the part of the metal trades unions. The application of the forty hour week in 1947 was largely the result of party-political action, which secured the enactment of appropriate legislation by the Labor governments of two major States and in this way, as union leaders are firmly convinced, forced the Federal Arbitration Court to apply the principle on a national scale. The full and regular participation of trade union representatives in both the formulation and administration of the post-war immigration programme was achieved not through the Federal Labor Government but by pressure-group action in relation to the succeeding non-Labor Government.

In the third place, the statement fails to make the point that on a single issue, where possible and appropriate, the unions may utilize all three methods. Thus, on the issue of long-service leave: by party-political action, they achieved the enactment of long-service leave legislation by four State Labor governments; by pressure-group action, they obtained corresponding if less favourable legislation from a non-Labor State government; and by threat of direct action, they obtained agreements covering important industries in the latter State and providing for long-service leave on terms similar to those embodied in legislation by the State Labor

11 See Perlman, Judges in Industry, 118ff, for a description of the events involved. His interpretation of them, however, fails to give due weight to the point emphasized by union leaders - the authorities' acceptance, under strike pressure, of the principle that the wage-freezing policy should be abandoned.

12 See Chapter 14

13 See Chapter 11
Finally, as a generalization, the statement does not allow for variations in the emphasis different unions place on each course of action open to them at the same time, variations which are usually most marked in relation to industrial and party-political action. Thus, while the Australian Workers Union is traditionally disposed to favour party-political action, the Amalgamated Engineering Union leans towards industrial action.

Nevertheless, the general implication of the statement quoted above is accurate. The effectiveness of each of the methods available to the unions at a given time is largely a function of existing economic circumstances; and the relative emphasis adopted by union leaders follows from their judgement of each method's effectiveness. This generalization has been illustrated in the recent history of a single union, the Miners Federation. Traditionally, one of the most powerful and militant unions, the Federation has been hard hit in recent years by increasing mechanization in the coal industry and by a shrinkage in the coal market. The effect of this situation on a union that had for long relied more strongly than any other on industrial action, was evident in the statement made by one of its leading officials when the A.C.T.U. Congress of September 1957 was considering the question of automation: 'The only way in which workers can share in the increased productivity brought about by automation is not by asking the boss, for more, but by legislative action'.

5. Union Attitudes to the A.L.P.

At no time since the foundation of the Australian Labor Party has the unions' dependence on the Party been less than in the years since the second

14 See Chapter 14
15 See, e.g., K.F. Walker, Industrial Relations in Australia, 264, 271.
world war. During this period the trade union movement has possessed an industrial strength greater than ever before, and has conducted consultations and negotiations direct with non-Labor governments on a scale and at a level previously unheard of. The extent to which the latter course of action, in particular, is used vitally affects the relationship between the trade union movement and the A.L.P. "Usually closer and less hostile relations with a non-Labor government involve an implicit weakening of the ties which bind the unions to the Labour Party." There has in fact occurred a general weakening of the ties between the unions and the A.L.P. since the war, a feature that is partly a result and partly a cause of the unions' greater readiness to negotiate with non-Labor governments.

One striking symptom is the attitude found in many union quarters to the question of union officials entering parliament. Generally speaking there appears to be at least a feeling of indifference on the question. One leading A.L.P. official commented: 'Prominent trade union officials don't seem to feel it necessary to move into politics'; while a union official remarked that 'unions don't try to get their men into parliament as they used to'. In some cases there seems to be a distinct current of feeling against union officials taking up political careers. Another prominent A.L.P. official, not a union official, went so far as to claim that in his...
State if a trade union official nominated for a seat it commonly happened that a 'wave of revulsion runs through his union'. This attitude, whether of apathy or of antagonism, is a distinct break with the past - it is admitted as being of fairly recent origin, estimated usually within the last twenty years. Thus, while thirty years ago there was 'no question that the step...from union official to Parliamentarian is considered a promotion', today, as one official put it, 'it is no longer an honour for union officials to get elected'.

The reason commonly given for this trend is that unionists consider an official's first loyalty to be to his union, which should not be made 'just a stepping-stone to politics'. So far as union officials themselves are concerned, attitudes vary not only according to personal ambitions but from union to union. At one extreme the Australian Workers Union has always been the single most active union in Labor politics, and apparently continues to enjoy its role as the most prolific spawning ground of unionist-politicians. On the other hand, lack of interest in political careers is probably strongest among the officials of unions, such as the Amalgamated Engineering Union, in which there exists a strong loyalty to the union and a corporate pride in its capacity as an industrial organization.

The feeling against union officials entering parliament does not appear to have reached the stage in Australia, as it has in the United Kingdom, where union rules debar parliamentarians from membership of their executive bodies,\(^2\) nor even of rules barring full-time officials from political careers a feature of most British unions. A number of Labor parliamentarians,\(^3\) Goodrich, 'The Australian and American Labour Movements' (1928), 4 Economic Record 196

3 The Amalgamated Engineering Union is an exception, its rules being based on those of its British parent-union.

4 Jacobson & Connor, 'The Trade Unions and Parliament' (1956), 9 Parliamentary Affairs 475
mainly confined to State legislatures, continue to hold full-time or other union positions. However, as a matter of practice officials are usually expected to give up full-time union positions on election in accordance with the principle of 'one-man-one-job'; in many cases they become automatically ineligible for continued membership of their union under its qualifications rule.

It is difficult to estimate with any precision the extent to which this development is reflected in the proportion of union officials in the ranks of parliamentary Labor parties, and even more difficult to estimate its effect on the proportion nominating as parliamentary candidates. The only figures available are limited to the Labor membership of the Federal Parliament from 1901 to 1954. There are no corresponding figures available for State parliaments, and none at all covering Labor candidates contesting elections. The Crisp-Bennett figures are set out in Table 3. They show that from 1931 there was a distinct, if small, decline in the proportion of former union officials of all ranks in the Federal Parliamentary Labor Party, though the proportion of former full-time secretaries remained comparatively stable and even exhibited a marked but temporary rise during the 'thirties. On the other hand, it is clear from a survey conducted by the present writer that the proportions of former or existing union officials of all ranks in State parliamentary Labor parties in recent years are usually much lower than at the Federal level. Assuming that the change in union attitudes, noted above, has had the effect of reducing the numbers of union officials embarking on a political career, the contrast between the recent proportions of unionist-parliamentarians at the State

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5 This is exclusive of the N.S.W. Legislative Council in which the proportion of full-time officials is very high owing to the peculiar nature of membership of it; see Table 16, note 1.
7 See Table 15.
and Federal levels is probably a result of the Commonwealth's increasing stature, which is likely to make a career in Federal politics more attractive than one in State politics to union officials whose ambitions lie in this direction.

On the other hand, even in the Federal sphere, but especially in the States, it is evident that the available data are sufficient to put in doubt the present relevance of the thirty-year-old statement that the position of trade union official is the 'first step on the most-travelled road to high public office'. It is not yet clear whether this heralds the evolution, as observed in the United Kingdom, of a 'new type of trade union leader who, towards the end of his career looks, not for a seat in the House of Commons, but for an opportunity of giving further service as an administrator on a public board of some kind'. But the opportunities for service of this nature have increased considerably in Australia since the second world war, if not to the same extent and importance as in Britain.

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The independence of the unions from Labor's political machine, and the weaker ties between them that this implies, has been further demonstrated in recent years in connection with the question of closer organization between the industrial and political wings. Only in Western Australia are both wings united in a single organization. Attempts to transplant this structure have been resisted by most union leaders. A proposal for national organization on these lines was sponsored by the A.L.P. during the 'twenties. Some union leaders favoured the scheme on the ground that it would ensure

8 Goodrich, op. cit., 195
9 B.C. Roberts, Trade Union Government and Administration in Great Britain 468
10 See Chapter 11
11 See Chapter 3
union control of the political wing. But most agreed with the view of
the Trades and Labor Council of South Australia that 'the main object of
the re-organisation scheme is to hand over the Trades and Labor Councils to
a political bureaucracy'. A similar scheme put into effect earlier in
Tasmania soon broke down as a result of union dissatisfaction. However,
further moves in this direction were made in Tasmania more recently. In
February 1957, the Tasmanian General Executive of the A.L.P. requested all
union delegates attending the State Conference the following month to meet
before the Conference opened in order to discuss the question of 'reconstit-
uting the Tasmanian Trades Union Council within the auspices of the A.L.P.'.
The Executive justified its action on the ground of the 'vital necessity of
complete co-ordination between the Political and Industrial wings of the
A.L.P.', but it did not escape a unanimous censure vote at the next meeting
of the Hobart Trades Hall Council. The pre-Conference meeting on the ques-
tion was attended by sixty-four trade union delegates, of whom sixty-two
voted against the Executive's proposal. The agenda item recommending the
formation of 'machinery to establish a State-wide industrial body of broad
representation within the framework of the Australian Labor Party' was not
dealt with by Conference.

14 Minutes, United Trades and Labor Council of S.A., 3/6/1927
15 See Section 2 above.
16 Letter reproduced in Hobart Trades Hall Council's circular to affiliated
unions, 25/2/1957. The Tasmanian Trades Union Council was a moribund body
set up in 1940 to coordinate the activities of the various trades and
labour councils in the State: see Chapter 3.
17 Ibid.
18 Minutes, Hobart T.H.C., 21/2/1957. The A.L.P. Executive's move followed
an attempt it had made the previous year to set itself as the competent
body to advise the State Labor Government on industrial matters, a claim
which was hotly disputed by the Hobart T.H.C.
19 Agenda for Annual Conference, A.L.P., Tasmania, March 1957, item number 50
It is, however, in Western Australia itself, where 'the whole organization of the Labour Movement is calculated to minimize the distinction between political and industrial elements', that the post-war independence of the unions from the A.L.P. has been most strikingly thrown into relief. From 1906 up to the second world war the combined central organization headed by the A.L.P. State Executive operated without any serious challenge to its existence from the trade union side. But since the war there have been signs of tension.

During the war, as one 'moderate' Western Australian union leader put it, the unions 'found out what industrial organization could do'. At the same time, many union leaders became increasingly sensitive to the fact that industrial matters considered by the A.L.P. State Executive in its capacity as the central union organization were discussed at a 'political rather than an industrial level'. The situation was brought to a head by the attitude of the State Labor Government to the locomotive drivers' strike in 1946. As a result a number of A.L.P.-affiliated unions combined with the Communist-controlled unions to form a Western Australian Council of Trade Unions (W.A.C.T.U.) in July 1947, with a claimed membership of ten unions and the promise of further affiliations. The new organization promptly applied for recognition as the State Branch of the A.C.T.U., Western Australia being the only State without such a branch. By October, fortified by the A.C.T.U.'s favourable response to its application, it was claiming an affiliated membership of fourteen unions representing 12,000 members.

That the W.A.C.T.U. was not merely an organization of Communist-led unions - unions which could not affiliate with the State A.L.P. - was demonstrated by the speedy reaction of the A.L.P. State Executive, which set

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23 Ibid., 10/10/1947.
in train plans for the creation of a Trade Unions Industrial Council (T.U.I.C.) within the A.L.P. framework. The T.U.I.C. was formally constituted by the A.L.P. State Conference (General Council) in December 1947. The powers of the new body, on which only A.L.P.-affiliated unions were entitled to representation, were subject in all cases to the A.L.P. State Executive; and it could amend its own constitution only with the Executive's approval.\[24\]

The T.U.I.C., as a member of the Executive pointed out, was to be 'merely' an advisory body, the decisions of which would be subject to the State Executive.\[25\]

The great bulk of the A.L.P.-affiliated unions that had joined or were contemplating membership of the W.A.C.T.U. transferred to the T.U.I.C., despite its limited powers. The W.A.C.T.U. languished from then on. In November 1948 the President and Secretary of the A.C.T.U. refused it recognition as the State Branch of the A.C.T.U., after finding that only eight unions were affiliated with it instead of the claimed thirty.\[26\] The coup de grace was delivered by the President of the State Arbitration Court in May 1949 when, after an exhaustive and damaging analysis of the W.A.C.T.U.'s claimed membership and its representative's credentials, he refused it leave to be represented alongside the A.L.P. State Executive in a hearing on the basic wage.\[27\]

Nevertheless, the formation of the T.U.I.C. did not solve the problem of friction between the political wing and those officials of affiliated unions who wanted greater independence; it merely shifted the focus of the struggle to the question of the T.U.I.C.'s powers. At the A.L.P. State

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25 Ibid., 42
26 Workers Star, 26/11/1948
28 (1949) 29 W.A.I.G., 7.
Conference of 1949, a number of remits from unions proposed that a set proportion of the Party's affiliation fees (one-third) should be set aside for the use of the T.U.I.C., and that the T.U.I.C. should be given exclusive jurisdiction over industrial matters: both proposals were rejected by Conference. However, the major battle took place over the question of affiliation with the A.C.T.U. Delegates were apparently agreed that affiliation was desirable in order to establish a State Branch of the A.C.T.U. The controversial question was whether the Branch should be constituted by the State Executive or the T.U.I.C. To the motion put forward on behalf of the State Executive, that it should become the Branch, an amendment was moved claiming the position for the T.U.I.C. The subsequent debate and the vote on the amendment indicated the seriousness of the division.

Speakers supporting the State Executive were unanimous that the existing organization 'had proved very successful' and they deplored the emphasis placed by the opposition on 'the distinction between the political and industrial sides of the Movement'. One State Executive supporter thought that if the amendment were carried, individuals who were both Executive and T.U.I.C. members 'would find it difficult to determine to which body they owed greater loyalty'; and another promised that even if the motion was carried, the T.U.I.C. 'would still have a considerable voice in the industrial matters involving the A.C.T.U.'. For their part, the T.U.I.C. supporters were equally unanimous in denying that the existing organization was 'successful'. Fear was expressed that if the State Executive became the A.C.T.U. Branch, 'industrial principles might be sacrificed to political

30 Ibid., 30
31 Ibid., 31
32 Ibid.
33 Ibid., 30
expediency'. It was claimed that since 'the industrial movement was now expanding, therefore it should have some organisation for exclusively reaching its own decisions'. And one delegate complained; 'When the Industrial Council was set up it was understood that some of the industrial work of the State Executive would be delegated to it. This had not been done to any extent.' When the vote on the amendment moved by the T.U.I.C. supporters was taken, the result was 50 to 78 against; and on a card vote being called for, it was again lost by 232 to 371. The Executive's motion was subsequently carried.

Their sound, if not inglorious, defeat did not choke off the advocates of greater independence for the T.U.I.C. Within a month they were urging the State Executive to provide the T.U.I.C. with sufficient funds to employ its own full-time secretary, it having no funds of its own. The request was not granted, the State Executive suggesting that 'State Secretary of the A.L.P. should also act as Secretary of the T.U.I.C. (a practice that has since been followed) and that the Council should 'continue to function as an advisory body'. As before, the T.U.I.C. was able to consider only matters referred by the State Executive and to submit recommendations to the Executive. Its trifling powers, and the frustration they implied, are illustrated by the resolution carried in response to a letter from an affiliated union asking the T.U.I.C. to subscribe to a labour journal: 'That we suggest to the State Executive that it subscribe to the review'.

T.U.I.C. recommendations were usually accepted by the State Executive. But it was inevitable that having been given an inch by the formation of

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34 Ibid.
35 Ibid., 30
36 Ibid.
37 Ibid., 31
38 Minutes, T.U.I.C., 13/9/1949
39 Ibid., 20/1/1950
40 Ibid.
the T.U.I.C., the union leaders most active in it should want a yard. The existence of agitation for greater independence was evident in the need felt by the State Secretary in December 1950 to make out a case in reply "to those persons who stated that there should be a separation between the political and industrial sections of the Party".41

In 1952 the serious metal trades strike of that year was handled by the State Executive's Disputes Committee, the T.U.I.C. being given no powers to deal with it. This demonstration of the complete inadequacy of the T.U.I.C. from an industrial point of view caused those union officials who had been most active within the Council to turn away from it in disgust. As a result the T.U.I.C. did not meet from September 1952 until the middle of 1953, when A.L.P. leaders considered it wise to attempt to revive it.

But the T.U.I.C.'s revival was not achieved without concessions on the part of the State Executive. The nature of these concessions, which were formally adopted by the A.L.P. State Conference of October 1953, reflected the depth of union discontent with the T.U.I.C. as originally constituted. The Council's general powers, formerly of 'recommendation' only, became powers of 'determination', and included the power to amend its own constitution. It was also given the right to elect two representatives direct to the State Executive, and the right 'to nominate and elect' one of the two State representatives to the A.C.T.U. Interstate Executive. In addition, an Industrial Committee was set up, composed of all the officers of the T.U.I.C. and the State President and Secretary of the A.L.P., to consult with the State Parliamentary Labor Party 'on all industrial matters requiring legislative attention'.

These extensions of the T.U.I.C.'s power succeeded in their immediate purpose of reviving interest in the Council and preventing an open split in

the Party. They did not, however, succeed in disarming union critics or eliminating possible causes of future friction. The Council was still firmly subordinate to the State Executive - under the influence, according to one union official, of 'politicians and women'. It had no funds of its own, and all its decisions were subject to a right of appeal to the State Executive, though this provision had not been used up to July 1957. Appointments of union representatives to public bodies were made by the State Executive, which refused a request to delegate the power in a case claimed by the T.U.I.C. to involve an industrial matter.

The question of competence in relation to A.C.T.U. decisions was a consistently sore point. Conflict on the issue was evident in the terms of a note which accompanied certain Interstate Executive decisions when the State Executive referred them to the T.U.I.C.

As the State Executive of the A.L.P. is the accepted affiliated body by the A.C.T.U., only that body is deemed to have complete powers of adoption or rejection. As State Congress, however, has clothed the Industrial Council with certain powers it is deemed advisable that the Council should also receive for its consideration the decisions of the Interstate Executive. It is suggested that the Council should be the first body to give consideration to the items, as its attitude should provide a valuable guide to the State Executive.

The matter was raised in crucial form when the A.C.T.U. Interstate Executive referred to its State branches the decision of the 1956 Special Congress that a nation-wide stoppage should be held in protest against the Federal Arbitration Court's failure to restore the system of automatic cost-of-living adjustments to the basic wage. The Western Australian State Executive approved the stoppage proposal by a large majority. But, when it was referred to the T.U.I.C., the proposal was rejected with only one dissenting vote, and the Council later re-affirmed this decision. Since the unions that would

43 Minutes, T.U.I.C., 14/5/1957; also, ibid., 4/6/1957.
44 Ibid., 8/2/1955.
have had to conduct the stoppage were almost unanimously against it, on the ground that it would be ineffective, the State Executive was forced to rescind its decision. One result of the episode was that A.C.T.U. decisions on industrial matters were subsequently sent to the T.U.I.C. before being dealt with by the State Executive.

But perhaps one of the most critical sources of friction had been the State A.L.P. rule debarring unions with full-time Communist officials from affiliating with the Party, a rule which automatically disqualifies Communist-led unions from taking part in the T.U.I.C.'s activities. Less than half-a-dozen unions are affected in this way, but many union leaders are convinced that they should be entitled to representation on the T.U.I.C. as a body concerned with industrial rather than political matters. The same principle was raised in 1957 when a union official was suspended from the A.L.P. for three years. The official, not a Communist, was a delegate to the T.U.I.C. and one of its officers; but his suspension from the A.L.P. involved automatic suspension from his T.U.I.C. positions. The incident reinforced earlier criticisms on the nature of T.U.I.C. membership.

The seriousness of the conflict aroused by the issues outlined above was shown by the reaction to six items on the agenda of the 1957 A.C.T.U. Congress which criticized the character of the A.C.T.U.'s Western Australian Branch. Before Congress met, the T.U.I.C. adopted certain recommendations emanating from the A.L.P. State Executive. These included an undertaking to hold a special conference of A.L.P.-affiliated unions, and excluding political branches, to decide whether a separate trades and labour council should be formed or whether the T.U.I.C. should become the A.C.T.U.'s State Branch. In addition, the State Executive undertook to examine the question of amending the rule debarring Communist-led unions from affiliation, and also to

47 Minutes, T.U.I.C. Officers' Meeting, 5/2/1957.
permit the T.U.I.C. to determine for itself the eligibility of any person to act as a delegate to it.

The Western Australian case, as an illustration of the unions' present tendency to assert their independence of the A.L.P., is significant because it involves a State where unionism is somewhat isolated from the more turbulent influences operating in the eastern States. It is true that State branches of Federal unions have played a major part in the agitation within the State, and have been spurred on by their Federal headquarters - as the raising of the matter at the A.C.T.U. Congress indicates. But they have been supported also by a number of State unions. Moreover, most of the unions concerned clearly view the problem less in terms of the formation of a separate trades and labour council, as is the inclination of union leaders in the eastern States, than in terms of an increased role for the T.U.I.C. An official of a Federal union's State branch summed up this view: 'If the Council was given full powers, and open powers to admit all unions who wanted to affiliate, then you couldn't want much better'. Only in this way, they realize, can a split of major proportions in the State Labor movement be prevented, an attitude that is indicative of their sincerity and moderation. The A.L.P. leadership has shown itself equally anxious to prevent a split - and not merely because the present organization enables them to fix union affiliation fees at a rate that is not only more than twice the rate levied by the A.L.P. in any other State, but is considerably higher than the combined rates of each other State Party and the corresponding trades and labour council.

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48 Recommendations, Special Industrial Council Meeting, 20/8/1957. The A.C.T.U. Congress subsequently approved the union conference, but urged that it should include unions not affiliated with the A.L.P.: Minutes, A.C.T.U. Congress, Sept. 1957, 10. But the A.L.P. State Secretary indicated that his organization's constitution prevented it calling a Conference including unaffiliated unions: ibid., 27.
The reserve towards the A.L.P. which is evident in the attitudes of many union leaders today is compounded of many elements - not the least of these, in some cases, being thwarted personal ambitions. More important, however, has been the effect of post-war prosperity and full employment policies in enlarging the unions' opportunities for successful action independent of Labor's political wing. Especially to the extent that such action takes the form of dealing with non-Labor governments, it has inevitably led to some conflict between the unions and the A.L.P. Party leaders, have naturally resented the readiness shown by unions to by-pass the A.L.P. in order to achieve their aims. For their part, many union leaders reason that it is better to gain something by dealing direct with non-Labor governments than nothing by pressing their views through Labor parliamentarians. The latter course has usually proved abortive in the past because governments are understandably reluctant to make even minor concessions which may be credited to their political opponents. The supporters of this attitude are concerned less with which political party gets the credit than that the concessions should be made.

These attitudes were brought out in two recent episodes in South Australia, where the problem is particularly acute because Labor has been out of office for more than twenty years. The first involved a suggestion from the Liberal Country League Government in 1953 that the United Trades and Labor Council (T. and L.C.) should nominate a representative to an advisory committee which was to consider amendments to the Workmens Compensation Act. Labor political leaders opposed acceptance of the invitation; workers' compensation was a stick with which the State Parliamentary Labor Party had been accustomed to beat the Government. The T. and L.C., on the other hand, showed itself to be less concerned with party-political advantage.
Despite attempts by some delegates prominent in the A.L.P. to have it referred to the Party leadership, the Government's invitation was finally accepted - though the election of the State Secretary of the Australian Workers Union, (an opponent of participation) as representative was curious if explainable in terms of a complex set of personal factors. A further move to oblige the representative to confer on request with leaders of the Parliamentary Labor Party was defeated in favour of a direction that he should confer only with the Executive of the T. and L.C. The importance placed on the issue was demonstrated by later events. The first report of the Workmens Compensation Advisory Committee in 1954 was accompanied by a minority report from the T. and L.C.'s representative (also a member of the A.L.P. State Executive) strongly criticizing the majority recommendations. The Executive of the T. and L.C. promptly instructed withdrawal of the minority report on the ground that, although the majority recommendations were inadequate, any delay in their enactment would deprive employees of the benefits they nevertheless involved. The full T. and L.C. endorsed the Executive's action by a vote of 73 to 39. A later, less well-attended T. and L.C. meeting carried by 48 to 43 a resolution, moved by a State A.L.P. Executive member, reversing the 1953 decision to take part in the W.C.A. Committee. However, a subsequent special meeting rescinded the withdrawal decision, and rejected, by 73 votes to 32, a proposal to have the matter considered by a joint meeting of the T. and L.C. and the State A.L.P. executives.

The second South Australian episode concerned the long-service leave legislation enacted by the Playford Government in 1957. Some time earlier, the Government had granted long-service leave on generous terms to its own

49 Minutes, United Trades and Labor Council of S.A., 1/5/1953
50 Ibid., 15/5/1953
51 Ibid., 15/5/1953; 29/5/1953
52 Ibid., 10/12/1954
53 Ibid., 18/2/1955
employees in order to compensate for the fact that public servants were paid no more than the minimum award wage. Shortly afterwards, the State A.L.P. Convention adopted these terms as part of its policy advocating long-service leave for private employees. The legislation proposed by the Government early in 1957 provided long-service leave for private employees on much less generous terms. The State A.L.P. therefore committed itself to unequivocal opposition of the Bill. On the other hand, the T. and L.C.'s reaction was to ‘welcome’ the Government’s intention to bring down the Bill, while claiming that the conditions it was to embody were not satisfactory. The meeting which carried this resolution rejected an amendment, moved by supporters of the A.L.P. State Executive, that would have deleted the part welcoming the Government’s intention to take action. The subsequent clashes on the matter between the T. and L.C. and the A.L.P. hinged on the Party’s decision that the Labor parliamentarians should vote against the Bill in Parliament. The T. and L.C. was more interested in obtaining such benefits as the Bill did provide than in making political capital out of the fact that the Bill suffered by comparison with the corresponding legislation in other States. The controversy reached a point where at least one union threatened disaffiliation from the A.L.P. if the Party persisted in its outright opposition. After the Premier refused union requests to extend the Bill’s provisions, two amendments supporting the decision of the A.L.P. ‘to fight and vote’ against the measure were rejected by the T. and L.C. in favour of a motion that merely ‘expressed dissatisfaction’ with its terms.

The conflict apparent in the two South Australian episodes reflects the standard attitude of central union organizations on the question of which body should make policy decisions. A delegate to the A.C.T.U. Congress of

55 Ibid., 10/5/1957
56 Advertiser (Adelaide), 25/6/1957
57 Minutes, United T. and L.D., 19/7/1957.
1940 indicated the previous position in relation to this problem and a popular union view on its solution:

There had been a long standing controversy ever since Labor representatives had gained seats in Parliament, as to whether the Industrial Movement or the politicians should make the first declaration of policy. He definitely stood for the Industrial Movement being the leaders in matters of policy. 58

Realistic union leaders make a rather narrower claim (and the delegate quoted may well have meant this). It is that the appropriate organs of the trade union movement, and not those of the A.L.P., should formulate all policy decisions on industrial matters.

The Party has not always accepted this claim. On occasion it has made decisions on industrial matters without consulting the appropriate central union organization, or even against its express wishes. Situations of this sort tend to arise most frequently at the Federal level where it is often a matter of the wishes of the A.C.T.U. being pitted against those of the Australian Workers Union. Thus the 1957 A.L.P. Federal Conference, meeting some months before the A.C.T.U. Congress, replaced its previous policy of compulsory unionism with a plank advocating preference to unionists. It did this despite an earlier resolution of the A.C.T.U. Interstate Executive, which stated in part: 'That the Federal A.L.P. be requested not to decide policy on the question of preference to unionists until the A.C.T.U. Congress ... has determined trade union policy on this important issue'. 59

Feeling among union leaders is strong on this point. On the other hand they do not usually regard themselves as being bound to defer to the A.L.P. where non-industrial policies are concerned. The A.C.T.U., for example, has made policy decisions relating to child endowment even though A.L.P. leaders have asked it to refrain from doing so.

58 Minutes, A.C.T.U., General Congress, April 1940, 18.
The union attitude on the question of policy-making is to some extent a reflection of the attitude of many union leaders to politicians as a class - men 'who are inevitably out of touch with the Industrialists' cause'. As demonstrated by this comment, which was made in 1926, the attitude is not a new one. Partly it is based on the past performance of Labor governments, and partly on distrust of the motives of politicians themselves. The politicians ('pollies' as they are disparagingly called in some union quarters) are often felt to be a breed apart, whose office removes them from the daily grind of ordinary mortals and makes them less sensitive to union aspirations. The attitude has been reinforced by the inevitable tendency of the party system to broaden the basis of the A.L.P.'s membership beyond the ranks of the unions. Unionists are often suspicious of parliamentarians who have risen solely through the political branch structure, especially where, as is frequently the case, they are men of means from the professional, commercial or land-owning walks of life. Union antipathy towards 'B.A.'s and barristers' as Labor politicians is by no means a thing of the past. And although occasional calls are still made for the election of Labor men who have 'risen from among the working classes', experience has shown that such men are no more immune to what many unionists regard as the debilitating effects of political office.

The need of the A.L.P. to broaden its appeal in order to attract electoral support outside the unions, and the consequent tendency to soft-pedal sectional union policies, has long provided a focus for criticism by union leaders impatient of compromise - or with political ambitions of their own.

The effort was made in the past to put trade union representatives into Parliament, but the mistake was made of creating the A.L.P. which gave financiers and other moneyed people the opportunity of getting

61 Minutes, United T. and L.C., 24/9/1926.
62 See Rowson, The Organization of the Australian Labor Party, 1916-1941, 137
63 Sydney Morning Herald, 7/2/1957
64 See Childs, How Labour Governs, 59-60
into the A.L.P., with the result that it did not reflect the mental attitude of the trade unionists of this country.\(^5\)

This view still appeals in some union quarters. Added force is given to it by the knowledge that the election campaign funds of parliamentary Labor parties not infrequently benefit from donations received from sources outside the A.L.P. and the unions.

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Relations between the A.L.P. and the bulk of the unions were further strained in the post-war period following the Party's decision to sponsor Industrial Groups within the union movement as a means of combatting the growing influence of the Communist Party in the unions. The A.L.P. Groups found a ready-made nucleus in various anti-Communist union groups active during the later war years, of which the most numerous and well organized were those of Catholics with a political outlook that was in many respects more conservative than that of most non-Communist union leaders. Many non-Catholic leaders of the Industrial Groups also shared this conservative outlook. By 1953, Industrial Groups, with the help of Federal legislation regulating the conduct of union elections, had succeeded in reducing Communist influence within the unions to near pre-war level. At the same time the Group leaders had made considerable strides within the A.L.P. itself. By the end of 1954 they controlled the Party executives in the three States where they functioned on the largest scale (New South Wales, Victoria and Queensland) and were influential in the parliamentary Labor parties at both the State and Federal levels. But while they held a number of large and important unions, the Group leaders were never in a position to dominate the central union organizations in the way they were able to dominate the corresponding Labor Party bodies. Within the A.L.P. itself, they drew a large part of their strength from the political branches. The Industrial Groups therefore

came to assume the form of a movement functioning within the unions but
directed from the A.L.P., though as originally conceived and accepted by
many union leaders it was apparently to operate in the industrial field alone,
relying on the Party only for its endorsement as an anti-Communist force.

Opposition to the Groups had come earliest from union leaders who had
themselves defeated the Communist threat within their own unions 'without
altering the traditional structure of the Labour movement' in order to do so.
They were soon joined by others who were uneasy about the conservative polit­
cical policies favoured by Group leaders, or, as in the case of the Aus­
tralian Workers Union leadership in Victoria from as early as 1950, found that
their claims to membership of the Party's main executive bodies were not
recognized by Group leaders. Opposition mounted when the Groups extended
their activities to unions with non-Communist leaders, and nominated can­
didates against officials who were members of the A.L.P. This policy, which
appears to have first operated on an important scale in South Australia, was
one of the principal reasons why the Groups were banned by the Party in that
State as early as 1951. Union leaders prepared to accept the Groups while
they were restricted to Communist-controlled unions, were naturally unenthusiastic at the prospect of facing Group candidates in their own union elec­
tions. The result was summed up by an official speaking to other officials
of his union:

We were not really and truly 100 per cent. opposed to this industrial
group until when? Until it started to put its nose into our business.
That is when we opposed it.

From this point on, the support of the great bulk of trade union leaders was

67 Rawson, ibid., 42.
item 125. It has been suggested that, in the case of the A.W.U. leadership
in S.A., the experience of their counterparts in Victoria (who were refus­
ed a place on the Group-controlled 'ticket' for the State Executive elec­
tions from 1950 on) was also a reason for the early stand taken in that
assured for the withdrawal of A.L.P. recognition from the Industrial Groups, as carried out by the 1955 Federal Conference.

For some non-Communist union leaders, opposition to the Industrial Groups was primarily a function of the struggle for control of the A.L.P. machine, in which the withdrawal of the A.L.P. imprimatur from the Groups was an incident. But for many others the withdrawal achieved their main aim by depriving the Groups of a prestige and assured support in union elections that was not otherwise available. This attitude was reflected in the general disinclination to carry the fight raging in the A.L.P. into the union movement as a whole. There have been bitter struggles within individual unions on the question of the Groups. But by and large the leaders of central union organizations have been able to resist attempts to import the A.L.P. split into the union movement. Perhaps the only major exception to this policy was the Hobart Trades Hall Council's expulsion of a delegate on the ground that his position of State President of the Anti-Communist Labor Party was incompatible with the position of delegate. The Council's action was, however, strongly criticized by other union leaders no less opposed to the Industrial Groups. Moreover, preservation of the industrial wing's unity was not only desirable in principle but, as a matter of practical politics, was possible because Group-controlled unions were in a distinct minority in common council.

The union movement's success in preserving a unity that was in marked contrast to the situation in the A.L.P., reflects the extent to which it was possible to insulate the union movement as a whole despite the fact that many union officials were intimately involved as individuals in the struggle within the party. This p. 71 Official Report, A.L.P., 21st Commonwealth Conference, March 1955, 41-2. 71 Minutes, Hobart Trades Hall Council, 15/11/1956. It is not unlikely that the expulsion of the Amalgamated Society of Carpenters and Joiners from the Melbourne Trades Hall Council had something to do with its Federal Secretary's support for the Groups (he stood as a candidate against the Labor Premier in the 1955 elections); but there was also a solid basis to the industrial reasons given for the expulsion.
in the Party. The gap this indicates between the two was widened by the tendency of many union leaders to turn their backs on the bitterness and disunity permeating the A.L.P. and to devote their energies to union affairs.

As the events discussed above in relation to the smaller States show, union preference for action independent of the A.L.P. is not confined to the three larger and more highly industrialized States where, particularly in New South Wales, the distinction between the industrial and political wings is traditionally a firm one. On the other hand, it is also apparent that there is considerable variation between the attitudes of different unions. This is of particular importance in relation to one union, the Australian Workers Union (A.W.U.).

The A.W.U.'s leadership has traditionally placed special emphasis on party-political activity, an emphasis which is exemplified by the fact that in South Australia the union is affiliated with the A.L.P. on its full State membership of something over 12,000, but is affiliated with the United Trades and Labor Council on a membership of only 3,000. The role of the A.W.U. within the A.L.P. has been a consistently important one; and its representatives have normally exhibited a marked unity of outlook in the Party's councils. As we have seen, clashes between the industrial interests of the A.W.U. and those of other unions are not infrequent and its relations with the A.C.T.U. and many of its affiliated unions are usually strained. Conflict between the A.W.U. and other unions or central union organizations is often carried over into the A.L.P., where the A.W.U. is in an exceptionally strong position. This constitutes a further element in the suspicion shown


73 See Chapter 12.

74 An exception was the different attitudes of the various A.W.U. State leaderships up to 1954 (when uniformity was enforced) to the Industrial Groups. In Victoria and S.A. the A.W.U. leaders were early in conflict with the A.C.T.U. and many of its affiliated unions are usually strained. Conflict between the A.W.U. and other unions or central union organizations is often carried over into the A.L.P., where the A.W.U. is in an exceptionally strong position. This constitutes a further element in the suspicion shown

75 See Chapter 3. (note 74 continued over page.)
by many union leaders towards the A.L.P. Thus the decision of the 1957 A.L.P. Federal Conference to ignore the A.C.T.U.'s request that it should postpone consideration of the compulsory unionism plank, was widely attributed to the anti-A.C.T.U. influence of the A.W.U. At the State level, the Tasmanian A.L.P. Executive's attempts in 1956 and 1957 to form a body that would have largely supplanted the trades and labour councils was also regarded as inspired by the A.W.U., which is influential in the State Party machine but is affiliated with only a single provincial trades and labour council and has chronically strained relations with the State Branch of the A.C.T.U., the Hobart Trades Hall Council.

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The growing preference of union leaders for working through the industrial rather than the political organizations of the Labor movement, whatever their reasons may be, indicate a diminished reliance on the A.L.P. It would be a mistake, however, to assume that the ties between the trade union movement and the Party are more than loosened. Quite apart from the union leaders who play an active role in A.L.P. affairs, many of whom still regard party-political action as being of supreme importance, there is no question of the overwhelming majority of the unions ending their traditional allegiance to the Party. The disputes and the suspicions which scar the relationship, and the ability of the unions to take independent action for the achievement of their aims, has not eliminated the fundamental 'unity of thought' that is implicit in the continuing tendency of both sections to identify themselves as different 'wings' of the same 'movement'.

This is partly a matter of a tradition dying hard. Unionists' belief in the A.L.P. as the political spearhead of a labour crusade has disappeared, except from occasional platform speeches, with the early years of the century. While in N.S.W. and Queensland, especially the latter, they were up to 1954 numbered among the most ardent Group supporters. 76

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76 Crisp, op. cit., 90.
Some may still regard the Party, in the words of one union official, as 'the political expression of the trade union movement', even though the correlation between expression and performance is admittedly erratic. Others certainly share the disenchantment with party-political action expressed by the union delegate whose 'earlier belief that Labor Governments would carry out the policy of the Movement had been shattered'. Most recognize, however, that the Party and, most important, the politicians, for a variety of reasons can be expected to have at least a sympathy with union aims that is less prevalent in their non-Labor counterparts - as a union resolution put it, 'the Labor Political Movement in Australia has been broadly consistent in its support of Union principles'. This is the realistic school that regards favourable legislation by Labor governments as flowing not simply 'from the formation of the Labor Party with the fullest cooperation of the Trades Union Movement', but rather from the 'continuous pressure of the Unions on the Party and its Parliamentary representatives'.

So long as the unions can exert pressure to this end more effectively and more consistently on and through Labor's political organization than in the case of any other, they cannot be expected to forgo party-political action as a means of achieving politically those ends which they cannot achieve industrially. Moreover, for those union officials who regard the bonds between the trade union movement and the A.L.P. primarily in the light of a personal stairway to political office, there is no question of severing those bonds.

These considerations explain why, at the height of the controversy with the A.L.P. over the question of its representation on the Workmens

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77 Minutes, A.C.T.U., Conference of Key Unions, Sept. 1930, 13
78 Minutes, Melbourne Trades Hall Council, 31/1/1952
79 J.H.O'Neill (Secretary, Hobart Trades Hall Council), 'The Trades Union Movement in Australia' (unpublished article), 13
Compensation Advisory Committee, the United Trades and Labor Council of South Australia could respond unanimously to a non-Labor political leader's criticism of the 'close relationship' between the unions and the Party with the statement: 'This Council, realising that the A.L.P. is the political party of the Trade Union Movement, further confirms this unity and will continue to retain and consolidate it'.

80 Minutes, United Trades and Labor Council of S.A., 29/5/1953
PART II
THE LEGAL FRAMEWORK

The formal relationship between trade unions and the state is found in the terms of the law relating to the unions. In Australia the state has for long given close and direct attention to industrial relations, with the result that the formal relationship between unions and state is set out in considerable detail.

Discussion of the relationship is, however, complicated by two factors. In the first place, the existence of the Federal system in Australia means that there are seven bodies of law (the Commonwealth and six States) to be taken into account. In the second place, for a clear understanding of certain aspects of the relationship, it is necessary to consider not only the special industrial legislation found in all jurisdictions, but also what we may call the general law relating to trade unions which reflects English law on the subject. Much of the general law is rendered redundant by the special industrial legislation which now covers the great bulk of Australian unions. But, to a varying degree in the different jurisdictions, the general law is still significant at a number of points and therefore cannot be ignored.

The legal framework in which Australian trade unionism operates is considered below in terms of five categories: the nature of the state's intervention in industrial bargaining; regulation of the strike; legal enforcement of preference of employment to unionists and compulsory unionism; regulation of unions' internal affairs; and the legal status of trade unions.
CHAPTER 5

THE STATE AND THE INDUSTRIAL BARGAINING PROCESS

There are two key stages in the process of industrial bargaining: the stage at which the bargain is struck, and the stage at which it is enforced. In Australia the state is directly involved in both the formulation and enforcement of standard wages and conditions of employment in industry generally. In part its involvement derives from the extent to which governments, primarily State governments, have embodied industrial standards in legislation; in this case the bargaining process takes place at the political rather than the industrial level, a feature that is discussed in a later chapter. But here we are concerned with such involvement so far as it results from the statutory establishment of tribunals which take part in the bargaining process at the industrial level. Tribunals with this function play an important part in industrial bargaining in Australia. In all jurisdictions, machinery has been established for the formulation and legal enforcement of wages and conditions of employment; and in most of the States, provision is made for the legal enforcement of agreements concluded by ordinary collective bargaining procedures. The measure of government concern in this field is given by the estimate that a total of 88.6 per cent. of Australian male (and 92.1 per cent. of female) employees are covered by legally enforceable awards, determinations and industrial agreements.

This chapter deals, in the first place, with the structure of the various systems of industrial regulation. But primarily it is concerned with the role of the trade union within those systems - the extent to which the systems depend on the union for their effective operation and the ways in

1 See Chapter 14.
2 Commonwealth Bureau of Census & Statistics, Bulletin, 21/2/1956. The figures are as at April 1954. The only major industry in which industrial bargaining is conducted completely outside any statutory system is the Broken Hill metal mining industry.
which the union has been fitted into them. Discussion of the union's role is restricted to those aspects of that role which are directly relevant to the formulation, interpretation and enforcement of norms of employment within the jurisdiction of the statutory tribunals. However, questions relating to the strike and other forms of direct action are dealt with in a subsequent chapter: union activity of this type is the most frequent cause of enforcement action against unions, but occupies a special position in this respect, which justifies separate treatment.

Neither the effectiveness nor the desirability of the various systems of industrial regulation is at issue here. Nor is it intended to give an exhaustive treatment of the many and complex legal problems arising in this field owing to the Australian Federal structure. Thus many constitutional questions of importance are not dealt with.

1. The Industrial Power

Broadly speaking, the line between the powers of the Commonwealth and the powers of the States may be fixed by reference to the scope of the Commonwealth jurisdiction, the residual powers attaching to the States. Source of the industrial power of the Commonwealth may be found in a number of provisions in the Constitution. But the general, and most important, is the power given the Commonwealth Parliament to legislate in regard to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State'. Under this provision the Federal Parliament's industrial power is restricted to laws providing for means of conciliation and arbitration. It cannot legislate directly

3 As to such problems, see generally R.M. Eggleston, 'Industrial Relations' in Essays on the Australian Constitution (Else-Mitchell, ed.), 185ff., D.C. Thomson, A Comparative Survey of the Australian Industrial Tribunals (roneoed); O. de R. Foenander, Studies in Australian Labour Law and Relations, and Better Employment Relations.

4 S.51 (xxxv). For other sources, or possible sources, of industrial power, see Foenander, Studies in Australian Labour Law and Relations, 1-46.
either for the prevention or settlement of industrial disputes, or to regulate industrial conditions in general.

The central feature of conciliation is the interposition of an independent body or person between the parties to a dispute with the function of facilitating agreement between them, the conciliator having no direct responsibility for the terms of the agreement. In the case of arbitration the independent body or person settles the dispute by making a decision, an award, which is not dependent on the agreement of the parties but is solely the arbitrator's responsibility. The arbitral function is the more important aspect of the Commonwealth's role in the industrial bargaining process.

Arbitration, under the Constitution, is not confined to the voluntary submission of industrial disputes, but includes the compulsory submission of disputes to arbitration before an arbitrator who is not chosen by the parties. The Federal arbitral power is exercisable only in relation to matters involved in an industrial dispute. Initially, the courts were inclined to interpret the term 'industrial dispute' in a way that predicated the existence of some form of direct action, but it is now accepted that an industrial dispute may be constituted by any genuine demand made by one party on another which the latter refuses to accept: it is necessary to show only that there is a disagreement between the parties and not that discontent or dissatisfaction exists. To fall within the constitutional meaning, an industrial dispute must extend beyond the limits of any one State.

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5 See Thomson, 'Conciliation in the Commonwealth Jurisdiction - A Legal Analysis' (1952), 2 University of Queensland L.J. (No.2), 40.
8 Australian Tramway & Motor Omnibus Employees Association v Commissioner for Road Transport and Railways (N.S.W.) (1938), 58 C.L.R. 436.
9 See Eggleston, op. cit., 197.
state requirement has been given a flexible interpretation. It includes a dispute arising from demands made by employees in more than one State on their respective employers, whose business activities need not extend outside the borders of any one State so long as they have a community of industrial interest. Once an interstate dispute has been found to exist and an award has been made, the jurisdiction of the award-making authority continues so long as the award is in force since the question of whether any further dispute under the award is interstate or not is regarded as settled until a new award is sought. This is important for the variation of awards.

The Constitution provides that in the event of inconsistency between a law of the Commonwealth and a law of a State the Commonwealth law is to prevail. Awards made by Federal industrial authorities have the force of Commonwealth law, and a Federal award therefore prevails over an inconsistent State law or the award of a State industrial authority to the extent of such inconsistency. As a result, where a Federal award is in force, the parties bound by it cannot be brought within the scope of an award made by a State industrial authority or of a conflicting law enacted by a State legislature.

There is little doubt that the Commonwealth bulks very much larger in the industrial field than was anticipated, or perhaps intended, at the time the Federal Constitution was drawn up. Nevertheless, the limitations imposed on it in this field are substantial:

The history of the industrial relations power supplies probably the clearest Australian illustrations of the defects... that Dicey considered were characteristic of a federal system. Legalism, in that practically every major development of policy...has gone to the High Court. Conservatism, in that not a single alteration in s.51 (xxxv) has been made in fifty years, notwithstanding many attempts to enlarge and simplify it. Weak government, as compared with a unitary system, in that, for example, the Parliament cannot deal with industrial relations

11 S.109
12 Clyde Engineering Co. Ltd. v Cowburn (1926), 37 C.L.R. 466
generally, but only with interstate industrial disputes; it cannot deal even with those disputes by any methods other than those of conciliation and arbitration, it cannot take the direct responsibility that a unitary State does as a matter of course.  

On the other hand, while the industrial powers of the States are restricted by the extent of the Commonwealth's powers, they are, apart from this limitation, very much wider. Thus while the main Federal industrial power is restricted to the procedures of conciliation and arbitration which may operate only in the event of an industrial dispute, State legislatures have a free hand over industrial matters, and may delegate their powers in any way and on any matter regardless of the existence of a dispute. Statutory industrial authorities functioning on this basis have been established in all States with regulative powers involving both compulsory submission of disputes to them and legal enforcement of their decisions. At the same time, State parliaments have not hesitated to legislate directly in this field, whether by the general provisions of Factories, Shops and Mining Acts, or by specifying standard conditions of employment otherwise within the jurisdiction of a State industrial authority, or by statutorily instructing the authority to award specified conditions or to act on certain principles in making awards.

The extent to which Federal awards exclude the application of State awards and determinations varies from State to State. It has been estimated that in 1954 44.3 per cent. of male employees in Australia were covered

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14 See Portus, op. cit., 250
15 E.g., under Queensland legislation, State awards automatically include standard provisions related to working hours, statutory holidays, annual holidays and sick leave; the State Industrial Court is directed to insert detailed long-service leave clauses in all its awards, and similar provisions are applied directly to employees outside State awards. The Commonwealth can legislate directly in relation to working conditions, but this power is restricted to certain industries, places or circumstances, and has nothing to do with its general industrial power.
by Commonwealth awards, and the same proportion, 44.3 per cent., were
covered by State awards. However, in single States the proportion of male
employees covered by State awards varied from 77.1 per cent. in Western
Australia and 73.5 per cent. in Queensland, to 45.4 per cent. in New South
Wales, 31.7 per cent. in Tasmania, 29.8 per cent. in South Australia and
27.4 per cent. in Victoria. The corresponding percentages of male employ­
ees covered by Commonwealth awards in each State were: 12.5 in Western Aus­
tralia, 19.4 in Queensland, 43.5 in New South Wales, 52.6 in Tasmania, 57.1
in South Australia, and 59.4 in Victoria. Thus in every State two systems
of industrial regulation, Federal and State, operate side by side, no fixed
principle determining which employees or what proportion of them are cover­
ed by each system.

2. The Systems of Industrial Regulation

The structures of the various systems that have been set up to regulate
industrial conditions in Australia show little uniformity. On the other
hand, with some important exceptions, there is rather less variation between
the powers exercised by the tribunals operating the systems.

The primary functions of the tribunals are making, interpreting and
enforcing the terms of standard conditions of employment - though in any
one system no single tribunal may be competent to carry out all three func­
tions. The instruments that embody these terms are the awards of arbitral
bodies, wages boards' determinations (which frequently represent, in fact
if not in theory, arbitral decisions), conciliation agreements obtained in
statutory conciliation proceedings, and industrial agreements obtained by
free collective bargaining procedures but enforceable by the tribunals.

16 For the source of these and the following figures, see note 2 above.
'Awards' here includes registered agreements.
The Tribunals:

The make-up and powers of the major industrial tribunals and other bodies operating in the Federal and State jurisdictions are detailed in Appendix I. In the first place, only those bodies covering industry in general and competent to deal with a wide range of industrial matters are included in the Appendix. It therefore excludes a number of tribunals whose operation is restricted to particular industries or occupations - for example, the Federal Coal Industry Tribunal, the Western Australian Coal Industry Tribunal, and various tribunals operating in the Federal and State public services and instrumentalities. It also excludes tribunals concerned with a limited set of industrial matters - for example, the various State tribunals dealing with apprenticeship and workers' compensation. In the second place, the powers of tribunals dealt with in the Appendix are those which relate directly to the tribunals' primary functions of making, interpreting and enforcing the instruments of industrial regulation. A wide range of powers which, though important, are incidental to these main functions are deferred for consideration in later chapters.

In the Federal sphere there are two main bodies, the Commonwealth Conciliation and Arbitration Commission and the Commonwealth Industrial Court. The Commission is concerned chiefly with making awards and conciliation agreements while the work of interpreting and enforcing them is largely carried out by the Court. Until 1956 all these functions were exercised finally by one body, the Court of Conciliation and Arbitration. In that year, however, a majority of the High Court, in a decision later upheld by the Privy Council, ruled that the Arbitration Court could not enforce awards. The Commonwealth Parliament, it was held, was not competent to combine in the one body both the arbitral power of making awards and the judicial power of
enforcing them—the dominant function of the Arbitration Court being arbitral rather than judicial in character. This decision was the immediate cause of the present division of functions between the Commission and the Court. The division is not absolute: the Commission, as shown in Appendix I, has certain powers which, while not judicial powers as the High Court views them, may be used as sanctions in cases of non-compliance with awards. In its work of making awards and conciliation agreements, the Commission, among whose members there is some differentiation of function and powers, is assisted by a number of ancillary bodies including boards of reference, conciliators and local industrial boards.

The main body in the New South Wales system is the Industrial Commissioner, a number of boards of reference and industrial magistrates. The Queensland system is simple in structure, an Industrial Court functioning with the aid of a number of industrial magistrates. In South Australia an Industrial Court operates alongside a specialised body known as the Board of Industry, together with over sixty industrial boards and a number of special magistrates. The Western Australian Court of Arbitration is assisted by a single conciliation commissioner, a number of boards of reference and industrial magistrates. No single industrial body with State-wide jurisdiction exists in Tasmania, where the functions of industrial regulation are carried out by seventy operating wages boards and the police magistrates. Statutory provision is made for special commissioners with conciliation powers but it has not been used. Similarly, in other States, statutory powers enabling the appointment of boards of reference (Vic. and Qld.):
The Instruments:

The instruments of industrial regulation fall into three classes: the arbitral award and determination, the conciliation agreement and the industrial agreement. The nature of these instruments and the tribunals' control over them in the various jurisdictions are detailed in Appendix II.

By far the most important, both in number and in the extent of their application, are awards and determinations. In their pure form these instruments represent an exercise of the arbitral power, that is they embody the decision of an independent third party on issues over which employers and employees have been unable to reach agreement – whether that third party is the judge of an arbitration court or the chairman of a wages board. In practice, however, the wide range of matters dealt with by existing awards and determinations means that in all cases both sides of the bargaining table are in agreement, or readily come to agreement, on a large proportion of these matters. The arbitral power is in fact usually exercised only in relation to certain key issues such as wage rates, or to claims for new privileges or concessions, or the extension or modification of old privileges. Moreover, in many cases the parties are able to agree on all matters and their agreement is embodied in an award or determination, an award of this character being known as a consent award. Thus many awards are awards in name only: agreement on their provisions has been reached by private negotiation outside the statutory machinery, and the terms of the agreement have then been submitted to arbitral authority for its imprimatur.

What may be termed the conciliation agreement represents an exercise by an industrial authority of its power of conciliation. In other words, and of commissioners, industrial boards and conciliation committees (W.A.) are either rarely used or have fallen into disuse altogether. But the Industrial Court of S.A., with no statutory power to do so, has occasionally set up boards of reference under consent awards.
it is an agreement reached after the authority's jurisdiction has been invoked but before the stage of arbitration is reached. Where provision is made for conciliation agreements it is usual for the tribunal concerned to convert them into consent awards. Only in the Commonwealth jurisdiction are conciliation agreements published apart from awards - though here, too, most of them are converted into consent awards. The legal force of a conciliation agreement is no different from that of an award. But the distinction between a conciliation agreement against which the certifying authority has no objection to offer and an award, whether or not it is made by consent, which is the direct responsibility of the authority may in some circumstances be of practical importance.

The third class is the industrial agreement. The distinguishing mark of this instrument is that it is the result of private negotiation between the parties. To this extent it resembles the collective bargaining agreement of the United Kingdom; but there the resemblance ends because the normal British collective agreement is not enforceable at law. By contrast, once the Australian industrial agreement has been registered under an appropriate Act it is enforceable by the relevant industrial authority in the same way as an award. Like its British counterpart, an unregistered collective agreement is not enforceable at law in Australia. Industrial agreements may be registered and legally enforced in all arbitration court systems, but not in the wages boards systems of Victoria and Tasmania.

The content of State awards and determinations usually follows more or less closely that of Federal awards, embodying provisions dealing with a basic wage for all workers covered, a marginal allowance for skill, 

3 See Foenander, Industrial Regulation in Australia, 7.
4 Australian Agricultural Co. v. Federated Engine Drivers & Firemens Ass'n (1913), 17 C.L.R. 261. See also D.C.Thomson, 'Voluntary Collective Agreements in Australia and New Zealand' (1948), 1 Annual Law Review (W.A.) 80
working hours, and with a number of general industrial conditions. Since
the establishment of compulsory arbitration in Australia, the content of
awards has greatly expanded as a result of the trend towards more detailed
regulation of general industrial conditions, a trend in which the Federal
tribunals have played the leading part. It is noticeable, however, that
the determinations of Victorian and Tasmanian wages boards are usually rather
less comprehensive than the awards made by the industrial courts in other
jurisdictions. The conciliation agreement normally covers the same range
of matters as an award. The industrial agreement may cover a similar range
of matters, but often it merely supplements a current award in relation to
certain matters with which the award may or may not deal.

3. **Unions in the Industrial Regulation Systems**

The position of unions in the statutory systems of industrial regu-
lation in Australia may be dealt with under five heads: first, the extent
to which the systems' effective operation depends on unions; second, the
unions' functions within each system; third, the formal recognition of unions;
fourth, the ways in which unions are legally equipped to carry out their
functions; and finally, the ways in which union organization is legally pro-
tected and encouraged. The divisions made in the case of the last four
headings are largely a matter of convenience because the allocation of func-
tions, the provision of equipment to carry them out and the protection of
organization, are all in a sense forms of recognition.

The discussion throughout is, unless specified otherwise, concerned
solely with employees and their organizations. It should be kept in mind,

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5 See Foenander, op. cit., 26-33.
6 See Thomson, *A Comparative Survey of the Australian Industrial Tribunals*, 41
7 See Foenander, *Better Employment Relations*, 129
8 This applies only to State industrial agreements; those in the Common-
wealth jurisdiction, as Appendix II shows, are very much more limited as
to their legally-enforceable content.
therefore, that in the case of the statutory powers conferred on employees' unions equivalent powers are almost invariably conferred, where appropriate, on individual employers, employers' organizations, government bodies and officials; such as inspectors and industrial registrars. Perhaps the most important feature to emphasize in this connection is that the individual employer - unlike the individual employee, as will be shown - invariably has statutory powers corresponding to those of the employers' and employees' organizations.

References to the registration of unions are restricted, unless otherwise stated, to unions registered under the industrial arbitration Acts of the Commonwealth, New South Wales, Queensland, South Australia or Western Australia. A union registered only under one of the State trade union Acts is regarded as unregistered for present purposes.

The Need for Unions:

All the Australian systems of industrial regulation, whether the tribunals concerned are courts or wages boards, in the last resort fall back on the decision of an impartial third party when employers and employees fail to reach agreement on the terms of such regulation. To this extent at least, arbitration is an element in all systems.

The first principle on which the notion of arbitration is based is that of a body or person, interposed between and independent of the parties to a dispute, with the function of deciding the issue in dispute. The second principle is that the parties must each be able to put their case to the arbitrator in order that he may reach his decision in full knowledge of the relevant facts and arguments. In certain circumstances the second principle may be of diminishing importance. This depends, on the one hand, on the

1 All but the South Australian Act provide for the registration of employers organizations also.
area and complexity of the field covered and the arbitrator's familiarity with it; and, on the other hand, with the arbitrator's approach to his role — whether he regards his functions, using Perlman's terms, as 'administrative' or 'autonomous' in character, the principle being of greater importance in the latter than in the former case.

The field covered by most industrial tribunals or persons with arbitral powers in Australia is so extensive and so detailed that it would be impossible for them to function adequately in the absence of something more than the bare claims and counter-claims of employers and employees. The need for information is the more pressing where, as is so often the case, the arbitrators are men with legal training but without first-hand industrial experience.

It is clear that if a system involving arbitration at some stage and dealing with great numbers of individuals is to function effectively, or is even to function at all, the claims made before the arbitrator, if they are to be given weight, must be consistent — consistent in the sense that not more than one claim at one time should be made on a given matter concerning a particular class of employee. Further, such claims must be backed by coherent argument if the arbitrator is to give an informed decision. The obvious means by which the numerous voices of individual employees can be given sufficient consistency and coherence is through a representative union. This does not necessarily preclude the individual voice, and in point of fact there are marked variations in the extent to which the different systems of industrial regulation depend on unions. In many cases, it is true, the variations are only formal. But differences in the structure of industrial regulation systems are not infrequently significant enough to lead to

variations in the reliance placed on union organization, variations which are reflected not only in the formal terms of legislation but also in the day-to-day operation of the regulatory machinery.

The first distinction on these lines is between the court and wages board systems. The wages board has least need of the union for the fulfilment of its functions. Each wages board covers the whole or a section of a particular industry or trade. Its chairman, who exercises the arbitral power, is usually chairman also of a large number of other boards which together cover a wide and diversified industrial area. In this case the problem of unifying employee-demands (or at least of reducing any differences in them to manageable proportions), and of securing the facts and argument necessary to inform the arbitrator's decision, is solved by the appointment to the board of permanent employees' representatives who are actually employed in the industry or trade concerned. The qualification of the employee-member is not that he represents a particular union, but that he is an employee with first-hand experience in the matters dealt with by the board. In these circumstances, union organization is not imperative. In fact, the wages board system was initially evolved as a means of protecting workers in weakly-organized industries. On the other hand, the need for employees to be organized is much more pressing where the tribunal covers a wide industrial area and does not change its membership according to the industry dealt with. The members of these tribunals cannot be expected to have the detailed knowledge necessary for adequate consideration of the great variety of matters arising for their decision. Moreover, the judicial procedures usually followed by such tribunals are often costly: this means, in many cases, that participation in proceedings before them is practicable.

3 In practice, however, Victorian and Tasmanian wages boards often follow the arbitration court practice of hearing witnesses: see Sawer, 'Conciliation and Arbitration of Industrial Disputes' (1947), 23 Economic Record, at 269.
for employees only through organizations with substantial financial reserves.

The second distinction is between the Federal and State industrial courts. The need for unions is less in the States than in the Commonwealth jurisdiction. In New South Wales and particularly in South Australia, this situation may be partly a result of the extent to which bodies on the wages board model are utilized. But the more general and significant reason arises from the difference between the Federal and State industrial power. The Commonwealth's main industrial power, as we have seen, restricts the jurisdiction of Federal industrial tribunals to matters involved in an interstate industrial dispute and to the parties to such a dispute. State tribunals are not restricted in this way. They may deal with any industrial matter regardless of whether it is in dispute, and their decision may bind not only parties to proceedings before them but all other relevant employers and employees. This means that a State tribunal is not forced to specify the parties in proceedings before it in order to indicate those bound by its award. In effect, it can disregard the parties and merely specify a locality and a calling within which its award is binding on all persons. In these circumstances, the question of whether a particular employee can be regarded as a party to the original proceedings, and therefore as being bound by the subsequent award, is irrelevant. But the same question is vital in the Federal jurisdiction, where it is essential for there to be some means by which the great and 'ever changing body of workmen that constitute the trade' can be readily defined as parties to a dispute and thus to an award.

Any attempt to effectively prevent and settle industrial disputes by either [conciliation or arbitration] would be idle if individual work-
men and employees only could be dealt with... If the judicial power of the Commonwealth is to be effectively exercised by way of conciliation and arbitration in the settlement of industrial disputes, it must be by bringing it to bear on representative bodies standing for groups of workmen. Further... the representative body must have some permanent existence, irrespective of the change in personnel of its members from time to time which is always going on. 6

Thus the only feasible means of achieving the degree of precision dictated by the terms of the Federal industrial power is by recognizing unions as parties to disputes and by making awards binding, through them, on their membership, in this way defining the individual employees the award is intended to bind. This situation alone is sufficient justification for the contention that the Commonwealth system is not only 'based on unionism', but it 'could not be worked without unions'. It follows that one of the chief objects of the Federal Conciliation and Arbitration Act must be 'to encourage the organization of representative bodies of employers and employees...'. 7

However, when it comes to enforcing awards, as distinct from making them, Federal and State tribunals are closer in their reliance on union organization.

It is essential not only that the Court should have the representative body before it in the hearing of the dispute, but that it should be able to make that body responsible for the observance of [the] award by those whom it represents... The Court must be able to enforce obedience on the representative bodies. 8

These remarks refer to the Federal arbitration system, but they are also applicable to the State systems. A Queensland parliamentarian pointed this out in terms which implied that a choice was open, even in this respect, to the State tribunals:

Our experience goes to show that where the union can be held liable for the payment of penalties and the union official can be utilized

6 Ibid., at 358-60; approved by the Full Court in Federated Ironworkers' Assn. v. Commonwealth (1951), 84 C.L.R., at 279.
7 H.B. Higgins, A New Province for Law and Order, 15
8 Ibid., 49. See also, e.g., (1911). 5 C.A.R., at 25; (1935) 35 C.A.R., at 131
9 C. & A. Act, s.2 (a).
10 Jumbunna Case, supra, at 359.
by the Court to induce the members of the union to obey an award, it is much better to deal with the unions than to deal with groups of individuals. 11

The Role of the Unions:

The unions' role in the systems of industrial regulation is made up, in the first place, of functions expressly conferred on them by statute and, in the second place, of functions which the unions are as a matter of practice expected to carry out. Statutory provisions set out the unions' role in minimal terms only.

The Federal, New South Wales, Queensland and Tasmanian legislation does not expressly give unions a voice in appointments to the relevant industrial tribunals; but that of South Australia, Western Australia and Victoria does give them such a voice. In South Australia only the Board of Industry is affected in this way, its two employees' representatives being nominated by the United Trades and Labor Council of South Australia.13 The employees' representative on the Western Australian Arbitration Court is nominated by the unions generally, while the Melbourne Trades Hall Council nominates all such representatives on the Victorian General Board.14 Unions are empowered to nominate persons as employee-members of ordinary wages boards in Victoria but such nominations need not be accepted; however, unlike the situation in Tasmania and South Australia, no limit is set to the number of members who may be union officials.

In practice unions operating in the systems of New South Wales, South Australia, Victoria and Tasmania have a larger voice in this respect than the statutory provisions indicate. In these States employees' representatives on conciliation committees, industrial boards and wages boards, as

11 (1929) 154 Qd. Parl. Debs., 2043
12 In Tas. one member of a wages board may be a full-time union official.
13 Ind. Code, s.253. There is also a permissive provision, affecting industrial boards, similar to that in Tasmania: see note 12.
14 W.A., Ind. Arb. Act, s.45; Vic., Lab. & Ind. Act, s. 21 (3)
the case may be, are almost invariably appointed on the nomination of the union concerned. In each case these bodies are usually established on the suggestion of an interested union. Moreover, although all that is required of the employees' representative on the Victorian Industrial Appeals Court is that he should have 'industrial experience', this member has invariably been the Secretary of the Melbourne Trades Hall Council.

In the Commonwealth, New South Wales, Queensland and Victoria, but in no other jurisdiction, unions are under a statutory obligation to notify the appropriate industrial authorities of existing or impending industrial disputes. As a matter of practice, however, unions in the other jurisdictions are normally expected to perform the same function.

Under Federal, New South Wales, Queensland, South Australian and Western Australian legislation, unions are empowered to initiate proceedings before the appropriate industrial tribunals for awards, determinations and orders and, where such jurisdiction exists, for the interpretation of these instruments. In the Victorian and Tasmanian wages boards systems, the only corresponding power explicitly conferred on unions is the right, in Victoria, to appeal to the Industrial Appeals Court against a wages board determination. But owing to the way in which the employees' representatives on wages boards in both States are selected, unions may, in effect, initiate proceedings for determinations, and frequently do so.

Under all Acts providing for the registration and enforcement of

15 The problem faced by the S.A. Industrial Court, when four nominations were made for three positions on an industrial board, rarely arises, and is even more rarely resolved in the manner the Court chose - by excluding the one union official (not an employee) nominated: see (1953) 25 S.A.I.R. 208.
16 Lab. & Ind. Act., s.42(3)
17 C'wealth, C.& A., s.28(2); N.S.W., Ind. Arb., s.25A; Qd., I.C. & A., s.21A; Vic., Lab. & Ind., s.41(2)
18 C'wealth, C. & A., ss.24,110; N.S.W., Ind. Arb., s.74; Qd., I.C. & A., s.7(1)(d), Sched.; S.A., Ind. Code, ss.17,176,260; W.A., Ind. Arb., ss.6,6190,91.
19 Lab. & Ind. Act., s.45(1)
industrial agreements, unions may be party to such agreements.

In most of the Australian systems of industrial regulation, the union’s role in relation to the enforcement of awards and determinations has two aspects which correspond, in effect, to the two stages in the enforcement process: on the one hand, the union as an entity to which enforcement procedures may be directly applied; and on the other hand, the union as an agency for securing compliance with awards and agreements on the part of both its members and employers.

In all jurisdictions except those of Victoria and Tasmania, unions are liable to monetary penalties for a breach or non-observance of awards, orders and industrial agreements committed by themselves or their members. The Federal and Western Australian Acts specify that in similar circumstances an award or agreement, or any part of it, may be suspended or cancelled so far as it applies to a union and its members, a procedure which is equally available in all other jurisdictions under the tribunals’ general power to rescind or at least vary their awards or determinations. The ultimate sanction within the power of the chief industrial authority in every jurisdiction apart from Victoria and Tasmania is the cancellation of a union’s registration under the relevant arbitration Act.

The Federal, New South Wales, Queensland, South Australian and Western Australian arbitration Acts empower unions or union officials to institute legal proceedings for the enforcement of awards and agreements against

20 C'wealth, C. & A., s.172; N.S.W., Ind. Arb., ss.11,12; Qd., I.C. & A., s.42(1); S.A., Ind. Code, s.38; W.A., Ind. Arb., s.37.
21 C'wealth, C. & A., ss.41,111,177; N.S.W., Ind. Arb., ss.93,119; Qd., I.C. & A., s.61; S.A., Ind. Code, ss.93,120,128; W.A., Ind. Arb., ss.99,100. Those in N.S.W. are formally applicable to individual union members, but it is specified that union property is available to meet such penalties.
22 C'wealth, C. & A., s.62; W.A., Ind. Arb., s.98A.
23 C'wealth, C. & A., s.143(1); N.S.W., Ind. Arb., s.8 (8); Qd., I.C. & A., s.40; S.A., Ind. Code, s.85 (1); W.A., Ind. Arb., s.29(2).
employers. The same power in Victoria and Tasmania is restricted to appropriate government officers. But the formal ability to launch prosecutions is less important than the unions' informal function of policing awards and agreements.

Government inspectors in all jurisdictions police relevant awards and determinations by making regular inspections of workplaces. In addition, they investigate complaints referred to them by unions or by individual employees. Most unions go no further than indicating members' complaints, or merely sending the complainant to the appropriate government department, and asking that they be investigated. In one or two States, though it is officially discouraged, union officials may accompany industrial inspectors investigating complaints raised by the unions. The practice is rare in most States, but is not uncommon in New South Wales and was standard procedure in Queensland until the defeat in 1957 of the Labor government whose successor abolished the practice. Some unions prefer to carry out the policing and enforcing function entirely on their own. Their officials, either full-time or at the shop steward level, investigate complaints from members and, in a few cases, carry out routine inspections in the same way as government inspectors. Where they are competent to do so, these unions may, and often do, institute legal proceedings against employers. Even unions who do not take such an active interest in policing frequently take legal action when government officers refuse to prosecute on the ground that a matter is trivial or that the action requested is against departmental policy. For many years, for example, the policy of the Queensland Department of Labour and Industry has been to leave the legal enforcement of the

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24 C'twealth, C&A., ss.119,177; N.S.W., Ind. Arb., ss.93,127; Qd., I. C. & A., ss.55,63; W.A., Ind. Arb., ss.99,100.

25 See, e.g., Walker, Industrial Relations in Australia, 61.
preference clause found in most State awards completely to the unions. But many of the unions most active in policing their awards prefer as far as possible to settle enforcement questions by direct negotiation with employers; in such cases, since breaches often arise from varying interpretations of awards, the only legal action necessary may be an application to an industrial tribunal for an interpretation.

The extent to which unions police their awards is in the first place a function partly of their size (small unions with part-time officials or overworked full-time officials are in no position to operate adequately in this field) and partly of the personal vigour of their officials. It also seems to depend on the militancy of the union or, in cases where direct action is less common, on the degree to which the industry concerned lends itself to small-scale, competitive enterprises. In the militant group, unions operating in the maritime, stevedoring and mining (particularly coal mining) industries carry out all the policing of their own awards, and a similar policy is to a great extent followed by unions in the metal trades and building and meat industries. A large amount of award-policing is also done by unions connected with the baking, clothing and furniture-making trades, and covering employees in hotels and shops; all these are industries in which small enterprises abound and the undercutting of award conditions, either through ignorance or intent, is not uncommon. To some degree the division between the militant unions and those covering small-scale industries is reflected in the methods of enforcement preferred: in the case of the former, direct negotiation with employers is usually employed as far as possible; in the latter, there seems to be somewhat greater emphasis on legal prosecution—probably on the principle that it is more important to make an example than merely to rectify the specific complaint.

26 See ibid., 50.
The union role in policing and enforcing awards against employers, even where the union does no more than transmit members' complaints to industrial inspectors, is important. But it is perhaps less important than in the days before government inspectorates were established and operated as extensively as at present. There has, however, been no corresponding diminution in their role as a means of enforcing awards against employees. It is essential that the representative body should be strong enough to secure obedience by individual workers of the conditions of the agreement or award. The expectation implicit in this statement, made in 1908, is held no less firmly by present-day industrial tribunals. Unions are expected to secure their members' observance of awards and agreements by using any sanctions available under their rules. To this end unions are held responsible for breaches committed by any section of their members. Naturally enough, they display considerably greater reluctance to act against their own members than against employers. But, while it is not frequent, disciplinary action is not uncommon against union members breaking award conditions, particularly in the case of craft unions; and in rare cases even legal prosecution has been used. The question of union responsibility in this connection arises most frequently and in its most significant form in relation to strike action, which is discussed fully in the next chapter.

Recognition of the Unions:

In most jurisdictions provision is made for the registration of unions as the formal mark of their recognition by industrial tribunals. But

27 See, e.g., (1905) 4 W.A.A.R. 49 and (1935) 15 W.A.I.G. 24. Provisions for a Federal inspectorate were enacted only in 1928, and no appointments were made until some years after: see (1932) 31 C.A.R., at 440.
28 Jumbunna Case, supra, at 359.
31 See Walker, op. cit., 56.
32 Registration under a State Trade Union Act does not of itself constitute recognition in this sense.
provisions of this sort do not necessarily constitute an exhaustive description of the bodies or persons, on the employees' side, that may have standing before an industrial tribunal. The assignment of functions is in itself a form of recognition. Thus, to test the importance of formal recognition by registration it is necessary to determine whether such recognition is equivalent to exclusive recognition. This involves first the question of whether the formally recognized union is the only body on the employees' side competent to exercise the rights and duties conferred by statute. If it is not, then the further question is raised as to the extent to which those rights and duties may be exercised by unions that are not formally recognized, or by unorganized individual employees.

Unions may obtain formal recognition by registration in all arbitration court jurisdictions. No corresponding provision is made in the wages boards States of Victoria and Tasmania; the situation in these States is discussed later.

In the Commonwealth, New South Wales, Queensland, South Australia and Western Australia, only registered unions are competent to initiate proceedings for awards; and, except in South Australia, only registered unions may take part in such proceedings and be made parties to the subsequent award. In South Australia, unregistered unions, at the discretion of the Industrial Court, may take part in proceedings for an award instituted by a registered union, and the award may bind the unregistered union's members. Moreover, the unregistered (and unincorporated) union is placed on the same footing as a registered (and incorporated) union in relation to the award's enforcement.

33 C'wealth, C. & A., s.132; N.S.W., Ind.Arb., s.8(1); Qd., I.C.&A., s.28(1); S.A., Ind.Code, s.63; W.A., Ind.Arb., s.8(1)
35 Ind.Code, s.35. See also (1929) 10 S.A.I.R. 107 and (1943) 17 S.A.I.R.314. But a common rule award may bind unregistered unions not party to the proceedings.
penalties for its breach being recoverable from the unregistered union's property 'in the same manner as if the association were an incorporated company' 37.

Only a registered union can be party to an industrial agreement filed under the Federal and Western Australian Acts. On the other hand, unregistered as well as registered unions in New South Wales, Queensland and South Australia can make and file such agreements 38.

The status of the individual employee who is not a member of a recognized union varies considerably. In New South Wales and Western Australia he cannot institute proceedings for an award, but is bound by a common rule award in the same way as the member of a registered union. However, in Queensland and South Australia any twenty employees who are not members of a registered union can apply for an award 39; in both States the terms of a common rule award (or determination) binds non-unionist employees. Under the Commonwealth legislation individual employees can be party to an industrial dispute and can therefore be made parties to an award. This procedure is rarely used because the award can bind only the named employees and does not affect other or new employees. There appears to be only one case where employers have chosen to create a dispute with individual employees; in most of the few cases where individual employees have been

37 Ind. Code, s.131.
38 N.S.W., Ind.Arb., ss.12,111(c); Qd., I.C.&A., s.42(1); S.A., Ind. Code, s.88. In N.S.W., unlike the other two States, this power extends only to unions registered under the State Trade Union Act and not to those altogether unregistered: see [1917] A.R. (N.S.W.) 404.
39 See (1913) 13 W.A.A.R., at 43.
40 Qd., I.C.&A., S.7(1); S.A., Ind.Code, ss.17(1),176(2). In Qd. only one award of this kind was in force (covering physiotherapists) in 1954; and in S.A. the provision has been used by a few branches of Federal Unions.
41 See Foenander, Studies in Australian Labour Law and Relations, 55.
43 (1936) 36 C.A.R., at 127. Some of the employees cited were members of an unregistered union; the others were apparently unorganized.
made parties to an award, the dispute has been initiated on behalf of a registered union as well as on their behalf. Except where he is named as a party, the non-unionist employee cannot be bound by a Federal award outside those restricted areas of the Commonwealth jurisdiction where a common rule award can be made. A non-unionist employee is normally affected by the terms of a Federal award only where it binds an employer in relation to all his employees regardless of union membership; the award does not bind the non-unionist but merely extends to him in the sense that his employer is obliged, for example, to pay him the award wage-rate.

The individual non-unionist employee bound by a State common rule award can institute proceedings for the enforcement of the award against his employer in Queensland and South Australia. But in New South Wales and Western Australia he has no such power, and neither has the non-unionist affected by a Federal award.

Unorganized employees in the Commonwealth, New South Wales and South Australian jurisdictions cannot make, nor are they bound by, a registered industrial agreement. They are similarly unable to conclude such an agreement in Queensland and Western Australia, but here they may be bound by one because ordinary agreements, as well as those declared common rules, bind all the employees of an employer affected.

In the matter of the nomination of employees' representatives to industrial tribunals, registered unions are given the exclusive right to nominate the employees' representative on the Western Australian Arbitration Court. No specification is given as to who may nominate such representatives on

44 See, e.g., (1941) 46 C.A.R., at 620. The employees cited were members of an unregistered union.
46 Qd., I.C. & A., s.63; S.A., Ind. Code, s.36.
47 In S.A., provisions enabling the conclusion of special common rule agreements by individual employees and binding on them (Ind. Code., s.98 (1)) have fallen into disuse.
New South Wales conciliation committees or South Australian industrial boards

Express references to unions are rare in the wages boards legislation of Victoria and Tasmania. Since no provision is made in either case for the registration of unions, such references as there are relate only to unions that are not registered in the sense in which the term has been used above - that is, they are registered under a State trade union Act alone or are registered under no Act.

The statutory emphasis, though not necessarily the emphasis in practice, tends to be on the individual employee regardless of union affiliation - this emphasis being stronger in Tasmania than in Victoria. Any employee in the trade affected may nominate persons for appointment as employee-representatives on a Tasmanian wages board, no mention being made of unions. The Victorian Act, on the other hand, confers power of nomination equally on a relevant union and any group of employees; it also adds a significant rider, which clearly favours union nominees, requiring the Minister to have due regard to the standing in the trade of the nominator. The Melbourne Trades Hall Council has the exclusive power to nominate employees' representatives on the Victorian General Board.

The formal power to initiate proceedings for a wages board determination, and for the enforcement of a determination, is restricted to government officials in both States.

In Tasmania a determination can be challenged on the ground of illegality by any individual, while an appropriate union, as well as a majority of the employees' representatives on the wages board concerned, may appeal to the Victorian Industrial Appeals Court against a determination.
The common rule nature of wages board determinations means that they are binding on all employees in the trade and locality concerned. They are not, however, legally binding on trade unions as such, though the existence of relevant unions is usually recognized in the terms of determinations.

Equipping the Unions:

The assignment of specific functions to the union at once constitutes implicit recognition of it and gives added meaning to any formal expression of recognition. So, too, statutory and award provisions which add to the union's capacity to carry out its assigned functions. Provisions in this category relate to the incorporation of unions; the right of union officials to enter and inspect workplaces and employment records; and the ability of unions to recover fines they have imposed on their members.

The Commonwealth Conciliation and Arbitration Act provides for the incorporation of unions registered under it. As a corporate body, the registered union is more than a mere agent of its members; it stands in their place and may itself be party to an industrial dispute forming the basis of the Arbitration Commission's jurisdiction. A union wishing to obtain an award is thus relieved from any obligation to seek the authorization of an individual employee or to show that a dispute exists between a particular employee and his employer. It would be difficult to over-emphasize the importance of the incorporation provision to the working of the Federal arbitration system.

On the other hand, because the jurisdiction of State industrial courts is based on industrial matters regardless of whether those matters are in

53 S.136.
54 Burwood Cinema Ltd. v. Aust'n. Theatrical & Amusement Employees Ass'n. (1925), 35 C.L.R. 528 (approved by Full Court: (1951) 84 C.L.R. 265).
55 A body capable of carrying out the functions assigned to unions 'could be constituted only by the creation of some legal entity': Jumbunna Case, supra, at 360.
dispute, there is not the same imperative need for the formal incorporation of recognized State unions. Unlike those registered under the Queensland, South Australian and Western Australian Acts, unions registered under the New South Wales Industrial Arbitration Act are not incorporated. However, under the Act's terms the capacity of the registered union to act and be acted upon as an entity is, as the legislature intended, no less a feature of the New South Wales system than it is of the other State arbitration court systems.

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If unions are to police awards and determinations effectively, their officials must be able to enter and inspect workplaces, interview employees on the job and sight employers' employment records.

The minimum requirement is the ability to inspect employment records dealing with wages and hours since these are the two most important matters dealt with by industrial tribunals. Federal awards usually direct employers to keep a time and wages book, or similar record, which is to be open to inspection by a duly accredited official of the union or unions concerned. In New South Wales the obligation to keep time and wages sheets is embodied in legislation, as is the power of union officials to inspect them. Queensland and South Australian legislation imposes the same obligation but confers the right of inspection only on industrial inspectors. Nevertheless most awards in these two States give union officials this right. The Western

56 Od., I.C. & A., s.41(1); S.A., Ind. Code, s.68; W.A., Ind.Arb.,s.13.

57 See (1912) 41 N.S.W. Parl. Debs. (2nd series) 1648.

58 Many clauses specify the number of demands for an inspection that may be made in a given time, the notice to be given, and the circumstances justifying such a demand - normally only where a breach of award is suspected: e.g., Wool & Basil Workers Award (1952), 73 C.A.R., at 601

59 E.g., Sawmilling Award (1953), 38 Q.I.G., at 123; Service Stations Employees Award, [1954] 2 S.A.G.C. 408.
Australian Act does not expressly require the keeping of time and wages records, though it does empower inspectors to inspect such records; on the other hand, State awards almost invariably direct that these records be kept and enable union officials to inspect them. In Victoria and Tasmania employers are obliged by statute to keep time and wages records which may be inspected by industrial inspectors. Most Victorian, and a number of Tasmanian, wages board determinations repeat the employers' statutory obligation in this respect, and in addition authorize union representatives to sight such records.

The ability of union officials to inspect time and wages records is frequently supplemented by right of entry powers which can be used for a wider range of purposes related to the policing of awards and determinations.

Any member of the Federal Arbitration Commission, the Industrial Registrar or his deputies may authorize a person to enter a workplace during working hours and to inspect any work, material, machinery, book or document and interview any employee. Officials of a union may be so authorized provided the union shows reasonable grounds for suspecting that an award is being infringed and that the infringement affects parties to the award; the last requirement usually excluding non-unionist employees. This right of entry is restricted to a specified time and place. It is not often used by union officials since very nearly half of all Federal awards include clauses giving union officials right of entry to workplaces covered by the award. Most clauses do not confer the wide powers available under the statutory right of entry; they are restricted to permitting the official to interview employees on 'legitimate union business', such as complaints about

60 E.g., Dairy Factories Employees Award (1953), 33 W.A.I.G., at 557.
62 C. & A. Act, s.42.
64 This proportion is based on awards in force at 31 August 1954.
the application of awards. Usually this right of entry may be exercised only during meal-breaks and other non-working periods, but under some awards it may be exercised at any time. A number of awards give wider definitions of the purposes for which right of entry may be used, and, subject to detailed conditions, not only permit union representatives to interview employees during meal-breaks but also direct that they be given 'reasonable facilities' to enter a workshop during working hours in order to investigate employees' complaints. Apart from the specific terms of awards, it appears that employers are normally expected to give right of entry to union officials in view of the policy that an appropriate clause will be awarded where there is evidence of 'active obstruction' by employers in this connection. Conversely, individual union officials have been stripped of their right of entry when they have abused the power or failed to exercise it in accordance with the terms of the award, or where its use may lead to unrest among employees. The clause itself has been deleted from an award after its use had resulted in the union members taking direct action.

In New South Wales the Industrial Registrar is empowered to issue a permanent entry and inspection permit to a duly accredited representative of a union with members covered by a State award or industrial agreement.

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66 E.g., Furnishing Trades Award (1952), 75 C.A.R., at 430
67 E.g., Wineries Award (1952), 74 C.A.R., at 615
68 E.g., Railways Metal Trades Grades Award (S.A.) (1953), 76 C.A.R., at 797.

The conditions are: for interviewing employees, that the official produces his authority, conducts interviews at meal-places, visits no more than once a week, is unaccompanied, and does not unduly interfere with work or create disaffection; for entry in working hours, that the official discloses the complaint to the employer, if desired makes his investigations in the employer's presence, does not interfere with the work and 'conducts himself properly'.

71 (1946) 57 C.A.R. 462.
72 Ind. Arb. Act, s.129A.
The permit may be revoked if used in an 'improper manner'. It allows the representative to enter a workplace covered by a relevant award or industrial agreement, during meal-breaks, in order to interview employees on 'legitimate union business' and, at any time during working hours, for the purpose of investigating a suspected breach of the Act, the award or the agreement.

The president and secretary of any union registered under the Queensland Act may authorize an official of the union to enter workplaces during working hours subject to the condition that he does not wilfully hinder the work of employees. The right of entry can be used only during meal-breaks or other non-working time for the purpose of interviewing employees. The State Industrial Court may suspend a union official's right of entry, or direct him to observe any conditions in its exercise, where he has used it in an 'unreasonable and vexatious' manner.

The President of the South Australian Industrial Court may confer a right of entry and inspection on 'any person'. A union secretary is entitled to use these powers when so authorized. The grant is limited to a particular time and place, but the purposes for which it may be used are as wide as under the corresponding Federal Act's provisions. The State industrial boards have no jurisdiction to deal with right of entry unless it happens to be a 'custom or usage' of the industry concerned; few board determinations include such clauses. On the other hand, the matter is within the general powers of the Industrial Court. Thus where it is outside the jurisdiction of an industrial board, the Court may make an award dealing with it. There are right of entry clauses in a number of awards but they are

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73 See Sydney Morning Herald, 17/9/1957, for the first instance of such a revocation - in the specific case for conducting a stopwork meeting without employers' permission.

74 This power includes the inspection of time and wages books.

75 I. C. & A. Acts, s.77

76 Ind. Code, s.30.


more restrictive than is usual in other jurisdictions. The standard type
prescribes that a union official may enter a workplace during working hours
to inspect the time and wages book and to interview any employee affected —
but only 'concerning such time book'.

In neither Western Australia nor Victoria is statutory provision made
for conferring right of entry on persons other than government officials.

In Western Australia, however, it appears that employers are normally
expected to grant the privilege to union officials, the State Arbitration
Court being prepared to award a right of entry clause, against employers'
opposition, where it is shown that union officials are unreasonably obstructed
by the employers. A fair proportion of awards include such clauses,
many inserted by agreement. The standard form is rather limited in scope.
It provides that an accredited union representative may interview employees
during lunch hours, but only in the event of disagreement about the award's
application, and the power may be used only once a week unless the employer
agrees otherwise. On the other hand, a number of awards do not limit the
circumstances in which right of entry is available to union officials; and
some permit employees to be interviewed at any time during working hours.
If a union official abuses his right of entry, the Arbitration Court will
refuse to enforce the clause against an employer so far as the official
is concerned.

Similarly, many determinations of Victorian wages boards include right
of entry clauses. Most restrict use of the right to interviewing employees
during the midday meal hour on 'legitimate union business'. In some cases

79 E.g., Service Stations Employees Award [1954] 2 S.A.G.G., at 410.
80 See (1948) 28 W.A.I.G., at 110.
81 E.g., A.W.U. (Apple & Pear Packing) Award (1954), 34 W.A.I.G. 44.
82 E.g., Broom & Brushmaking Award (1954), 34 W.A.I.G., at 151.
83 E.g., Painters (Ticket Writers) Award (1953), 33 W.A.I.G., at 573.
it may be exercised also during working hours for the purpose of investig-
86 ating a complaint. The availability of right of entry is usually subject
87 to specified conditions; and an employer is entitled to refuse entry, if
the union representative contravenes these conditions, interferes with work
being carried on, creates disaffection among employees, or is offensive.

The Wages Board Act of Tasmania does not directly confer power of entry
on union officials. But it does specify that a wages board determination
may confer the power on officials to enable them to interview employees in
connection with the 'business or affairs' of the union concerned. A number
of determinations include right of entry clauses. Some merely empower
the Chief Inspector of Factories to authorize relevant union officials to
enter workplaces covered by the determination at such times as he specifies,
but direct that if entry is permitted during working hours only union job
representatives or, with the employer's consent, unionist employees may be
interviewed. Other clauses directly confer right of entry, either in
relation to non-working hours only, or, in connection with the investigation
of a complaint, during working hours as well - in the latter case subject
to the same conditions found in the corresponding Federal, New South Wales
and Victorian right of entry clauses.

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The award-enforcing functions of unions are directed not only against
87 The conditions relate to the number of representatives with right of entry
at one time, production of the entry authority, and the frequency with
which the right may be used.
88 Wages Bds. Act, s.73
Such clauses permit refusal of entry, and cancellation of the authority,
if the official causes dissatisfaction among employees, is offensive, un-
duly interferes with the work, or breaches any other conditions attaching
to his authority.
90 E.g., Electrical Engineers Wages Bd. Determ. [1952] Tas.G.G., at 3142;
employers, but, as has been shown, also against their own members. Their ultimate disciplinary power is expulsion. There is no legislation expressly guaranteeing the legal enforcement of expulsion decisions, but there are such guarantees in relation to the unions' lesser disciplinary power to impose monetary penalties on their members.

Unions registered under the industrial arbitration measures of the Commonwealth, New South Wales, Queensland and Western Australia are empowered to sue for and recover fines or penalties they have imposed on members in accordance with their rules. In no case do these provisions distinguish between penalties imposed for breach of awards and agreements and penalties imposed for contravention of union rules concerned with other matters; they are not expressly concerned with the unions' ability to enforce awards against their members, but they can be used for this purpose. There are no provisions in the legislation of South Australia, Victoria or Tasmania enabling the legal recovery of union-imposed fines.

Protecting and Encouraging the Unions:

The kind of protection and encouragement considered here is that found in statutory and award provisions — that is, protection and encouragement which is legally enforceable. There are a number of ways in which the law protects union organization, activities and members, and encourages unions by enhancing their ability to recruit new members. In many cases the relevant provisions operate not only in relation to antagonistic employers but also in relation to actual or possible competition from other unions.

In the arbitration court jurisdictions, a union already registered receives considerable protection against the registration and competition of rival unions. The Commonwealth Industrial Registrar may refuse to register...
an applicant union if there is a registered union to which its members might 'conveniently belong'. Although a number of competing unions are in fact registered, mainly during the early stages of the arbitration system's operation, the general view of the Federal industrial authorities is that the existence of rival unions competing for members is inimical to industrial peace; and it has been held that the object of the statutory provisions referred to above is to prevent such a situation arising. Similarly, in New South Wales registration may be refused where the interests of an applicant union’s members can be protected by a previously registered union, while in South Australia and Western Australia a refusal of registration may be based on the 'conveniently belong' formula of the Federal Act. In each case the statutory provisions are aimed at preventing a multiplicity of competing unions. Of the arbitration Acts, only that of Queensland makes no reference to principles on which registration may be refused, but the Industrial Registrar may refuse applications for registration, and has in fact done so.

The general effect of the registration provisions and their application has been to ensure that once a union is registered it has 'a virtual monopoly of the industrial care, guidance and discipline' of the employees in the industry (or craft) and locality it covers - except where for some reason the members of an applicant organization cannot 'conveniently belong' to it. The reality of the monopoly depends, of course, on the extent to

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93 C. & A. Act, s.142.
95 N.S.W., Ind. Arb., s.8(3); S.A., Ind. Code, s.66(a); W.A., Ind. Arb., s.21.
97 This measure is unique in that it expressly provides for the registration of two or more unions in the same calling, and for them to be 'bracketed' to give them joint rights under the Act.
99 As, e.g., where the applicant union's members object to the political affiliation of the registered union: [1927] A.R. (N.S.W.) 45; (1933) 13 W.A.I.G. 275.
which participation in proceedings before the relevant industrial tribunal is, on the employees' side, exclusive to registered unions. Thus the 'monopoly' conferred by registration under the South Australian Industrial Code - which, as we have seen, gives substantial recognition to unregistered organizations - means very much less than the monopoly obtained by unions registered under the Commonwealth Act. As the wages boards legislation of Victoria and Tasmania does not provide for the registration of unions, this form of protection is not available in those States.

All industrial arbitration Acts include provisions aimed at protecting unionists in their employment. Employers are forbidden to dismiss an employee, to injure him in his employment or to alter his position to his prejudice merely because he is an officer, delegate or member of a registered union. The Queensland provision also forbids a refusal of employment on the same grounds, while the Commonwealth Act extends the prohibition to the case of an employee intending to become an official, delegate or member of a registered union. There are no corresponding provisions in the wages boards measures of Victoria and Tasmania.

The Queensland Act, as has been mentioned, extends its protection of unionists to the point of engagement of labour. No similar provision is found in any other Act, but a number of Federal and Western Australian awards include clauses which prescribe that when taking on labour, employers are not to discriminate against union members merely on the ground of their membership. The anti-discrimination provision is regarded as first cousin to preference to unionists, and Federal and Western Australian tribunals.

1 Commonwealth, C.&A., s.5(1); N.S.W., Ind.Arb., s.95; Qld., I.C. & A., s.53(1); S.A. Ind.Code, s.122; W.A., Ind.Arb., s.135. These provisions apply to members of unions applying for registration in the Commonwealth, Qld. and W.A., of unions registered under the Trade Union Act in N.S.W., and of unregistered unions in S.A.
have often awarded it where they considered circumstances did not justify a grant of preference. The preference clause, requiring employers to give preference in employment to members of a specified union or unions, or to unionists generally, provides a stronger form of protection than the anti-discrimination clause, but also includes an element of positive encouragement to union organization. Arbitration courts, particularly in the Federal and Western Australian jurisdictions (and in New South Wales before the introduction of statutory compulsory unionism), regard preference as being primarily protective in character. But unions today value legally-enforceable preference clauses less for the protection they give than for the way in which they facilitate the recruitment of 'hard-core' non-unionists, a feature which has been stressed by the Queensland Industrial Court at least. Both elements are present, too, in compulsory unionism provisions - either in awards or in legislation - but the emphasis on encouragement rather than protection is even greater than in the case of preference. A legally-binding obligation on all employees in a given calling and locality to be or become financial members of the appropriate union on pain of dismissal or refusal of employment is probably the ultimate form that legal encouragement (and recognition) of unionism can take.

Union officials' right of entry to workplaces plays an important part in encouraging union organization. Most right of entry provisions in awards, determinations and statutes are framed in a way that allows them to be used as a means of getting in touch with non-unionists on the job in order to persuade them to take out a union ticket. The main exception is the standard right of entry clause found in South Australian awards, the terms of

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2 The question of anti-discrimination, preference and compulsory unionism provisions is discussed fully in Chapter 7.
which limit its use to award-policing purposes. The normal right of entry provision is almost invariably used to recruit membership, and where there is doubt about whether its terms extend this far unions usually press for it to be interpreted in this way.

Right of entry is important in the protection, as well as the encouragement, of union organization. It is usually granted in terms wide enough to allow union officials to collect union subscriptions on the job—dues-collection being one of the main components of 'legitimate union business', the phrase most commonly found in right of entry provisions. Right of entry is almost invariably used, where possible, for this purpose, which is expressly referred to in some award clauses.

The collection of union subscriptions is facilitated under a few Federal, New South Wales and Queensland awards by a clause directing the employer on the written request of an employee, to deduct the employee's union subscription from his wages and pay it direct to the appropriate union. Much rarer is the award requirement that the employer, without further notification, is to deduct regularly all membership contributions from the wages of his unionist employees and transmit them to the union.

Apart from easing the task of dues-collection, all industrial arbitration measures empower unions registered under them to sue for and recover subscriptions owed by members. This statutory power is important because dues owed by members of unions not so registered are not recoverable at law.

4 See (1939) 40 C.A.R. 166.
6 E.g., C'wealth, Clothing Trades Award (1953), 76 C.A.R., at 457; W.A., Newspaper Award (1953), 33 W.A.I.G., at 587.
7 E.g., C'wealth, Dried Fruits etc. Industry Award (1952), 75 C.A.R., at 395; N.S.W., Sugar Field Workers Award (1954), 9 I.I.B., at 727; Qd., Sawmilling Award (1953), 38 Q.I.G., at 124.
8 E.g., C'wealth, Railways (Miscellaneous Grades) Award (1953), 76 C.A.R., at 652; Qd., Brisbane City Council Labourers Award (1954), 39 Q.I.G., at 831.
9 C'wealth, C&A., s.148; N.S.W., Ind. Arb., s.118; Qd., I.C.& A., s.65; S.A., Ind. Code, s. 76; W.A., Ind. Arb., s.175.
except in New South Wales where a similar power is conferred on unions registered only under the State Trade Union Act.

The general protection given to union members and officials in their employment has already been discussed. In some cases additional protection is given to activities undertaken by an employee as a union official. A number of Federal, New South Wales and Western Australian awards, and Victorian and Tasmanian wages board determinations, include a clause instructing the employer to recognize as accredited representatives of the union concerned any of his employees who are appointed shop stewards; and he must allow a shop steward, without loss of pay, to interview him or his representative during working hours. Some Victorian determinations permit the employer to refuse to recognize a shop steward appointed by the union, but, if he does so, oblige him to recognize a delegate elected by and from his employees. The Industrial Court of South Australia has doubted its power to award a clause requiring employers to recognize shop stewards; but a few awards include a provision of this sort inserted by consent. It appears that in Queensland there has been no need felt to obtain similar provisions as there are none in State awards. A major part of the shop stewards' duties is the collecting of union dues; indeed, in many cases this appears to be the only function they are required to fulfil under union rules.

In addition to the protection of shop stewards, the Commonwealth and

10 See Chapter 8.
13 (1945) 19 S.A.I.R., at 257.
15 See Kuhn, 'Strikes and Australia's Industrialization' (Sept. 1956), 28 Australian Quarterly, at 62.
New South Wales legislation debars employers from dismissing, or in any way injuring in his employment, an employee who has absented himself from work without leave in order to discharge his duties or rights as a union official, and whose previous application for leave without pay was unreasonably refused by the employer. More positively, a number of Federal awards direct employers to grant leave without pay to employees who are union delegates in order that they may attend union conferences. In a few cases, employers are required to grant leave in order to allow an employee to attend to 'any' union business. Some Western Australian awards and Victorian determinations also include clauses prescribing that union officials are to be granted leave without pay to carry out their duties.

Finally, a number of awards and determinations in all jurisdictions protect the ability of unions to communicate with their members by requiring employers to permit the display of union notices (sometimes limited to 'formal' notices, or simply to notices of meetings) in a prominent position in workplaces, usually on condition that they are signed by an accredited union representative and occasionally on condition that they are first approved by the employer. The same purpose is achieved by right of entry provisions, which are in many cases used to conduct lunch-hour meetings of union members.

16 C'wealth, C. & A., s.5(1); N.S.W., Ind. Arb., s.95.
17 E.g., Wool & Basil Workers Award (1952) 73 C.A.R., at 602.
The legal position of the strike in Australia is complicated. It is a product partly of the development of the English law relating to strikes, and partly of the way in which the strike is treated in the various systems of industrial regulation peculiar to Australia. The complexity arises not merely from this combination, but more from the fact that neither the adaptation of English law nor the creation of the industrial law has taken place in a uniform or coherent fashion throughout the seven Australian jurisdictions.

1. The General Setting

The legal position of the strike in the United Kingdom is based on statute law, a law which has been enacted piece-meal largely in order to meet situations created by judicial decisions. These decisions related partly to interpretations of the Act of 1825 amending the measure of the previous year that had repealed the repressive Combination Acts of 1799 and 1800, and partly to interpretations of the common law status of the strike.

1 Attention here is concentrated on legal provisions that are directly concerned with strikes, and no attempt is made to deal with the variety of other measures which may be directed against strikers according to circumstances, such as the (S.A.) Public Meetings Act 1912-34 and legislation relating to processions: see Perlman, Judges in Industry, 165. For English examples, see Knowles, Strikes: A Study in Industrial Conflict, 120.
The English Act of 1825 conferred a severely limited right to strike on workers. Against this meagre right the courts developed the common law doctrine of criminal conspiracy. In the first place the strike was attacked as being a criminal conspiracy *in restraint of trade*. This principle was over-ruled by the Criminal Law Amendment Act of 1871. But in a subsequent case it was held that although a strike could no longer be regarded as a conspiracy in restraint of trade, it could be acted against as a conspiracy to *coerce*. The attack by way of criminal conspiracy was then cut off altogether by the Conspiracy and Protection of Property Act of 1875 which exempted from this category any action by a combination of persons 'in contemplation or furtherance of a trade dispute' where the action 'if...committed by one person would not be punishable as a crime'. Similar provisions have been enacted in all the Australian States except New South Wales, where strikers were convicted of criminal conspiracy at least as late as 1909.

Ousted from the field of criminal law as a means of combating direct action by trade unions, the English courts turned to the civil law and developed the tort of civil conspiracy, which postulated that a combination acting with the intention of injuring a man in his trade or other interests was unlawful and, in the event of actual damage arising, actionable as a conspiracy. This doctrine made unlawful, as had the law of criminal conspiracy, acts done by persons in combination which were not

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2 *R. v. Bunn* (1872), 12 Cox. 316.
3 Conspiracy and Protection of Property Act 1875, s.3.
4 Vic., Employers and Employees Act 1928, s.55; Qd., Criminal Code 1899, s.543A; S.A., Criminal Law Consolidation Act 1935, s.260(1); W.A., Criminal Code 1913, s.561; Tas., Conspiracy and Protection of Property Act 1889, s.2.
unlawful if done by an individual. As applied by the House of Lords in *Quinn v. Leathem*, it struck only at the individual members and officials of trade unions. This was, of course, serious enough for the unions, but it meant that their funds were still not directly liable for damages for strike action. In the same year that *Quinn's Case* was decided, however, the decision of the House of Lords in the *Taff Vale Case* swept aside this immunity by establishing that a trade union could be sued in tort as a party to a conspiracy and that its funds were therefore directly available in the event of damages being awarded. But again the judges were overruled by Parliament. The Trade Disputes Act of 1906 repeated, in relation to the doctrine of civil conspiracy, the principle laid down by Act of 1875, and also restored the immunity enjoyed by trade union funds before the *Taff Vale* decision. In Australia, these provisions have been enacted only in Queensland. In all other States, union members and officials may be sued for civil conspiracy, and a trade union itself may be held liable for damages for conspiring with its own officers or members.

The only general legal restriction on the right to strike in the United Kingdom is the employee's liability for breach of his contract of employment. In these terms the lawfulness of a strike turns on the question of whether strikers have given the required notice before terminating their employment. Thus in industries where the customary contract period is one week, each striker is legally bound to give at least a week's notice of his intention to cease work. On the other hand, where contracts may be terminated without notice, as in casual employment, the

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7 [1901] A.C. 495.
9 Trade Disputes Act 1906, ss.1, 4.
10 Trade Union Act 1915, ss. 28(1), 30(1).
11 See (1906) 3 C.L.R. 686; (1917) 17 S.R. (N.S.W.) 243; (1916) S.R. (N.S.W.) 323.
question of breach of contract does not arise. Under the Master and Servant Act of 1867 breach of the contract of employment could be treated as a criminal offence subject to a statutory penalty. This measure was replaced in 1875 by the Employers and Workmen Act (the change in title is perhaps significant) which provided, with certain exceptions considered below, that the only legal remedy for breach of a contract of employment was a civil action by way of damages. These provisions have been repeated in the legislation of only one of the Australian States, Victoria. In the other States the principles of the earlier English Act of 1867 are followed.

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In all jurisdictions special measures have been enacted or can be enacted in relation to strikes in essential industries or strikes that are considered to constitute a threat to the livelihood and well-being of the community. Most strikes and most industries share these characteristics in some degree. The measures considered here are those which deal with strikes in certain industries statutorily classified as 'essential' and with certain strikes regarded as creating an 'emergency'. There is, of course, a great deal of overlapping between the two notions. The distinction adopted here is based on permanency of application: restrictions on strikes in essential industries are permanent in operation,

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12 Go-slows, bans or limitations of work always constitute breach of the contract of employment, since employees are failing to work in accordance with their contract: Kahn-Freund, op. cit., 106.
13 Employers and Workmen Act 1875, s.4.
14 Employers and Employees Act 1928, s.44.
15 N.S.W., Masters and Servants Act 1902, s.4; Qld., Wages Act 1918, s.30(1)(b); S.A., Masters and Servants Act 1878–1935, s.7; W.A., Masters and Servants Act 1892, s.7; Tas., Master and Servant Act 1896, s.8. The penal provisions have been used, in N.S.W. at least, against strikers: see Sutcliffe, A History of Trade Unionism in Australia, 72.
while statutory powers provided for dealing with strike-emergencies, which may or may not relate to industries specified as 'essential', enable the temporary application of restrictions to deal with a particular situation.

In the United Kingdom the principle that striking is not a criminal offence is waived in the case of certain industries and certain types of work. It is a penal offence for any person 'wilfully and maliciously' to break his contract of employment in the knowledge that his action will probably 'endanger human life, or cause serious bodily injury, or to expose valuable property...to destruction or serious injury'. A similar embargo covers, specifically, workers in gas, water and electricity undertakings; but in these cases the 'probable consequences' involved include simply the deprivation of gas, water or electricity as the case may be.

The general prohibition of the English measure has been repeated in the legislation of three Australian States, Victoria, South Australia and Western Australia. The embargo on breach of contract by employees in gas and water undertakings is found in the legislation of four States: Victoria, where light and sewerage are also included; South Australia, where railways and tramways are also included; Western Australia, where electric light is also included; and Tasmania.

The significant feature of these prohibitions is, in the first place, that criminal law sanctions are applied not in terms of the interests

16 Conspiracy and Protection of Property Act 1875, s.5.
17 Ibid., s.4; Electricity (Supply) Act 1919, s.31.
18 Vic., Employers and Employees Act 1928, s.57; S.A., Criminal Law Consolidation Act 1935, s.262; W.A., Conspiracy and Protection of Property Act 1900, s.4.
19 Vic., E. & E. Act, s.56; S.A., C.L.C. Act, s.261; W.A., C. & P.P. Act, s.3; Tas., Conspiracy and Protection of Property Act 1889, s.3.
of the employer but in terms of public interests. In the second place, it is not striking but breach of the contract of employment that is prohibited. In other words, only the lightning strike is prohibited. By contrast the English and Australian Commonwealth legislation dealing with strikes and picketing by seamen embody absolute prohibitions of strike action.

These provisions exhaust the chief specific restrictions on strikes in essential industries in the United Kingdom and in most of the Australian States. But additional legislation of this character is in force in the Commonwealth jurisdiction and in New South Wales and Victoria. The Victorian measure covers the widest range of essential industries but is limited to prescribing conditions on which strikes in these industries may be held. The Commonwealth and New South Wales measures, on the other hand, cover only government employees and, in the former case, industries connected with interstate and international trade and commerce, but place a complete ban on strike action. An outline of these measures is given in Appendix III.

Legislation conferring emergency powers for use against particular strikes falls into two categories: temporary measures specially enacted to give a government power to deal with a specific strike, and permanent measures which equip the government with powers that may be used only where necessary to meet emergency situations created by strikes.

20 See Kahn-Freund, op. cit., 47.
21 But, as to the obstacles which such provisions enable employers to put in the way of other strikes, see Knowles, op. cit., 101.
22 U.K., Merchant Shipping Act 1894, ss.225, 236; Aust., Navigation Act 1912-56, ss.100, 103.
Temporary emergency legislation is always within the power of
governments subject to political and, in the case of the Commonwealth,
constitutional considerations. Two recent examples of such measures
enacted in Australia are outlined in Appendix III.

Permanent emergency legislation is in force in most Australian
jurisdictions. All but one of these measures follow the pattern of the
English Emergency Powers Act 1920 which empowers the proclamation of a
state of emergency and the making of regulations for the purpose of
'securing the essentials of life to the community'. The exception is
the South Australian Emergency Powers Act, initially enacted as a wartime
measure, which simply confers a standing power to make regulations. The
Australian legislation is outlined in Appendix III.

Up to this point it has been possible to describe the legal position
of the strike in Australia in terms of the corresponding situation in the
United Kingdom. But from here on Australian strike-restrictions have no
English counterparts.

Apart from the special provisions applicable within the various
systems of industrial regulation, which are discussed in the next section,
general use of the strike is subject to further restrictions imposed by
the legislation of four States. In New South Wales and Queensland all
strikes are illegal unless strikers and their unions have complied with
certain statutory conditions before taking such action; and in South

24 C'wealth, National Emergency (Coal Strike) Act 1949; Qd., Industrial
Law Amendment Act 1948.
25 C'wealth, Crimes Act 1914-50, Stevedoring Industry Act 1956; N.S.W.,
Emergency Powers Act 1949; Vic., Essential Services Act 1948; Qd.,
26 S.2.
Australia and Western Australia, no strike is legal. The relevant provisions are described in Appendix III. Moreover, in three States, New South Wales, Queensland and Western Australia, provision has been made (as outlined in the Appendix) for the holding of secret ballots on strike action conducted by unions outside the respective industrial arbitration systems.

2. The Strike and Industrial Regulation

The development of English law has been in the general direction of securing and protecting the right to strike. The Acts of 1875 and 1906 reflected the legislature's aim to secure this right in the face of a judiciary clearly hostile to trade union action - a conflict of view that has been largely resolved since by judicial acceptance of unionism as a legitimate form of economic organization. Protection of the right to strike is a logical consequence of the English recognition of free collective bargaining as the basis of industrial relations. On the other hand, the failure of Australian State legislatures to adopt the same policy, while partly a matter of political accident, seems to have been primarily a result of the purposes and legal context of their systems of industrial regulation.

It will be observed that the States in which the general right to strike has been either greatly restricted or withdrawn altogether (the Commonwealth having no power to legislate in relation to strikes in general) are those with industrial arbitration courts. The chief impulse

1 See Kahn-Freund in The System of Industrial Relations in Great Britain, 117-20.

2 The position did not go by default on the part of the unions, which early pressed for remedial legislation dealing with conspiracy and contracts of employment; see Evatt, Australian Labour Leader, 149; Spence, Australia's Awakening, 605, 611, 617; Lightfoot & Sutcliffe in Trade Unionism in Australia (Atkinson, ed.), 70-1.
behind the establishment of arbitration court systems was the attempt to obviate direct action as an incident of industrial bargaining. In these circumstances the search was not for means of legally protecting the right to strike, but rather for means of making the strike unnecessary and, ultimately, unusable. The tendency therefore, has been to prohibit or at least discourage strike action, whether inside or outside the arbitration system.

Australian legislatures have usually approached questions of industrial disputes...and the combined action of workmen, from a standpoint very different from that of England, where the mere act of 'striking' has not been penalized by Act of Parliament. Here, the act of striking has frequently been made punishable. This has not been because Australian legislative bodies have been hostile to the claims of organized labour. The reason is that they have established Courts, tribunals and boards, for the very purpose of making recourse to the instrument of strike and lock-out unnecessary.4

There is no point in protecting strikers from actions for criminal conspiracy when they and their unions are already subject to heavy statutory penalties. The same consideration applies in the case of civil conspiracy and penal provisions relating to breach of the contract of employment.

Arbitration or Strike:

State intervention in the industrial bargaining process in Australia involves two distinct propositions that deny the right to strike. One relates to the form of such intervention, the other to its purpose. Of

3 This contrasts with the social protectionist impulse behind the pure wages board systems of Vic. and Tas., though strike-prevention is now an important element in these systems also.

4 Per Evatt, J., McKernan v. Fraser (1931), 46 C.L.R., at 373. This point is discussed more fully below in this section.

5 Against the simpler and more certain procedures available under arbitration legislation, action by way of civil conspiracy also involves the burden of proving damage. As a result such actions are usually brought in this connection only by non-unionists dismissed because of a union strike-threat or strike: see McKernan's Case, ibid., at 380.
the two, the first is narrower in scope.

The standard form taken by state intervention in industrial bargaining in Australia is, as we have seen, the interposition of an independent arbitrator between the parties to an industrial dispute. The proposition developed from this form of intervention has been expounded by Isaacs, J., in the High Court. He argued that use of the strike is not inconsistent with arbitration so far as resort to arbitration is voluntary; but once arbitration is accepted (whether to settle all present and future disputes or only a specific dispute), a compulsory element is imported into the situation.

Compulsion to do a given thing excludes everything inconsistent. And the nature of submission to arbitration is inconsistent with self-redress. If the submission is voluntary, no one would doubt that any attempt at self-redress would be inconsistent with the submission. If it is compulsory, the inconsistency must, of course, be as great.... If a party while bound to arbitrate attempts to decide the matter for himself, it is an inconsistent act, and it is a breach of his obligation which binds him to abide by the decision of the disinterested third party.  

This is the reasoning behind the assertion that employees cannot "have a strike and arbitration too" - that they cannot "work under an award...and at the same time have the right to strike". The principle has been laid down repeatedly by arbitral authorities and is given compulsive force by an extensive pattern of strike prohibitions and sanctions affecting employees and their organizations recognized by the authorities.

Resort to the processes of compulsory arbitration in Australia is, in the first instance, legally a voluntary act on the part of employees and their unions. Usually it involves a union registering under an

6 **Stemp v. Aust'n Glass Manufacturers Co. Ltd.** (1917), 23 C.L.R., at 237, 240.
7 (1913) 7 C.A.R., at 255.
appropriate Act, and thus undertaking to submit to arbitral decision. In these circumstances the compulsory principle applies to all disputes with which the union or any of its members may be concerned while it is registered.

Registration of employees' unions implied the election of arbitration instead of direct action as the better means of settling disputes. The [unions in question] made this election but now in fact contend that after securing awards they are free to aid strikes for claims refused by the Court after judicial inquiry. If this right is conceded the whole scheme of the Act falls to pieces.10

In these terms, unions and employees are assumed to have chosen between two mutually exclusive procedures. But the choice is more apparent than real. In the first place, as was shown in the previous chapter, the effect of registration in most arbitration court systems on the organizing ability of unions (particularly where registration is restricted) constitutes a compelling reason, quite apart from the possible benefits of arbitration, why a union should seek registration. In the second place, the ability of State arbitration courts to make common rule awards means that employees and members of unions that have not chosen to submit to arbitration procedures may in fact find themselves bound by those procedures: this applies equally in the wages board jurisdictions since board determinations are automatically common rules. Finally, as we have seen, statutory restrictions imposed on strikes within the State arbitration court systems are usually extended to cover strikes outside those systems. In South Australia and Western Australia, there

9 The original N.S.W. Ind. Arb. Act of 1901, however, prohibited strikes only during the time a matter was the subject of arbitration court proceedings: see Evatt, Australian Labour Leader, 136.

is no question of choice since all strikes are illegal. It is at this point that it is relevant to consider the second proposition denying the right to strike which follows from the purpose of state intervention in the industrial bargaining process in Australia.

The fundamental purpose underlying all Australian systems of industrial regulation as they operate today is to provide means by which 'fair play' and not 'economic resource' (meaning principally 'the rude and barbarous processes of strike and lock-out') can be established as the determinant of the industrial bargain. As H.B. Higgins, a founder and President of the Federal Arbitration Court, declaimed:

Reason is to displace force; the might of the State is to enforce peace between industrial combatants as well as between other combatants; and all in the interest of the public.  

In less lyrical vein, Mr Justice Isaac's measured statement of the ramifications of the Federal Conciliation and Arbitration Act serves to emphasize this point.

It is a statute embodying a great public policy. Its purpose...is to encourage and maintain industrial peace in the Commonwealth.... Industrial disputes, of course, involve wages, hours of labour, safety, sanitation and other incidents of industry. The modification of legal relations between employers and employees...is of course involved, and that means alteration of rights and obligations. But that is not the prime purpose of the legislation; it is the necessary means of achieving the great object in view - the elimination of stoppage in industries that serve the people of the Commonwealth as a whole. The interests of the disputants are great; but it is because struggles over their individual interests are detrimental to the great general interests of the Commonwealth that the incidental alteration of legal relations of those engaged in industry is undertaken.  

The emphasis placed in these statements on 'the interest of the public', in Higgins' phrase, and 'the great general interests of the

11 Higgins, A New Province for Law and Order, 2, 40.
12 Ibid., 2
13 George Hudson Ltd. v. Aust'n Timber Workers Union (1923), 32 C.L.R., at 434-5.
Commonwealth', in Isaacs', leads naturally to the adoption by the proponents and practitioners of industrial arbitration of a concept of justice which is concerned less with the opposing sectional interests of industrial disputants, than with resolving their dispute in a way that conforms most closely with what are interpreted as public interests. In these terms, a former President of the A.C.T.U. has pointed out, industrial arbitration involves not 'arbitration between two parties, but arbitration between two parties and a third party - the community as a whole'. In practice the extent to which the arbitration process operates on this pattern varies with circumstances and the personalities of arbitrators. But arbitral machinery established on this premise is aimed at providing a substitute for all direct action in accordance with the view that such action is, in itself, detrimental to the public interest.

In a policy which provides for the adjustment of grievances by means of adjudication unhampered by legislative restrictions, so that if a claim be in accord with natural justice it shall be allowed, the right to strike, postulated by social philosophers who speak of an industrial and economic system in which no such adjudication has been provided, does not survive.  

It follows that a government setting up a system on these lines is in some degree bound to take steps to discourage strikes occurring outside the system. For their part, the tribunals concerned are committed to the elimination of strikes within their jurisdiction. Australian strike statistics indicate that the commitment is larger than the tribunals' power to fulfil it - perhaps larger than the power which the government of

15 See, e.g., Perlman, Judges in Industry, 180.
17 A symptom of this commitment is the growing tendency, on the part of both legislatures and tribunals, to extend the legal definition of a strike beyond a concerted cessation of work to a concerted refusal to accept employment - an extension which, as embodied in a now-repealed English Act dealing with emergency strikes, has been described as a 'startling widening of the term strike': Knowles, Strikes: A Study in Industrial Conflict, 115.
a political democracy is prepared to grant or to use in most circumstances. Nevertheless, it remains, and is most strongly emphasized in relation to unions functioning within arbitration court systems.

**The Union's Responsibilities:**

The question of the union's responsibilities under compulsory arbitration has been developed in a far-reaching manner by judicial decision. Basically, as we have seen, union participation in industrial arbitration procedures has been judicially regarded as involving acceptance of two principles. First, that the union will submit all disputes in which it is involved for the decision of the relevant tribunal. Second, that it will abide by the tribunal's decision. The tribunals regard acceptance of these principles by the unions as 'the *quid pro quo* for the benefits they derive from registration'. But, as viewed by the judges, a union's responsibility goes deep into its organization; it does not stop short at the official policies and official actions of the union as a representative body.

The union is held to have the duty of ensuring that its 'individual members...pursue their claims through the arbitration system set up by the Act and...abide by the awards made under the Act'. It is responsible for the actions of its branches and any group of its members. Thus the

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20 Ibid. See also, (1953) 75 C.A.R., at 143.
21 (1949) 64 C.A.R. 288; (1948) 61 C.A.R. 128. The High Court held in an early case that a union, in the absence of express authorization or ratification, was not liable for strike action by a branch acting without the knowledge of the union's governing body: (1916) 21 C.L.R. 129. The union's rules allowed branches to conduct local business independently of the union. But later Arbitration Court decisions, requiring unions to equip themselves with rules enabling them adequately to fulfil their responsibilities (see below), appear to have robbed unions of this defence.
union itself is liable for strike action taken by any of its members; and it is liable irrespective of the existence of 'formal technical proof' of its participation, of the reasonableness of its advice to members to take such action, and regardless of whether it has expressly left the strike decision to the members concerned. The union is under an obligation to keep itself informed on such matters, and mere knowledge of a strike or an intention to strike is sufficient to invoke its responsibility. A union may, therefore, be held responsible for strikes which it has neither authorized nor considered.

In fulfilment of its responsibilities, the union is expected where necessary to employ all its powers to prevent or to end a strike by its members.

Now it cannot be held sufficient that the executive body has directed [striking] members to abandon their strike. Those responsible to act for the organization must be prepared to go further. They must, on behalf of the organization, apply whatever disciplinary sanctions are available to it under its rules, either to enforce its direction (as expressed by them) or to divest itself of the membership of its recalcitrant members. Failure to do this, from whatever motives, whether from fear of the loss of a branch or a sub-branch (which may be supporting the strike) or from fear even of complete dissolution, must be held to be tantamount to a condonation. Such a failure amounts to this: that the organization is unwilling to face up to the responsibilities incurred by its registration under the Act.26

Moreover, the union is under an obligation to ensure that it has adequate rules which enable it to carry out these responsibilities.

In three States the extent of the union's responsibilities is expressly recognized by statute. The Industrial Arbitration Acts of New

23 (1922) 30 C.L.R. 570.
25 (1952) 74 C.A.R., at 91.
South Wales and Western Australia lay down that in any action against a union for the imposition of a strike penalty, it is a defence that the union attempted to prevent its members taking and continuing such action. In similar proceedings, the South Australian Industrial Court may not impose a penalty if it is proved that the union has, 'by such means as appear reasonable', tried to bring about the same result. In Queensland the union's responsibility has been held to be no less.

The responsibilities unions are expected to shoulder in relation to strike action sharply distinguish the character of a union operating in the context of free collective bargaining from the character of a union functioning under compulsory arbitration in Australia. The distinction is between an organization whose ultimate purpose is to co-ordinate the collective economic power of employees as a means of forcing employers to concede industrial demands; and an organization whose 'primary function is to help in the effort to maintain industrial peace as a convenient instrument to secure for those whose interests it represents industrial justice where necessary, but to secure that justice according to law'. In the latter case, the union 'is not merely a convenient method of obtaining [its members'] just rights but is also a public instrument for effectively administering an important statute of public policy for the general welfare'.

28 N.S.W. Ind. Arb., s.101; W.A., Ind. Arb., s.141(5)(b).
29 Ind. Code, s.106(2)(b).
30 (1925) 9 Q.I.G., at 16. But the I.C. & A. Acts provide that a union (registered or unregistered) is not liable for the acts or words of an agent who acts without the knowledge of the union's executive body or against its instructions in connection with a strike: s.52.
31 Per Isaacs, J., C'wealth Shipping Board v. Fed'd Seamens Union (1925), 35 C.L.R., at 475.
32 Ibid. My emphasis.
Prohibitions and Sanctions:

Prohibitions of strikes by unions operating within the various systems of industrial regulation are found in legislation, in the instruments of industrial regulation (awards, determinations and registered agreements) and in labour injunctions - the last usually being designated merely as 'orders'. Disobedience of prohibitions in any of these forms is almost invariably subject to a monetary penalty laid down by statute and, in some cases, imprisonment. Prohibitions and sanctions of this sort, and their availability in the different jurisdictions, are set out in Appendix III.

In all jurisdictions there are in addition various sanctions available other than the standard penalties of fines and imprisonment. These sanctions may be considered under three heads: refusal to continue award-making proceedings; the withdrawal or modification of standard conditions of employment or other privileges; and the cancellation of a union's registration.

Industrial tribunals in most jurisdictions have on occasion refused to entertain proceedings instituted by unions with members who are striking or threaten to do so. This policy flows logically from the view that unions are not entitled to both the strike and legal regulation of industrial conditions. It is usually applied in connection with union claims for an award or, less commonly, union appeals from an award. It usually takes the form of a refusal to continue proceedings, or to give effect to a decision already handed down, until the union has ended the

33 In wages board jurisdictions, this policy takes the form of a refusal to convene a wages board.
strike or persuaded its members to do so. It may involve rejection of
the union's claims altogether or dismissal of the union as a party to the
proceedings.

Industrial tribunals are not formally required to adopt this policy,
which has been applied with varying rigour in different jurisdictions and
at different times. In practice, proceedings are not uncommonly continued
while strikes are in progress, the tribunal concerned considering that
other sanctions may be more effective or equitable in the circumstances,
or that this course appears to conform better with the public interest —
which may in effect mean merely that the gravity of the situation is such
as to require the sacrifice of principle for the sake of a speedy settle-
ment. Moreover, it appears that greater use of the power to summon
compulsory conferences may have led to some relaxation of the policy.

Practice has also varied on the question of the matters which should
be involved in a strike before a refusal to hear union claims can be
justified. The New South Wales Industrial Commission is apparently in-
clined to apply the policy regardless of the strike's nature or object.
But in the Federal jurisdiction it is apparently to be applied only where
the strike is about matters related to those raised in the relevant

36 See (1945) 55 C.A.R., at 196, 199. The Qd. Industrial Court can apply
this policy only in relation to those members of a union who are
actually taking part in the strike: I.C. & A. Acts, s.7(7).
32 W.A.I.G. 81. It may also involve the waiving of a lockout penalty
where the union applying for the penalty subsequently conducts an
38 See (1952) 73 C.A.R., at 333.
39 For a case in which this consideration seems to have played an
important part, see Perlman, op. cit., 119.
40 See Foenander, Studies in Australian Labour Law and Relations, xiv-xv.
41 See Sydney Morning Herald, 19/2/1957.
In South Australia its use has been limited still further to cases where the strike is directly in support of union claims before the tribunal.

The policy of refusing to entertain a striking union's claims has occasionally been carried to its logical conclusion - a refusal to incorporate in awards concessions won by strike action. Thus an arbitration court has refused to allow the award of a lower tribunal to enter into force where the award's terms had been influenced by a strike. In the same way, some arbitral authorities have refused to recognize any prescriptive right to a condition of employment in favour of employees who have gained it from their employers by striking or by threat of a strike. But it has not always been felt necessary to push this view too far. Usually the question does not arise because employers consent to the union claim.

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The withdrawal or modification of standard conditions of employment, or of other privileges, as a strike sanction may be accomplished by the cancellation or suspension of complete awards and determinations, or by varying their terms (that is, deleting certain clauses or altering their content), or by attaching conditions to particular privileges.

Only in the Commonwealth and Western Australia are there explicit statutory provisions empowering the suspension or cancellation of an award so far as it affects a registered union and its members; this may be done for any reason, including breach of the award or an order and a

42 (1950) 68 C.A.R., at 731; see also Higgins, op. cit., 80.
43 (1949) 23 S.A.I.R. 49.
45 (1952) 73 C.A.R., at 159; (1917) 11 C.A.R., at 516.
refusal to accept employment on the award's terms. The same ability is implicit in the general powers of the arbitration courts in New South Wales, Queensland and South Australia, but is not, apparently, in the case of Victorian and Tasmanian wages boards. In Victoria, however, the Governor in Council may suspend a determination dealing with a matter which is the subject of an 'organized strike'. Apart from statutory provisions, some strike-prohibition clauses in Federal awards specify that the award may be suspended or cancelled for contravention of the clause. A number of New South Wales awards contain a warning that they are 'liable to be cancelled' in the event of a strike; and some Western Australian awards provide that they shall 'automatically cease to operate and have effect' in the same eventuality.

Industrial tribunals in all jurisdictions can attach conditions to the terms of their awards and determinations, and, under their general powers of variation, can delete or suspend particular clauses. It appears that these powers have not been used to any great extent to lower prescribed standards of employment merely as a sanction against strikes - though arbitral authorities have not failed to threaten striking unions with action of this kind. The procedure usually adopted is to withdraw altogether, or to provide for the withdrawal of, employees' or unions' entitlement to certain conditions or privileges. In appropriate circum-

47 C'wealth, C. & A., s. 62; W.A., Ind. Arb., s. 98A.
49 Lab. & Ind. Act., s. 41.
50 E.G., Marine Cooks Award (1950), 68 C.A.R., at 547.
51 E.G., Galvanized Iron Manufacturers Award (1954), 112 I.G. (N.S.W.) 397.
52 E.G., Dock, Rivers & Harbour Workers Award (1950), 30 W.A.I.G., at 92.
53 In the C'wealth and W.A. this power is directly related to strike action: see note 47 above.
54 See Higgins, op. cit., 24; Foenander, Industrial Regulation in Australia, 80.
stances it may involve, as in the case of a crew that refused to take a
ship to sea, a withdrawal of the men's right to wages, overtime and other
payments earned since the stoppage began, and of their right to notice
before being dismissed. But the most common sanctions of this nature
directed against individual employees are connected with annual leave
provisions in awards, a practice which appears to have originated in
Queensland but is now followed chiefly by Federal and Western Australian
industrial tribunals.

Annual leave provisions normally direct that days lost through un-
authorized absence from work are not to count towards such leave, the
employee merely being required to make up the time so lost. But the
annual leave clause in a number of Federal awards is accompanied by con-
ditions which amount to giving employers a means of penalizing strikers.
In one form, the employer may deduct one day from an employee's accruing
annual leave for every day the employee is absent from work without cause.
A more severe provision enables the employer to treat such absence as a
break in the employee's continuity of service, in which case the employee
loses all time that previously counted towards his annual leave. In the
stevedoring industry a legally-enforceable order originally made by the
Stevedoring Industry Commission prescribes that, at the employer's option,
no annual leave credits shall be given to a waterside worker who takes
part in a strike of not less than forty-eight hours duration. Clauses
of this character are usually awarded by the Western Australian Arbitration

56 See (1934) 14 W.A.I.G., at 231.
57 E.g., Storemen & Packers (Wool Stores) Award (1951), 73 C.A.R., at 541.
58 E.g., Food Preservers Award (1951), 73 C.A.R., at 227. The intention
of the provision is indicated by its reference to 'collective or
concerted absenteeism'.
59 See (1952) 75 C.A.R. 37; Sydney Morning Herald, 10/2/1956.
Court only when a strike exists or is impending, and are normally withdrawn afterwards. The standard clause lays down that a striker 'shall forfeit' one day of the annual leave owing to him for each day or part of a day he takes part in the stoppage. On occasion the penalty has been raised to two days of leave for each day of the strike. In the New South Wales coal mining industry, under the jurisdiction of Federal tribunals, similar use has been made of provisions dealing with long-service leave.

In the peculiar circumstances of the stevedoring industry, a notable special sanction available for use against individual strikers is the statutory power to suspend or cancel a striking waterside worker's registration, thus debarring him from obtaining work in the industry.

Strike sanctions in the category considered here, however, are usually directed against unions rather than individual employees. An arbitrator may, and has threatened to, vary an award in such a way as to involve a union in long and expensive legal proceedings. But more commonly the sanction takes the form of deleting award clauses that directly benefit the union connected with a strike. For example, in a case of this nature a Federal arbitrator deleted from an award clauses dealing with the union officials' right of entry, their right to inspect time and wages records, and with the posting of union notices in workplaces. Similarly, the standard right of entry clause found in New South Wales awards up to 1953 (when such clauses were rendered redundant by statutory

60 E.g., Boilermakers Award (1952), 32 W.A.I.G., at 73.
61 See (1938) 40 W.A.L.R. 81.
64 See Perlman, op. cit., 50.
65 (1946) 57 C.A.R. 462.
provision) provided for automatic suspension of the clause in the event of a strike. But the provision most frequently used in this way is the preference to unionists clause, a sanction that is, of course, available only where industrial tribunals have discretionary power to award preference. It is relevant, therefore, only in the Federal, Queensland, Western Australian and, up to 1953, New South Wales jurisdictions. Even in these cases availability is conditional on the extent to which preference clauses are a feature of awards. Thus the sanction is almost invariably available in Queensland and was usually so in New South Wales before 1953. It is often available in Western Australia, but less commonly in the Federal jurisdiction.

Only in Western Australia are a substantial number of preference clauses in State awards coupled with a proviso relating to strike action: most provide for automatic cancellation of the clause in the event of a strike, while a few merely stipulate that the clause is not to apply to individual strikers. A few Queensland preference clauses provide that the clause may be suspended or cancelled in the event of strike action, though this constitutes a warning rather than a necessary authorization. But deletion of the preference clause as a sanction against strikes has been used in all relevant jurisdictions. Its use has naturally been greatest in Queensland where it has been emphasized that preference is granted on condition the union concerned does not resort to direct action. The Court has deleted preference clauses on this ground, and has expressed

66 E.g., Firemen & Deckhands Award (1953), 111 I.G. (N.S.W.), at 651-2.
67 See Chapter 7.
68 See Table 6.
70 See (1947) 32 Q.I.G. 803.
its determination to do so regardless of whether a strike has been author-
ized in accordance with the Act. Correspondingly, the Court will not
restore a deleted preference clause without evidence of the union's in-
tention to abandon the use of strike action; nor will it make a grant of
preference, otherwise warranted, if it considers the union cannot effect-
ively guarantee that its members will not strike. In New South Wales
before 1953 preference clauses were deleted from awards for illegal strike
action on a number of occasions. Preference has been included in a
Federal award on the implied condition that there should be no strikes by
members of the union concerned; the grant has been cancelled because of
strike action, and withheld because of a union's strike record and its
failure to offer guarantees for the future.

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Cancellation of a union's registration as a sanction against strikes
is available in all arbitration court systems. The statutory powers of
arbitration courts in this connection are outlined in Appendix III, to
which is appended a brief description of the effects of deregistration.

Technically, deregistration is not a distinctly punitive power,
a view that has received particular emphasis from Federal tribunals.

An order for deregistration...is not a punishment. It is merely
the assertion by the Court that registered unions cannot maintain

71 (1946) 31 Q.I.G. 229.
73 (1919) 4 Q.I.G. 513.
74 See [1936] A.R. (N.S.W.), 1, 25. Between 1912 and 1918 the State Act
required the cancellation of preference clauses for strike action.
75 (1928) 26 C.A.R., at 886.
76 (1928) 26 C.A.R. 1097.
77 (1918) 12 C.A.R., at 284, 286; (1923) 18 C.A.R., at 1216; (1930)
78 See (1917) 11 C.A.R., at 985.
a concurrent right to approach this Court and to resort to direct action.\footnote{79}

In practice, however, deregistration is widely regarded, in the terms of a former President of the Western Australian Arbitration Court, as 'one of the severest punishments' available for use against striking unions. In an early Federal decision, Higgins, J., viewed deregistration, to the extent that it constituted a punishment, as being unjust because it could affect union members who had nothing to do with a strike - if 'punishment is to be any good in its object of getting the work of the country done, it must discriminate between the innocent and the guilty'. In later Federal judgements, Higgin's distinction between 'the innocent and the guilty' was discarded.

It was...urged that even if deregistration were not a punitive act its result would be the deprivation of large bodies of workmen...not concerned in the strike in question of their right to approach the Court. This is true but all men so deprived must be presumed to support the actions of their Federal Executives. If they do not - if they wish to rely on arbitration as against direct action - they must see that effect is given to their choice.\footnote{82}

In short, 'The rank and file of the Union must accept responsibility for the utterances and actions of their executive bodies'. The converse, as has been shown earlier in this chapter, also applies. On this view, responsibility within the registered union is not divisible. The Federal authorities on occasions, however, have been forced to modify the principle, as when an application for deregistration of a union because of the actions

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\footnote{80} Per Dwyer, P., (1936) 16 W.A.I.G., at 107; and see also, [1917] A.R. (N.S.W.), at 476.

\footnote{81} Re Waterside Workers Fed'n: Ex parte the Attorney-General (C'wealth) (1917), 11 C.A.R., at 606.

\footnote{82} Metal Trades Case (see note 79 above), at 10.

\footnote{83} Commissioner for Railways, N.S.W. v. Aust'n Railways Union (1940), 42 C.A.R., at 568.
of one of its branches was held over in order to give the 'rank and file
of the Union an opportunity of declaring what really is the policy of their
Union'. Indeed, despite general judicial acceptance of the view that
deregistration is the logical outcome of a refusal to adhere to arbitral
processes, arbitration courts have used the power sparingly—usually on
the stated ground that it is applicable only in extreme cases.

A union deregistered for striking may apply for, but is not automatic-
ally granted, re-registration, which is usually granted only if it is
shown that the union intends to abandon use of the strike and to observe
award terms.

Apart from the sanctions considered above, it may be mentioned that in
all jurisdictions there are statutory provisions aimed at enabling industrial
authorities to anticipate or control the incidence or conduct of strikes.
These measures fall into three categories: notification of disputes, com-
pulsory conferences and strike ballots.

Unions in all jurisdictions are required, either by statute or as a
matter of practice, to notify an appropriate industrial authority of likely
or existing strikes. In all cases except Victoria power is provided to
enable the calling of compulsory conferences; by this means the parties
to an industrial dispute can be forced to resume negotiations, or at least

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84 Ibid., at 569.
86 (1917) 24 C.L.R. 85; (1929) 27 C.A.R. 1208. If another union applies
earlier for registration in its place, the new union is prima facie
87 See (1929) 27 C.A.R., at 1210; (1938) 39 C.A.R. 1263; (1952) 74 C.A.R.,
at 56.
88 See Chapter 5.
89 G'wealth, C. & A., s.29; N.S.W., Ind. Arb., s. 25(1); Qd., I.C. & A.,
s. 23(1); S.A., Ind. Code, s. 20; W.A., Ind. Arb., s. 171(1); Tas.,
Wages Bds., s. 77.
to return to their seats at the bargaining table. Statutory provision for ballots to be held either before or during a strike operate in the Federal, New South Wales, Queensland and Western Australian jurisdictions, as shown in Appendix III.

3. The Right to Strike

The Australian trade union movement does not argue about the right to strike as a principle. Privately, some union leaders on the conservative fringe may be prepared to do so, but this is not evident in official statements which undoubtedly reflect general union opinion. Strike action is regarded in a light which gives it the status of a natural right. Union leaders consistently use the terms 'inherent', 'inalienable' and 'fundamental' in connection with the right to strike, and the unions have repeatedly affirmed that they will 'never give up the right to strike'. Acceptance of this principle does not, however, entail automatic support for all strikes - though there are union leaders who subscribe to the maxim, attributed to Henry Boote, 'some strikes are damnably ill-advised, but all are justified'. Strikes may be opposed because they are considered abortive or capricious, which, in the latter case, often means simply that they have not first been approved by a relevant central union organization. Unofficial strikes (that is, those not authorized by union executive bodies or officials) are usually frowned on; and most union leaders express strong opposition to political strikes, though their definition of such a strike tends to be somewhat imprecise.

It follows from their insistence on a right to strike that union leaders, unlike the arbitration court judges, prefer to regard the strike as a supplement and not an alternative to arbitration. Thus while the judges hold that

conditions above the minimum standards embodied in awards should be secured by 'individual bargaining' alone, the unions maintain the right to use collective bargaining methods, and thus the strike, for this purpose.

Union leaders argue that beyond the minima of arbitral awards the 'higgling of the market' principle operates - 'in unfavourable times', as one said, 'employers pay us not a penny more than the award rate; when things are favourable, it's our job to turn the tables on them'. And strike action, union leaders are convinced, has often achieved results unobtainable in any other way. Thus the right-wing leader of the Federated Ironworkers Association: 'He said that for every pound increase which the union had secured in the Courts, it had obtained two pounds by industrial action and negotiation'.

But the union attitude towards the strike goes deeper than this. It is an attitude to the principle of arbitration itself. The President of the A.C.T.U. put it this way: 'The Trade Union Movement subscribed to arbitration with equity and not...when there was distinct inequity'. The unions, in other words, are not prepared to accept arbitration courts as ultimate repositories of 'industrial justice'. Their leaders therefore maintain that the right to strike 'could never be sacrificed...because the right is quite often the only economic weapon that workers can use when their just claims are refused by employers and wage-fixing tribunals'. Moreover, union

4 Sydney Morning Herald, 16/6/1955. The same official stated that during previous months, under his leadership, the union (formerly Communist-controlled) had conducted more strikes than in any similar period in its history.
5 Minutes, A.C.T.U. Special Congress, Sept. 1952, 8.
leaders not only feel free to question arbitral decisions, but they are convinced that arbitration courts, despite judicial protestations, are influenced in their decisions by the industrial strength of the parties. J.A. Cranwell, for nearly twenty years head of the powerful Amalgamated Engineering Union, drew this lesson from the history of his organization:

[It] is a clear indication that when presenting claims to wage-fixing tribunals it is nearly always necessary to support such claims with strong demands that they be conceded. Tribunals...are only prepared to grant the standards and conditions that the workers concerned are strong enough to effectively demand. Reforms secured by strong groups are gradually recognised and ultimately receive legislative and judicial sanction. Their application is then extended but it is doubtful if any worthwhile improvement in standards ever originated in the courts of law.... Unless it is prepared to use its economic power, a trade union has little chance of securing wage rates compatible with the value of the services its members render to the community.7

A leading official of the Australian Workers Union, an organization long noted for its allegiance to arbitration, put the same point more bluntly.

Unless you are powerful you cannot put up an argument in the Court. If you are weak they will kick you to death. That's arbitration today.8

And reliance on industrial strength as much as on legal process is implicit in the A.C.T.U. Congress declaration that the union movement 'must retain its right to strike in order to maintain and improve living standards and working conditions'.

In line with this attitude the unions have rejected judicial moves to obtain 'completely unequivocal' renunciations of direct action from unions seeking registration. They have also pressed vigorously and constantly for the repeal of all statutory strike penalties, and for amendments to

8 Sydney Morning Herald, 2/2/1956.
prevent tribunals deregistering unions and refusing to entertain proceedings because of strike action. More important, the unions have continued to use the strike weapon.

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In the Federal Arbitration Court, Higgins, J., once asserted that 'the power to punish is meant to deter rather than to avenge'. Power to punish strikers and their unions at law is almost invariably available to employers and industrial tribunals in Australia, with little evidence that its use has deterred as well as avenged.

The statutory procedures and penalties directed against individual strikers and common to Australia and the United Kingdom have failed to deter strikes as much in the former as in the latter case. The special penalties available for use against individual strikers and union officials under the Australian systems of industrial regulation appear to have accomplished no more.

It is equally clear that strike ballot provisions have not fulfilled the intention behind their enactment. Unions have rarely held pre-strike ballots in accordance with statutory requirements, which are in any event subject to the obvious weakness that a supporting vote clothes a strike with an 'air of sanctified legality' and strengthens the strikers' resolve.

Ballots held during a strike have the same weakness, though on one or two

13 See Knowles, Strikes: A Study in Industrial Conflict, 100-1, 114-9; also Wrottesley, 'Strikes and the Law' (1951), 5 Industrial Law Review, 257.
14 The same lesson has been learnt in the New Zealand arbitration system: see Martin, 'Twenty Years of Compulsory Unionism' (1956), 8 Political Science, at 110.
occasions such ballots have led to a return to work; but if, as is usually the case, the union is antagonistic, it may be impossible to follow this procedure. These considerations were fatal, for example, to the proposal that a ballot should be taken during the coal miners' strike of 1949.

The withdrawal or modification of standard conditions of employment and other privileges has been employed to a varying extent as a strike sanction. For example, the power to suspend Victorian determinations has not been used for many years, while the Queensland Industrial Court has frequently deleted preference clauses. It is doubtful if action on these lines has materially assisted the ending of strikes, and its value as a deterrent is lessened by the usual practice of restoring the pre-strike situation as part of the settlement terms. The explicit threat of sanctions of this kind may have proved an effective strike-preventive in some cases, but it has also failed in others.

But the sanctions that have been used with greatest determination, and constitute the chief anti-strike weapons in the armoury of industrial regulation systems, are directed against unions as such: they are deregistration and fines levied on union funds.

Deregistration has been used as a sanction on a number of occasions in Western Australia, comparatively frequently by Federal, New South Wales and Queensland tribunals, and least of all in South Australia. Regarded by tribunals as their strongest weapon against striking unions, deregistration's effectiveness as a strike-deterrent may be judged by its effectiveness as a punishment, in which role, as one legal observer claimed, it has met with

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16 See, e.g., Foenander, Industrial Regulation in Australia, 191-3.
18 See H.V. Evatt (1949), 204 C'wealth Parl. Debs. 481.
19 See Perlman, op. cit., 50.
'considerable success'. It proves little about its effectiveness merely
to cite the invariable application for re-registration which follows de-
21 registration. It is perhaps more revealing that such applications have in
the end usually been granted - in fact, have sometimes been encouraged by
the tribunal concerned. In 1938 the Federal Arbitration Court deregistered
the powerful Amalgamated Engineering Union because some of its members were
on strike. A few months later, with the encouragement of the non-Labor
22 Federal Government, the union applied for and was granted re-registration
despite the fact that another union covering the same field had earlier been
re-registered, and despite the fact that a large number of its members were
striking at the time. The remarks made by Beeby, J., on this occasion are
significant:

It may be that deregistration was the wrong remedy for the incidents
that took place. It is obvious that the Union not being registered
completely disorganizes the industry, and the award, which was one of
the most important ever made by the Court. The Union should be back
in the fold, and if afterevents occur, there are other remedies that
the Court will not hesitate to apply. 23

The Federal tribunal has not been so forgiving in the case of the
Building Workers Industrial Union, which was deregistered in 1948. The union
has applied at least four times for re-registration; it was still unregistered
at the end of 1957. The tribunal's attitude has no doubt been fortified by
the fact that the B.W.I.U. is Communist-dominated, and by the subsequent
registration of a new union covering largely the same field and under an anti-
Communist leadership. Nevertheless, the B.W.I.U. has shown no signs of
withering away in its exile. It has substantially maintained its membership
in New South Wales, Victoria and Tasmania, and in Queensland has successfully

20 Thomson, A Comparative Survey of the Australian Industrial Tribunals, 46.
21 Ibid., 46n; Foenander, Studies in Australian Labour Law and Relations,
51-2.
22 Souvenir, A.E.U., 220.
23 Quoted by Perlman, op. cit., 109-110.
headed-off attempts to establish the rival organization. It operates under
State awards, determinations and collective bargaining agreements, has
apparently overcome attempts by employers and governments to bypass it.
Its rival (though still affiliated with the New South Wales Labor Council
and, in somewhat different circumstances, with the South Australian Trades
and Labor Council) is barred from affiliation with the main central union
organizations under a 1950 recommendation of the A.C.T.U. Interstate
Executive. Moreover, the B.W.I.U. has continued to use the strike weapon —
to such an extent that in 1957 the New South Wales Industrial Commission
handed down, but later rescinded, an order for the deregistration of its
State branch.

In a State jurisdiction, the New South Wales branch of the Federated
Engine Drivers and Firemens Association was deregistered by the State In­
dustrial Commission early in 1955 and was still so at the end of 1957.
Members of the union, which had suffered previous deregistrations under both
Federal and State Acts, have continued to use the strike weapon despite
judicial condemnation of their strikes as 'wicked and wanton' and the im­
position of strike penalties on their union totalling well over £1000.

The claim that deregistration has an 'added advantage' as a strike
sanction because a union seeking re-registration 'comes back on the Court's

24 This was finally accomplished in 1953 by a Federal arbitrator's refusal
to certify an agreement between the other union and Qd. employers on the
ground that this would mean the formation of a second carpenters' union
in Qd., which was not in the public interest: Courier-Mail, 30/12/1953.
25 For example, the Bolte non-Labor Victorian Government was finally persuaded
after both its Labor and non-Labor predecessors had refused, to give the
B.W.I.U. as well as its rival representation on the Carpenters Wages
Board.
26 In S.A. the B.W.I.U.'s rival was a separate State union, established
earlier with a larger membership and not connected with the other Federal
union. The B.W.I.U. accepted the result of a ballot of building workers
in S.A. conducted by the A.C.T.U. and favouring the State union, which,
unlike its Federal counterpart, has been granted affiliation with the
A.C.T.U.
own terms which means an undertaking to behave itself in future', makes two questionable assumptions. In the first place, it is doubtful whether deregistered unions in every case do re-register on the tribunal's terms. As Beeby's statement quoted above seems to indicate, the Amalgamated Engineering Union's re-registration in 1938 was not wanted only by the union. It is also reported that the undertaking given by the union, before its re-registration, was actually drafted by Beeby and was the best version he could get from the union as a face-saver for the Court. In the second place, an undertaking may cover everything or nothing. The undertaking given by the A.E.U. in 1938 was in these terms:

The said Union undertakes that it will not support any of its members who go on strike without first giving the Executive an opportunity of bringing the subject-matter of the dispute before the Court and the Union will use all its influence to induce its members to observe the terms of the award.

The limited character of this undertaking — its application solely to unofficial strikes, and its use of the mild term 'induce' — is clear. Indeed, an identical undertaking later offered by the Building Workers Industrial Union in support of its application for re-registration was rejected by the same Court because it did not cover official strikes and was not sufficiently unequivocal. The B.W.I.U. refused to agree to re-registration at the price of a stronger undertaking, and its stand was endorsed by the A.C.T.U. Congress. The union would not 'come back' on the Court's terms.

In view of the B.W.I.U.'s record since deregistration, the judicial contention that the members of a deregistered union 'are without guide in the industrial field, they wander about and get lost', appears to overstate

28 Thomson, op. cit., 46.
29 Perlman, op. cit., 109n.
31 (1952) 74 C.A.R. 53.
the case. Deregistration has certainly placed the B.W.I.U. at a disadvantage in many respects. But its survival as one of the largest and most powerful unions, combined with the circumstances of the A.E.U.'s deregistration in 1938, gives colour to the doubt expressed publicly by at least one judge of the effectiveness of deregistration. In 1917 Higgins, J., described deregistration for strike action as a 'reckless, hysterical, fatuous step', claiming that 'destruction of such control [of unions] as has already been secured by registration would be the very negation of strong and sane action': 'What is wanted is more control, not less control, on the part of the Court. Deregistration means less control'. To a large extent his argument was confined to the Federal tribunal's inability to deal with unregistered unions. The argument therefore does not apply with the same force to State jurisdictions where industrial tribunals are competent to penalize striking unions not registered under them. But it is of some significance that employers and their organizations, the usual initiators of disciplinary proceedings, have in recent years shown a marked tendency to apply for monetary penalties rather than deregistration, not only in the Federal jurisdiction but also under the New South Wales arbitration system.

Legislation empowering the imposition of strike-fines on unions, instead of their members or officials, is in force in all jurisdictions except Victoria. In South Australia a strike penalty was last imposed on a union in 1954, the first for a considerable time previously; unions have not been penalized in this way in Western Australia since the big metal trades strike of 1952; and the Tasmanian penal provision has never been used against a union. The Queensland Industrial Court has fined striking unions on a number

34 Re Waterside Workers Federation; Ex parte Attorney-General for the C'wealth (1917), 11 C.A.R., at 605-6.
35 Ibid., at 602.
of occasions, the last being in 1956, but has tended to place greatest emphasis on deletion of preference clauses as a penalty. The practice of fining unions has been followed most extensively in the Commonwealth and New South Wales jurisdictions, which together with Queensland cover the most militant sectors of Australian industry.

In the five years to September 1955, six Federal unions were fined a total of £5,300; and the New South Wales Industrial Commission imposed fines totalling £5,156 on ten unions on various occasions. Apart from the fines, legal costs awarded against the unions were usually considerable, often exceeding the fine imposed: the Amalgamated Engineering Union, for example, was fined a total of £4,700 in both jurisdictions and spent 'almost the same amount' in legal expenses. Even where a union has been found guilty of striking but, for various reasons, no penalty has been imposed, it is often obliged to pay the costs of the plaintiff as well as its own. It is probably an overstatement to say that the fines were financially crippling, though the leading official of the union most affected, the A.E.U., has said, 'No union can stand such penalties'. But certainly, a continuation over a period of fines on this scale would constitute a serious threat to a union's existence. The penalties are in any event an unwelcome additional burden on union finances which, in both jurisdictions, are already heavily committed to the expenses involved in conducting normal award proceedings. These considerations probably played a major part in ensuring that the unions complied with twenty-one of the twenty-six orders to end a strike which were handed down by the Federal Arbitration Court in relation to the

37 Ibid., 3.
38 Sydney Morning Herald, 17/10/1955.
39 See, e.g., ibid., 30/6/1955. In this example, awarded costs were £150 and £50, respectively, in two cases involving one union.
40 Ibid., 17/10/1955.
metal trades during 1952-55. On the other hand, the existence of the Court's punitive powers did not prevent the strikes.

It is impossible to assess with any accuracy the extent to which the presence or use of legal sanctions in Australia has prevented strikes. Available statistics are inadequate, and in any event would be incapable of allowing for a complex of variable factors which make strict comparisons in time or between different countries of questionable value. One thing, however, is certain: legal sanctions have not eliminated strikes in Australia. On the other hand, it is apparent that the enactment of anti-strike measures, the threat to impose penalties, and the actual imposition of penalties have on many occasions actually provoked strike action. There is also some evidence to suggest that the incidence of strikes in Australia is greater than in the United States, the United Kingdom, Canada or Sweden, and that the man-days lost through stoppages is fairly high on an international comparison.

Of the industrial tribunals' role in this context, therefore, the most that can be said (and it is little more than guess-work) was expressed by a Federal arbitrator: 'Arbitration has achieved no more than some mitigation of the industrial warfare that is endemic in all capitalist communities'.

Emergency powers exercised directly by governments appear to have accomplished

\[41\] Ibid., 25/7/1955. These figures were given by the Secretary of the Metal Trades Employers Association.
\[42\] See Walker, Industrial Relations in Australia, 354-5.
\[43\] See Tables, ibid., 356-7.
\[45\] See Table, Walker, op. cit., 355.
\[46\] Per Foster, J., (1948) 61 C.A.R., at 136. It has also been argued that arbitration has changed the character of strikes: Kuhn, 'Strikes and Australia's Industrialization' (Sept. 1956), 28 Australian Quarterly, at 58-60, 68.
no more in this respect. So far as they have achieved anything, it has been the ending rather than the prevention of strikes; and it is these powers rather than those of industrial tribunals which have been brought to bear in the case of the most serious industrial conflicts. Moreover, the industrial tribunals have not only failed to eliminate the strike but apparently play a comparatively minor part in ending the strikes that do occur, the overwhelming majority of which are settled outside the framework of industrial regulation systems.

In part, the failure to eliminate the strike, particularly so far as penalties imposed on unions themselves are concerned, is explained by the fact that 'strikes often happen in defiance of the unions'. Under instructions from tribunals, unions have occasionally taken steps to discipline striking members; but these have usually been belated and half-hearted, and penalties imposed for this reason are usually rescinded after the crisis has passed. Even union leaders who sincerely wish to end a strike are faced with difficulties arising from their usually elective positions, or 'difficulties which could be created with non-unionists' if a union's ultimate sanction of expulsion is employed. In the Federal and New South Wales jurisdictions in particular, industrial judges have on the whole preferred to emphasize legal requirements at the expense of social realities. But at least one Federal arbitrator, Kirby, J., now President of the Arbitration Commission, has recognized the problems involved.

I feel that the organizations may well have done more than they have actually done towards having the bans lifted and the Court's order literally obeyed. But those in charge of the organizations are dealing with members, not servants. They have had years of experience in the trade-union world and I do not feel competent to substitute

47 Walker, op. cit., 362.
48 See Table, ibid., 361.
49 Knowles, op. cit., 116.
my judgement for theirs and say that if orders had been given and
disciplinary powers exercised they would have succeeded in having
the bans lifted. By such actions they may have split their
organizations in twain, caused themselves to be thrown out of
office and yet - as the Chief Judge has so patently demonstrated -
still be in contempt of this Court if they failed in securing
literal obedience to the Court's order.51

But the main element in the failure to eliminate the strike is the
union attitude to the right to strike as a general principle, which was dis-
cussed above. As Foster, J., asserted, the unions have not only 'always
claimed that the "right" to strike was a sacred one which they would never
give up', but, 'in point of fact they never have given it up'. It follows
that in the last analysis the unions cannot accept their legal responsibili-
ties as interpreted by the tribunals. Thus the Federal Arbitration Court's
attempt to extract an undertaking from the A.C.T.U., to instruct its member-
unions to refrain from striking during a basic wage hearing, was met with
the retort that 'under no circumstances would the A.C.T.U. give such an
assurance to the Court'.

By law, then, the right to strike in Australia is at least circumscribed
in all jurisdictions, and within most systems of industrial regulation is
abolished. In fact, the right to strike is exercised despite the law and
the interpretation given it by industrial tribunals. The dichotomy between
law and practice has been aptly summarized by the President of the A.C.T.U.
in matter-of-fact terms which reflect the unions' attitude to the state's
intervention in the industrial bargaining process:

In Australia this right [to strike] is denied theoretically, and
the law imposes penalties for...strikes against awards or determina-
tions made by wage-fixing tribunals. This, of course, does not prevent
strikes actually taking place to remedy what the trade unions feel is
an award that does not properly remedy industrial grievances.54

51 Metal Trades Employers Ass'n v. Amalg'd Engineering Union (1950), 67 C.A.R.,
at 367.
CHAPTER 7

PREFERENCE TO UNIONISTS AND COMPULSORY UNIONISM

Legal requirements that employers should give preferential treatment to union members are common in Australia. They usually apply to the engagement of new labour, but may also be applicable to the continuance of employment or at the point of dismissal. For present purposes two categories may be distinguished on the basis of the terms in which preference to unionists can be prescribed. These are: absolute preference and qualified preference.

Under an absolute preference provision, the employer is required to give preference in employment unconditionally to unionist as against non-unionist applicants, and he is free to employ non-unionists only if no unionist is available. On the other hand, the characteristic feature of the qualified preference provision is that the unionist must have some qualification other than a union ticket before he can claim preference. Availability and willingness to accept the job offering are not regarded here as independent qualifications; they are self-evident, and clauses referring to these alone properly prescribe absolute rather than qualified preference. The normal requirements are that the unionist should be equal in competence and, where applicable, in qualifications to a non-unionist applying at the same time for the same job - or, more vaguely, that the unionist should be 'suitable'. The usual form of the qualified preference provision relies on the all-inclusive 'other things being equal' formula.

Both absolute and qualified preference are quite distinct from what is known as compulsory unionism. The essence of compulsory unionism is that

1 Prohibitions of discrimination against unionists are not in the preference category, but in view of their close relationship to it (noted in Chapter 5) their incidence is indicated below.
union membership is prescribed not as a prerequisite for preferential treatment in the matter of engagement or dismissal, but as a condition of employment. A compulsory unionism provision, as the term is used here, may prescribe preference at the point of engagement to members of the union; it may prescribe equal or secondary preference to non-unionists who give an undertaking to join the union once they are engaged. It may make no provision for preferential treatment to be given to unionists, or it may automatically disqualify from being engaged any man who is not already a union member. The common factor in all these cases is that at some stage all the employees affected must be or become, and must remain, members of the union or unions concerned. To describe this as 'super-preference', a term used in Queensland twenty years ago, is misleading: in the last analysis no question of preference is involved because the non-unionist's competing claim to employment is excluded altogether. As the High Court has pointed out, a compulsory unionism clause is different in kind from one prescribing preference in employment in that it provides for a monopoly of employment for union members.

The practical effects of the operation of compulsory unionism and absolute preference, but not qualified preference, probably tend to be

2. These two types of provision are equivalent to the 'union shop' and 'closed shop' provisions, respectively, of British and American collective agreements.

3. The requirement need not apply to all an employer's employees. A number of operative clauses apply only to new employees; the principle is the same for those affected.

4. This is recognized by an agreement in W.A. which requires all employees to be unionists and also prohibits discrimination against unionists at the point of engagement: Cleaners & Caretakers Agreement (1939), 19 W.A.I.G. 246.


6. As A.B. Piddington pointed out, qualified preference is in fact of 'little use' to unions except as an 'externally attractive privilege' to induce non-unionists to join the union: Report, Royal Commission on Industrial Arbitration in N.S.W., 1913, cxxiv. For corroboratory opinion, see 11 C.A.R., at 287; 31 C.A.R. 593; 33 C.A.R. 1159; 39 C.A.R. 312.
similar in the long-run. But the distinction between them is not wholly a technical one, turning as it does on the recognition of non-unionists: absolute preference clauses place no legal obligation on non-unionist employees to take out a union ticket and thus, by contrast with compulsory unionism provisions, require some measure of independent organization on the part of the union concerned.

The distinction between compulsory unionism and preference to unionists is held to throughout this chapter. But for the sake of simplicity the general term 'preference', unless otherwise qualified, may be taken to include compulsory unionism - a practice with which almost all awards and industrial agreements providing for compulsory unionism are in accord.

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In Australia the policy of preference to unionists may be applied by way of direct statutory provision, the terms of a tribunal's award or determination, the terms of a legally-enforceable or an extra-legal collective agreement, or it may be the result of an employer's decision - whether taken on his own initiative or under union pressure. The following discussion is restricted to cases where the policy of preference is enforceable at law - that is, where it is embodied in statutes, awards and determination.

7 Thus under an award prescribing absolute preference an employer may continue to employ an employee expelled from his union: (1933) 18 Q.I.G. 615.

8 This chapter deals only with preference based on union membership. But it should be noted that such preference is subject to qualified preference given to ex-servicemen (Re-establishment & Employment Act 1945-56) and to specified tradesmen, mainly in the metal trades (Tradesmen's Rights Regulations Act 1946-55) - the latter Act having precedence over the former. Both are Federal wartime measures; their operation was extended to Sept. 1958. Apart from these, some N.S.W. awards give preference in re-employment to employees dismissed in slack periods (e.g. (1947) 85 I.G. (N.S.W.), at 1132); and two provisions still in force give preference to 'white' over 'coloured' labour ((1951) 36 Q.I.G. 881; (1926) 6 W.A.I.G. 175). Preference of service to members of employers' organizations is prescribed in two W.A. awards; application for a similar provision was rejected by the Qld. Industrial Court in 1947.
tions, and formal agreements.

1. Statutes


The Federal measure lays down that, except in special circumstances, only persons registered by the Stevedoring Industry Authority are to be employed as waterside workers. An applicant for registration must either be a member, or have applied for membership, of the union recognized by the Authority at the port concerned. At all major ports except Darwin, where the North Australian Workers Union is specified, the recognized union is the Waterside Workers Federation.

The New South Wales provision was enacted in 1953. In the first place, it requires employers in industries covered by a State award or industrial agreement to give 'absolute preference of employment' to members of the relevant union or unions registered under the Act. In the second place, an adult employee in such an industry is liable to dismissal if he fails to join an appropriate union within twenty-eight days of his engagement, or of the entry into force of the relevant award or agreement or the Act. These provisions are accompanied by certain conditions. Unions

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9 This includes the awards of tribunals other than the main ones discussed in Chapter 5. Only in this way can the extent to which preference is a feature of industrial regulation in Australia be fully appreciated.
11 Ibid., s. 29(1). Moreover, normally only applications submitted through the union can be accepted: ibid., s. 31(1).
12 Between 1901 and 1953 preference to unionists in one form or another was always within the power of State industrial tribunals, though the extent of the power was altered on a number of occasions: see 'Preference to Unionists Since 1900' (1953), 111 I.G. (N.S.W.) 429. The 1953 amendment by-passed the tribunals for the first time.
13 Ind. Arb. Act, s. 129B (1).
14 Ibid., s. 129B (2), (3).
must admit to membership any person under a statutory obligation to join; a limit is placed on the amount of the annual membership fee that a member may be required to pay in advance; a proposal to expel a union member can be carried out, if the member wishes to challenge it, only if approved by
the Industrial Commission. In addition, a detailed procedure is laid down for the exemption of conscientious objectors to union membership from
the compulsory unionism requirement.

This measure came into force in December 1953, but early in 1954 its validity was challenged. The High Court had still not heard the case by early 1958; in the meantime the compulsory unionism provisions have been inoperative because the unions are unable to launch enforcement proceedings while the matter is on appeal.

2. Tribunals

Commonwealth:

There are three industrial tribunals with power to grant preference to unionists under Federal legislation: the Arbitration Commission, the Coal Industry Tribunal and the Public Service Arbitrator.

Included in the statutory definition of industrial matters which may form the subject of a dispute within the Arbitration Commission's jurisdiction is 'the preferential employment or the non-employment of any particular person or class of persons or of persons being or not being members of an organization'. This constitutes the basis of the Commission's power to award preference to members of unions registered under it. The

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15 Ibid., s. 129B (4), (5), (7).
16 Ibid., s. 129B (11). This widened the grounds of objection available under an amendment of 1951. For an elaboration of the present provision, see [1954] A.R. (N.S.W.) 71. Up to the end of 1957, less than 4,000 certificates of exemption had been issued.
1 C. & A. Act, s.4(j).
2 Metal Trades Employers Ass'n v. Amalg'd Engineering Union (1936), 54 C.L.R. 387; R. v. Wallis (1949), 78 C.L.R. 529.
Act goes on to empower the Commission to direct that preference shall be
given to members of any registered union 'in relation to such matters',
and in such manner and subject to such conditions, as the Commission lays
down. This provision, it has been ruled, assumes the existence of the
preference-awarding power and merely sets out the conditions of its exer-
cise.

It is apparent that the Commission is able to award absolute prefer-
ence. The opinion of one Federal arbitrator, that in view of 'recent
decisions of the High Court' he had no power to award absolute preference,
appears to be a somewhat restricted interpretation of the Act and a ques-
tionable interpretation of the decisions in question, which were concerned
with the Act's authority in relation to compulsory unionism and not to
preference as strictly defined. Absolute preference has, in fact, been
provided for in a number of Federal awards.

On the other hand, it is settled that nothing in the Act enables the
Commission to grant compulsory unionism. There are, however, discre-
pancies between the law and practice in this respect which indicate that
something more than the nature of the statutory power conferred on arbitral
authorities is involved.

The limits set to the jurisdiction conferred by the Act are, in the
first place, of particular importance where employers oppose a grant of

3 C. & A. Act, s.47(1).
4 Metal Trades Case, see note 2 above.
5 Up to 1947, when the reservation was deleted from the Act, preference
could be awarded to unionists only subject to 'other things being equal'.
6 (1952) 73 C.A.R., at 728.
7 See Wallis' Case, note 2 above; R. v. Findlay (1950), 81 C.L.R. 537. In
view of dicta in the latter case, it appears that though absolute pre-
ference may be granted, the terms in which this is usually done would
be held invalid as not being sufficiently specific in order to comply
with the Act.
8 Wallis' Case, see note 2 above.
preference. That such limitations are intended primarily to meet situations
of this nature is shown by the provision giving the Commission a discre­tion-
ary power to refuse to certify an agreement containing terms which the
Commission has "no power to insert in an award". It seems, therefore,
that a compulsory unionism clause in a certified agreement is not ultra
vires the Act. On the other hand, even where an award is made with the
consent of all parties, and to this extent resembles a certified agreement,
the Commission is formally responsible for the award in a way it is not for
a certified agreement. This means that the statutory limitations relat­
ing to preference apply equally to a consent award as to a disputed award.
Thus, there appear to be no statutory grounds for the reservation made by
a former President of the Arbitration Court (expressed at a time when the
Act provided only for qualified preference) that the "Act only allows this
Court, except by consent, to make awards for preference subject to "other
things being equal"." Nevertheless, a number of awards made before 1947,
when the Act's terms were broadened to cover absolute preference, did in­
clude consent clauses prescribing absolute preference and compulsory
unionism. Since the High Court's ruling that the 1947 amendment did not

9 C. & A. Act, s. 31(3).
10 See Foenander, Industrial Regulation in Australia, 7; and see Chapter 5.
11 (1925) 22 C.A.R., at 422 (my emphasis). It is noteworthy that the
practice of the New Zealand Arbitration Court, operating under substant­
ially similar statutory provisions, of awarding compulsory unionism by
consent was held to be outside its powers by the N.Z. Court of Appeal:
12 E.G., Bond and Free Stores Award (1927), 25 C.A.R., at 1214; an award
made by Dethridge, C.J., who was later to maintain that the Act con­
ferred no power to grant absolute preference: (1938) 39 C.A.R., at 314.
13 E.G., Journalists (Worker Newspaper Ltd.) Award (1943), 50 C.A.R., at 5;
an award made by Piper, C.J., who had earlier maintained that the Act
permitted a grant of no more than qualified preference: (1941) 44 C.A.R.,
at 319.
cover compulsory unionism, a number of consent awards have been handed down with compulsory unionism clauses. But compulsory unionism is not a feature only of consent awards. A high proportion of the awards restricted in application to the Australian Capital Territory include compulsory unionism clauses, the insertion of which was in most cases opposed by the employers concerned. These clauses represent a continuation of the policy of the Industrial Board which functioned in the Territory up to 1949 under special legislation. They are clearly outside the powers conferred by the Conciliation and Arbitration Act under which they are made; but, like similar clauses inserted by consent, they are effective law until challenged. However, apart from the special case of A.C.T. awards, it appears that the few preference clauses which have been inserted over employers' opposition do not go beyond the statutory limits.

The Act sets out grounds on which the Arbitration Commission may grant preference to unionists. These include circumstances in which the Commission considers such a grant is necessary to prevent or settle an industrial dispute, to ensure the effectiveness of an award, to maintain industrial peace or for the 'welfare of society'. Within this broad frame of reference, the Commission has considerable freedom in laying down more specific principles of action.

A disputed claim for preference is granted only for a special reason. Greatest emphasis has consistently been placed on unjust discrimination

14 E.g., Meat Industry (Shops & Smallgoods Factories) Award (1952), 73 C.A.R., at 793.
15 See, e.g., (1951) 72 C.A.R. 516.
16 C. & A. Act, s.47(2). Between 1904 and 1910 the Act allowed the Court to grant preference only if the grant was approved by a majority of employees affected by the award.
17 See (1941) 44 C.A.R. 319.
18 (1935) 34 C.A.R. 841.
shown against unionists, which constitutes an abuse of the employer's freedom to choose his employees. A grant of preference is an appropriate means of preventing (in the dramatic phraseology of Higgins, J.) this 'gradual bleeding of unionism by the feeding of non-unionism'. In the application of this principle, the arbitral authorities have required clear proof of unfair treatment. Given such proof, the preference clause awarded may affect all employers bound by the award or may be restricted to those who have followed a discriminatory policy - and then, usually, only if they refuse to abandon the practice. Where there is some doubt on the question of proof, a clause forbidding employers to discriminate against unionists is often awarded in place of preference.

It has proved difficult for unions to give a clear demonstration of unfair discrimination, and the reliance placed on this ground is reflected in the Federal tribunal's 'oft-repeated disinclination to act' in the matter of preference claims. This emphasis, evident from the first, has been maintained in recent years. But it has not precluded reference to, and occasionally use of, other grounds.

20 (1913) 7 C.A.R., at 233.
21 (1913) 7 C.A.R. 132; (1911) 5 C.A.R. 147.
22 (1939) 41 C.A.R. 285. There are some cases where preference has been awarded in relation to individual firms only: see Foenander, Towards Industrial Peace in Australia, 177.
23 (1912) 6 C.A.R. 130. It has been held that where the discrimination favours another registered union, preference should not be granted (1940) 42 C.A.R. 135; but a lay arbitrator later stated he would grant preference in these circumstances ((1949) 63 C.A.R., at 280).
24 Foenander, Towards Industrial Peace in Australia, 180. For example, disputed preference claims were granted only twice up to 1923: see (1923) 18 C.A.R. 1216.
The maintenance of industrial peace, specified in the Act, has occasion-
26 ally been noted by Federal arbitrators. One gave it somewhat limited
scope as a ground when he held that the fact that a non-unionist working
alongside unionists 'provokes discontent' did not justify an award of pre-
27 ference. On the other hand, the arbitrator responsible for Australian
Capital Territory awards indicated in conversation that his main reason for
continuing the compulsory unionism policy was that it had proved to be
conducive to industrial peace in the Territory.

The statutory ground of the 'welfare of society', inserted in the Act
in 1910, does not appear to have assumed any importance until 1932, when
Drake-Brockman, J., suggested that 'in the interests of social welfare,
preference may properly be granted to unionists for the purpose of prevent-
28 ing the exploitation of female labour'. Implicit in his conception of
social welfare was the need to give effect to the objectives of the award,
a consideration now included in the Act as a separate ground for granting
preference. Thus he inserted a preference clause in the Clothing Industry
Award as a means of ensuring the enforcement of award conditions in view
29 of the High Court ruling, later reversed, that the Arbitration Court
could not make an award binding on employers in relation to their non-
unionist employees. A similar consideration had earlier influenced
Beeby, J., who stressed the importance of the union to the effective opera-
tion of the arbitration system when he inserted a preference clause in the
27 (1951) 71 C.A.R. 319.
28 Amalg'd Clothing & Allied Trades Union v. D.E. Arnall & Sons (1932),
30 Drake-Brockman's award included an absolute preference provision, which
he was obliged to amend to conform with the Act when it was declared
invalid by the High Court: (1932) 47 C.L.R. 1.
Tramways Award. As a ground for awarding preference, this represents a much more positive approach than where proof of discrimination is relied on. In the latter case preference is granted as a means of protecting a union rather than facilitating the performance of its statutory functions.

Acceptance of the views expressed by Drake-Brockman and Beeby was evident in two later decisions by a lay arbitrator. In the first case he dismissed a claim for preference where employers already engaged labour through the union by informal agreement, but indicated that if this arrangement was interfered with he would grant a further application 'because of the casual nature of the industry' - 'in a casual industry, unless there is some form of control of labour, no one is in a position to police the award'. In the second case, one of two unions operating in the same industry had originally obtained the industry's award while the other had given evidence of a distaste for arbitral processes. The arbitrator considered that, in these circumstances, the maintenance of industrial peace justified a preference clause favouring members of the union that had obtained the original award 'because they are prepared to observe its terms and conditions'.

But despite references to, and occasionally application of, more favourable grounds for awarding preference, the question has usually been approached on the basis of unfair discrimination against unionists. As a result, Australian Capital Territory awards apart, grants of preference are 'unusual' where they are opposed by employers. Although the agreement of employers may not be a 'ground' in the strict sense, it is in practice a factor on which considerable weight has been placed. This is

33 Ibid., at 961.
34 (1952) 73 C.A.R., at 883.
exemplified by one lay arbitrator's refusal of preference 'in the absence of agreement or evidence of unjustifiable discrimination'; and by another's decision to grant absolute preference in view of the employers' consent - 'notwithstanding the fact as often expressed by me in other decisions that preference of employment should not operate in any industry'. Preference, it was pointed out, is 'generally a matter for agreement between the parties'.

Nearly a third (81) of the 255 awards made under the Conciliation and Arbitration Act and in force at 31 August 1954 contained clauses prescribing some form of preference to unionists. 39 of these provided for compulsory unionism (23 in awards applicable only to the Australian Capital Territory); 16 for absolute preference; and 26 for qualified preference. A total of 25 awards without preference clauses included provisions prohibiting employers from discriminating against unionists. The number and proportions of the various types of preference clauses are set out in Table 4, and their terms are outlined in Appendix IV.

The preference clauses in the awards examined showed no uniformity in the matter of conditions attached to them. None provided for cancellation of the clause in the event of strike action. But nearly half

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35 (1948) 60 C.A.R., at 832.
37 (1952) 73 C.A.R., at 882. But even with agreement it appears that preference is not invariably awarded, as shown by the A.C.T.U.'s unsuccessful attempt to secure a statutory direction to this effect: (Sept. 1956) 3 A.C.T.U. Bulletin 5.
38 The limits imposed by the C. & A. Act on the kind of preference that could be awarded were temporarily removed by wartime regulation (1942 S.R., No.343), but this does not appear to have been used to justify any of the absolute preference or compulsory unionism clauses inserted during the regulation's currency.
39 Between 1904 and 1910 the C. & A. Act laid down, in effect as conditions of any grant of preference, that the union should be non-political and its rules should not be oppressive.
(37) required the unions concerned to admit all applicants for membership, a requirement now applicable to all registered unions under a 1952 amendment to the Act. One clause made the operation of preference conditional on the union's fees and subscription being kept within specified limits. Only six of the 39 compulsory unionism clauses provided for the exemption of conscientious objectors; but since 1956 this condition has been attached to all preference clauses by statutory provision. The incidence of the conditions accompanying these preference clauses is set out in Table 6, and their terms are outlined in Appendix IV.

The statutory definition of industrial matters within the jurisdiction of the Coal Industry Tribunal includes a provision similar to that from which the Arbitration Commission derives its preference power. But unlike the Commission, the Tribunal is not expressly limited by statute as to the kind of preference it may award. Nevertheless, the Tribunal appears to regard its jurisdiction as being identical to the Commission's. This was implied in its comment, when awarding a qualified preference clause, that the provision 'follows the principles enunciated by the High Court' in two cases concerning the Arbitration Commission's preference powers. The Coal Industry Tribunal has also been ready to follow the Commission's example and exceed its jurisdiction by awarding compulsory unionism with employers' consent:

The existing [compulsory unionism] provision...has been in the award for some years and was there inserted by the Commonwealth Court of

40 C. & A. Act, s.144. Where a union closed its books to new membership, its preference claim was rejected: (1936) 36 C.A.R., at 99.
41 C. & A. Act, s.47 (3)-(7). Little use was made of these provisions up to the beginning of 1958.
42 Coal Industry Act 1946-56, s.4(j).
Conciliation and Arbitration. The Federation asks that it be included in the new award. This is not opposed by the employers, but it has been pointed out that doubt exists as to the jurisdiction of the Tribunal to frame the clause in its present form. I share this doubt but having regard to the length of time for which the provision has existed as a condition of employment...and also to the circumstance that it has apparently worked to the satisfaction of employers and employees alike, I propose...to insert the clause in the new award. 44

Seven of the thirteen general awards made by the Coal Industry Tribunal and in force at 31 December 1954 included a preference clause of some kind. Of these clauses, two prescribed compulsory unionism; four, absolute preference; and one, qualified preference. In only one case was a condition attached: a compulsory unionism clause included a provision limiting the entrance fee of the union concerned.

The Commonwealth Public Service Arbitrator is empowered to determine 'all matters submitted to him', including the 'conditions of service or employment' of Federal Public Service employees. In the absence of any specific reference to preference, these terms appear wide enough to admit the matter and to permit a grant in any terms the Arbitrator chooses, including compulsory unionism. The question has arisen on only a few occasions since the original Act was passed in 1920. On the first of these, the Arbitrator rejected a claim for absolute preference to unionists as 'impracticable', without enlarging on his decision. But subsequently he showed that he intended to follow the prevailing policy of the main Federal arbitral body. 'It is the practice of the Arbitration Court not to grant preference unless discrimination against members of the Union has been proved. No such proof was forthcoming in this case.' These cases in-

45 See Table 4 and Appendix IV.
46 Public Service Arbitration Act 1920-56, s.12 (1).
47 (1922) 2 C.P.S.A.R., at 91.
48 (1924) 4 C.P.S.A.R., at 351; see also (1928) 8 C.P.S.A.R., at 257.
volved absolute preference claims. A later application for a provision applying the Arbitrator's determination exclusively to members of the applicant union, an implicit form of compulsory unionism, was recognized by the Arbitrator as such and refused.

However, as a means of obtaining preference in the Federal Public Service, the unions look primarily to Labor governments for favourable employment policies. Nevertheless, two of the 105 general determinations made by the Arbitrator and in force at 31 December 1954 included absolute preference clauses, both inserted by consent in 1949.

**Queensland:**

The Industrial Court is the only State body with power to award preference to unionists. If the High Court's interpretation of the corresponding Federal legislation is adopted, the source of the Industrial Court's preference power is found in the definition of industrial matters within the Court's jurisdiction, which includes the 'employment...of any person or persons or class of persons...or a claim to dismiss or to refuse to employ any person or persons or class of persons'. The further requirement that the Court should grant preference where it is agreed to by the parties concerned or considered advisable by the Court, merely sets out

49 (1942) 22 C.P.S.A.R., at 191.
50 See Chapter 14.
51 29 C.P.S.A.R. 17, 685. See Table 4 and Appendix IV.
52 I.C. & A. Acts, s.4(c). The Legislative Council blocked a Labor government's attempt to enact an express preference power in 1916. But the Court found such power first in the statutory direction that any matter likely to cause a strike was within its jurisdiction ((1917) 2 Q.I.G. 376), and later in the more general terms of the provision quoted in the text: (1917) 2 Q.I.G. 450.
53 I.C. & A. Acts, s.8(2). This provision was first enacted in 1929 (in company with limits on the form of preference to be awarded) by the non-Labor government which in 1930 abolished the preference power and annulled existing preference clauses. A Labor government restored the provision in 1932.
the conditions on which the power is to be exercised.

The last of these provisions refers only to 'preference'. On the interpretation given its counterpart in the Federal Act, it therefore supports grants of absolute preference, but equally does not include power to grant compulsory unionism, a 'monopoly of employment'. The distinction was recognized by a State arbitration judge when he made the point that 'an exclusive right of employment is something quite distinct from a mere right of preference'. But the Industrial Court has consistently interpreted and applied its powers as enabling it to award compulsory unionism, with or without the consent of employers.

The grounds held to justify a disputed grant of preference are much wider in Queensland than in other jurisdictions. Initially, the State Court adopted the Federal Court's policy of relying on proof of discrimination against union members. But it soon showed indications of a readiness to view preference as something more than a means of protecting a union against hostile employers. The first sign of this was the Court's acceptance of the argument advanced by one union advocate:

The unions and the employers...were both vitally interested in the uninterrupted working of the industry, and the accomplishment of this object would be facilitated by the employers strengthening, rather than by weakening, the power of the [union] executive. The strength of the unions and the effectiveness of their control over their members was, in a large measure due to the fact that [under the previous agreement] it was to the unions the employer must come if he wanted an employee, and that it was by the permit of the unions that the employee worked. If, as proposed by the employers, the

54 (1919) 4 Q.I.G. 435.
55 Such an award is within its wide jurisdiction over matters likely to cause a strike (see note 52), but compulsory unionism has been awarded in other circumstances against employers' opposition.
56 (1917) 2 Q.I.G. 569; 2 Q.I.G. 771; (1918) 3 Q.I.G. 10. These cases were based on the Court's general preference powers (see note 52) as were those discussed further in the text.
employers and not the unions were empowered to nominate the workers, it would strike at and perhaps destroy the authority of the unions.\(^{57}\)

The shift of emphasis foreshadowed by acceptance of this argument was later given expression by the President of the Court.

I approach the question of granting preference to unionists with a favourable inclination, for a well-organized union, intent on obtaining the best conditions for the employees by peaceful methods, deserves every encouragement which the Court can give.\(^{58}\)

Subsequently he granted an application for preference, contending that the clause would 'strengthen the hands of the union in forcing discipline, and in preventing the disintegration and frustration of its policy by malcontents'. The other member of the Court at the time put his finger on the point of central concern when he explained that the Court had abandoned its earlier restrictive policy of insisting on proof of discrimination because 'the experience of both the Judges has been that preference is a potent instrument in securing industrial peace'. Thus preference is given 'as a protection against non-unionists and in order to obtain due observance of awards'. In short, the Court 'uses preference...as a means of encouraging unions to abide by arbitration'.

The Industrial Court's attitude to the purposes of preference has meant that preference clauses have been obtained with comparative ease in Queensland, though the Court has usually insisted that an applicant union should first have enrolled as members the bulk of employees in the industry covered. Almost ninety per cent (275) of the Court's 308 awards in force at 31 December

\(^{57}\) (1918) 3 Q.I.G., at 223.
\(^{58}\) (1919) 4 Q.I.G., at 519.
\(^{59}\) (1920) 5 Q.I.G., at 592.
\(^{60}\) (1921) 6 Q.I.G., at 470.
\(^{61}\) (1926) 166 Qd. G.G., at 718.
\(^{63}\) See, e.g., (1921) 6 Q.I.G. 468; (1950) 35 Q.I.G. 346.
1954 included preference clauses. The great bulk of these (245) provided for compulsory unionism, while 25 prescribed absolute preference, and a mere five gave qualified preference. Two awards without preference clauses contained anti-discrimination provisions. The number and proportions of the various types of preference clauses are set out in Table 4, and their terms are outlined in Appendix V.

It follows from the principles influencing the Industrial Court's approach to preference that the main condition attached to its grant is that the union should settle its industrial problems through the Court and not by direct action. The Court has repeatedly made its attitude clear on this point. Thus the attachment to six preference clauses of provisions threatening their cancellation in the event of strike action seems intended merely to give a close warning in the case of certain strike-prone industries.

The Court's view of preference as a means of strengthening unions' disciplinary powers over their members, primarily in order to ensure compliance with arbitral decisions, is subject to the condition that these powers may not be used 'autocratically or unfairly'. This condition is not, however, specified in any award.

Of the 31 awards without preference or anti-discrimination clauses, 21 covered State government employees who have been subject to compulsory unionism in another form (see Chapter 14); the preference clause in one had been deleted for strike action; one could include no such clause since it was made on the application of individual employees and not of a union; two merely adopted Federal awards, neither of which prescribed preference; and one provided that the 'customary practice' of engaging labour be continued, probably through the union office as provided in an industrial agreement between the same employer and another union.

These awards related to the meat, shearing and sugar industries.

(1946) 166 Qd. G.G. 717. In this case the Court amended a preference clause to remove an employer's obligation to discharge men penalized by their union for failing to adopt a restrictive practice.
The Industrial Court has emphasized the condition of the admission of all applicants for union membership primarily in relation to non-unionists employed at the time preference is inserted in the award. No more than twenty-two of the preference clauses examined included open union requirements, of which nearly half applied only to non-unionists already employed.

The Court has been prepared to examine the reasonableness of union admission fees under the Act's requirements in relation to registration of unions. In the early stages it was common practice for the operation of preference clauses to be made conditional on the union's entrance fee not exceeding a specified amount. But only three clauses in awards applicable in 1954 were coupled with a provision of this type.

None of the preference clauses examined made provision for the exemption of conscientious objectors to union membership. The Industrial Court apparently did not even consider the question until 1948, when it made a general order setting out the circumstances in which a certificate might be obtained exempting a person from taking out a union ticket. The Court added that, without safeguards, the exemption of individuals from obligations imposed by preference clauses would be a 'very dangerous principle to adopt'.

Western Australia:

There are three tribunals with power to grant preference to unionists under Western Australian legislation: the Arbitration Court, the Western

68 See (1934) 19 Q.I.G. 285.
69 The Court apparently relies on the Act's requirement of reasonable facilities for the admission of members to registered unions. A non-Labor government's provision, inserted in 1929, that preference was to operate only while an open union policy was maintained, was deleted by a Labor government.
71 The non-Labor government's 1929 Act specified maximum admission fees and subscriptions for unions affected by preference; the provision was deleted by a Labor government.
72 For the incidence and terms of these and the other attached conditions, see Table 6 and Appendix V.
73 (1948) 33 Q.I.G. 1012.
Australian Coal Industry Tribunal and the Railways Classification Board.

For many years after the Arbitration Court was set up it was considered to have no power to award preference. In 1934, however, Dwyer, J., held that in a 'proper case' the Court could award preference to unionists. He found the power in the inclusion of the 'status of workers' and the 'employment...of any class of persons' in the statutory definition of industrial matters, and in the provision giving the Court general power to make rules for the peaceful conduct of an industry. Dwyer's reasoning was subsequently adopted by Wolff, J., whose decision was upheld by the Supreme Court.

In the 1934 case, Dwyer granted a qualified preference clause, while Wolff, in 1938, awarded compulsory unionism. In a third case, decided before Wolff's decision was handed down, Dwyer had referred to the 'wide distinction between giving preference to workers of a certain class...and a provision to prohibit the employment of persons', and had declared that the Court was powerless to award the latter. This opinion was not followed by Wolff; and since then a number of compulsory unionism clauses have been

74 W.A. Meat Export Co. v. W.A. Meat Industry Employees Union (1934), 14 W.A.I.G. 132. An express preference power was deleted from the Bill which became the original W.A. arbitration measure in 1900. The Act of 1902 included both the provisions relied upon by Dwyer in 1934, but the Court's President in 1903 disclaimed a preference power solely because of the withdrawal of the 1900 provision ((1903) 1 W.A.A.R. 125). His successor, Parker, J., first supported this decision ((1903) 2 W.A.A.R. 64 and 71), then held that 'on the whole' preference could be awarded in 'special circumstances' ((1905) 4 W.A.A.R. 58), and later reverted to his first opinion ((1905) 4 W.A.A.R. 139). Until Dwyer's decision, Parker's last opinion was accepted by the Court (e.g., (1910) 9 W.A.A.R. 58; (1926) 6 W.A.I.G. 9).

75 Ind. Arb. Act, ss. 6(b) & (c), 94(1)(b).

76 Re Building Trades Award (1938), 18 W.A.I.G., at 530; (1938) 41 W.A.L.R. 59. In the appeal from this decision, the Supreme Court considered only the question of general jurisdiction; that of the form of preference which could be awarded was not raised.

77 (1935) 15 W.A.I.G., at 238.
inserted in awards of the Court, most of them by consent. The question of
whether its jurisdiction includes compulsory unionism does not appear to
have been argued before the Arbitration Court, nor was it raised in the ap­
peal from Wolff's decision to the Supreme Court, which dealt only with the
question of general jurisdiction. But the matter was considered at some
length in 1953 by the Arbitration Court's subordinate officer, the Con­
ciliation Commissioner. The Commissioner agreed with the employers' con­
tention that the Supreme Court's decision had left the matter open. On
their argument that 'substantially similar' preference powers in the corres­
ponding Acts of the Commonwealth, New South Wales and New Zealand had been
declared to stop short of compulsory unionism, he pointed out a difference
between those Acts and the Western Australian measure. This was the pro­
vision giving the Arbitration Court final power to determine whether any
matter referred to it is an industrial dispute within its jurisdiction.
In view of a reference made in the Supreme Court to the finality of this
power, the Commissioner ruled that the Arbitration Court could award com­
pulsory unionism.

The Arbitration Court does not grant disputed claims for preference as
a matter of course, each case being considered on its merits. Preference
will not be awarded merely to facilitate the recruitment of union members,
nor is the elimination of friction between unionists and non-unionists
sufficient reason for its award. But the consideration of industrial
peace has not been ignored by the Court: it was the main ground on which
Dwyer made the first preference award, and was referred to by Wolff in his
1938 decision on the matter. Preference has been granted on other grounds
78 (1953) 33 W.A.I.G. 396.
79 Ind. Arb. Act, s.64.
80 (1938) 41 W.A.L.R., at 65.
81 (1934) 14 W.A.I.G. 132; (1940) 19 W.A.I.G. 466.
82 (1951) 31 W.A.I.G. 574.
83 (1934) 14 W.A.I.G., at 133; (1938) 18 W.A.I.G., at 530.
also. Wolff's award of compulsory unionism in the building industry, cited above, was aimed at eliminating jobbing operatives whom the Court found to be undercutting standard wage rates and lowering the quality of work done.

And a preference clause was inserted in an award covering other workers in the same industry in order to 'create uniformity'. However, as in the Federal jurisdiction, proved discrimination against union members has come to be regarded by the State Court as the major ground justifying a disputed grant of preference. Lack of such proof has been the chief reason advanced in recent years for refusing preference claims.

Over a quarter (83) of the Arbitration Court's 293 awards in force at 31 December 1954 contained preference clauses, most of them inserted by consent. 30 provided for compulsory unionism, 25 for absolute preference, and 28 for qualified preference. A total of 14 awards without preference clauses contained anti-discrimination provisions. The number and proportions of the various types of preference clauses are set out in Table 4, and their terms are outlined in Appendix VI.

The Arbitration Court has not emphasized preference as a means of encouraging unions to abide by arbitration as has the Queensland Industrial Court, but a direct link between preference and industrial peace has been specified with much greater frequency in Western Australian than in either Queensland or Federal awards. A third (27) of the preference clauses examined included a provision directing cancellation of the clause in the event of strike action. More than a quarter (22) of the clauses were coupled with an open union requirement. None of them placed limits on

84 18 W.A.I.G., at 530.
85 (1949) 29 W.A.I.G. 348.
86 (1948) 28 W.A.I.G. 392.
87 Apart from these provisions, the Act prohibits rules which impose unreasonable conditions on new members or fail to provide reasonable facilities for their admission.
union fees or subscriptions. Only one compulsory unionism clause provided for the exemption of conscientious objectors from its requirements.

The Western Australian Coal Industry Tribunal is empowered to settle disputes in the State coal industry on any matter 'likely to affect the amicable relations of employers and employees', a broad definition which clearly includes preference and compulsory unionism. Four awards made by the Tribunal were in force at 31 December 1954; each of them included a compulsory unionism clause, to which was attached an open union requirement.

The Railways Classification Board is empowered to determine specified matters affecting the salaried staff of the Western Australian Government Railways, and also 'any other matter submitted by mutual consent', which appears to include preference. Both of the Board's two awards in force at 31 December 1954 prescribed absolute preference for unionists without attaching any conditions.

Other Jurisdictions:

In New South Wales, the application of compulsory unionism directly by legislation removes preference from the Industrial Commission's jurisdiction. The South Australian Industrial Court is expressly debarred from directing that preference in employment should in any circumstances or manner be given to either unionists or non-unionists. A similar statutory proviso is

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88 See Table 6 and Appendix VI regarding conditions attached to preference clauses.
89 Mining Act 1904-55, s.313.
90 See Tables 4 and 6, and Appendix VI.
91 Railways Classification Board Act 1920-50, s.15(2)(e)(xi). The arrangement of sub.-sec. (2) is curious: the interpretation given here is the only one possible if, as it apparently considers itself to have, the Board is to have power to award preference.
92 See Table 4 and Appendix VI.
93 Ind. Code, S.21(1)(e). Under this provision the Court refused a claim for a clause excluding non-unionists from entitlement to award provisions concerning payment for public holidays, annual leave and sick leave; the Court noted the union advocate's admission that this was a 'straight out attempt to get preference': (1949) 23 S.A.I.R. 354. A Federal award includes a clause of this type: see Appendix IV.
applicable to the powers of wages boards in Victoria. There is no express prohibition against Tasmanian wages boards dealing with preference to unionists, but the State Crown Solicitor has expressed the opinion that no such power can be implied from the terms of the Wages Boards Act. There are no preference clauses in Tasmanian determinations.

**The Queensland Comparison:**

One of the most striking features of the incidence of preference clauses awarded by industrial tribunals is the contrast between their occurrence in the awards of the Queensland Industrial Court and in those of the main Federal and Western Australian tribunals. As Table 4 shows, the contrast is marked not only in relation to the incidence of all types of preference clause, but also in relation to the proportion of clauses that prescribe compulsory unionism.

This contrast seems to stem largely from the different ways in which the various tribunals have approached the question of preference when its grant is opposed by employers. The Federal tribunal and, by and large, that of Western Australia have relied primarily on proof of discrimination against unionists as a ground for awarding a disputed claim for preference. The rarity with which this ground has been held to support such an award testifies to its weakness from the union viewpoint. The Queensland Court's early abandonment of discrimination as the pre-eminent ground has resulted in an approach more favourable to union aims.

In the first case, the approach is negative: preference should 'only be granted when the conduct of the employers justifies' such action.

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94 Lab. & Ind. Act, s.30(1).
95 This opinion is supported by a legally-qualified student of industrial law: Foenander, Better Employment Relations, 125n.
96 (1923) 18 C.A.R., at 1217 (my emphasis). The judge added, somewhat paradoxically, that preference must also 'be earned by a union before it should be granted'; it is, on this view, something for which unions must pay in advance, without the certainty of a return, whereas on the Queensland view (see text below) payment is made after the grant. See also, (1931) 30 C.A.R., at 111.
Preference is viewed primarily as a means of enabling the tribunal to 'protect men in their exercise of their right as free men to combine for their mutual benefit' - in other words, as a means of protecting unions against an unfair practice. By its adoption of this view, as a President of the Queensland Court pointed out, the Federal tribunal may be taken to 'regard the arguments against preference as the stronger'.

In the second case, the approach is positive: preference is granted in order to 'encourage' unions to continue to resort to arbitration. It is, on the one hand, a privilege which a union may lose by resorting to direct action, and, on the other hand, a disciplinary weapon which the union can use to ensure that its members abide by arbitration - 'the union organizer finds his task of organizing simplified, and the governing officials are aided in the control of their members'. Preference is viewed less as a protective device than as a means of obtaining the application of certain policies by the unions. Here, the general argument for preference carries greatest weight, and the probability of a disputed claim for preference being granted is enhanced because the tribunal is concerned mainly with the future behaviour of employees rather than the past behaviour of employers.

Apart from the formal approach of tribunals, a factor of some importance in explaining the high proportion of Queensland preference clauses seems to have been the influence exerted by State Labor governments on the Industrial Court. This question is discussed in a later chapter.

97 (1913) 7 C.A.R., at 233.
99 Ibid.
100 See Chapter 14.
3. **Formal Agreements**

Legally-enforceable agreements may be filed or certified under legislation in the Commonwealth and all States except Victoria and Tasmania. No question of statutory jurisdiction is involved in making these agreements (provided they do not offend against public policy), and they may contain terms which the relevant tribunal has no power to insert in its awards. Moreover, because they are concluded through negotiation between employers and unions, the reason for the inclusion of preference clauses in them is largely irrelevant for present purposes - except in so far as the policies of industrial tribunals exert some influence, a point that is discussed below.

The extent to which preference clauses have been embodied in formal agreements, the terms in which they have been framed and the conditions expressly attached to them are set out in Table 5 and in the appropriate Appendices. Industrial agreements filed under the New South Wales Industrial Arbitration Act are excluded from consideration because the compulsory unionism provisions of the Act apply equally to employees covered by such agreements as to those covered by State awards. On the other hand, agreements certified by the Commonwealth Arbitration Commission are dealt with in the present category as if they corresponded to State industrial agreements. In fact, if not formally, they are closer to the consent awards into which similar agreements reached in conciliation proceedings are invariably converted in the State jurisdictions. The terms of legally-enforceable industrial agreements in the Federal jurisdiction, as was shown in an earlier

1 See Chapter 5.
3 C'wealth, Appendix IV; Qd., Appendix V; W.A. Appendix VI; S.A. Appendix VII.
chapter, are so limited that they cannot include preference clauses.

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From the analysis of formal agreements set out in Table 5 it is evident that there is a rough correlation between the incidence of preference clauses in these agreements and their incidence in the awards of relevant industrial tribunals. In each jurisdiction the proportion of agreements with preference clauses is higher than the corresponding proportion of awards. But, as shown in Table 7, the variations in the proportions of such agreements, as between the different jurisdictions, broadly follow the corresponding award variations. A similar pattern is evident in the type of preference prescribed, in the formal agreements tending to include a higher proportion of the stronger preference-forms.

These correlations suggest that the readiness of the appropriate industrial tribunal to award preference is in some measure reflected in the readiness of employers to agree to give preference to unionists. In this connection, it is appropriate to note the industrial agreements which are filed under the Federal Conciliation and Arbitration Act but deal with industrial conditions in general. They are the only published collective agreements that are not enforceable at law. As shown in Table 7, the incidence and character of preference clauses in them exhibit the same correlation as in the case of legally-enforceable agreements. This argument, of course, can be carried too far if it is overlooked that strong unions are often able to force employers to give preference to their members irrespective of the policy of the appropriate industrial tribunal.

4 As has been noted previously, most preference clauses in Federal and Western Australian awards at least have been inserted by consent. This should be taken into account, but it does not appear to affect materially the conclusion suggested in the text.

5 See Table 5.
There is within an association such as a trade union a repetition of the familiar two-pronged process of government, law-making and law-enforcing. The first is a matter of making and amending rules governing the conduct of the union's affairs and the rights and duties of its members; the second a matter of administering or applying those rules. These functions are not always 'internal' in the sense that they affect only members, though in most cases their direct effect is limited in this way.¹ They are 'internal', however, in the sense that, saving the superior law of the state, they are functions carried out solely through bodies set up by and within the union.

The state in Australia has concerned itself with internal trade union functions to an increasing extent. On the one hand, its concern has been reflected in the judicial development of the law relating to voluntary associations in general, a development that is in large measure a product of policies originally established by English courts. On the other hand, and more important, this concern has been reflected in a growing inclination to regulate the internal affairs of unions by legislation.

The principles developed by the courts as part of the law of voluntary associations are in Australia primarily applicable to unions registered under legislation modelled on the English Trade Union Act of 1871, and subsequent amendments, and to unions which are not registered at all. By contrast, legislative intervention in union internal affairs has been mainly, but not exclusively, directed at unions registered under legislation

¹ The main exceptions relate to rules dealing with admission to membership which, of course, directly affect non-members.
providing for compulsory industrial arbitration.

Measures on the lines of the English Trade Union Act have been enacted in all Australian States, the Commonwealth having no power to do so. In Victoria and Tasmania, as we have seen, these are the only State measures under which unions can register. But in the other four States, as in the Commonwealth, unions may register under industrial arbitration legislation. In Queensland, South Australia and Western Australia a union may register under both the relevant industrial arbitration Act and the relevant trade union Act, or it may register under only one of these measures. In New South Wales, however, registration under the Trade Union Act is a prerequisite for registration under the State's Industrial Arbitration Act. For the sake of convenience in the following discussion, use of the term 'trade union' is restricted to unions which are either unregistered or are registered only under a State trade union Act; the term 'industrial union' is reserved for unions registered under industrial arbitration measures, most of which use the term in this way.

1. Rule-making

British courts have traditionally viewed the constitution and rules of the trade union as forming the terms of the contract to which each member, of his own free will, becomes a party at the time he takes up member-

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2 It is chiefly in N.S.W., where a union registered in this way must also be registered under the State Trade Union Act, that legislative intervention in this field is applicable to unions other than those registered under industrial arbitration measures.

3 Though there is no legal requirement in Qd. that an industrial union should first be registered as a trade union, it has been claimed that as a matter of practice a requirement of this sort operates: Building Workers Industrial Union (Qd. Branch), circular letter, 13/9/1957, 6.

4 These terms are used here in a strictly legal sense and have nothing to do with the nature of union organization, i.e., with whether it is carried out on an industry or craft basis.
ship. Australian courts have followed this view, which places trade
unions on the same plane as voluntary associations in general.

Regarded as a contract freely entered into, trade union rules are
subject to court supervision only to the extent that they are unlawful in
general terms or, more particularly, to the extent that their contents go
beyond the matters which a union is permitted by statute to include in its
rules. In such circumstances the courts may disallow rules. The courts
also have what amounts to a restricted ability to alter trade union rules.
This is found in their common law power to intervene, given jurisdiction,
in the internal affairs of voluntary associations by requiring that the
decisions of domestic tribunals should be reached in accordance with the
principles of natural justice. A requirement of this kind involves an
implicit addition to rules which do not expressly include such principles.

Under the State trade union Acts, as under the corresponding English
measure, registered trade unions are required to provide for certain
enumerated matters in their rules, to keep certain records, and to make
returns on specified matters to appropriate government officers — require-
ments that constitute implicit additions to the unions' rules. The ordi-
nary courts are given no special powers in this connection. But they have

5 See, e.g., Lord Atkinson, Amalg'd Society of Carpenters, Cabinet Makers
& Joiners v. Braithwaite, [1922] 2 A.C., at 245. There are signs that
widespread operation of compulsory unionism policies may be leading to
some modification of this view: see Denning & Romer, L. J.J., Lee v.
Showmen's Guild of Great Britain, [1952] 1 All E.R. at 1181, 1188; and
6 This question is discussed below in section 2 of this chapter.
7 The principles involved are primarily that the member knows the charge
he has to answer; that he is given a proper opportunity of defending
himself and a fair hearing; and that the decision arrived at is an honest
one: see Citrine, Trade Union Law, 214ff.
8 See Appendix VIII.
9 But in N.S.W. the Industrial Commission has such powers: see Appendix
VIII.
exercised their general power of statutory interpretation (noted above) to hold that the terms of these measures preclude trade union rules from dealing with certain matters. This question has arisen in its most important form in relation to rules authorizing a union to expend funds for political purposes. The key decision is that handed down by the House of Lords in the Osborne Case. A majority of the law lords ruled that the statutory definition of a trade union given in the Trade Union Act of 1871 was restrictive, and that it therefore prevented a registered trade union from having rules allowing it to contribute to political activities. This interpretation was later applied also to the rule-making powers of unregistered trade unions.

The principle of ultra vires the statute, propounded in the Osborne Case, has been adopted by Australian courts in relation to registered trade unions. But only in New South Wales and Queensland has legislation been enacted, after the pattern of the English Trade Union Act of 1913, expressly permitting trade unions to make provision in their rules for any lawful matter, including expenditure of funds for political purposes. In all other States, therefore, it appears that registered trade unions are liable to application of the principle that political provisions are beyond their rule-making powers.

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12 O'Sullivan v. Finch, [1914] A.R. (N.S.W.) 279; Allen v. Gorton (1918), 18 S.R. (N.S.W.) 202; True v. Aust'n Coal & Shale Employees Fed'n (1949), 51 W.A.L.R. 73. These cases, as was the Osborne Case, were preceded by contrary decisions in both Australian and British courts: [1902] A.R. (N.S.W.) 16; [1907] 1 K.B. 361.
13 See Appendix VIII. These provisions apply to all trade unions in Qld., but only to registered trade unions in N.S.W.
14 This apparently applies equally to unions with double registration since registration as an industrial union does not alter the character of a trade union: [1951] A.R. (N.S.W.) 100; (1949) 51 W.A.L.R. 73.
Industrial unions in most of the relevant jurisdictions are required, as a condition of registration, to have rules providing for certain matters which are usually laid down in considerably greater detail than the corresponding requirements applicable to registered trade unions. This is also the case with statutory directions about the preservation of specified records and the making of returns on certain matters to government officers, which similarly constitute implicit additions to the rules of industrial unions. But such additions to industrial unions' rules do not stop short at this point as they do in relation to trade unions. Most relevant legislation lays down terms of admission and resignation for union members, provides for union elections to be conducted by government officers in certain circumstances, specifies matters on which and ways in which ballots of union opinion are to be conducted, and, in New South Wales, sets out the procedure to be followed when expelling a union member. Apart from this, industrial unions in all jurisdictions may make rules providing for any other matters 'not contrary to law'.

The statutory 'not contrary to law' formula has provided the basis for the Australian courts' adoption of a doctrine of implied powers in relation to the rule-making ability of industrial unions - a doctrine that is directly contrary to the principles laid down in the Osborne Case in relation to trade unions. With one exception, it has been held that the rules of an industrial union may properly deal with political and related matters.

15 See Appendix VIII.
16 Registered trade unions in N.S.W. are excepted from this generalization since most of the following requirements, applicable to State industrial unions, are equally applicable to them.
17 See Appendix VIII.
The exception was a decision by the Supreme Court of Western Australia, in which the Court held that the power to impose a levy for political purposes 'appears foreign to the principle of operating a system of industrial arbitration' and was therefore outside an industrial union's competence. Most of the existing Australian precedents are against acceptance of this view in the other jurisdictions where no express statutory power to have political rules is conferred on industrial unions.

Again, by contrast with trade unions, court supervision of the industrial union's rule-making powers do not end at this point. Not only are the statutory requirements affecting alterations to the registered rules of an industrial union usually more detailed, but the Federal and Western Australian industrial tribunals have extensive power to disallow or alter such rules, the Industrial Commission of New South Wales having a similar though more limited ability. In addition, the power of all the main industrial

20 True's Case, supra (1949), 51 W.A.L.R. 73. In an earlier N.S.W. case it was held that a registered trade union's powers in this respect were not enlarged by its registration also under the State Industrial Arbitration Act: O'Sullivan v. Finch, [1914] A.R. (N.S.W.) 270. But this case is not strictly comparable with True's Case, since the N.S.W. Act at that time did not include the 'not contrary to law' rule-making formula as did the Act of W.A. On the other hand, under the corresponding New Zealand measure including this formula, the principles of the Osborne Case have been consistently applied to industrial unions: see Auckland Freezing Works Industrial Union v. N.Z. Freezing Works Industrial Ass'n, [1951] N.Z.L.R. 341; also see, (1913) 16 G.L.R. 309 and [1917] N.Z.L.R. 829.

21 The Federal Minister for Labour's announcement that he was considering legislation similar to the N.S.W. provisions was the result of an intention to protect unionists who refuse to contribute to political funds as does the N.S.W. measure: see 1957 C'wealth Parl. Debs. (1st series), 990-1; also, Sydney Morning Herald, 21/4/1958. There is no need to give Federal unions express statutory power to make political rules.

22 See Appendix VIII. The N.S.W. power applies also to registered trade unions. The Federal disallowance power has been used, for example, against rules specifying offences and penalties with insufficient precision (56 C.A.R. 561), giving a union executive 'general and unfettered' power to disband branches (56 C.A.R. 347), failing to give an internal right of appeal against disciplinary action (31 C.A.R. 401), threatening expulsion for divulging union business (39 C.A.R. 322), and requiring members to give reasons for resignation (39 C.A.R. 326).
tribunals to deregister industrial unions is conferred in terms which enable
them to exercise it whenever they consider any of a union's rules suffic-
iently objectionable.

2. Rule-Enforcing

The ordinary courts in Australia have no express statutory powers to
enforce the rules of either registered or unregistered trade unions. Their
jurisdiction in this field, like that of the English courts, is therefore
a product of the policies they have adopted in relation to voluntary as-
sociations in general. The body of law developed in this way has arisen
chiefly from decisions given in cases involving expulsions from membership.

The courts have customarily avowed reluctance to interfere with the
internal management of voluntary associations. But in recent years there
has been a trend towards adapting the traditional principles determining
the courts' jurisdiction in this field in a way that enables a more flexible
approach to the problems involved. Before discussing recent developments,
the basic principles which have been affected may be outlined briefly and
in simplified form.

When individuals come together in a voluntary association, such as a
trade union, they enter into a series of contracts with each other, the
terms of which are found in the association's rules. A member is therefore
entitled to appeal to the courts to remedy a breach of the rules under the
ordinary law of contract. Technically, the remedies available to him fall

23 See Appendix VIII. By contrast, a trade union may be deregistered only
where one of its purposes, embodied in its rules, is unlawful.
1 But in N.S.W. the State industrial tribunal is empowered to enforce re-
gistered trade unions' rules: see Appendix VIII. This power is dis-
cussed below in relation to State industrial unions.
2 Dawkins v. Antrobus (1881), 17 Ch.D. 615; Cameron v. Hogan (1934),
51 C.L.R. 358.
into two categories, common law and equity. His only common law remedy is an action for damages. As the law stood until recently, this course posed considerable procedural difficulties in the case of members of trade unions, and probably still does so far as members of most other voluntary associations are concerned. Nevertheless, given the existence of rules constituting the necessary contractual basis of their jurisdiction, the courts could interfere with the decision of an association to the extent that it was susceptible to an award of damages. On the other hand, quite apart from the procedural difficulties of a common law action for damages, members of associations are usually more concerned with obtaining other remedies which are not available at common law. For this reason, equity

3 Common law and equity were administered by separate courts in England up to 1875, when the two jurisdictions were 'fused' with the effect that the one court could provide the remedies available in both cases and could do so in a single hearing. This system, which has since been applied in the Australian States though with some modification in N.S.W., does not in principle absolve the courts from deciding in a particular case whether a common law or an equitable remedy is available.

4 In certain circumstances where the members of an association are regarded as joint owners of the association's property they have appropriate common law remedies to protect their share of the property, but these usually involve sale of the property and distribution of the proceeds, a result which is not normally a member's aim.

5 The member of a voluntary association may not only find it difficult to prove any specific financial loss on which damages may be based, but he is initially faced with the problem of how to proceed. In the first place he has to bring the action against each individual member of the association responsible for the breach, and if a domestic tribunal's decision constitutes the breach it may be difficult to show it was authorized by the other members. As to the difficulty facing representative actions in such circumstances, see R.M. Martin, 'Legal Personality and the Trade Union' in Legal Personality and Political Pluralism (ed. L.C. Webb). If it was not so authorized, then the decision is a void act and no damages can be given because the plaintiff is unable to show an effective breach of contract by anyone: see Edgar v. Meade (1916), 23 C.L.R. 29. The procedural difficulties for voluntary associations in general were shown in a trade union case: Kelly v. National Society of Operative Printers Assistants (1915), 84 L.J.K.B. 2236. But these difficulties have since been resolved in relation to trade unions at least by Bonsor v. Musicians Union, [1955] 3 All E.R. 518: see Chapter 9 below.
provides more useful remedies. These are the declaration — stating, for example, that a wrongfully expelled member is still a member — and the injunction restraining an unlawful act, such as a breach of the contract found in the rules of an association. The difficulty in this case was that the courts doubted their jurisdiction to grant either remedy merely on the basis of a breach of contract. Thus they insisted that they would intervene at the instance of a private member alleging wrongful expulsion only if his membership entitled him to a 'right of property'. A wide interpretation has been given to the notion of property. It includes, for instance, the right to benefits from an association's funds, the right to vote in elections for officers of an association, and even the right to share in an association's assets on dissolution. Despite its wide interpretation the notion has limited the courts' ability to intervene in the affairs of voluntary associations.

The insistence on the existence of a property right leads naturally to the conclusion that the courts cannot entertain an action brought against an association which has no property. However, this conclusion and the premise on which it is founded were impliedly disputed in the recent Abbott v. Sullivan, a case that seems to represent a radical development in the

6 Rigby v. Connol (1880), 14 Ch.D., at 487.
7 Carpenters' Case, supra, [1922] A.C. at 448. Agreements for the provision of benefits are not directly enforceable under Australian and British trade union Acts (see Appendix VIII), but this does not prevent such agreements forming the basis of jurisdiction for a declaration that, e.g., an expulsion is invalid. Carpenters' Case, supra, 440; Amalgamated Society of Engineers v. Smith (1913), 16 C.L.R. 537; Higgins v. Aust'n Government Workers Ass'n, [1921] S.A.S.R. 378.
8 Pender v. Lushington (1877), 6 Ch.D. 70; Engineers' Case, supra, 16 C.L.R. 537.
9 Strick v. Swansea Tin Plate Co. (1887), 36 Ch.D. 558.
10 Baird v. Wells (1890), 44 Ch.D. 661; Graham v. Sinclair (1918), 18 S.R. (N.S.W.) 75.
judicial position. The plaintiff had been struck off the register of cornporters in the Port of London by a committee that had for some time operated for the purpose of controlling the register and protecting cornporters' interests. The committee was not part of the formal machinery of the trade union to which cornporters belonged, and no cause of action was shown against the union itself. The committee had no constitution or rules and was unable to own property. The plaintiff's exclusion from the cornporters' register therefore infringed no property right, and his right to work as a cornporter, which was so infringed, was not regarded as a property right: 'The right of a man to work is just as important to him as...his rights of property'. Denning, L.J., a member of the Court of Appeal in this case, was later to cite it as establishing that the courts' jurisdiction, whatever the remedy sought, was founded on contract and not property. Yet a majority of the Court (with Denning dissenting) not only found that there was no express or implied contract on which a claim for damages could rest, but, it seems, were uncertain that a contract could be implied to support the Court's jurisdiction in relation to other remedies. Thus, one of the majority, Morris, L.J., after citing with approval an opinion expressed forty years earlier that there were rights outside property which the courts should protect in cases of exclusion from voluntary associations, held that the Court was entitled to intervene on this basis and remarked that as

12 Per Denning, L.J., ibid., at 234.

13 Lee v. Showmens Guild of Great Britain, [1952] 1 All E.R., at 1180. See also Ford, 'The Use of the Injunction to Restrain Wrongful Expulsion from Voluntary Associations' (1954) 1 Sydney Law Review, at 197. For an argument advanced before Abbott's Case that the courts, if hesitantly, were moving towards adoption of this principle, see Lloyd, 'The Disciplinary Powers of Professional Bodies' (1950), 13 Modern Law Review, at 288ff.

a result, 'No need arises to explore whether the jurisdiction of the court could alternatively be founded on some contractual basis'.

The importance of the majority decision in Abbott's Case was that it seemed to imply that there was no reason why the courts should not intervene by way of a declaration (one having been made in the lower court) and, possibly, an injunction on the basis of a jurisdiction related to rights other than rights of either property or contract. This at least was the construction placed on the decision by Pilcher, J., in Davis v. Carew-Pole, in which the same vital point was involved — absence of a property right. Pilcher ruled that the Court could interfere with a domestic tribunal's disciplinary decision by way of declaration and injunction despite the lack of a property right and, further, despite the lack of a contractual link between the tribunal and the plaintiff. Moreover, he suggested that even if, in the absence of a property right, a contractual relationship was required as a basis for jurisdiction, such a relationship was implied once the plaintiff had submitted to the domestic tribunal's jurisdiction. This opinion not only supported Denning's view as to the contractual rather than the proprietary basis of the courts' jurisdiction, but also extended the notion of an implied contract.

If the line of development opened up by Abbott's Case is followed, it may be that persons affected by decisions of domestic tribunals need at most show only the existence of a contractual relationship (which may be created simply by submitting to the tribunal's jurisdiction) in order to invoke the courts' intervention. At the least, they may have to show only

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15 Abbott's Case, supra, at 238-9.
16 [1956] 2 All E.R. 524, at 529.
17 Ibid., at 530. This relationship, he thought, could support a declaration, injunction or damages. He distinguished Abbott's Case in the latter respect on the ground that there the plaintiff had refused to accept the domestic tribunal's jurisdiction.
that the tribunal's decision has infringed some substantial interest, such as depriving them of the right to work in a particular calling - a consideration of particular importance in relation to trade unions. In either case, property rights will be relevant not to the question of jurisdiction but to 'the form of remedy'.

In Australia, on the other hand, the High Court has not yet modified the principle that, so far as the remedies of declaration and injunction are concerned, it will take account of a breach of contract relating to membership of a voluntary association only in order to protect a right of property - though by its interpretation of the term 'civil right', used in this connection, the Court does appear to have gone beyond 'property' in the strict sense. The Court re-affirmed this policy in the leading case of Cameron v. Hogan, but it is arguable that the definition given there of the associations to which the policy applies is open to an interpretation excluding trade unions.

Given jurisdiction to entertain actions brought by members of voluntary associations, the courts then face the question of the principles on which they may interfere with an association's internal management. Again, this question has arisen most frequently in expulsion cases. Both, English and Australian courts have traditionally emphasized that they have no power

18 Lee's Case, supra, at 1180.
19 Macqueen v. Frackleton (1909), 8 C.L.R., at 697; in relation specifically to a trade union, see Webster v. Bread Carters' Union (1930), 30 S.R. (N.S.W.) 267.
21 'They are for the most part bodies of persons who have combined to further some common end or interest, which is social, sporting, political, scientific, religious, artistic or humanitarian in character, or otherwise stands apart from private gain and material advantage': per Rich, Dixon, Evatt and McTiernan, JJ., (1934) 51 C.L.R., at 370-1, 378.
22 For a full discussion of this question, see Martin, op. cit.
to review the facts leading to an expulsion and so to determine the correctness of the domestic tribunal's decision: they may examine the decision only to determine whether it has been reached in compliance with the association's rules and in accordance with the principles of natural justice. This approach involves, on the one hand, enforcing the rules of an association such as a trade union, and, on the other hand, where the point is not expressly covered by the rules, altering them to include the principles of natural justice. In these terms two basic problems are raised: the sort of rules the courts are to enforce, and the force they are to accord those rules in relation to other considerations such as the principles of natural justice.

In the leading English case of *Dawkins v. Antrobus* it was implicit in the Court's judgement that the only relevant rules were procedural and not substantive - corresponding to the purely procedural principles of natural justice. Fifty years later, in *Maclean v. The Workers' Union*, this policy was laid down expressly. The courts, it was held, had no power to go beyond rules prescribing the manner in which the expulsion power was exercised; they could not construe relevant rules of substance as applied to the facts of the case. Well before this decision, however, Australian courts had assumed jurisdiction to construe substantive rules in a way that entailed applying them to the facts of the case. And since *Maclean's Case*, the English Court of Appeal has held that it has power to examine any decision of a trade union's domestic tribunal which involves a question of

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23 *Dawkins v. Antrobus* (1881), 17 Ch.D. 615; *Australian Workers' Union v. Bowen (No.2)* (1948), 77 C.L.R. 601.
24 [1881] 17 Ch.D. 615.
25 [1929] 1 Ch. 602.
law, including the true interpretation of any of the union's rules. The
Court re-affirmed the principle that it could not review the facts in the
manner of a court of appeal, but, as one of its members openly recognized,
the 'construction of the rules is so bound up with the application of the
rules to the facts that no one can tell one from the other'. It is ap­
parent then that, legal niceties aside, both English and Australian courts
are prepared to enforce trade union rules in expulsion cases, regardless
of whether they are procedural or substantive. But no similar clarity is
evident on the question of the force to be accorded to existing trade
union rules as against other considerations.

In Lee's Case, in which the English Court of Appeal held it could
construe rules of substance, the Court distinguished the rules of the trade
union concerned from those of social clubs and professional associations
involved in earlier cases, and stated that those cases had turned on ethical
rather than legal questions, questions which were primarily matters of
opinion and not of legal construction. One member of the Court suggested
that if the trade union's rules had empowered the expulsion of members where
'in the opinion of' or 'in the judgment of' the domestic tribunal they had
broken the rules, then the plaintiff might have been in difficulty. He
added, however, that considerations of public policy might well influence
the courts to ignore such an attempt to oust their jurisdiction to construe
the rules, especially in the case of a trade union to which employees were
compelled to belong. Another member, Denning, L.J., was more outspoken

27 Lee's Case, supra, [1952] 1 All E.R. 1175. This view has since been
applied in a New Zealand case: Tucker v. Auckland Racing Club, [1956]
N.Z.L.R. 1.
28 Ibid., at 1182.
29 Ibid., at 1180, 1181, 1186. One of the judges, Denning, L.J., by implica­
tion went further than his colleagues to exclude the medical cases from
this category on the ground, apparently, that they involved questions
of a man's right to work - unlike the club cases.
30 Ibid., at 1188.
and categorically condemned trade union rules of this sort as contrary to public policy and void. The point has still to be settled by English courts. In Australia, on the other hand, it appears to have been conceded that the rules of voluntary associations in general and trade unions in particular can oust the courts' jurisdiction in this way.

The Australian courts have given a similar restricted interpretation of their powers in relation to the principles of natural justice. It appears that their jurisdiction to apply these principles may be ousted by express and unequivocal provision to this effect in the rules of a voluntary association, including a trade union. For their part, the English courts have still to settle the question. The claim, made in an early decision, that they could determine whether rules were contrary to natural justice was refuted in a later decision. More recently, two members of the Court of Appeal expressed opposing views on whether public policy required that the rules of voluntary associations should not exclude the principles of natural justice.

Finally, there is the question of whether an expelled member's failure to exhaust his right of appeal within the association denies the courts jurisdiction. In Australia the question appears settled. Denial of jurisd-

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31 Ibid., at 1181.
32 Macqueen v. Frackleton, supra, at 700; Australian Workers Union v. Bowen, supra, at 606. Moreover, while the courts will not recognize a rule expressly forbidding members to take legal action, they are unable, it was held, to interfere where a rule prescribes the expulsion of a member taking such action: Macqueen v. Frackleton, supra, at 700-1, 709-10.
34 Dawkins v. Antrobus, supra, at 630.
diction is effected only where rules expressly lay down that the member must exhaust his right of appeal before taking legal action; otherwise he may go straight to the courts. In the United Kingdom some legal commentators seem to have interpreted the Privy Council's decision in a Canadian case, involving union rules with an express exhaustion-of-internal-appeals provision, as meaning that wherever an internal right of appeal is provided the member must exhaust it before resorting to the courts. The Australian decisions point in a different direction; and in a subsequent English case, an expelled union member's failure to exercise his internal right of appeal was referred to but given no weight. In the event of a direct decision on the point, the English courts may well follow the Australian view.

In matters other than expulsion, both English and Australian courts have followed the same principles as to the basis of their jurisdiction. They will not interfere where the acts complained of are merely irregularities in connection with actions within the trade union's powers, nor where the rules provide machinery for the settlement of the dispute in question, such as a dispute about election results. Nor will a declaration be given on the application of a minority where it would be merely

37 Macqueen v. Frackleton, supra, at 695.
embarrassing and serve no useful purpose. Otherwise, the courts will examine the conduct of a trade union election, for example, with an eye to the customary criteria – conformity with the rules and the principles of natural justice.

All Australian industrial unions are empowered to recover at law membership subscriptions owed under their rules; and in most of the relevant jurisdictions, fees, fines and levies are similarly recoverable. There is, however, greater variation when it comes to the enforcement of industrial unions' rules in general. In the Commonwealth, New South Wales and Western Australia there is no problem of establishing jurisdiction. In each case the appropriate industrial court is empowered to enforce any rules of industrial unions registered under it. This power differs from that enabling the courts to enforce rules relating to subscriptions against individual members, because it is 'designed for the protection of members against...arrogant and unjust treatment in defiance of their membership rights under the rules of their registered organizations'.

The New South Wales Industrial Commission interpreted its rule-enforcing power rather narrowly when it echoed the traditional policy of the

46 Craddock v. Davidson, supra. In this case a trade union committee's rejection of a nomination for the presidency was held invalid on the grounds it was not reached in accordance with the union's rules (the committee had no power to make the decision and its meeting did not have a quorum) or with the principles of natural justice (the opposing candidate presided over the meeting and the plaintiff had no opportunity to state his case).
47 See Appendix VIII. These provisions apply to registered trade unions in N.S.W.
48 See Appendix VIII. This, as Latham, C.J., indicated, confers a much wider jurisdiction than that of the ordinary courts: 77 C.L.R., at 608. It is equally applicable to registered trade unions in N.S.W.
ordinary courts to hold that although its jurisdiction did not depend on property, it would not normally interfere in internal disputes at the instance of an individual member unless property rights were involved. More recently, however, it was suggested that the Commission would not confine itself in this way where the principle involved 'touched the settled rights of all the union members in a vital particular', as in the case of a member's right to nominate for union office. In the Federal jurisdiction the interests justifying intervention have consistently been interpreted in wide terms. There should be no interference in unions' domestic disputes, it has been stated, unless there are 'allegations of fraud or of some violent breaches of the rules which may disturb the peace of the industry, or prevent the organization properly functioning under the Act'. In other words, all that is required is that there should be 'some element of public interest' involved, rather than a private property right, since the purpose of the statutory power is not merely to enable individuals to enforce their civil rights against others.

The South Australian Industrial Court finds direct power to enforce union rules under the statutory requirement that all disputes between an industrial union and its members must be decided in accordance with the rules. However, this power has been held to cover only those matters with which the union's rules are required to deal as a condition of registration.

The Queensland Industrial Court is given no direct statutory power to enforce union rules in general, though it may achieve this end by threatening use of its deregistration power which can be used in any circumstances the Court thinks fit. But apart from extreme cases where such a step might be justified, it seems that the Industrial Court can enforce rules only incidentally to its exercise of other powers. Otherwise, action of this nature in relation to industrial unions is a matter for the ordinary courts in Queensland.

The general rule-enforcing powers available to the main Federal, New South Wales, and Western Australian industrial tribunals have been used in a wide variety of circumstances, particularly in the Federal jurisdiction. They have been held applicable, for example, where an expulsion or a union election is carried out other than in accordance with the rules. But in recent years each of the three industrial tribunals has been given specific and more comprehensive powers to deal with disputed elections, while since 1953 the New South Wales Industrial Commission has been able to interfere with an expulsion from an industrial union before the expulsion is actually effected. Despite the comparatively limited character of the South

56 Thus, where an award prohibited the continued employment of unfinancial unionists, the Industrial Court had to determine whether an employer was bound to dismiss employees who had failed to pay fines imposed by their unions. In reaching its decision, the Court examined the validity of the fines, and ruled against the unions on the ground that the members concerned were not guilty of misconduct under the unions' rules and that the fines were therefore illegal: (1946) 166 Qd. G.G. 717. Similarly, the Court can intervene where it is alleged that a unionist has been penalized for disobeying a union instruction which is contrary to the Act or any award: (1949) 43 Q.J.P. 123; (1949) 43 Q.J.P. 134.

57 See Foenander, Industrial Regulation in Australia, 186.


59 See Appendix VIII. These provisions do not, however, exclude resort to the general rule-enforcing powers: (1952) 74 C.A.R., at 139.

60 See Appendix VIII. This provision was enacted as part of the legislation aimed at imposing compulsory unionism.
Australian Industrial Court's power to enforce rules, it appears to cover cases involving expulsions and disputed elections because these are among the prescribed matters for which the rules of an industrial union in that State must provide.

None of the general rule-enforcing provisions, nor the special expulsion provision in the New South Wales legislation, indicate the force that is to be given to union rules as against the other considerations mentioned above in relation to trade unions.

The Federal provisions were given a restrictive interpretation by the Chief Judge who held that a union tribunal's decision as to the meaning and application of the rules could be interfered with only if it was made in bad faith, or if the member disciplined had not been given reasonable notice of the tribunal's proceedings and a reasonable opportunity of defending himself. In other words, the Court could not intervene if the decision was reached in accordance with the principles of natural justice. Since this opinion was expressed, however, the Federal Arbitration Court (now the Industrial Court) has shown by its actions that it is not inclined to regard as final the construction of an industrial union's rules by a domestic tribunal. Moreover, the Court has not only construed and applied the specific terms of rules, but it has interfered with union decisions on the basis of conditions it considered to be implied by rules. Industrial courts have also applied the principles of natural justice.

It appears that industrial unions, like Australian trade unions, may oust the jurisdiction of industrial courts to construe rules by relating their interpretation to the opinion of a domestic body.

63 Short v. Wellings (1951), 72 C.A.R. 84.
65 Australian Workers Union v. Boven, supra, at 606, 634-5; also (1950) 66 C.A.R., at 159.
An early New South Wales decision, affirming that the rules of an industrial union could exclude the principles of natural justice from consideration by the courts, was later echoed by a High Court judge when he stated that the principles of natural justice 'cannot override the express provisions of the rules'. But it is apparent that the majority decision of the Court in the same case overruled this view by implication.

On the question of the exhaustion of an industrial union member's internal right of appeal, a Federal industrial judge held that the statutory rule-enforcing power should not be exercised until the applicant had used every avenue of relief available within his union, an opinion that has also been expressed by the New South Wales Industrial Commission. In both cases, however, it was emphasized that application of this policy was discretionary and not mandatory. Industrial courts are therefore free to follow the High Court's decision in Bowen's Case, of which a clear implication was that an industrial union member need not exhaust his internal right of appeal where the rules do not specifically require him to do so. The effect of a rule with an express requirement of this nature does not appear to have been considered in connection with an industrial union, but it is probable that the industrial courts would follow the principle applicable to trade unions that exhaustion of appeal is obligatory in these circumstances.

The ability of industrial unions to oust the jurisdiction of industrial courts by the terms of their rules has been discussed above on the lines of the corresponding powers of trade unions in relation to the ordinary courts.

69 (1948) 77 C.L.R., at 618, 619, 632.
But it must be emphasized that the rules of industrial unions are subject to much greater supervision than those of trade unions or voluntary associations in general.

In the first place, the rules of a union seeking registration as an industrial union, and any alterations to its rules after registration, are usually closely scrutinized by the authorities to ensure their compliance with the relevant industrial arbitration Act. All these measures contain provisions which in effect, if not always expressly, give wide powers to refuse the registration of rules. In all cases, for example, 'tyrannical or oppressive' rules are indicated as illegal. Unless it is registered, a rule is not recognized by the industrial courts.

In the second place, all industrial courts can disallow or direct the alteration of rules already registered, whether this jurisdiction is expressly given them or may in fact be exercised in the shadow of the power to deregister industrial unions. Thus, even if an industrial union's rule could be held to oust the jurisdiction of the relevant industrial court, the court may find the power to remove the obstruction on the ground that it contravenes the Act. Recognition of these powers has led frequently to applications to industrial courts asking, either concurrently or alternatively, for orders enforcing a rule, disallowing it, and deregistering the union because of the rule.

70 But a Federal industrial judge has refused to disallow a rule empowering expulsion where, 'in the opinion of' a domestic tribunal, a member's conduct came within the meaning of the rule: see, ibid., at 603, 606. This does not mean, however, that the Federal Industrial Court will refuse disallowance of a similar rule in another case.

The legal status of a group such as a trade union is determined at a given time by the nature and extent of legal regulation affecting it. Traditionally, legal status has been viewed primarily in terms of whether or not the group constitutes a legal entity, a characteristic usually acquired by incorporation under appropriate legislation. A number of consequences flow from the definition of a group as a legal entity, which is thus merely a brief way of indicating that the group, in a corporate capacity, may, for example, act by agents, sue or be sued for a civil wrong, enter into contracts and be liable for their breach.

On the other hand, if the group is not a legal entity these consequences do not necessarily follow — indeed, as the courts have traditionally viewed the question, the rights and duties accompanying incorporation are exclusive to groups expressly designated as legal entities. For in these terms a group which is not a legal entity has no corporate existence distinct from its individual members, and its rights and duties are merely the rights and duties attaching to each of its members in their personal legal capacity.

In Australia, as in the United Kingdom, the organization of individuals into trade unions has for many years been recognized by statute, and trade union Acts provide for the registration of these associations. But none of the Acts expressly define the trade union as a legal entity by incorporating it. The question of whether the Trade Union Act of 1871 can be regarded as conferring legal entity by implication on trade unions registered under it

1 See Dennis Lloyd, The Law of Unincorporated Associations, 147.
has been raised on a number of occasions before the English courts. Opinions have been expressed by some judges that the effect of the Act is to make the registered union a 'legal entity', a 'corporate body'; others have viewed its effect as creating a 'quasi-corporation', a 'tertium quid', which has legal personality, and therefore is not an unincorporated association, but is unlike either an individual or a corporation. However, in only one of these cases (and that the least authoritative) did the court decisively accept the proposition that a registered trade union is a legal entity distinct from its membership. In Australia, a State Supreme Court considered that the registered trade union had 'at least a quasi-corporate status'. But the authority of this decision may be questioned in view of the more recent opinions expressed in the House of Lords in Bonsor's Case, though in that case the ambiguity of the judgement that held the balance on the point may well leave the matter open.

In most jurisdictions there is much less uncertainty about the formal character of the Australian industrial union - the distinction between the industrial union and the trade union, as noted in the previous chapter, being continued for present purposes. The industrial arbitration measures

6 See Martin, 'Legal Personality and the Trade Union', in Legal Personality and Political Pluralism (Webb, ed.), for a full discussion of these decisions.
7 Egan v. Barrier Branch of Amalg'd Miners Ass'n (1917), 17 S.R. (N.S.W.), at 257, 262-3.
8 Supra, [1955] 3 All E.R. 518.
9 This judgement was that handed down by Lord Keith: for a discussion of it, see Martin, op. cit.
10 That is, 'industrial union' as a union registered under an industrial arbitration Act; 'trade union' as a union registered under a trade union Act or under no Act.
of the Commonwealth, Queensland, South Australia and Western Australia each incorporate unions registered under them. The New South Wales Industrial Arbitration Act alone is silent on the point. It is the position of the formally unincorporated industrial union of New South Wales which indicates the shortcomings of the distinction between the incorporated and unincorporated body as a description of the union's legal status, and points to the vital distinction based on the extent to which the union is subject to legal regulation. For although it is without express legal entity under the Act, there is no demonstrable difference between the role of the New South Wales industrial union in the State arbitration machinery and that of industrial unions in other jurisdictions whose legal character is in formal terms wholly different. The position of trade unions in South Australia points in the same direction. They have powers within the State arbitration system which are almost as great as those of incorporated industrial unions; and to enable the enforcement of awards against them, it is laid down that penalties are recoverable from a trade union in the same manner as if it were an 'incorporated company'.

These examples indicate that the formal definition (or lack of it) of a union as a legal entity tells very much less than the full story about the union's effective status, which is less a matter of legal definition

11 C'wealth, C. & A. Act, s.136; Qd., I.C. & A. Acts, s.41; S.A., Ind. Code, s.68; W.A., Ind. Arb. Act, s.13. The incorporating provision in the Federal Act is a little less explicit than those in the State Acts, but its effect is no different: see Jumbunna Coal Mine v. Victorian Coal Miners Ass'n (1908), 6 C.L.R., at 336.
12 The incorporation provision in the original Act of 1901 was omitted from later measures.
13 It may be noted that when the Bill which is the basis of the present N.S.W. Ind. Arb. Act was before Parliament, the Minister for Labour stated that it was intended that industrial unions should be treated as entities for the purpose of litigation under the Act: (1912) 41 N.S.W. Parl. Debs. 1648.
14 Industrial Code, s.131.
than of legal regulation. The distinction between the unincorporated trade union and the incorporated industrial union is one of degree, not of kind. If the position of the English trade union is examined from this point of view, a picture of its legal status emerges which is quite unlike the picture that can be assumed from the courts' refusal to recognize it as a legal entity.

The English trade union, as we have seen, is not a corporation, nor have the courts accepted it as some kind of quasi-corporate body. On this basis it might with reason be expected that the trade union has none of the rights and duties attachable to a legal entity. Nevertheless, the courts have in fact attributed to the trade union qualities which have traditionally been thought applicable only to a legal entity. They have held that a registered trade union as such (that is, in its registered name) can sue and be sued in tort – an attribute that, as Maitland points out, is not only 'one of the essential attributes of the corporation', but one that at times 'seemed to have appeared as the specific differentia of the corporation'. In the Osborne Case another principle of corporation law, the doctrine of ultra vires the statute, was applied to a registered trade union on the basis of legislation which did not incorporate the union. The courts have also held that a member may sue his union in its registered name, and may recover damages from its funds for breach of the contract found in its rules. Moreover, an injunction may be issued against a trade union

18 Yorkshire Miners Ass'n v. Howden, [1905] A.C. 256.
in its registered name, whether the action is brought by a member or by an outsider.

The English courts have thus clothed the registered trade union in rights and duties characteristic of a legal entity, but they have done so without decisively accepting the union as anything more than a voluntary association which has no legal personality distinct from the individuals forming its membership. By and large, despite apparent logical inconsistencies, the courts have preferred to view the consequences of their decisions as procedural - 'a more convenient mode of proceeding' - rather than substantive. However correct this view may be in law, it is clear that the decisions it has been held to justify have brought about a startling change in the legal status of the registered trade union.

By comparison with the English trade union, the Australian industrial union is subject to closer and more extensive regulation. In New South Wales many aspects of this regulation are equally applicable to registered trade unions, but trade unions elsewhere in Australia are on broadly the same footing as their English counterparts. Unlike the developing legal regulation of the trade union, however, that of the industrial union flows less from judicial decision than from statutory enactment. The industrial union is, in the first place, on a footing entirely different from the trade union's, a footing which depends on its statutory functions rather than on the fact that it is formally defined as a legal entity. Thus, before

20 Amalg'd Society of Carpenters, Cabinet Makes and Joiners v. Braithwaite, [1922] A.C. 440; Howden's Case, supra; Osborne's Case, supra.
21 Taff Vale Case, supra.
23 Per Lord Lindley, Taff Vale Case, supra, at 445. See also, ibid., at 438-440, 442-3; Howden's Case, supra, at 280; Russell v. Amalg'd Society of Carpenters and Joiners, [1912] A.C., at 429.
legislation had been enacted to enable direct enforcement of Federal industrial unions' rules, it could be held that the status of these unions was such as to justify intervention by the ordinary courts in expulsion cases even in the absence of a property right, which was the courts' necessary basis of jurisdiction in cases involving trade unions and other voluntary associations.

This organization is the creature of the Federal Parliament for a special reason, and as incidental to a specific power in the constitution. The incorporation of employees in such an organization is a matter of public policy, and to effectuate the policy of the Act.... The very object of the legislative provisions in incorporating such an association and facilitating the settlement of industrial disputes might be defeated if members and branches could be excluded by a governing body, contrary to rules, unless property was involved. 24

The emphasis here is on the industrial union as a public rather than a private body - the latter being the customary legal conception of unincorporated bodies such as trade unions and other voluntary associations. But although incorporation is stressed in the passage, it is apparent that the principles advanced are applicable to industrial unions whether or not, as in New South Wales, they are incorporated. It is their role in the statutory scheme not their formal legal character that is important.

As bodies with statutory public functions, industrial unions do not 'exist only for the purpose of concerning themselves with the private rights and duties of their members', and are thus not entitled to 'freedom from interference in the management of affairs and the settlement of matters as between members'. Judicial interference in an industrial union's internal affairs does not signify the courts' recognition that members have interests justifying protection; it is merely an incidental result of industrial

unions being 'treated as part of the machinery for the prevention and settle-
ment of industrial disputes'. The right to control the policy and offic-
ers of an industrial union, vested by legislation in the union's members, is maintained primarily 'in the interests of the public' rather than those of the members.

The development of the law relating to trade unions, on the other hand, has no distinct legal justification of this nature. It is probably true that the English Trade Union Act of 1871, and its Australian counterparts, 'created a fairly definite demarcation between the trade union and the great class of voluntary, unincorporated associations to which the law concedes no legal status apart from that of the individuals composing them', and that the distinction 'is none the less real because a trade union...does not possess the status of a corporation or a partnership'. English courts, as their developing treatment of trade unions' internal affairs shows, have certainly acted as if this were so. But they have not justified their ac-
tions on the ground that the character of the trade union is legally distin-
guishable from that of the voluntary association. On the contrary, they have been at pains to emphasize that there is no such distinction. Nor, despite claims to the contrary, does it appear that the process signifies an acceptance by the courts of realist theories of the personality of associations.

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28 Hedges & Winterbottom, The Legal History of Trade Unionism, 91.
30 See Martin, op. cit., for a full discussion on this point.
The nature and extent of relevant legal regulation, as has been pointed out earlier, delimits the legal status of a group at a given time. Such regulation also constitutes an expression of the way in which the group is regarded by law-makers, whether these be legislatures determining statute law or courts determining common law. In this sense, legal status is essentially a function of the law-makers' attitude to the group, an attitude that is important not only to the group's legal status at a particular moment but also as the long-term determinant of its future legal regulation. Moreover, this attitude may be the product of considerations which have little to do with the legal character of the group at any particular time. This is illustrated in the judicial development of the law affecting trade unions. The development has taken place in two phases, in both of which it is evident that the courts have been influenced by considerations related to the social rather than the legal character of the trade union.

The first phase culminated in the decisions handed down in the Taff Vale Case and the Osborne Case, the one striking at the trade unions' ability to take industrial action, the other at their ability to take political action, and each dealing a 'smashing blow to trade union activity'. Before these decisions the courts had successively fashioned the weapons of criminal conspiracy and civil conspiracy which were primarily directed against trade union activity, as shown by the contrasting decisions given in substantially similar cases involving, respectively, a business cartel and a trade union. That judicial prejudice against trade unionism was

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31 Supra.
32 Supra.
33 Citrine, Trade Union Law, 17.
34 See Kahn-Freund in The System of Industrial Relations in Great Britain (eds., Flanders & Clegg), 116-7; and see Chapter 6 above.
a significant factor in the formation of these policies, as has been claimed, is not unlikely. At least it is evident that the courts were slow to follow the legislature in its progress from suppression to toleration of unionism. This argument gains from the 'transformation of judicial attitudes' which followed the legislature's reversal of the courts' policies and the enhanced social standing of unionism after the first world war.

The second phase in the judicial development of trade union law has taken place since the second world war. It has involved greater regulation not of the unions' ability to pursue their aims, as in the first phase, but of their ability to injure their members' vital interests. This development, as has been shown, has occurred in relation to exclusion from union membership, and it has clearly been influenced by the power trade unions have obtained, as a result of compulsory union membership policies, to deprive members of their right to work. Thus, the existence of compulsory unionism has evoked judicial doubt about the realism of the traditional view that the contract found in trade union rules is one into which a member enters of his own will. Moreover, it has induced the courts to regard expulsion from a trade union as being quite different from expulsion from most other voluntary associations. Denning, L.J., as he then was, repeatedly asserted that the right to work was more important than the property right on which the courts have usually based their jurisdiction in expulsion cases, and other judges have adopted the same view. But perhaps the most significant

37 Kahn-Freund, op. cit., 118.
38 See Chapter 8.
41 See Lee's Case, supra, at 1180, 1184; Bonsor's Case, [1954] 1 All E.R. at 834. Also see Martin, op. cit., for a fuller discussion on the point.
indication of the importance of this factor was given in Bonsor's Case, in which the law lords were divided on the question of whether the trade union was a legal entity but unanimously ruled that a wrongfully expelled member could recover damages from his union—a decision that reversed existing precedents and attached to the trade union a liability previously thought applicable only to incorporated bodies. Lord MacDermott gave the most lucid and forceful defence of the traditional conception of the trade union as an unincorporated association. Once he had discarded the notion of legal entity as a means of enabling damages to be obtained against the union, it was apparent that his decision turned largely on the opinion (which followed an earlier reference in his speech to the effect of the union's 'closed shop' policy on the plaintiff's right to work) that 'expulsion from membership of a trade union stands, as a breach of contract, in a special category'.

The legal status given to trade unions as a result of judicial development of the law has emerged primarily from the courts' recognition of the power trade unions wield in society. Thus, as has been discussed at length elsewhere, the Taff Vale decision, enabling the registered trade union and not merely some of its members or officials to be sued for strike action, was a necessary extension of the law if the industrial power of unionism was to be curbed. The growth of that power rendered it no longer practicable to attack unionism by way of individual unionists. Similarly, the courts' present inclination to distinguish between expulsion from a trade union and expulsion from voluntary associations in general flows from a recognition of the compulsory features of trade unionism. The effect of

43 Martin, op. cit.
these policies has been to emphasize the public character of the modern trade union.

Australian industrial courts have reached the same conclusion in relation to industrial unions, but they have been able to state it with less circumspection because it is derived from legislation which specifies the role of industrial unions and closely regulates their activities. Formally speaking, therefore, Australian industrial courts need not take account of the power exercised by industrial unions as interest groups - indeed, they probably have no jurisdiction to do so since their frame of reference is defined by statute and not by the somewhat looser terms of common law and equity. Nevertheless, the consideration of the power of modern unionism is as relevant to Australian industrial unions as it is to English trade unions. But it is significant at the political rather than the judicial level. Its effective impact is on legislatures rather than courts, because the traditional bar existing in the United Kingdom to legislation regulating union activities does not operate in Australia.

Probably the most common political view of union status is based on the effect of industrial arbitration legislation. It is therefore restricted to industrial unions. But since the vast majority of unions function within statutory arbitration systems, the restriction is unimportant. This view was expounded by R.G. Menzies:

...the effect of the development of industrial arbitration has been to increase recruitment to the great unions [and] to increase their strength.... As a result, a decision made by an industrial organization can no longer be regarded as being merely something which concerns its own members. An industrial organization is now so much a public utility that any major decision made by it affects the whole society.44

The more widely-based view is derived from a recognition of union power as something which is more than merely a product of arbitration systems, but the conclusions are the same. It was expressed by H.V. Evatt, Attorney-General in the Chifley Labor Government, in connection with the question of union elections.

Today the trade union movement...is extremely powerful; indeed, in some respects, it is as powerful as the organized community itself... so that the modern trade union bears the stamp of public interest and concern - something which we never recognized fifty, or even twenty, years ago.... There is...an analogy between the conduct of elections in a registered trade union and those of the National Parliament... [and] trade union elections are entering a sphere which is as important to the well-being of the community as are elections for the Commonwealth or a State Parliament.\(^4^5\)

This view was held, by a Labor Government, to justify it entering what has been called a 'new phase' in the regulation of Federal industrial unions by legislation. Both Australian legislatures and English courts (the latter in fact if not yet in theory) have discarded the 19th century proposition that unions are 'essentially clubs'. The legal status this has given unions, as bodies which in the eyes of law-makers should be regulated in important respects, has already led to greater regulation of union activities and contains the seeds of further regulation.

The trend is more pronounced in Australia than in the United Kingdom because legal regulation of Australian unions has reached a stage where it has a momentum of its own, and the prevailing tendency is to seek a solution through the law to any question involving the unions. The very fact of extensive regulation, and its general acceptance, means that there is little dispute about the principle of state intervention in union activities. Thus

\(^4^5\) Ibid., 1812-3.
\(^4^7\) Minority Report, Royal Commission on Trade Unions (U.K.), 1869, quoted by Milne-Bailey, Trade Unions and the State, 203.
Australian legislatures not only operate in a political context widely different in this respect from that of the British Parliament, but they are, of course, untrammelled by the problems of jurisdiction which confront the English courts.

In addition, legal regulation in Australia is not concerned solely with imposing conditions on union activity; it has also given benefits sought by the unions. This in itself strengthens the logical argument for greater supervision.

The protection of unionism by the State carries with it considerable control of unionism by the State. Where the State gives privileges it must impose obligations. If it takes special notice of a group within its jurisdiction it must interest itself in the constitution and action of that group.49

Some idea of the extent to which this argument has been carried into practice, and an indication of its continuing force, is given by a statement made in 1914 by the Attorney-General of a non-Labor Federal Government on the question of prescribing compulsory union membership by legislation:

...before any civilised community would consent to give public recognition and compulsion to any union, it would insist on the performance of certain conditions. It would insist, in the first place, that the doors of that union should be absolutely open... to all persons belonging to that particular trade, who knew their business and were not of bad character. We know also that no compulsory unionism could possibly be brought about, as long as there was any discretion in the unions as to the amount of entrance fee to be paid by new members joining.... Another condition... would be the imposition of a definite law against striking at all.... A further condition would certainly be that the funds of the unions should be under the control of a public trustee, and that the expenditure of those funds should be subject to audit.50

48 See especially Chapters 5 and 7 above.
49 Hancock, Australia, 218.
50 (1914) 73 C'wealth Parl. Debs. 1063-4. In this connection, see the conditions set down in the Stevedoring Industry Act 1954-56 (s.43), which imposes compulsory unionism on waterside workers, and also those accompanying a similar imposition in the N.S.W. Industrial Arbitration Act 1940-57, s.129B.
The list is exemplary if not exhaustive. Its significance arises from the fact that although it was outlined on the assumption of a situation where the law 'not only recognised unions but made them compulsory', the conditions it embodies have since been largely applied to Federal unions - in company with other far-reaching conditions such as the empowering of industrial authorities to enforce or disallow union rules and to supervise union elections - despite the lack of any general compulsory unionism requirement favouring those unions. The extension of regulation is thus the result of more general considerations which do not depend on specific privileges granted by the state, but are a function of the social stature of Australian trade unionism and the total environment in which unionism operates. On the basis of these considerations, Australian unions have acquired a legal status that renders them susceptible to continuing and increasing legal regulation.

51 Ibid., 1064.
A study published in 1941 on wartime collaboration between employers, workers and governments defined 'collaboration' as free, confident, and organized co-operation of employers and workers with each other and with the public authorities for the determination of conditions of employment, the framing and application of industrial and social legislation, the prevention and settlement of industrial disputes, and the formulation and application of social and economic policies, both generally and in relation to particular industries and particular problems.

Here we are concerned with cooperation, of this character and for all or any of these purposes, between workers organized in trade unions and the public authorities. The purposes set out in the definition fall into two categories in terms of which the union's role in the state's administrative framework may conveniently be described.

In the first place, such a description is concerned with the ways in which trade unions may influence government policy decisions at their source, whatever the level at which such decisions are made and whether they relate to the enactment of legislation or simply to the administration of existing law or practice. Attention here is directed to the existing institutions and procedures which are, or may be, utilized by the unions in order to present their views at the policy-making levels of government. This is the area of consultation and advice where the trade union movement functions as a political pressure group.

In the second place, such a description is concerned with the ways
and extent to which unions and unionists take part in the actual administration of government. This is the area where the unions may function as organs of government, or their members may function, either in a personal or representative capacity, as public servants.

There are three points to be noted on the question of union-government collaboration. First, the two categories distinguished above are in many cases overlapping: government bodies with trade union representation may both formulate and execute policy. This does not, however, rob the distinction of any usefulness. Whatever the policy-making powers of administrative bodies, the fact that they execute policies decided by or above them sets them apart from bodies concerned exclusively with the formulation of policy, whether in an advisory or direct policy-making capacity.

Second, Australian unions have greater opportunities to influence government policy in the case of Labor than of non-Labor governments. They can hope to influence Labor government policies not only by direct negotiation with government leaders but also by acting on and within the Labor Party machine. Moreover, in their direct dealings with Labor governments their role within the Party machine adds an implicit weight to their views that is not present in their dealings with non-Labor governments. The question of the special relationship between unions and Labor governments is dealt with in later chapters.2 The present discussion is concerned with the existing administrative relationship between unions and governments whatever their political complexion, but with particular

2 See Part IV, 'The Party-Political Framework'.
emphasis on non-Labor governments since in their case the relationship can be expected normally to operate at a minimal level.

Third, the definition of collaboration given above implies not only the existence, on the workers' side, of 'voluntary and representative' organizations, but the acceptance of those organizations by the public authorities. Conversely, it implies the acceptance of the public authorities themselves by such organizations. This point should not be underrated in view of the possible influence of syndicalist or Communist theories in trade union circles, or, more normally in Australia, in view of the way in which trade unionists as Labor Party supporters may regard a non-Labor government. Further, the definition implies some readiness on both sides 'to settle their problems by negotiation [and] to consult together on all matters of common interest'. Thus mutual acceptance of each other and of the desirability of consultation in some form are essential prerequisites to cooperation between trade unions and government. If its significance is to be appreciated, a description of the union role in the state's administrative framework must be preceded by an analysis of trade union and government attitudes to union activity in this field.

3. I.L.O., loc. cit.
CHAPTER 10

THE DEVELOPMENT OF A TRADITION

In October 1954 the Commonwealth Government set up the Ministry of Labour Advisory Council. For the first time in Australia 'formal arrangements had been made for regular and continuing high level consultation among the Commonwealth Government, employers and the Trade Union movement on labour and employment problems.' The Council's formation was of considerable significance. In the first place, the Government concerned was non-Labor. In the second place, while a similar body had operated in the United Kingdom for more than a decade, 'neither the tradition nor the machinery of joint consultation and negotiation existed to the same extent' in Australia. The establishment of the Advisory Council seemed to indicate that the attitudes composing a tradition of this sort had, at least to some extent, taken shape.

1. The Trade Unions

Trade union leaders' changing attitudes to consultation with non-Labor governments during the 'thirties has been touched on in a previous chapter. In both the State and Federal spheres during the 'twenties such consultation as did take place was usually of a formal character. It was conducted more by letter than by deputation and frequently through the medium of Labor parliamentarians. The exceptions, where more or less informal discussions were held, usually involved serious industrial

2 Ibid, 2.
3 See Chapter 4.
disputes. The customary formal approach meant that issues were seldom discussed; instead, a demand was made and a reply given with no further exchange of views or attempt to reach a compromise. Even the limited amount of more informal consultation that took place was regarded with suspicion by many union leaders. A proposal that the A.C.T.U. should send a delegation to discuss certain questions with the Bruce-Page Government in 1927 inspired a resolution from a central organization opposing all delegations of this sort on the ground that 'there is no reason why such matters cannot be dealt with by our Parliamentary Federal members.'

But the accumulated experience of the shortcomings of party-political action, culminating in the controversy over the Premiers' Plan, and renewed experience of economic depression made it increasingly apparent that it was not sufficient for the unions merely to make declarations on the policies of non-Labor governments or to demand concessions without discussion. Much less was it possible to ignore such governments or to treat with them only through Labor parliamentarians. Negotiation with non-Labor governments was essential for a union movement that could not expect to influence major government policy decisions in any other way. Moreover, union leaders were increasingly conscious of the desirability of obtaining a voice in the way in which government administrative powers were exercised, a view that was to gain added weight with the onset of war and the extension of Federal control over economic and industrial affairs. Implicit in these attitudes was the recognition by many union leaders that some cooperation with non-Labor governments was inevitable if their aims were

4 Minutes, United Trades & Labor Council of S.A., 18/11/1927.
to be achieved. This was made clear by the Secretary of the A.C.T.U.
when, with the industrial strength of the union movement consolidated
by wartime conditions, he impressed on the Menzies government the
unions' claim for a share in the administration of the war:

I would suggest that if the Commonwealth Government desires to
command the utmost possible co-operation of the trade union
movement, it should immediately follow the example of the Brit­
ish Government by appointing representatives of the trade union
movement on every body or tribunal set up in connection with the
war effort.5

Later, the complement to this proposition was submitted to the subse­
quently Labor Government when it was reminded that in return for their
support, the unions wanted not only to be 'consistently consulted... on
industrial matters,'6 but to be represented 'on all Boards where the
interests of the workers were affected by the decisions of such Boards.'7

The right to be consulted and the right to be represented on admin­
istrative bodies were not regarded as temporary measures for use only in
times of crisis. In 1945 the President of the A.C.T.U. voiced the union's
determination to continue to insist on these rights:

The trade union movement...is not prepared to see a return to
conditions operating prior to the war. To this end the move­
ment will exert economic and political pressure to the fullest
possible extent; it will become politically active on a scale
unsurpassed. Experience has shown that economic pressure alone
is not sufficient, that the government of the country day by day
and year after year is compelled by the complicated conditions
operating to interfere more and more with the relations between
employer and worker.8

The intention to deal with governments at all times, and not only when
they happen to be Labor governments, is clear in this statement. Despite

5 C. Crofts, 'The War Time Responsibilities of Trade Unions and Their
Leaders', a broadcast printed in The Labor Call (Melbourne), 22/5/1941.
6 The Labor Call, 19/2/1942.
7 Report, Convention of Federal Unions convened by the Federal Govern­
ment, June 1942, 18.
8 P.J. Clarey, in Australia's Post-War Economy, 258.
continuing ties with the Labor Party the trade union movement, as one of its leaders put it, now 'reserves the right to negotiate with all governments'; the day to day problems facing the unions demand that they should be free to deal equally, if on somewhat different terms, with Labor and non-Labor governments alike.

This does not mean that all union leaders are agreed on procedures for dealing with non-Labor governments, or even that, since 1945, they have always been united on the need for such dealings. There have been, and still are, strong differences of opinion on both counts. The charge of 'cooperating' with a non-Labor government can still be a damaging one in union circles, though there is little doubt that 'cooperation' in this sense is given a more restricted meaning today than thirty years ago. Acceptance of the need for some measure of cooperation with the Menzies Federal Government after its election in 1949 was by no means universally automatic, despite the prominence of those union leaders who showed immediate realism in facing the implications of the Labor defeat. In 1950 the A.C.T.U. Interstate Executive rejected a proposal, supported by its leading officials, that it should be represented at an industrial conference suggested by the Menzies Government. As one opponent of participation said, 'it is our duty to work for the defeat of the Menzies-Fadden Government, and the Trade Union Movement should not in any way co-operate with such a Government'. And a few months later, the strongly left-wing Trades and Labor Council of Queensland carried a motion recalling

the attitude prevalent in the 1920's: 'We declare that the A.C.T.U. should not confer as proposed with the Menzies Government, but, on the contrary, should demand that the Menzies Government take immediate steps to reduce and peg prices.' This view at first obtained fairly general support in union circles. Its firm supporters were largely militant left-wing union leaders, including Communist officials, and many of those who were most closely involved in political activities within the Labor Party. In addition, many union leaders not committed in either of these ways found it acceptable because the union movement now, unlike the 'thirties, was able to speak from a position of considerable industrial strength - an attitude that was probably reinforced by an over-optimistic belief in the early return of a Labor government. Clear indications that industrial strength was not enough and the failure of the hoped-for Federal Labor government to materialize influenced a reversal in the attitude of the uncommitted union leaders. At the same time, the ranks of those who opposed consultation on principle were depleted by the successes of the right-wing Industrial Groups, which on the one hand reduced Communist strength and on the other, despite their close ties with the Labor Party, showed a greater readiness to cooperate with non-Labor governments.

The A.C.T.U. Interstate Executive's proposal in 1954 to take part in the Ministry of Labour Advisory Council, and its endorsement by a majority of the A.C.T.U.'s State branches, was in marked contrast to the Executive's rejection in 1950 of the Menzies Government's invitation to attend an industrial conference - as it was, too, to the pre-war attitude of union

10 Ibid, 25/7/1951.
11 For examples of the role, in this type of context, of union leaders politically committed in this way, see Chapter 4.
leaders towards the suggestions of non-Labor Federal governments for the formation of a Trade Union Advisory Panel. Even since 1955 and the eclipse of the Industrial Groups, however, there does not appear to have been any marked swing back to a policy of no-negotiation with non-Labor governments. In time, even the earlier hard-core opponents of consultation with the Menzies Government came to recognize that some action on these lines was necessary and that this meant cooperation in some form. Thus there no longer seems to be serious disagreement among union leaders on the need for such consultation. The main debate has shifted to the forms consultation should take, which involves the question of union participation in formal consultative bodies set up by non-Labor governments. After 1954 this debate centred on the A.C.T.U.'s representation on the Ministry of Labour Advisory Council.

To the extreme left-wing, participation in the Council smacked of 'class-collaboration'. To officials closely linked with the Labor Party it indicated a consistent policy of by-passing Labor's parliamentary representatives. The stand taken by these groups was strengthened by some features of the Government parties' attitude towards the Council. Resentment was felt in union as well as political Labor circles at the tactics of some Government members who sought to embarrass the Labor Opposition by

12 See Section 2 below. Hasluck suggests the union attitude was a combination of distrust of non-Labor governments in general, a personal distrust of Prime Minister Menzies, and the influence of union leaders opposed to rearmament: The Government and the People, 1939-41, 146, 566. The feeling that a non-Labor government 'should not be supported in this way' was, apparently, still very strong when the Panel proposal was revived in 1940: see E. Ronald Walker, The Australian Economy in War and Reconstruction, 287.
contending that proposals, previously considered by the Council, had thereby received the approval of the union representatives on that body. It was also a complaint of the union representatives themselves that notice given of the matters to be discussed at Council meetings was often too short owing to the intricate constitutional procedures of their organization. Criticism was brought to a head by the Government's failure in October 1956 to inform the Council of certain important changes (to which the union movement was strongly opposed) it proposed to make to the Conciliation and Arbitration Act, even though the Council had met a short time before the amending Bill was introduced. The fact that the A.C.T.U. President was directly informed of some, though not all, of the Bill's contents between the Council meeting and the Bill's introduction was not regarded as affecting the principle that Council members should have been given an opportunity of expressing their opinions - a view, incidentally, that was also voiced strongly by the employers' representatives at the Council's next meeting.

To many union leaders who had previously accepted participation in the Advisory Council, these features of its operation made participation of questionable value, and seemed to bear out the early prediction of a firm opponent of participation that the Council could 'develop into a highly dangerous Committee in relation to compromising the Trade Union Movement'. The growing feeling on this score was evident in the A.C.T.U. Interstate Executive's treatment of proposals that it withdraw from the Council: in May 1956 it rejected at once a proposal on these lines, but when the question was again raised early in 1957 it found it advisable to report back and obtain the approval of a majority of the State branches for

continued participation. Particularly on the side of union leaders closely involved in Labor Party activities, the campaign against participation in the Council was intensified. It was widely accepted among delegates to the 1957 A.C.T.U. Congress that the agenda paper item proposing withdrawal from the Council, on the ground that such bodies were aimed at 'welding...the Trade Union Movement to the reactionary policies' of the Menzies Government, would receive a majority vote. Congress did not reach this item, but the Interstate Executive's decision in February 1958 to accept the proposal contained in the item probably reflected the feeling of Congress. In any event, the decision represented a victory for the alliance on this question of extreme left-wing union leaders and those intimately connected with the Labor Party. It remains to be seen whether the same policy will be followed in relation to other Federal advisory bodies.

Even those trade union leaders who are firmly convinced of the general value of representation on government advisory bodies do not, however, advocate that invitations from non-Labor governments to take part in the activities of such bodies should be automatically accepted. Each case must be decided on its merits. In February 1957, for example, the A.C.T.U. Interstate Executive declined the Federal Government's invitation to its President to become a member of the Commonwealth Economic Advisory Committee, a body which was set up the previous year and had held its first meetings without trade union representation. The mounting criticism of

15 Agenda Paper, Australian Trade Union Congress, Sept. 1957, item 130.
16 It may well be that there was some significance in the resignation from the Advisory Council, shortly before the Executive's decision, of F.E. Chamberlain, a member of the Executive and also Federal President of the A.L.P.
the A.C.T.U.'s participation in the Ministry of Labour Advisory Council had a good deal to do with this decision. But there were also solid arguments advanced in support of it. The Economic Advisory Committee, as constituted in 1957, included spokesmen for manufacturing, commerce, grazing, banking and retailing interests, as well as public servants and university economists. Many union leaders otherwise favourable to participation in advisory bodies considered that a single union spokesman did not constitute sufficient representation in a committee so heavily weighted with employers' representatives. This contention was linked to a more fundamental objection directed at the character of the Committee. The Committee was constituted with the intention that it should, as a body, submit definite recommendations on economic policy to the Government. Although, in formal terms, the A.C.T.U. President had been offered membership in a personal capacity, it was felt by union leaders that his participation would mean that the trade union movement was binding itself in advance to such recommendations. The difference, on this argument, between the Economic Advisory Committee and the Ministry of Labour Advisory Council was that while the Committee, which included no Government leader, was expected to set out an economic policy for the Government's consideration, the Council was more in the nature of a forum under the chairmanship of the Minister for Labour and National Service, the Government introducing specific topics and inviting comment from the interest-groups represented. The emphasis in the case of the Council was less on recommendations (though these might be made on a basis of unanimity) than on keeping the Government informed of the views of major groups on matters.

17 As it happened, the Committee in 1957 did not reach the stage of making specific recommendations.
of common concern. There was a similar, if less marked, difference between the Economic Advisory Committee and the earlier National Security Resources Board, set up by the Menzies Government in December 1950 and in active operation for three years. The President of the A.C.T.U. accepted membership of the Board in a personal capacity although heavily outweighed numerically by employers' representatives. The Board did make recommendations to the Government, but on the basis of its members' consensus of opinion. More important, however, the Board was, like the Ministry of Labour Advisory Council, presided over by a Government leader, the Prime Minister, and other Cabinet ministers occasionally took part in its discussions. 'Largely speaking, the Board functioned by informing the Prime Minister's mind'.

While there is disagreement among union leaders on the question of participation in consultative bodies set up by non-Labor governments, there is general agreement on the desirability of having trade union representatives on government administrative bodies. The President of the A.C.T.U. in 1945 put the union case in terms which few union leaders would question today:

...on all controlling authorities appointed for the express purpose of the administration of industry and devising methods for economic control, the trade union movement must be represented...We are the party of the third part in the economic life of the community. It is useless to say that there are only two parties, the party of the first part, the Government; the party of the second part, the employer. There is a party of the third part, the workers...In order that we can play our part and bring our experience to bear, in order that we can put the viewpoint of the masses of the people before those who have some influence on the conduct of industry, we say that we must be represented on the controlling bodies.

18 Ronald Mendelsohn, The Allocation of Resources as an Administrative Problem, (ronoedo), 14.
19 Clarey, op. cit., 259-60.
Even before the second world war, as we have seen, the unions were pressing non-Labor Federal governments for union representation on administrat(i)ve bodies. More recently, the Trades and Labor Council of Queensland, of all the A.C.T.U.'s branches the most consistent opponent of participation in bodies like the Ministry of Labour Advisory Council, has pressed for union representation on bodies administering the meat industry and price control, for example, even though such representatives would be outnumbered and out-voted. The emphasis placed on this aim varies from State to State; it appears to be greatest in New South Wales and Vicloria. But in all States there is little disagreement on its desirability in principle.

Representation on administrative bodies raises somewhat the same problems of commitment for the unions as in the case of advisory bodies, though usually at a lower and therefore less controversial level. The question here, and it is applicable to either type of body, is whether unionist-members should be considered as direct representatives, that is union delegates, or as acting in a purely personal capacity. The Australian trade union movement, unlike the British, has not yet reached the stage of deliberately formulating a coherent policy on this question. For example, the action of J. Shortell, President of the New South Wales Labor Council, in relinquishing his union posts on his appointment to the Stevedoring Industry Authority in 1956, did not reflect a belief that by doing so he would release the unions from any implied obligation to accept unpopular decisions of the Authority or would be in a better position to carry out his

20 See Chapter 4.
new functions. It reflected merely the fact that his new position was a full-time one and would allow him little time for union activities. The problem was easily solved in this case; but it arises in most others, since the great majority of positions held by unionists on administrative boards, and all those held on advisory bodies, are part-time and the unionist-members continue to hold their union positions.

From a government's point of view, as is apparent from experience in other countries as well as Australia,

the role of 'representative' has in some instances tended to hinder the constructive contribution that may be made either by the trade unionist or by the employers' member in the discussions and decisions of tripartite agencies because the representative may be bound by instructions, may not wish to go beyond previously agreed policy, or may be more eager to serve his group than to aid the committee discussion. 21

It was this sort of situation which brought about the failure of the second Stevedoring Industry Commission set up in 1947 with administrative and arbitral powers. The Commission included two representatives of the Waterside Workers Federation who were the union's top officials and also members of the Australian Communist Party. The experiment was abandoned in 1949. The immediate reason given by the Federal Labor Government for this action was that the representatives, in their capacity as union officials, had incited strikes by their members against the gaoling of one Communist union leader for a political offence and of another for contempt of the Federal Arbitration Court; 22 but throughout the life of the Commission the two representatives had shown no great

readiness to smooth its path in smaller matters, and the head of the Commission had recommended earlier that it should be re-constituted.

This problem may be avoided by disqualifying the union representative from taking part in discussions or exercising his vote on matters of direct concern to the unions - a solution which the Commissioner of the Tasmanian Hydro-Electric Commission attempted to impose on the Secretary of the Hobart Trades Hall Council when he was appointed a member of the Commission. Clearly, however, this not only debars the union representative from discussing or voting on precisely those matters in which he has greatest interest and experience, but destroys any value his appointment might have had as a means of obtaining union views and cooperation.23 The less short-sighted solution favoured in a number of countries is the selection of unionist-members as individuals rather than representatives, in the hope that this will give them independence as union spokesmen and at the same time achieve the purposes for which they are usually appointed. The policy of the personal appointment is used extensively in Australia.24 It is most commonly used by non-Labor governments, but is often preferred by Labor governments. However, before making firm selections on this basis, Labor governments are more likely to confer with the relevant central union organization.

The role of 'representative' poses problems for unions as well as governments. Experience has shown, as one union leader put it, that 'union representatives do not always act as representatives'. They have on occasion supported decisions or policies opposed by central union organizations or unions other than their own, or even by their own

23 The State Labor Government recognized this and supported the unionist-member's protest.
24 See Table 9.
union. More frequently, they have failed in their accepted and often primary function of passing back information. Moreover, on most decision-making bodies unionists are in a minority and can hope only to influence and not to decide policies. The implication of direct representation on administrative boards, as the British Trades Union Congress has recognized, is that the unions are under an obligation to accept board decisions, regardless of whether the union representatives have voted in favour of the decisions and despite their small voice in making them. Even where the obligation to abide by the decisions of a body on which they are represented is not accepted by the unions, union officials are aware that many unionists and the general public tend to regard the views of representatives as an accurate expression of union policies and their presence on a body as involving the unions' acceptance of its decisions. Many union leaders are even inclined to view representation on an advisory body as implying that the unions in some degree accept government policies in the field covered by that body. As a solution to this problem, the British trade union movement has accepted the notion of the unionist-appointee serving in a personal capacity, whose actions involve for the unions neither the right of direction nor the obligation of responsibility: 'although in practice they are nominated by a trade union body they are not trade union representatives in the sense of being delegates'.

25 Ibid.
26 British Trade Unionism (3rd ed.), 144 (P.E.P.).
27 Trades Union Congress, Trade Unions and Government Authorities, 6.
The Menzies Government from the inauguration of the Ministry of Labour Advisory Council was careful to emphasize that its unionist-members were appointed strictly in a personal capacity. Union leaders in general were not, however, disposed to treat representation on the Council as a personal matter for those concerned. The A.C.T.U. Interstate Executive has itself referred to the 'A.C.T.U. representatives to the Council'.

And an item on the agenda of the 1957 Congress observed the technical position by confining itself to a firm recommendation that the A.C.T.U. officials withdraw from the Council, but clearly indicated the common view of the character of the officials' membership by declaring that 'there can be no participation without commitment' for the unions. This view was also evident in an earlier proposal for the officials' withdrawal from the Council on the ground that their participation 'gives the appearance that the stamp of approval of the Labor Movement is being sought for the plans of the Federal Government'.

Again, when the A.C.T.U. President was invited in a personal capacity to become a member of the Economic Advisory Committee in 1957, it was the Interstate Executive that considered and declined the invitation, a procedure that indicated the Executive's recognition of the attitude of most union leaders to appointments of this sort. Six years earlier the President had accepted, on his own initiative, a personal invitation to take up membership of the National Security Resources Board. The Interstate Executive's decision that he was acting not as 'a representative of the trade unions but as an individual' did not prevent protests based on

28 Bland, op. cit., 2.
30 Agenda Paper, op. cit., item 120.
the assumption that he was in effect, if not formally, a representative. 33

Unionists appointed in a personal capacity as members of administrative bodies are usually regarded in the same light. For their part, many of these members themselves prefer to emphasize the personal character of their appointments. But the view expressed by an official appointed on a personal basis to membership of the Tasmanian Hydرو-Electric Commission, that 'I...feel that I am answerable to the Trades Unions', is by no means uncommon. 34

The policy which is at present most widely accepted among Australian unions is therefore one which seeks the best of both worlds. With reservations in some quarters so far as advisory bodies at least are concerned, direct representation is sought wherever possible. Where a unionist is appointed in a personal capacity, representation is usually assumed although the appointee himself may not accept this principle, especially if the position is a full-time one and requires his resignation from union office. In line with the general view, union leaders expect in relation to a Labor government, and hope in relation to a non-Labor one, that they will at least be consulted before personal, as well as representative, appointments are made from union ranks. But more than this, they want the right of nominating such appointees. In 1954, for example, the Victorian Labor Government altered the constitution of the Melbourne and Metropolitan Tramways Board to include an employees' representative. The subsequent appointment of a unionist to fill the position raised a storm in union circles because he had been nominated by neither the union concerned nor the Melbourne Trades Hall Council, a privilege which was expected from a Labor

government. But perhaps the most striking illustration of the strength of union feeling on this score was given in the controversy surrounding the appointment of H.J. Blackburn as employees' representative on the New South Wales State Mines Control Authority in April 1955. Blackburn was a prominent member of the Labor Party, President of the Lithgow Labor Council, an official of one of the mining unions and an employee in the State-owned mines. But his appointment touched off a strike, supported by the Miners Federation, in the mines controlled by the Authority. The strike was directed against the action of the State Minister for Mines in making the appointment on his own initiative. This he was entitled to do under the terms of the relevant Act; but in the past it had been the custom to fill the position by a ballot of the employees concerned. One union spokesman claimed, even though the Minister was a member of a Labor Government, that it was 'a case of the boss appointing an employees' representative'. The Minister pointed out that the representative, whoever he was, could hope to have little effect on the Authority's decisions since he was only one of seven members. But this was not the issue, and the strike continued. The Minister's appointee was obliged to resign within a fortnight of his appointment, after which the customary ballot for the employees' representative was held.

At the same time as they insist on the representative character of all unionist appointments, most union leaders refuse to be bound automatically by any decision of a body on which the unions are represented, notwithstanding that the decision may have been supported by their representatives.

Starting from this premise, union leaders are therefore less concerned with the technical nature of unionist appointments to consultative and administrative bodies than, subject to the qualifications discussed earlier, with securing appointments of this sort to as wide a range of public bodies as possible.

In the first place, this policy aims at making the union voice heard at as many levels and points of influence as possible. On administrative boards it can be hoped that the vote of unionist members may carry some weight in decisions made, though they are almost invariably in a minority: at least they may ensure a more sympathetic attitude to union wishes—a factor of particular importance in the case of unionist appointments to arbitral bodies. On advisory bodies union views may be expressed more regularly and in circumstances which can be hoped to give them greater force than their ad hoc expression.

In the second place, this policy aims at securing information which may not be otherwise readily available to the unions—a feature of participation in the activities of advisory and administrative bodies that, as one union leader put it, 'is not to our disadvantage'.

In the third place, many union leaders recognize that in the case of administrative boards and of advisory bodies on which employers are represented, regular meeting in circumstances other than those of industrial conflict may make for a measure of personal goodwill and understanding which is likely to be of value when industrial crises do occur. The A.C.T.U. Interstate Executive has pointed out, for example, that an incidental benefit resulting from the operation of the Tradesmens Rights Committees has been that they have 'helped in many...ways to improve relationships between
Finally, for some union leaders the 'spoils' motive is not without personal relevance. Union office seldom carries financial rewards matching its responsibilities; and the fees or other payments accompanying membership of many public bodies, chiefly administrative boards, are often welcome. In the case of full-time positions, assured security of tenure is usually added to a greater financial return.

2. The Governments

It has been argued: 'It is natural, in a time of prosperity, that unions should lose some of their traditional antagonism towards non-Labour parties, and seek good relations from any government from which they may expect co-operation'. But a time of prosperity is precisely the time when the unions are industrially powerful and are therefore least dependent on the favours of non-Labor governments to which they make no pretence of political allegiance. Moreover, it was during the depression years of the 'thirties that the weakened Australian trade union movement, faced with a non-Labor Federal government and richly experienced in the shortcomings of Labor governments, was forced to look for some way of dealing with non-Labor governments on a scale not contemplated in the previous forty years. The general readiness of union leaders to deal, for example, with the Menzies Government since 1949 seems to be less a function of prosperity than of the combined effect of the lesson hammered home in the 'thirties and the widening role of the Federal Government in economic and industrial

38 See Table 9.

affairs since the war. On the other hand, what could perhaps be called 'natural' in this context is the eagerness of the Menzies Government to seek cooperation from a union movement strengthened by economic prosperity - a situation foreshadowed by the attempts of the Lyons and first Menzies non-Labor governments to effect a liaison with a union movement whose power was enhanced by war or the threat of war.

In Australia, as in the United Kingdom, the need to obtain at least minimal cooperation from the unions was brought home to the members of non-Labor governments during the war of 1914-18 when full and unimpeded production was of the utmost national importance. Recognition of this was most apparent in the steps taken in 1917 by the Prime Minister, W.M. Hughes, to facilitate the Government's ambitious shipbuilding programme by obtaining from the unions concerned 'guarantees that the policy of the Government should not be paralysed by strikes.' Similarly, union representatives were included in a conference called by the Governor-General to consider the question of encouraging voluntary recruiting following the failure of the second conscription referendum. In each of these cases, the Federal Government concerned was non-Labor; it was also aware that it was regarded with particular hostility by the trade union movement because it was led by Hughes, the ex-Labor Prime Minister, who had been expelled from the Labor Party as a result of the split on the conscription issue. Despite this hostility (and possibly, to some extent, because of it), Hughes' Nationalist Government on a number of occasions was obliged to seek from the unions a measure of cooperation, which it did not always obtain without making

concessions.  

Little in the way of formal machinery of consultation was established by contrast with the development on these lines that took place under the first Menzies Government in the early stages of the second world war. But the desirability of some liaison with the union movement in wartime was clearly admitted.

For those leaders of later non-Labor governments who wished to see it, wartime experience also indicated that consultation might be useful in periods of peacetime economic crisis - even if only in circumstances where the crisis enhanced union strength. Hughes showed awareness of this in 1922 when he called a conference of union leaders and employers to discuss issues in the current condition of the Australian economy. But the notion that non-Labor administrations should actively encourage consultation with the union movement as a general peacetime policy was as slow to take root on the side of government as its converse was on the side of the unions. In large measure, government reluctance on this score was a reflection of the weakness of the unions' bargaining position during much of the interwar period, which meant that government leaders preferring to restrict their contact with the unions could afford to do so. But it is also apparent, and understandable, that non-Labor governments were disinclined on principle either to give or to seek cooperation in relation to organizations as closely involved with their political opponents as were the unions. The Bruce-Page Government, for example, might have found it expedient on occasion to relax this policy, as in 1927 when it prepared to add to its anti-

4 For example, the price paid for the cooperation of the shipbuilding unions in the case cited above included the establishment of a special tribunal for the industry which by-passed the Federal Arbitration Court. The same procedure had been followed in November 1916 as a means of getting the coal miners to end a serious strike.

strike legislation and at the same time sought to conciliate union opinion outside the industries primarily concerned by proposing an 'industrial peace conference'.

But this Government's more consistent attitude is illustrated by its policy on the question of selecting union representatives for conferences of the International Labour Organization — a matter of comparatively little moment to the Government, but one which was regarded by the unions as involving a principle of considerable importance.

According to the practice initiated by the Hughes Government, the union representative to an I.L.O. conference was selected by the combined vote of the State trades and labour councils. In 1926, however, the Prime Minister, S.M. Bruce, requested each trades and labour council to submit three names from which the Government would select the union representative for the I.L.O. conference of that year. When the councils refused to fall in with the plan and submitted a single name after the customary election, the Government refused to nominate a union representative for the conference, stating that it was not going to abandon its 'right of nominating delegates or of taking part in their choice.'

Only after intensive negotiations was the Government persuaded to accept the councils' nominee. Nevertheless, later the same year, after the trades and labour councils had each agreed to submit three nominations for the four trade unionists to be included in a Government-sponsored industrial mission to the United States, the Government went outside the councils' nominations in appointing one of the union representatives: the councils thereupon repudiated the scheme.

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6 Ibid., 325.
The Government's experiences in 1926 did not prevent it making another attempt, again without success, to secure more than one nomination from the unions for the position of union representative to the next I.L.O. conference. However, the later non-Labor Federal governments of the 'thirties accepted the principle that such representatives should be selected solely by the union movement and nominated by the A.C.T.U. This policy has since 1949 been followed without question by the Menzies Government - to the extent that it has unhesitatingly accepted the nomination of one of the most prominent Communist union officials for a position of this sort. 9

There seems to have been some relaxation during the 'thirties in the attitude of non-Labor governments to consultation with the unions, partly, perhaps, as a result of increased union activity in this sphere, particularly at the Federal level. But it was still a period when, as union officials recall, a senior member of a non-Labor State cabinet could boast that in more than eight years of office the occasions on which he had met trade union leaders officially could be counted on the fingers of one hand. The significant change in this attitude was to come with the second world war; and the symptoms of the change were not only to be evident during the war period itself on a far greater scale than in 1914-18, but were to persist beyond that period.

The combination of a trade union movement that was, for a variety of reasons, stronger than it had ever been and a global war that reached to the shores of Australia impressed on government leaders more conclusively than ever before the need to secure union co-operation. The way in which

9 See Sydney Morning Herald, 26/2/1957.
The only method of achieving a synthesis of labor's own aspirations and the requirements of total war is to bring labor's chosen representatives into the formulation of war policy and, indeed, into its daily administration at almost every level.\[10\]

The Federal war administration up to October 1941 was in the hands of non-Labor parties, whose leaders showed themselves quick to perceive the truth of this statement - even when there was no more than the threat of war. As early as 1938 the Lyons Government attempted to set up a comprehensive manpower committee, including a Trade Union Advisory Panel, within the Department of Defence; and the question of forming a similar panel was explored early the following year as a means of promoting the Government's scheme for a voluntary national manpower register. Both proposals died because the A.C.T.U. refused to be formally associated with a panel of this sort.

The idea was dropped for the time being. But with the onset of war and Australia's entry into it, the need for the Menzies Government to solve the problem of enlisting the union movement's cooperation became vital: 'the questions that came to demand political attention were those of labour relations, that is of the terms on which unions could be persuaded to cooperate with a non-Labor government'.\[12\]

The importance of these questions had been underlined a few months before the outbreak of war by the successful union boycott, led by the A.C.T.U., of the national manpower register.\[13\]

At the close of a serious coal miners' strike in May 1940, the Prime Minister revived the proposal for a Trade Union Advisory Panel, and publicly expressed his anxiety to secure the cooperation of the trade union movement.

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12 Ibid., 346.
in order to eliminate 'unnecessary' industrial stoppages.\textsuperscript{14} The functions of the proposed Panel were envisaged as two-fold: to advise the Government on the conduct of its relations with the unions, and to interpret Government policy to the unions.\textsuperscript{15} After negotiations on the matter, the Government accepted a plan suggested by the A.C.T.U. for the structure of the proposed Panel.\textsuperscript{16} The plan was approved by an A.C.T.U. conference of Federal unions early in July, but was rejected by New South Wales and Queensland when it was referred to the A.C.T.U.'s State branches. In view of the importance of these States, the Government discarded the plan as unworkable, despite its endorsement by the majority of the branches. At the same time, the Government abandoned the attempt to work through the A.C.T.U., and issued direct invitations to the A.C.T.U. and each of seven key unions to nominate representatives for a Panel to be set up with a more restricted membership than that originally proposed by the A.C.T.U. The establishment of a Trade Union Advisory Panel on this pattern was announced late in July. Representatives from six organizations attended its first meeting.\textsuperscript{17} The A.C.T.U. had rejected the invitation, alleging that the Government was trying to 'split the trade union movement';\textsuperscript{18} and the Munitions Workers Union had withdrawn its initial acceptance in view of the A.C.T.U.'s decision. The A.C.T.U.'s stand was later endorsed by a majority of its State branches.

\textsuperscript{14} Hasluck, \textit{The Government and the People 1939-41}, 207, 216.
\textsuperscript{15} Butlin, op. cit., 243.
\textsuperscript{16} The plan provided for a Panel consisting of the chairman of each of nine subsidiary panels covering different industry groups, together with the four top A.C.T.U. officials. The panel as finally established included 'sub-panels' providing liaison with individual unions.
\textsuperscript{17} These were: Australian Workers Union, Amalgamated Engineering Union, Maritime Transport Council, Road Transport Union, Textile Workers Union, and Electrical Trades Union. All the unions concerned, except the A.W.U., were affiliated with the A.C.T.U.
\textsuperscript{18} Walker, op. cit., 287.
On the other hand, John Curtin, Leader of the Federal Parliamentary Labor Party, expressed his approval of the Panel as constituted, and recommended the A.C.T.U. to accept membership of it on the terms offered by the Government. Less than a year later the Government approached the A.C.T.U. on the question of broadening the Panel's representation. The attempt was unsuccessful.

During the remainder of 1940 the Menzies administration convened the Panel on a number of occasions and gave serious consideration to its advice. The Panel also facilitated the settlement of several disputes involving unions that were directly or indirectly represented on it. But its restricted membership and the circumstances of its formation limited its value. Although it continued to meet from time to time in 1941, less reliance seems to have placed on it. Its diminished importance in the Government's eyes was indicated by the frequency with which it was found necessary to by-pass it, examples of which are discussed below. Many union leaders agreed with the A.C.T.U. in viewing the Panel's formation as an 'unskilful attempt to play trade union politics.' Thus while the members of the Parliamentary Labor Party on the Advisory War Council were pressing the Government to consult more frequently and more extensively with the trade union movement, machinery was lacking for regular consultation at the top level with the greater part of the movement, and many union leaders resented the existence of such machinery as did exist.

19 Hasluck, op. cit., 235, 292.
20 For an account of these meetings and their results, see Amalgamated Engineering Union, Souvenir, 25th Anniversary, 1945, 253-5, 261.
21 Butlin, op. cit., 243.
The failure to establish the Trade Union Advisory Panel as a fully representative body should not obscure the fact that up to October 1941, when the Curtin Labor Ministry took office, a considerable amount of consultation between the Government and unions outside the Panel did in fact take place. Indeed, a consequence of this failure was that in many cases the Government was obliged to by-pass the Panel despite its wish to use it to the greatest possible extent. In November 1940, for example, the Government's proposals to modify the Federal arbitration system were discussed not only with the Panel but also with the A.C.T.U. and the State trades and labour councils before the necessary regulations were drafted. Similarly, a conference called in March 1941 to discuss industrial measures contemplated by the Government was attended by representatives of interested unions not on the Panel as well as of those who were. Moreover, from October 1940 ad hoc consultation with unions outside the Panel was facilitated by the formation of the Department of Labour and National Service which, by centralizing responsibility for industrial problems, encouraged the development of closer informal relations between the administration and the unions than was possible when responsibility for these problems was dispersed.

Government consultation with unions outside the Trade Union Advisory Panel was not limited to ad hoc discussions. Union representatives were to be found on a number of Federal Government bodies before the Labor administration took over. There were, for instance, trade union representatives on the Manpower Priority Board set up in July 1941 with advisory powers on manpower problems; on the prices advisory committees formed in each State; on the Shipbuilding Board established in March 1941 with...
extensive administrative as well as advisory powers; on the Central Reference Board and local reference boards set up in February 1941 to deal with disputes in the coal-mining industry; and unions concerned in the munitions industry were represented on the area boards of management of the Munitions Department. One of the most significant examples of consultation between the Menzies Government and unions outside, as well as within, the Trade Union Advisory Panel took place from early 1940, when a number of 'dilution' agreements were negotiated between the Government, employers' organizations and the unions covering skilled labour in the metal industry. The agreements, later embodied in statutory regulations, aimed at alleviating the shortage of skilled labour in the trades affected. The machinery set up to administer the dilution scheme included representatives of the unions concerned, and was still in operation at the beginning of 1958.

Thus, although the Federal governments of the immediate pre-war and early war periods were non-Labor and were unable to establish a Trade Union Advisory Panel on a fully representative basis, they nevertheless sought and obtained cooperation of the trade union movement on a scale greater than at any time previous. The governments' urgent need for such cooperation was matched by the unions' realization that some degree of cooperation was not only to their advantage but, in the circumstances,

23 The special importance attached to obtaining the cooperation of unions connected with the munitions and defence industries was shown by the petrol allowance, additional to the normal ration, granted to their officials in order to help them carry out their duties: Butlin, op. cit. 453n.
24 The trades concerned were: engineering, boilermaking, blacksmithing, metal moulding, and the electrical and sheet metal trades.
politically necessary. After Labor's succession to the Federal government benches in October 1941, it was natural to expect the acceleration and extension of this process and a more wholehearted acceptance of it by both sides. The Labor Government's position in this respect was at once stronger and more vulnerable than that of its non-Labor predecessors. It could make a stronger appeal to unionists for support as their own government, and it could, up to a point, count on a hesitation in union circles to embarrass it by over-ready use of direct action. At the same time, union leaders expected more from it than from a non-Labor government - if no more than prompt and sympathetic consideration of their problems and a readiness to discuss and explain government policy. The Government early demonstrated its intention to attempt, as far as it considered possible, to live up to these expectations.

In February 1942 E.J. Ward, the Minister for Labour and National Service, convened a conference including delegates from seventy-six Federal unions, all State trades and labour councils and the A.C.T.U., for the main purpose of discussing regulations dealing with manpower control. The Minister emphasized that the Government was 'most anxious' to obtain the unions' cooperation in view of the difficulties likely to arise in the application of the regulations.25 Four months later the Government convened a similar union conference which was attended by fifteen members of the Labor Cabinet, the Prime Minister acting as chairman. Most of the conference time was taken up with ministerial explanations of Government policies and answers to questions from the union

delegates. This conference was the model for similar meetings which were held annually during the remaining three years of the war.

At the first of the regular conferences in June 1942, the Prime Minister was at pains to claim, in reply to complaints from some delegates, that his Ministers, and particularly those in charge of the Army, Labour and the War Organization of Industry departments, 'had all been having regular consultations with Trades Union Officials', and that he himself 'had always been ready to meet and receive Trades Union Delegates'. The Minister for Labour indicated the pressures to which Labor Ministers were subject in this connection when he suggested that 'only in cases where Trades Union Leaders had failed to secure satisfaction through the ordinary channels should they seek the aid of the Minister or the Government'. The unions expected and, on the whole, appeared to get easier access to the ear of government at the ministerial level - despite complaints from a number of union leaders on this score at the 1944 conference with the Government. Because of this: 'There now seemed to be less need for formal machinery for consultation between the Government and labor than for bringing employers and workers into conference on controversial issues.' Although Curtin initially moved to establish it on a more representative basis, the Trade Union Advisory Panel lapsed while the Government concentrated its efforts on setting up machinery to bring unions and employers together.

27 Ibid, 32.
29 Walker, op. cit., 238.
Shortly after the Labor Government took office, it formed an Industrial Relations Council including representatives of employers, unions and the Government under the chairmanship of a State arbitration court judge. The Council's first meetings held in January 1942 were also its last. The employers' representatives withdrew when the chairman gave his casting vote in support of a recommendation advocating compulsory unionism and the Prime Minister declined to alter the Council's procedure: the error lay, perhaps, in making such a vote possible. A Womens Employment Board, similarly constituted and charged with the task of fixing women's wages, also failed in its main purpose when the employers' organizations refused to nominate a representative, leaving it to the Government, as an employer of female labour, to appoint the 'employers' representative'. In the same way, the scheme for joint industry advisory committees, promoted by the Department of War Organization of Industry, failed to take root in private industry because of most employers' reluctance to participate in bodies that involved giving unions access to business information.

The contention that formal machinery had a smaller part to play in the Labor Government's relationship with the unions was substantially true at the top level at least. But neither the Government nor the unions were disposed to rely solely on ad hoc means of consultation at all levels. As a result, formal machinery was not neglected and, indeed, proliferated during Labor's wartime administration; as a general rule labor was represented henceforth on most important controlling or advisory bodies. Apart from the similar appointments made earlier

30 A.E.U., Souvenir, op. cit. 270.
31 Walker, op. cit., 289.
by non-Labor governments, union representatives were appointed to the
Land Transport Board and to its subsidiary body the War Railways Comm-
ittee, both having extensive administrative powers; to the Aircraft
Production Advisory Committee; to each of the industry advisory committees
of the Manpower Directorate; and to the joint production committees set
up in government munitions factories. A trade union secretary was made
an additional adviser to the Prices Commission. In the departments of
Labour and of War Organization of Industry, liaison officers with the
trade union movement were appointed from union ranks, a practice which
was also followed on a smaller scale by a number of other departments
closely concerned with labour problems.

As E.R. Walker, former Director of Reconstruction, has pointed out,
'These arrangements were not universally satisfactory, but the general
policy that they reflected made it possible to introduce, with labor's
support, many measures that would have been fiercely opposed in other
circumstances'. And, if on a scale more in keeping with the less
pressing needs of peacetime, the general policy these arrangements re-
lected has been applied since the war by non-Labor as well as Labor
governments. The process is evident at both the State and Federal levels.
In South Australia, for example, where non-Labor governments have held
office continuously since the early 'thirties, union leaders emphasize
the change that has taken place since the pre-war period in the attitude
of the State government to consultation with the unions. In both the

32 Ibid.
State and Federal spheres there is no comparison between the number and variety of advisory and administrative bodies with unionist-members operating today and twenty years ago.  

Non-Labor governments have also shown a greater readiness to follow Labor's practice of consulting central union organizations about appointments to government bodies from union ranks. The change has been most marked in the Federal sphere where the broadening role of the Commonwealth in economic affairs, combined with the 'adoption since the war of full employment policies', the expansion of social security measures, and the growing recognition of the bearing of industrial relations on the economic well-being of nations, has impressed on non-Labor parties the need for a measure of cooperation with the trade union movement. Informal consultation since 1949 between the unions and members of the Menzies Government has become as normal as consultation with a Labor government - if less palatable to many union leaders.

To a large extent the change in government attitude is clearly a function of the post-war strength of Australian trade unionism. The threat or existence of direct action has time and again in recent years drawn the Menzies Government to initiate negotiations with the unions. Non-Labor governments had previously taken the same course in similar circumstances, though probably less frequently. But government leaders now tend to approach such negotiations from a less uncompromising standpoint than was often evident in the case of pre-war leaders of non-Labor

33 See Table 9.
governments - not that the Menzies Government has hesitated to show the mailed fist when it has thought that the occasion warranted it. In July 1955, for example, when the union campaign against the anti-strike penal clauses of the Federal Conciliation and Arbitration Act was at its height, the Minister for Labour and National Service convened and presided over a conference of employer and union representatives for the purpose, as he said, of obtaining a 'frank interchange of views between us all'.35 Again in 1956, when widespread stoppages were threatened in protest against the Stevedoring Industry Bill then before Parliament, the Minister offered to meet the A.C.T.U. Interstate Executive in order to make 'a personal explanation of the legislation'.36

But while the unions' industrial strength is probably a major influence, the Government's attitude also seems to include an element derived from a 'greater recognition of the union movement in its own right, as an integral part of community organization.'37 There appeared, for instance, to be an indication of this in the Prime Minister's invitation in September 1955 to discuss 'the grave uncertainty of the economic situation' with A.C.T.U. officials as well as with banking and other financial interests.38 Moreover, the supplementing (to some extent the supplanting) of ad hoc consultative procedures by the formation, on the Government's initiative, of the Ministry of Labour Advisory Council reflected an appreciation of the trade union movement's stature that was not merely a product of the movement's industrial nuisance value to a non-Labor government.

36 Ibid., 1/6/1956.
37 Kenneth F. Walker, Industrial Relations in Australia, 333.
CHAPTER 11

TRADE UNIONS IN THE ADMINISTRATIVE STRUCTURE

1. The Organization of the Parties

One of the main problems facing those who favoured greater consultation between the Australian trade union movement and Federal governments after the experiences of the first world war was the lack of any authoritative central union organization at the national level. In the States, the trades and labour councils were in most cases competent to act as union spokesmen in relation to State governments. One of the councils, the Melbourne Trades Hall Council, in fact played a large part in handling such negotiations as took place with Federal governments before the site of the Commonwealth Parliament was transferred from Melbourne to Canberra in 1927; but the representation of the Council fell far short of giving it national authority.

The expansion in consultation involving Federal governments that occurred during the 1914-18 war affected individual Federal unions and State trades and labour councils. The lack of an effective national organization not only hindered unified expression of trade union views, and consequently diminished the weight government leaders placed on such views as were expressed, but it largely stultified any ideas those leaders might have entertained about extending their consultative relations with the union movement. The Bruce-Page Government demonstrated the natural preference of government leaders for dealing with a single organization when it asked the Commonwealth Council of Federated Unions to secure the unions' nominations for their representative to attend the I.L.O. conference in 1926. The Council, which restricted its activities
chiefly to handling union claims before the Federal Arbitration Court, referred the Government to the State trades and labour councils.¹

The formation of the A.C.T.U. in 1927 was the first step towards an effective national organization that could speak authoritatively for the trade union movement and conduct its relations with Federal governments. But even by 1939 the A.C.T.U.'s claims to this role were still largely pretensions. Thus the first Menzies Government's attempts to establish the Trade Union Advisory Panel on a fully representative basis in 1940 failed because the A.C.T.U. lacked authority within the union movement. The structure of the Panel suggested by the A.E.T.U., and accepted by the Government,² was not considered satisfactory by the bigger unions. The Amalgamated Engineering Union, affiliated with the A.C.T.U., boycotted an A.C.T.U. conference called to discuss the scheme because it was dissatisfied with its representation on the subsidiary industry panels provided for and with the lack of any assurance that it would be represented on the Advisory Panel itself.³ The Australian Workers Union, not affiliated, opposed the plan for the same reasons, and was a major factor in the refusal of the Queensland Trades and Labor Council to endorse the proposal. The bigger unions' attitude also appears to have played some part in the New South Wales Labor Council's rejection. The Government's abandonment of the A.C.T.U.'s scheme was understandable in the light of these considerations, which were

¹ Secretary's Annual Report, Jan. 1927, Minutes, United Trades & Labor Council of S.A., 11/3/1927. After this experience, the Government in 1928 sent its request on the same matter to the trades and labour councils instead of the newly-established A.C.T.U. This time, the councils asked it to deal with the central body.
² See Chapter 10.
strengthened by the objections of the unaffiliated Western Australian central union organization to the predominant position given A.C.T.U. representatives in the proposed Panel.

The A.C.T.U.'s inability to control its major member-unions was underlined when, against its opposition, five affiliated organisations accepted the Government's invitation to take part in the Trade Union Advisory Panel as finally constituted. Again, despite the condemnation levelled by the 1940 A.C.T.U. Congress against the A.E.U. for negotiating a dilution agreement on its own initiative, and the Congress's warning to all other unions against similar action, a number of other affiliated unions later followed the A.E.U.'s example.

The Leader of the Federal Labor Opposition summed up the position when he pointed out that the difficulties surrounding the formation of the Trade Union Advisory Panel were difficulties which 'any Prime Minister would experience in Australia' because of the lack of a national union organization. Because of this, he thought that the Panel, although without A.C.T.U. representation, was 'quite competent adequately to represent the Trade Union movement'; and he recommended the A.C.T.U., 'as a sort of greater entity of unionism in Australia', to accept membership of the Panel on the terms offered by the Government.

Despite Curtin's advice the A.C.T.U., as of its nature it had to, continued to insist on its right to government recognition as the authoritative spokesman for the trade union movement. Its leaders were no more prepared to forgo this principle for the sake of membership of the Trade Union Advisory Panel in 1940 than they had been for the privilege

4 Ibid., 252.
5 Quoted by Hasluck, The Government and the People, 1939-41, 235.
6 Ibid.
of taking part in a conference with a Federal government in the first year of the A.C.T.U.'s life, when they demanded, and were refused, the exclusive right to represent the union movement at the industrial peace conference proposed by the Bruce-Page Government in 1927. As soon as the Curtin Labor Government took office in October 1941, the A.C.T.U. pressed its claims for recognition as the 'direct source of contact' between the unions and the Government on all Federal matters. At the conference of Federal unions convened by the Minister for Labour and National Service in February 1942, the A.C.T.U. leaders secured the adoption of a resolution re-asserting this claim. But in June the same year, the Prime Minister found it necessary to point out again that 'the A.C.T.U. as a Body did not represent the Trades Union Movement as a whole', and to appeal for 'some definite and authoritative machine' that could speak for the unions — 'a real Trades Union Panel with definite authority to cover the whole Trades Union Movement; a Body which represented all elements of the Movement; a Body whose decisions would be final.'

The continuing inability of the A.C.T.U., despite its claims, to function in this capacity resulted in the Labor Government's policy of consulting directly with the Federal unions and the State central union organizations by means of annual large-scale conferences throughout the war period. Recognition of this inability was also evident in the compo-

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7 See Greenwood (ed.), *Australia: A Social and Political History*, 325.
8 Statement, P.J. Clarey, *The Labor Call* (Melbourne), 5/2/1942.
10 Report, Convention of Federal Unions, June 1942, 16.
sition of the short-lived Industrial Relations Council, on which the union representation consisted of four A.C.T.U. officials and one official directly appointed from each of four major unions, (three of which were affiliated with the A.C.T.U.). When the Government did attempt to confine its negotiations to the A.C.T.U., it met strong opposition from major A.C.T.U. member-unions.

The change that has taken place in the stature of the A.C.T.U. within the trade union movement since the war has already been discussed at length. In the present context, the change was indicated by the fact that in 1954 all the union representatives on the Ministry of Labour Advisory Council were, by contrast with the wartime Industrial Relations Council, wholly appointed, in fact if not technically, on the nomination of the A.C.T.U. But the most arresting indication of the new role of the A.C.T.U. in dealings with Federal governments was given in September 1956 by an exchange of letters between A.E. Monk, President of the A.C.T.U., and H.E. Holt, Minister for Labour and National Service in the Menzies Government.

In a letter to the Minister, the President protested against the Acting Prime Minister's action in receiving a deputation from the Victorian branches of a number of A.C.T.U.-affiliated unions shortly after he had refused to see an A.C.T.U. deputation on the ground of pressure of business. Monk also noted that that the Clerks and Ironworkers unions, both affiliated with the A.C.T.U., were each pressing the Government to receive a deputation on matters which had already been the subject of

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11 A.E.U., Souvenir, op. cit., 269.
12 See, e.g., ibid., 272.
13 See Chapter 3.
A.C.T.U. policy decisions - one of the unions' proposals had in fact been rejected three months earlier by a special A.C.T.U. Congress. Monk urged the Government to take account only of representations that expressed 'the declared policy of the Trade Union Movement' rather than minority views.

To his reply the Minister attached a copy of a letter he had sent to all members of the Ministry, other than the Prime Minister and Acting Prime Minister, following the A.C.T.U. President's approach. This letter set out Holt's own practice and his reasons for it, and indicated the intended practice of members of the Government as a whole.

It has been my own practice...to refer all such requests for deputations and representations of other than a minor character, to the A.C.T.U. indicating that I would consider any requests or views put to me from that source. This procedure has a number of obvious advantages. By channelling these matters through the A.C.T.U. the number of items eventually reaching the Government is considerably reduced.

Many relatively trivial matters and others of only temporary concern become sieved out in the process. It is helpful towards forming a soundly based judgement to know that the views put forward have first been considered by the A.C.T.U. and have its endorsement. Subsequent discussion of any points that may require clarification or elaboration is facilitated. It is of advantage to know the people we are dealing with and we can ascertain more accurately the background of any proposition put to us. The A.C.T.U. is the official organization of its affiliated trade unions and can speak with more authority than anyone else for the trade union movement.

It appears that Mr Monk's recent communication to me is the consequence of what he alleges to be a departure from this procedure by some Ministers...I have discussed Mr Monk's letter with our colleagues of the Cabinet and it has been decided that as a matter of general practice, members of individual Trade Unions affiliated with the A.C.T.U. should be asked, whether making requests for deputations or forwarding written representations, to submit these to the Government through the A.C.T.U.14

The rise of the A.C.T.U. as the authoritative union spokesman at the Federal level appears to have been reflected in the corresponding role

of the metropolitan trades and labour councils at the State level. The councils have shown a noticeable tendency in recent years to emphasize that they are acting as State branches of the A.C.T.U. in their dealings with State governments.

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The question of organization has also been important on the side of the Federal government. There is little doubt that consultation with the unions has been facilitated since 1940 by the establishment of the Department of Labour and National Service which provides centralizing machinery complementary to that provided on the trade union side by the A.C.T.U. The centralizing role of the Department is illustrated by the policy now followed of requiring that all industrial agreements covering employees of Federal departments and instrumentalities must be approved by the Department of Labour and National Service before their conclusion. This policy, clearly designed to introduce some uniformity into the terms of such agreements, is disliked by union leaders who contend that it has prevented 'favourable settlements' in many cases. Nevertheless, in the same way that the Minister for Labour and National Service, in the correspondence cited above, was emphatic that the union movement was most effectively dealt with through the A.C.T.U., the A.C.T.U. President, in the same exchange, referred to 'what we have both recognized as being the proper approach to economic and social questions' – that they should be

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15 As one official put it: 'The day is gone when 80 per cent. of the Public Service Arbitrator's determinations were the result of agreement'. A.C.T.U. leaders were also convinced that a settlement of the postal workers' regulation strike of 1957 would have been reached much earlier with the Post-Master General's Department if it had not been for the attitude of the Department of Labour and National Service: Minutes, A.C.T.U. Interstate Executive, Feb. 1957, 11.

'channelled through you, as the Minister for Labor'.

At the State level, departments of labour operate in each case. But their ability to act as centralizing bodies differs with the extent of their functions. The departments in South Australia and Western Australia, for instance, are restricted to matters concerning State government employees, and the various industrial matters which usually come under the department of labour in other States are dispersed among other departments. The Federal Department of Labour and National Service, like the A.C.T.U. in relation to the State trades and labour councils, has since the war taken steps to secure greater cohesion of action between itself and its State counterparts. Such coordination as there is has been achieved mainly through the relations established between the State departments and the regional offices of the Federal Department in each State capital. But a development that has already borne some fruit and is likely to be important in the future is the establishment of the Departments of Labour Advisory Committee, consisting of the permanent heads of the Federal and all State departments of labour, which meets at six-monthly intervals. The Federal Department has also played a leading part in attempts to secure a uniform approach to apprenticeship matters which, in terms of general legislative powers, are exclusively within the competence of the States.

The centralizing functions of the Federal Department of Labour and National Service in relation to both the Commonwealth and State adminis-

17 The Committee was set up in 1947, but lapsed two years later until its revival in 1955 on the suggestion of the Ministry of Labour Advisory Council. The Committee recently sponsored a scheme to allow interchange of the powers of Federal and State Industrial Inspectors.
18 A joint Federal-State Committee of Inquiry investigated apprenticeship problems during 1952-4; and in 1955 a standing joint body, the (P.T.O.)
trative structures is significant in the light of the post-war extension of Federal activities in the economic field. It is also important in view of the parallel rise of the A.C.T.U. as the authoritative organ of the trade union movement and the growing tendency of the unions to approach their problems on a national basis.

2. Consultation with the Unions

Consultation between unions and governments usually takes place in one of two ways. In the first place, it may be the result of approaches made by either side whenever matters of common concern happen to arise. In the second place, it may take place through joint bodies established for the express purpose of enabling regular discussions on a given range of matters.

Ad hoc consultation may be conducted in a variety of ways and at a number of levels. The degree of formality tends to rise with the level in the governmental structure at which consultation takes place. It is therefore likely to be conducted on a more formal plane at the ministerial than at the departmental level. The frequent variations from the rule are primarily a function of personal factors, which are of first importance in this context. Political factors are of major importance in determining the results of consultation, but are usually of secondary importance in determining the nature of the consultative process.

Ad hoc consultation is frequent and informal between the top officials of the Federal Department of Labour and National Service and the A.C.T.U. officials, both being based in Melbourne. The telephone and office

15 Apprenticeship Advisory Committee, was formed.
discussion, rather than the letter and formal conference, are the preferred and most-used instruments of consultation. Easy personal relations between departmental and union leaders at this level are encouraged not only by frequent contact but also by joint participation in delegations to conferences of the International Labour Organization. On this basis exchanges of views and information are readily carried through. Nevertheless, restraints imposed by the responsibilities of the men involved are probably inevitable at this level. This, together with the nature of the union movement which gives its leaders a great but not dominating influence on its decisions, means that there is considerable value in such exchanges at levels below that of the national leadership on each side.

The regional offices established by the Federal Department of Labour and National Service in each State capital play an important part in the consultative process. The regional directors are usually in touch with trade union leaders, in some cases on a first-name basis. In the case of one regional director this is reinforced by previous association with the union movement as a full-time official of one of the biggest unions. Normally there is a fair amount of useful communication between the Department and union leaders at this level. But regional directors are necessarily concerned with a wide range of matters, and concerned with them in a supervisory rather than an executive capacity. The officers with the unions on a day-to-day basis are the regional industrial officers,¹ who

¹ The title of Regional Industrial Officer is not used in N.S.W. and Victoria where the Department's regional office establishments are larger than in the other States; the counterpart of the R.I.O. in these States is given the title of Assistant Director (Industrial Relations), though carrying out basically the same functions. In the text, the latter officers are included in the discussion on regional industrial officers' functions.
provide the main channel of communication between the Department and
the unions in relation to the continual flow of matters involving the
two. It is at this level that the most informal, and in many ways the
most fruitful, form of consultation usually takes place.

The regional industrial officer (R.I.O.) is the chief source of
routine information sought by the unions on awards and industrial
matters generally. This is a function of particular importance in the
smaller States where many of the State branches of Federal unions are
run by part-time officials who place a great deal of reliance on the
Department for information and advice. The contacts made in this way
are valuable as a means of obtaining information from the unions. But
the exchange of official information is something which can, of course,
take place at any level and in a variety of ways. It is, for example,
a function of the employment officers operating in centres scattered
throughout each State as well as in the capitals.

The peculiar value of the R.I.O. results, in the first place, from
his training and interest in the wide sweep of industrial affairs, neither
of which, naturally, are as pronounced in the case of his colleagues con­
cerned primarily with the Department's activities in the employment field.
In the second place, there is his greater mobility. A regional director,
responsible for both the industrial and employment activities of his office,
is usually hindered by lack of time and by his official status from keeping
up a regular and close contact with union leaders in general. On the
other hand, most R.I.O.'s can and do constantly seek to promote closer
relations with union leaders.\textsuperscript{2} Frequent communication by telephone is

\textsuperscript{2} In the case of the metal trades unions especially, this aim is
promoted by frequent association with union officials on local
tradesmen's rights committees, of which the R.I.O. is usually
chairman.
important. But a readiness to visit union officials in their offices, to strike up a casual conversation in Trades Hall corridors, or to discuss matters out of working hours over a glass of beer is usually of greater importance in establishing the easy personal relationship on a first-name basis which is often an essential prerequisite to a frank exchange of views and information in this field. The R.I.O.'s, and some of their superiors, work along these lines at least to some degree. Variations in the procedures preferred reflect differing personal qualities of the officers involved; and their success depends largely, of course, on the personalities of the union leaders concerned.

As it was viewed by one R.I.O. who has followed the policy of personal contact most completely (and, as union leaders testified, with considerable success), the aim of this policy is that the officer should be 'accepted as part of the scenery'. It is in these circumstances that the 'off-the-record' technique can be most frequently and usefully employed, leading to complete frankness in discussion. At its best, the technique has resulted in the disclosure of confidential information by union leaders, in the knowledge that although the information itself or in its original form will go no further, it will influence reports and recommendations made within the Department. The departmental heads are well aware that in many cases their regional officers have access to confidential information in this way: they have shown a far-sighted appreciation of the factors involved by accepting reports made in the light of such information, without requesting specific details or, where these are not disclosed, the sources of any specific information which is given.
Summing up, it is clear that ad hoc consultation with the unions is frequent and usually informal at all levels in the Department of Labour and National Service. On the union side, most officials (including many acting for State unions) have contacts within the Department and are usually quick to seek information or to put their views on specific issues. On the departmental side, responsible officers are accustomed to getting in touch with union leaders for information on a wide range of other matters, and to 'sounding out' union leaders on matters of major importance, such as the amendment of legislation. A.C.T.U. officials are as a matter of course normally informed officially about the contents of Bills originating in the Department before these are made public. In the case of major policy matters in particular, the informal approach may be combined with the more formal procedure of a conference between union and departmental representatives, the degree of formality usually rising, as is natural, with the numbers involved or with the variety of interests represented.

Ad hoc consultation between the unions and State departments primarily concerned with industrial matters is also frequent and often conducted on an informal basis. The same initial points of contact operate in relation to the State departments as the case of the Federal Department – the exchange of official information, the handling of union complaints connected with the enforcement of awards and general industrial legislation. The extent to which personal relationships are formed and provide a basis for informal discussions and friendly cooperation appears to bear some relation to the size of the State: the likelihood of casual contact between public servants and union officials outside, as well as inside, office hours is
greater in the smaller States. Departmental preparation of documents for the use of union advocates in cases where the State government is opposing union claims before a State industrial tribunal, and departmental advice to a union to claim higher wage rates for its members employed by the State government: these are impressive examples of cooperation with the unions and have occurred in two of the smaller States. Departmental heads and their subordinates, with inevitable variations resulting from the personalities involved, normally have easy relations with at least the leaders of the State central union organization and usually with officials of individual unions as well. Again, the telephone rather than the letter is more often used. Generally speaking, however, there appears to be rather more emphasis in the States than in the Federal sphere on formality at the upper departmental levels. There are also other varying features between the States and the Commonwealth which affect the union-departmental relationship.

In the first place, there is in the States less evidence of a deliberate intention to create a harmonious relationship with the unions in the sense of taking the initiative in making and maintaining personal contacts with union leaders. The action of the Federal regional director, who addressed a meeting of the State's main central union organization on certain aspects of Commonwealth industrial policy, has no parallel among State departmental officers. But more important, the Federal regional industrial officer has no counterpart in the State administrations. The State officers handling industrial matters in relation to particular public enterprises or to government employees in general are concerned mainly with
the mechanics of industrial bargaining in this area rather than broader
industrial questions, and therefore cover only a part of the field with
which the Federal officers are concerned.

In the second place, the range of matters dealt with at the departmental
level in the States is almost invariably limited by a ban on the discussion
of 'policy', usually meaning legislation, which is less evident in the Fed­
eral sphere. Combined with the lack of an intention to create a basis for
consultation, this limitation is likely to affect the frequency, and perhaps
the informality, of consultation between State labour departments and the
unions.

The differences between Federal and State departmental practice are
probably the product of a number of factors. Among these is the dominant
role of the Commonwealth in economic and industrial affairs: the assumption
of this role has not only brought the Federal administration into close and
constant touch with the unions since the war, but seems in many ways to have
relieved the States of responsibilities in this field that they might other­
wise have shouldered. The fact that in some States general industrial act­
ivities are carried out by more than one department is also likely to have
some effect. But perhaps of greatest importance is the role of the State
cabinet minister by comparison with his Federal counterpart.

At the State level, access to ministers responsible for industrial
matters is easier and consultation more frequent than at the F_e_d_era_l. Where
the F_e_d_era_l Minister for Labour spends a large part of his time in Canberra
and the rest mainly in Melbourne, State ministers are located permanently
in the State capitals. The geographical factor hinders easy access to
the F_e_d_era_l Minister on the part of Federal unions with their headquarters
in Sydney; and, when the Minister is in Canberra, those based in Melbourne, together with the A.C.T.U., are affected in the same way. On the other hand, there is no similar hindrance in the case of the main unions at the State level, whose headquarters are almost invariably in the State capitals. Coupled with this is the effect of the larger legislative competence of State governments in the industrial field and the tendency of ministers themselves to handle even comparatively trivial matters connected with it. Thus in 1956, while the permanent head of the Department of Labour and National Service informed the A.C.T.U. of impending changes to the main Federal industrial measure, the Labor Council of New South Wales learnt of proposed amendments to the corresponding State legislation direct from the State Premier. This is a result partly of the more intimate character of State politics and partly of the sweeping nature of the State industrial power, which elevates many questions of detail to the legislative level. Such questions are therefore likely to be more numerous at this level than is the case in the Federal sphere, and if union representations on them are considered at all they are almost invariably dealt with by the minister in person - though the practice is not confined to questions of this sort. Moreover, union leaders are more often and more closely acquainted with State than with Federal ministers, particularly in the compact political communities of the smaller States.

The factors encouraging union consultation direct with State ministers inevitably tend to lessen the importance of consultation with the officers of State departments. On the other hand, the absence or smaller influence of the same factors in the Federal sphere gives comparatively greater importance to consultation with officers of the Department of Labour and
National Service. This does not mean that the Federal Minister is eliminated from the consultative process where policy matters are concerned; what it means is that he is frequently spared the preliminary skirmishing.

The procedures of ad hoc consultation at the ministerial level are basically the same in both Federal and State spheres, though their use is probably more frequent in the States and there is also likely to be more emphasis on informality - depending largely on the personalities involved. At its most formal, the communication of union views to ministers is achieved by letter. But if the matter is sufficiently important, or it is considered that it cannot be adequately dealt with in this way, the minister may be asked to receive a deputation on the subject. The deputation is the procedure commonly resorted to in the case of matters the unions wish to press at the ministerial level. For their part, ministers may initiate consultation in the same ways and in the same forms though, as distinct from union leaders, they are normally likely for reasons of convenience to prefer communication by letter rather than by conference. But it is they, rather than the unions, who favour tripartite conferences including representatives of employers as well as unions. Less formal approaches often result from long associations in these ways, a development which is encouraged by the growing tendency for negotiations at the ministerial level to be handled almost exclusively by the leaders of central union organizations.

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Ad hoc consultation constitutes the most widespread form of communication between unions and governments. There are, however, a number of formal government bodies on which unions are represented that provide a
regular channel of consultation on a varying range of matters and are concerned solely with giving advice to the government concerned. Some of these bodies, chiefly of a minor character, were set up before 1939. But most have been established since the war. None are solely union-government bodies: they also include representatives of other interests, principally employers. On the government side, almost all of them include departmental rather than ministerial representatives, but their recommendations, if any, are usually made to the relevant minister. Unionist-members are usually appointed as direct union or employee representatives; but in some cases, particularly Federal bodies, they are formally regarded as being appointed in a personal capacity, though their appointment is clearly a consequence of their association with union affairs.

Advisory bodies are formal in the sense that they have been set up, either by statute or by administrative decision, as standing bodies with regular rules of procedure. But apart from any advice they may give, their principal value lies in the fact that they tend to generate informality by the opportunities they provide for the regular association of those involved. The operation of bodies of this kind can therefore be expected to assist the formation of personal relationships between union and government representatives which will in turn encourage informality in the field of ad hoc consultation.

A list of the various Federal and State advisory bodies with unionist-members operating at the end of 1957 is given in Table 9. The list is not claimed to be exhaustive, though it is as full as has been found possible to make it. It deals only with advisory bodies in existence in 1957, Thus

3 See Table 9.
temporary bodies with a specific task, like the Commonwealth-State Apprenticeship Inquiry of 1952-54 (with two unionists in its membership of nine) and the 1955-56 Committee of Inquiry into the stevedoring industry (with one of its three members a unionist), are not included; nor is the National Security Resources Board (with one union representative in its membership of twelve), which was set up as a standing body in 1950 but has not met since 1953.

As Table 9 shows, the greatest development in the use of advisory bodies with union representation has taken place in the Federal sphere. In most States, if the various apprenticeship committees are included, there were numerically more bodies of this sort operating in 1957. But in no State were there bodies to match the stature of the major Federal advisory bodies or the range of matters with which they were concerned. In the second place, only in the Federal sphere were there advisory bodies of which cabinet ministers were members. Finally, the great majority of the Federal advisory bodies were set up by a non-Labor government.

3. **The Unions' Role in Administration**

There are three ways in which unions take part, or may take part, in the actual administration of government: through their ability to help administer industrial legislation, through the appointment of unionists to government administrative bodies, and, finally, through the appointment of unionists to positions in the professional public service.

The unions' role in the administration of industrial arbitration leg-

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4 These were the Ministry of Labour Advisory Council (from which the A.C.T.U has since withdrawn) and the Coal Industry Committee; in each case the appropriate minister acted as chairman. The now-moribund National Security Resources Board was presided over by the Prime Minister.
islation, and the way in which they have been equipped by law to carry it out, have been discussed in detail in an earlier chapter. It is there­fore sufficient merely to recall that in all jurisdictions, with some variations, unions are charged with the initiation of the statutory proced­ures for settling industrial disputes, with the responsibility for ensuring that their members comply with awards and agreements, and with the function of policing and enforcing awards and agreements against employers. It is in this field that the unions are most extensively and most closely involved in the administrative framework of government in Australia.

There is, in addition to arbitration legislation, a number of measures dealing with matters of direct union concern. In the main these are State measures regulating such matters as industrial safety, shop and factory working hours and standards of sanitation. The Federal Parliament has no general constitutional power to regulate industrial conditions directly by legislation, though Federal industrial tribunals may of course do so, their awards almost invariably dealing with matters otherwise covered by general State legislation. In certain areas, however, the Commonwealth has found power to legislate in this way, and has exercised its power to bring unions into the administration of legislation. Thus, under the Tradesmens Rights Regulation Act 1946-55, the unions concerned are given a voice on the bodies that determine the qualifications of tradesmen in certain industries; and under the Stevedoring Industry Act 1954-56, the Waterside Workers Federation has the sole right to recruit waterfront labour in all major ports, a stat­utory grant which gives the union an important share in the Act's adminis­tration.

1 See Chapter 5.
Most State measures directly regulating industrial matters do not expressiy give unions a share in their administration. Nevertheless, unions frequently play an important part in policing and enforcing legislation of this sort. They usually operate in this field by bringing cases of non-compliance to the notice of government officers who have power to take legal action. But in many cases the union first takes up the matter with the employer concerned, and, occasionally, may even call a strike in order to secure his compliance - a tactic which is most frequently adopted as a means of enforcing safety measures. Sometimes the unions may take legal action themselves; this course is open in New South Wales to union officials acting formally as individuals, but rarely in other States where legal enforcement is almost invariably in the hands of government officers alone.

The extent to which unions take an active part in policing general industrial legislation varies greatly. Generally speaking, they pay more attention to the bread-and-butter provisions of awards and agreements. Many, of course, are not greatly affected by general legislation of this kind. Of those that are, most seem to do little more in this field than refer complaints from members to departmental inspectors. To some unions, on the other hand, direct industrial regulation by legislation is of great importance, and they are correspondingly active in securing its enforcement. The Furnishing Trades Society of New South Wales, for example, has obtained extensive statutory regulation of the State furnishing trade, and the legislation's effectiveness is largely a result of the union's energetic and continual policing of its provisions. 2

2 See Walker, Industrial Relations in Australia, espec. 43, 48-9, 61.
trades unions are especially active in policing regulations prescribing baking and hours: in Western Australia, for instance, the local baking union follows a consistent policy of imposing heavy fines on its own members for working after-hours. Mining unions are invariably sensitive on the question of compliance with safety regulations, and the same attitude is apparent on the part of building trades unions: in both cases strike action rather than legal action is the preferred means of enforcement.

Unionists have been appointed to many bodies administering government enterprises or other activities of government concern. A list of both Federal and State administrative bodies with unionist-members is given in Table 9, which indicates the variety of such bodies and the nature and conditions of the unionist-appointees’ membership.

As shown in the Table, the composition of administrative bodies operating in 1957 gave unionist-members a dominant voting power in only one case, the New South Wales Milk Board, and usually they were in a decided minority. Nevertheless, the presence of unionist-members does enable the expression of union views within bodies whose decisions, in most cases, are of direct interest to the unions. Apart from this, even a single unionist-member’s vote may be of importance on occasions.

3 N.S.W. baking union officials carry out this function at the request of the State Minister for Labour: Sydney Morning Herald, 10/1/1956.
4 In N.S.W. unions have prosecuted members who have taken temporary employment contrary to the Annual Holidays Act: ibid., 30/3/1955; 15/6/1955.
5 Building unions recently sponsored the formation of ‘safety committees’ on job sites to police the N.S.W. Lifts and Scaffoldings Act: ibid., 13/2/1957.
No doubt a partial explanation of the growing practice of appointing trade union officials to administrative bodies is the opportunities it gives to reward faithful or powerful unionist supporters with the payments which, as the Table shows, often accompany such appointments. The payments are not usually large, and therefore probably play a more important part in the spoils-distribution of Labor than of non-Labor governments. On the other hand, the practice can also be justified by sound administrative reasons which may influence non-Labor governments - though even in the case of such governments, there have on occasion been allegations circulating in union circles that paid appointments have been given to certain union officials as 'rewards for faithful service'. However this may be, the background of a unionist-appointee may enable him to contribute materially to an administrative body's discussions, particularly in the field of labour matters or related questions. Whether this actually occurs is, as experience with the Federal primary produce marketing boards has shown, largely dependent on the calibre of the appointee. In addition, a unionist-member may enhance the prospects of union cooperation. The mere fact of his membership and the share, even if little more than nominal, that it gives unions in the making and administration of policy may achieve this. But more important, the member's access to information and to fresh views of problems may facilitate, and has in fact done so, the resolution of misunderstandings and union acceptance of policies which would have been opposed if the union representative had not advocated their support.

These considerations appear to have some bearing on the increasing number of union officials appointed to South Australian administrative
bodies since the war by the non-Labor Playford Government. The Menzies Federal Government has shown relatively less energy in this field by comparison with its activity in the formation of consultative bodies. It has contented itself largely with the maintenance of the status quo established by its Labor predecessors, aware that, despite its many inadequacies from the administrative standpoint, any attempt to change it would antagonize the unions and probably raise more serious problems.

The contrast between the practice of Labor and non-Labor governments, and thereby the importance placed on the 'spoils' motive, should not be carried too far. By comparison with the performance of the South Australian non-Labor Government, for example, Queensland Labor governments have shown far less inclination to appoint union officials to administrative bodies. Moreover, even under strong union pressure, Labor Federal governments were not prepared to enact special legislation to allow the appointment of unionists to three important primary produce boards set up by non-Labor governments before the war: provision for appointments on these lines was not made until after Labor had been in power several years. Indeed, the Labor enactment of 1946 constituting another Federal board, the Australian Wheat Board, made no provision for a union representative, an amendment to this effect not being passed until two years later. A union leader in 1942 indicated the resistance met by the unions in this connection when he complained that it had taken 'no less than

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6 To a suggestion that a unionist should be appointed as consumers' representative (a practice followed by other governments, including the non-Labor government of S.A.) on administrative bodies dealing with price control, a Labor Premier of Qld. replied that the most suitable person for such a position was 'an elected representative of the people, i.e., a Minister of Parliament'@ Minutes, Trades & Labor Council of Qld. 7/7/1942.

7 These were the Meat, Dairy Produce, and the Apple & Pear boards.
eight months to convince the Labor government that leather trades unions should be represented on the wartime Hides and Leather Industries Board.  

The third way in which the unions may take part in government administration, though more indirectly and with less certainty than in the ways already discussed, is through the appointment of unionists to positions in the professional public service. This category is restricted here to appointees from the ranks of unions whose membership is drawn from occupations outside the professional public service. These appointments are invariably full-time, and involve the severance of the appointee’s official connections with the union movement. They are made on a personal basis; and although they are usually made in the light of the appointees’ industrial experience and the relevant union or central union organization is frequently consulted beforehand, it is seldom seriously argued that such appointees are acting as union representatives.

Almost invariably appointments of this sort have been to positions below the decision-making level of government departments and instrumentalities. This feature distinguishes them from the personal, full-time appointments of unionists to administrative bodies, because all these represent the top administrative level in their respective fields. The more general distinction, however, is based on the fact that while the major functions with which a unionist-member of an administrative body is concerned are attached to the body itself and not to the member as an individual, the main functions with which the appointee in the category discussed here is concerned are within his competence as an individual.

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In the past, the practice of appointing unionists to public service positions was given impetus by two developments. One of these was the establishment, first at the State and then at the Federal level, of inspectorates to police awards and general legislation directly regulating industrial matters. This created a need for government officers with industrial experience, and, initially, industrial inspectors were largely recruited from the ranks of union officials. But the practice is a dying one. Reliance on it has decreased as a result of the acceptance by the departments concerned of the responsibility for training their own men to fill these positions. The practice is also often regarded as undesirable. It is argued that in some fields at least industrial experience gained through union activity is not adequate training for the policing of highly technical regulations covering a wide variety of industries; nor, in the eyes of some departmental heads does it provide the best background for 'selling' rather than merely enforcing industrial legislation. Most inspectorates still include a leavening of ex-union officials, and others are occasionally appointed. But the tendency now is to appoint inspectors by promotion within the department concerned.

The second development occurred during the second world war when the vital importance of labour relations encouraged the appointment of union officials to positions in Federal departments and instrumentalities concerned with industrial matters. The practice was particularly evident after the Curtin Labor Government took office in 1941. The Amalgamated Engineering Union alone lost at least five of its full-time officials in this way, together with a larger number of lesser officials. Other
unions were similarly affected. Many of the wartime appointees remained after the war to make their careers in the public service, one of them having risen to the position of Regional Director in the Department of Labour and National Service. But here again, while union officials are still occasionally appointed as industrial officers in Federal departments and instrumentalities, appointments of this sort are now more often made from within the public service. The same situation applies in the case of State departments and instrumentalities. On the other hand, the need for obtaining union cooperation, which influenced wartime practice in this connection, has been evident in relation to the migration programme. Almost all the Federal officers charged with the selection of skilled migrant labour in Europe are ex-union officials, who were appointed after consultation with the A.C.T.U. and the unions primarily concerned. For the same reason, all the Investigators appointed to police the application of the Federal Tradesmens Rights Regulations Act are ex-unionists.

It is in the systems of industrial arbitration, however, that unionist-appointees have continued to be most strongly and consistently represented in positions which do not require legal qualifications. Thus of the nine Commissioners (including the Senior Commissioner) who operate in the Federal arbitration system, five are ex-union officials. Two of the three one-man local coal authorities, constituting part of the special arbitration machinery covering the coal industry in New South Wales, are former officials of mining unions. All four conciliation commissioners

9 These appointments, as union leaders have testified, have contributed materially to union acceptance of migrants in the skilled trades: Minutes, A.C.T.U. Interstate Executive, Feb. 1957, 18.
10 These appointments are additional to those, listed in Table 9, of unionists to the various arbitration bodies operating in all States with unionist-members.
appointed under the New South Wales Arbitration Act, and the single conciliation commissioner appointed under the corresponding Western Australian measure, are former union officials, as is the single chairman of all Tasmanian wages boards. In the case of appointments in this field it is usual for the appropriate central union organization to be sounded out beforehand by the government concerned.

Unionists appointed to government positions of the kind considered here cannot, generally speaking, be expected to press union views and to act in accordance with them in the way that their counterparts on administrative bodies may be expected to do so. Nevertheless, the unions favour such appointments. For, even though the performance of unionist-appointees in the arbitration field, for example, is frequently criticized, it is felt that they at least, as one union official put it, 'have an understanding of trade union problems outside the forms of the arguments presented to them.'
PART IV

THE PARTY-POLITICAL FRAMEWORK

The Labour Party having grown out of the Trade Union Movement and, being financed from the beginning by fees paid by affiliated Trade Unions, the relationship between the Labour Party and the Trade Union Movement is and always must be a close and intimate one.

There is...a very much closer link between the industrial wing and the political wing of the labour movement in Australia than there is in those countries [U.K., U.S.A. and Canada], which tends to make every industrial issue a political issue also.\(^2\)

These two statements, one by a leading Labor politician and the other by a leading Liberal politician, illustrate the extent to which the trade union movement in Australia is identified with the Australian Labor Party (A.L.P.). The present discussion of the party-political framework is concerned with an assessment of the contemporary relationship between what are loosely termed the industrial and political wings of the Australian labour movement. Such an assessment involves an examination of the formal links between trade unions and Party as set down in constitutions and rules. It also involves an inquiry into what has been called the power structure of the Party,\(^3\) which for present purposes means the ways in which and the extent to which trade unions are, or may be, in a position to influence or control Party policies and activities at each of three levels - the Party machines outside parliament, the parliamentary Labor parties, and Labor governments.

CHAPTER 12

THE A.L.P. MACHINE

1. Membership

The Federal organization of the A.L.P. has no membership or affiliation structure distinct from its State branches. Thus Federal trade unions, as such, cannot affiliate with the Party, but can do so only through their branches operating at the State level.

The basic units of A.L.P. organization in all States are political branches and affiliated unions. The overwhelming majority of Australian unionists are members of unions affiliated with the A.L.P. In most States only individual unions, including State branches of Federal unions, are so affiliated. The practice of affiliating unions on a district as well as on a State basis is the exception rather than the rule, though some unions in most States are affiliated in this way. In Western Australia, however, unions are customarily affiliated on a district basis and each unit is given the status of a branch of the State Party: the A.E.U., for example, is affiliated through its twenty-eight branches within the State instead of as a single State-wide organization as it is in other States. No trades and labour council is affiliated with any State branch of the Party, but no Victorian union is eligible for affiliation unless it is first affiliated with a 'recognized' trades and labour council. Moreover, it appears that trades and labour councils are ineligible under the Party rules operating in all States except South Australia, where provision

1 But in W.A. the Trade Unions Industrial Council is a constituent part of the Party structure.

2 A.L.P. (State of Victoria), Constitution and Platform, 1956, r.33. This title is referred to below as 'A.L.P., Vic. Rules'. The same form is used for all references, after the first, to the constitutions and rules of the other State branches of the Party.
is made for the affiliation of 'other organizations'; the United Trades and Labor Council was in fact affiliated, on a nominal membership, for a time during the 1920's.  

In some States (New South Wales, Queensland and South Australia) the rules in each case state that the membership of the Party consists of the members of affiliated unions and of political branches.  But this formal statement, or lack of it, does not necessarily reflect the true status of affiliated union members in relation to political branch members. Thus in New South Wales, despite the formal statement, affiliated union members as such are not eligible to exercise the most signal privilege of Party membership, the right to vote in selection ballots for parliamentary candidates; they can do so only as full members of a political branch.  

In South Australia, again despite the formal statement, members of affiliated unions can take part in Electorate Committee meetings only if they are attached to a political branch. Only in Queensland does the formal statement reflect the true position: members of affiliated unions are as such entitled to vote in selection ballots.  

In the States where the Party rules embody no formal statement of this kind, the status of affiliated unionists is closer than in New South Wales and South Australia to that of political branch members. Members of unions affiliated with the Victorian Party are entitled to vote in selection ballots after fulfilling

5 A.L.P., N.S.W. Rules, r. 146  
6 A.L.P., S.A. Rules, r.5 (a). The test of eligibility to vote in selection ballots is not available in this case because selections are made by the annual Convention.  
7 A.L.P., Qd. Rules, rr. 41-43.
certain minor formalities. In Western Australia they are expressly
given all the rights and privileges of political branch members. And
in Tasmania an affiliated union member, after signing the Party Pledge,
may enjoy all the rights accompanying full membership of the Party without
joining a political branch.

On the other hand, the Party rules in four States declare that a
person who fails to join a trade union for which he is eligible is auto-
matically ineligible for membership of a political branch. In South
Australia and Western Australia the requirement is limited to unions affil-
iated with the Party, in Victoria to unions affiliated with a trades and
labour council, and in New South Wales the requirement is general. These
rules, together with the natural tendency of A.L.P. members to join an
appropriate union even where no formal requirement to this effect is laid
down, result in a great deal of duplication between the membership of pol-
itical branches and affiliated unions. This should be borne in mind in
relation to the analysis of the composition of A.L.P. State branch member-
ships which is given in Table 10, although it does not materially affect
the position revealed by the Table. The important factor, in view of the
overwhelming numerical dominance of affiliated union members in all States,
is the status and rights held within the Party machine by affiliated union-
ists as such. This factor has been touched on above, and is discussed
in more detail in the pages ahead.

8 A.L.P., Vic. r. 65.
9 A.L.P. (W.A. Division), State Constitution, Standing Orders, Platform
and General Governing Rules, 1953, as amended to 1956, r. 4 (c).
10 A.L.P. (Tasmanian Section), Platform, Constitution and Rules', 1953, as
amended to 1956, r. 5 (b).
11 A.L.P., Rules: N.S.W., r. 48 (a); Vic., r. 85 (h); S.A., r. 3 (d);
W.A., r. 19 (h).
2. Conferences and Executives

Affiliated unions are not directly represented on the A.L.P.'s Federal bodies, the Federal Conference and the Federal Executive. The members of these bodies formally represent State branches of the Party. As their method of selection varies from State to State, it is proposed to deal first with the part played by unionists in the main Party bodies at the State level in order that their role at the Federal level may be seen in perspective.

The Party Conference - also referred to as the Convention (Queensland and South Australia) and the General Council (Western Australia) - is the 'supreme ruling authority' in each State branch of the A.L.P. Its decisions are final and binding on all Party members, including parliamentarians, within the State. Conference meets annually in all States except Queensland and Western Australia, where its meetings are held at three-yearly intervals because of the distances many delegates must travel in these two States.\(^1\)

Conference in all States is composed of delegates from affiliated unions and from the political membership of the Party. The basis of representation of political delegates varies from State to State. In New South Wales and South Australia they are drawn direct from individual political branches as well as from the Party organization at the level of the State electorate. In Western Australia they are sent by individual branches and by each of the nine District Councils. Political delegates in Victoria and Queensland are selected at the level of the State electorate only; but in Tasmania only individual political branches are so

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\(^1\) Provision is made in these, and in all other States, for the convening of special conferences, though this is rarely used.
The allocation of Conference delegates in accordance with the number of members represented is the system most commonly used in assessing the delegates to which both affiliated unions and political branch memberships are entitled. The system is not, however, used in all cases, and where it is used the scales of membership, on which the assessment is made, are different. In Victoria, South Australia and Tasmania, where this system applies, delegates allocated to both affiliated unions and the political membership are assessed on the same scale. The same system is used in New South Wales in relation to both union and political delegates, but the scales applicable to the two categories are different, and are weighted so as to redress to some extent the numerical inferiority of the political membership. Delegates from affiliated unions in Queensland are allocated on a membership scale that is particularly favourable to the bigger unions, while delegates representing the political membership

2 A.L.P., Rules: N.S.W., r. 19; Vic., r.5; Qd., r.18; S.A., rr.13,14; W.A., r.11 (a); Tas., r.24. In S.A. and W.A. the Federal and State parliamentary Labor parties are each entitled to one delegate.

3 The scales used are as follows. Vic.: 1 delegate for up to 500 members; 2 for 501-1000; 1 for each additional 1000 members or part thereof. S.A.: 1 delegate for 25-150 members; 2 for 151-250; 3 for 251-350; 4 for 351-500; 5 for 501-750; and a maximum of 6 delegates for more than 750 members. Tas.: 1 delegate for 10-50 members; 2 for 51-100; 3 for 101-200; 4 for 201-500; a further delegate for every additional 500 up to 3000; and 1 delegate for every 1000 members, or part thereof, above 3000.

4 The scales used are as follows: Affiliated unions: 1 delegate for up to 500 members; 2 for 501-1000; and a further delegate for each additional 1000 members or part thereof. State Electorate Councils: 2 delegates for up to 250 members; and a further delegate for each additional 500 members or part thereof.

5 The scale used is as follows: 1 delegate for 1000-3000 members; 1 further delegate for each additional 3000 members, with a maximum of 12 delegates in the case of any one union. Affiliated unions with individual memberships of less than 1000 jointly elect a number of delegates assessed on the basis of their collective membership in accordance with the above scale.
are fixed at one for each State electorate. This method of allocating delegates gives the political membership considerably greater representation than is the case in other States. The membership of affiliated unions in Western Australia is irrelevant to the allocation of delegates: each affiliated union, and each political branch and District Council is entitled to one delegate irrespective of its membership.6 This method does not reduce union representation, as it would in other States, since unions in Western Australia are affiliated on a district basis and are therefore allocated delegates on the same basis. The A.E.U, for example, with twenty-eight affiliated district branches is entitled to a delegate for each branch.

An analysis of the number and proportions of union delegates at recent State Conferences is given in Table 11. The striking feature of these figures is the fact that delegates representing affiliated unions were in a minority at the 1956 Queensland Convention, while in all other States union delegates formed a majority, in most cases an overwhelming majority. The Queensland reversal of the pattern found in other States is, however, more apparent than real as a consequence of the rule which expressly allows members of affiliated unions, as well as political branch members, to vote in elections for the delegate representing the State electorate in which they reside.7 This provision is especially favourable to a union like the A.W.U., which, with a membership of 82,000 scattered throughout the State, is not only the largest union in the State but is larger than any Federal union apart

6 A.L.P., W.A. Rules, r.11 (a)
7 A.L.P., Qd. Rules, r.24
from its own parent body. As a result, the delegates from the ten electorates in the Western Zone of the State are almost invariably associated with the A.W.U.; the same union is also entitled to the maximum of twelve delegates as an affiliated union. This pattern is repeated in many other of the seventy-five electorates and, in some cases, in relation to other large unions.

The Queensland provision permitting affiliated unionists, as such, to take part in the selection of political delegates is not repeated in the rules of any other State branch of the A.L.P. But in New South Wales, South Australia, Western Australia and Tasmania it appears, in the absence of any express prohibition, that a member of an affiliated union, as a member of a political branch, can take part in ballots for the selection of political delegates as well as exercising a vote in the selection of the delegates from his union. Only in Victoria is it specified that an affiliated unionist who is also a political branch member may vote for his union or political delegate, but not for both.8

On the other hand, union delegates in some States need not, and on occasion are not, members of the union they represent. Only in New South Wales, South Australia and Tasmania is it stipulated that union delegates must be members of the union they represent.9 The Victorian rules require only that all delegates shall be members of the

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8 A.L.P., Vic. Rules, r. 25 (e)
9 A.L.P., Rules: N.S.W., r. 33 (c); S.A., r.14 (c); Tas., r.33. Union delegates in N.S.W. and Tas., but not in S.A., are also required to be members of political branches.
and in Queensland, delegates must be either members of the Party or of an affiliated union, though even this requirement may be waived by Conference. The Western Australian requirement that all delegates shall be members of the Party has the same effect as the Queensland rule, since an affiliated union in that State has the formal status of a political branch and an affiliated unionist is therefore a full member of the Party. The Queensland and Western Australian rules do not restrict the choice of delegates from among a union's members to the extent that the Victorian provision does. But in each of these three States the way is open for the attendance at Conference of union delegates who are not members of the union they represent, and may, indeed, not be unionists at all. Conferences in these States have in the past been attended by such delegates, usually parliamentarians or other prominent members of the political wing who for some reason have been unable to secure election as political delegates. This practice is probably facilitated by the fact that, with the exceptions of South Australia and Tasmania, Party rules do not require that union delegates should be elected by the members of the union concerned, though, even in the case of the two exceptions, the mere existence of such rules is no guarantee that unions comply with them. It has been claimed that in Victoria at least delegates are usually appointed by union executives.

10 A.L.P., Vic. Rules, r.24. This rule, inserted in 1939 as a safeguard against Communist-influenced unions, was unpopular with union executives because it restricted the unions' right to appoint delegates: A. Davies, Chapter on Victoria in the forthcoming State Government in Australia (ed., Davis), (MS.) 62-3. The rule was waived in 1955 when 15 of the union delegates at the Victorian special Conference, convened by the Federal Executive as a result of the dispute in the Party, were not members of the A.L.P.: see Official Report, A.L.P., 21st. Commonwealth Conference, 1955. 20.
11 A.L.P., Qd. Rules, r.18 (f)
12 A.L.P., W.A. Rules, r.11 (f)
14 A.L.P., Rules: S.A., r.14 (b); Tas., r.31.
and only a minority of unions give their members a voice in the selection of delegates.\textsuperscript{15} The same is probably true of other States.

The numerical dominance of delegates representing affiliated unions at most State conferences, as shown in Table 11, is important in relation to the voting power of such delegates. In all States the customary system of one-delegate-one-vote is applied, but in South Australia and Western Australia provision is also made for the use in special circumstances of a different system, which works to the advantage of the unions in general, and to the advantage of the larger unions in particular. In South Australia any matter before Conference may, on the call of the delegates from five affiliated organizations, be decided by a card vote in which the voting power of each delegate or group of delegates is given a numerical value equivalent to the number of affiliated members represented.\textsuperscript{16} Under the card vote system, the numerical dominance of affiliated unions' memberships can be brought to bear directly on the decision of important issues. The effect is particularly significant in relation to large unions because of the limit set to the number of delegates that may represent a single union; thus the A.W.U. with the maximum six delegates exercising six normal votes, and representing only three per cent. of the total normal vote at the 1957 Conference, increases its voting strength to 12,000 under the card vote system and its share of the possible total vote to more than fifteen per cent. In Western Australia a modified form of the South Australian card vote may be used if one-tenth of the Conference delegates call for it.\textsuperscript{17}

Voting strength (except in the case of District Council delegates who are

\textsuperscript{15} Rawson, \textit{The Organization of the A.L.P.}, op. cit., 5.
\textsuperscript{16} A.L.P., \textit{S.A. Rules}, r.19 (a)
\textsuperscript{17} A.L.P., \textit{W.A. Rules}, r.11 (i). The same system, with some variation in detail, is available also in relation to each of the W.A. district councils \textit{ibid}, r.15 (a).
restricted to a single vote each) is assessed on the basis of one vote for each hundred, or part of a hundred, members represented. Under this system only the votes available to union delegates are affected since, in 1956 at least, no political branch had a membership of more than a hundred. As in South Australia, it is primarily the big unions that reap the benefit. Thus, in one card vote held at the 1956 Conference, the eleven A.W.U. delegates, with eleven normal votes representing six per cent. of the total normal vote, increased their voting strength to eighty-seven votes or fifteen per cent. of the total 575 card votes that were cast; and the nine normal votes (five per cent.) of the nine delegates from the Amalgamated Society of Railway Employees were increased to sixty-one (eleven per cent.).

The number and proportion of union representatives attending recent State Conferences is shown in Table 11.

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The administrative structures adopted by A.L.P. State branches fall into two categories: those with a single executive body and those which, either as a matter of practice or in conformity with formal rules, consist of a two-tier system of executive bodies.

In the first category are New South Wales, Victoria and Tasmania. In each case a relatively small Central Executive (General Executive in Tasmania) administers the affairs of the Party between sittings of Conference. Neither the number of members on the various executives nor the method of their selection is uniform.  

18 These figures are calculated from a voting card used at the 1956 Conference.
19 A.L.P., N.S.W. Rules, r.4; Vic., r.28; Tas., rr.51, 52, 64.
The New South Wales Central Executive consists of forty-two members, including five executive officers; all but five are elected by Conference — the exceptions being two members elected by the Labor caucus in the State Legislative Assembly, two by the Federal Labor caucus and one by the State Legislative Council Labor caucus. In Victoria the Central Executive has a membership of twenty-five, including six executive officers; except for the State Secretary, Assistant Secretary and Woman Organizer, who are appointed by the Executive and are ex officio members, members of the Executive are elected by Conference. The Tasmanian General Executive consists of eleven members, including three executive officers; they are elected by Conference with the exception of the Leader of the State Parliamentary Labor Party who is an ex officio member. In Tasmania, unlike other States, the State Secretary of the Party is not a full voting member although he attends Executive meetings.

In Queensland, South Australia and Western Australia two-tier systems of administrative control operate. Supreme executive authority is vested in a numerically large body. A smaller body supervises the day-to-day administration and forms an important centre of influence despite its subordinate constitutional powers. Only in South Australia is the two-tier system formally established under Party rules.

A Central Executive and a Central Council are the two South Australian executive bodies, the Council being 'the governing body between Conventions'. The Central Executive is the smaller body; it consists of twenty members, including five executive officers, of whom all but three are elected by card vote at the Convention — the three exceptions being the
Immediate Past President, the Secretary, and the Leader of the State Parliamentary Labor Party who are ex officio members. All members of the Central Executive are ex officio members of the Central Council, whose membership otherwise comprises delegates from affiliated unions and political branches, allocated in accordance with the size of the membership represented, together with one delegate each from the State and Federal parliamentary Labor parties. There is thus no set limit to the size of the Council. In 1957 its membership, including the Central Executive members, numbered 220.

In Queensland and Western Australia a single body, the Queensland Central Executive (Q.C.E.) and the State Executive, respectively, is formally established as the administrative authority of the Party. Both these bodies have a very large membership as a result of the way in which they are constituted. The membership of the Q.C.E. is made up of eleven members elected by Convention, one member each from the State and Federal parliamentary Labor parties, and an unspecified number of members appointed directly by affiliated unions in accordance with their membership. In March 1957 its total membership was sixty-six. None of the members of the Western Australian State Executive are elected by Conference (General Council). The bulk of them are elected by the nine district councils, each of which is allocated a number of delegates on the

21 Ibid., r.21. The scale used is as follows: 1 delegate for 25–249 members; 2 for 250–499; 3 for 500–1499; 4 for 1500–2499; 5 for 2500–3499; 6 for 3500–4999; with a maximum of 7 delegates for a membership of more than 5000. All delegates must be elected at 'properly constituted' meetings and must be *bona fide* members of the organization they represent.
22 A.L.P., Qd. Rules, r.28. The scale used for allocating members is: 1 delegate for 2000–4999 members; a further delegate for each additional 5000 members, or part thereof, with a maximum of 5 delegates for more than 20,000 members. Affiliated unions with individual memberships of less than 2000 jointly elect a number of delegates assessed on the basis of their collective membership in accordance with the above scale.
In addition, the Executive comprises the eight officers of the Party, elected by the combined members of the district councils; delegates from unions affiliated direct with the State Executive and allocated in accordance with the scale operating in relation to district council delegates; two delegates from the Trade Unions Industrial Council; and one delegate each from the State and Federal parliamentary Labor parties, the Labor Women's Central Executive and the Young Labor League. The total membership of the State Executive in 1957 was eighty-two.

The size of the Queensland and Western Australian Executives has naturally led to the detailed supervision of the Party's activities in these States being carried out by a more manageable group, the Executive in each case acting as an endorsing rather than an administrative body. The role of the small administering group is of particular importance in Queensland, where the Q.C.E. is obliged to meet only at three-monthly intervals; the Western Australian State Executive must meet at least once a month. In both States the administering group is composed of the officers of the Party, though in neither case is their constitution as a separate body acknowledged by the rules. In Western Australia the rules provide for the election of eight officers by the combined vote of district

23 A.L.P., W.A. Rules, r.12 (a). The district councils are in every case predominantly composed of union delegates allocated on a scale related to membership. The scale used in assessing the number of State Executive delegates to which a Council is entitled is as follows: 1 delegate for up to 500 members, and one further delegate for each additional 1000 members or part thereof.

24 The provision enabling affiliation directly with the State Executive is for the benefit of unions operating in areas, chiefly in the north-west of the State, where no District Council exists.

25 A.L.P., Rules: Qd., r. 32 (a); W.A., r.13.
council members.  

In Queensland, on the other hand, the administrative group is at once more powerful than in Western Australia and almost completely overlooked by the State Party's rules. The executive officers of the Party are not formally defined; the Q.C.E. is merely empowered to elect 'its own Officers'.  

The group formed by the officers is customarily known as the Inner Executive, though the only reference to such a body in the rules is a provision defining a function that the 'Executive Committee of the Queensland Central Executive' may not undertake.  

In March 1957 the Inner Executive consisted of seven members.

The number of union officials on the main executive bodies of State branches of the A.L.P. in 1957, and their proportion of the total membership in each case, is shown in Table 11.

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The biennial Federal Conference of the A.L.P., the 'supreme governing authority and policy-making body' of the Party, consists of six delegates from each State branch of the Party, a total of thirty-six delegates. The Federal rules lay down no uniform method for the selection of delegates, and the method varies from State to State. In Victoria and Tasmania all six delegates are elected by the State Conference, and the same practice is followed in South Australia (the card vote being used) although the rules are silent on the point. Conference directly elects four of the New South Wales delegates and also elects the State President and General Secretary who are ex officio delegates. One of the delegates from Western Australia is elected by the State Executive and the remaining five

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27 A.L.P., Qd. Rules, r.32 (m).  30 A.L.P., Rules; Vic., App. 1, r.2; Tas., r.54.
28 Ibid., r. 32 (yy)  31 A.L.P., N.S.W. Rules, r.27.
by the district councils, the Executive being empowered to fill any vacancies if insufficient appointments are made by the councils.\textsuperscript{32} The Queensland rules make no provision for the appointment of delegates to Federal Conference, but in practice they are elected by the triennial Convention or, if Convention does not deal with the matter, by the Q.C.E.

The Federal administrative body of the A.L.P., the Federal Executive, is composed of two delegates from each State branch, a total of twelve delegates.\textsuperscript{33} Both delegates are elected by the State Conference in Victoria and Tasmania;\textsuperscript{34} and also in South Australia on a card vote, though the rules do not refer to their selection. In New South Wales the State President and General Secretary, both elected by Conference, are ex officio delegates.\textsuperscript{35} The Western Australian delegates are elected on the combined vote of all members of the district councils.\textsuperscript{36} The Queensland Convention, in the absence of any direction from the Party rules on the point, elects the two delegates from that State.

The number and proportion of trade union officials who were members of the two Federal bodies in 1957 are detailed in Table 11. It must be remembered that these officials were acting in the capacity of representatives of State branches of the A.L.P., and they voted, where instructions had been given, on the instructions of their A.L.P. State branches and not of their unions. On the other hand, as the Table also shows, most of the significant bodies in the State branches which selected them and instructed them were composed mainly of union representatives.

\begin{footnotes}
\item[32] A.L.P., Rules, r.22 (b)
\item[33] A.L.P., \textit{Federal Executive Rules}, 1957, r.3.
\item[34] A.L.P., \textit{Rules}, Vic., App. 1, r.2; Tas., r.53.
\item[35] A.L.P., N.S.W., Rules, r.27
\item[36] A.L.P., W.A., Rules, r.23.
\end{footnotes}
3. A.L.P. Executives and Central Union Bodies

The links between executive bodies of the A.L.P. and corresponding central union organizations are of increasing importance with the expanding role of these organizations as coordinators of union policies and activities. The nature of these links constitutes a significant element in the relations between the industrial and political wings of the labour movement; they affect the way and extent to which ideas are exchanged, differences composed and cooperation achieved.

Casual, personal contact on the private or official plane is of first importance. At the State level, individual executive members of central union bodies and their counterparts in the A.L.P. machine, particularly where the latter are union officials also, are normally on familiar terms even where their official paths do not cross. The concentration of trade union offices in the Trades Hall found in each State capital (and in many provincial centres) is enough to ensure this. Moreover, familiarity with those on the strictly political side is encouraged by the location of the State Labor Party's head office in the relevant Trades Hall in all States except Queensland, where the A.L.P. office is in the A.W.U.-owned Dunstan House. Personal contact is less in evidence at the Federal level.

Members of the A.L.P. Federal Executive come from all States. The Federal Executive's head office is in Brisbane, while the A.C.T.U. is based in Melbourne. The executive bodies of the A.L.P. and the A.C.T.U. meet at different times and different places. Members of each body from the same State are, of course, likely to have established personal relationships.

1 In W.A., of course, the head office of the A.L.P. State Branch and of the Trade Unions Industrial Council are one and the same.
but general contact of this sort is inevitably much rarer than at the State level.

On the official plane, the most important form of liaison occurs through the duplication of membership between the respective executive bodies, and through joint membership of standing committees set up with the aim of facilitating regular consultation between the two bodies concerned.

Duplication of membership between A.L.P. executive bodies and those of the corresponding central union organizations varies greatly as is shown in Table 12. The importance of such duplication lies in its function as a channel of communication, and therefore, even where it is relatively slight, it may still be of considerable value to both bodies. The degree of duplication is usually higher between the executives of central union organizations and the larger Labor Party bodies, such as Conferences. But for the purpose of continuing liaison, duplication at the executive level is by far the most important.

Standing bodies with the specific task of facilitating regular consultation between the A.L.P. machine and corresponding central union organizations operate only in New South Wales, although in Victoria and South Australia consultative bodies including also representatives of the respective State parliamentary Labor parties to some extent carry out the same function. In New South Wales, an Industrial Committee composed of the top officials of the State Labor Party and the Labor Council is

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2 The practice of the Victorian Branch of the A.L.P., mentioned by Crisp in 1954, of 'always' including the President and Secretary of the A.C.T.U in its delegation to the A.L.P. Federal Conference, was not continued in 1955 or 1957, although the A.C.T.U. President was a member of the Victorian Central Executive in those years. See Crisp, *The Australian Federal Labour Party, 1901-1951*, 311.

3 See Chapter 13.
very active. A Social Services Committee constituted on the same lines operates sporadically. A Holidays, Shops and Hours Acts Committee was active in the past, especially in connection with the forty-hour week campaign, but has since fallen into disuse. In States where committees of this nature have not been set up, ad hoc discussions are not infrequently conducted between leaders of the Party machine and the trades and labour council on matters of joint concern. At the Federal level, consultation between the A.C.T.U. and the A.L.P. Federal Executive is generally conducted through the members of the Executive who are also on the A.C.T.U. Interstate Executive.

The ideal (as expressed by a union official with a prominent part to play as a link between central union bodies and the A.L.P. machine), that the relationship between the industrial and political wings should be 'so free and understanding that formal meetings shouldn't be necessary', is far enough from realization to make the existence of the formal and semi-formal means of liaison outlined above of continuing importance and possible value.

4. Finance

The financial requirements of a political party fall into two categories: funds needed to pay expenses involved in the routine administration of the party machine, and funds necessary to support periodic election campaigns.

The finance for the administration of the A.L.P. machine is obtained from annual affiliation fees levied on affiliated unions and from subscriptions payable by the members of political branches. The rates at which such fees and subscriptions are payable to State executives of the
A.L.P., together with the total amounts paid or payable in both cases in recent years, are shown in Table 13. The Federal Executive is not within the terms of the Table because its operating expenses are met by annual payments from the State branches assessed in relation to their total affiliated and direct membership. It is to be emphasized that Table 13 refers only to fees and subscriptions which are handled by State executives. This means that while the full amount of union affiliation fees is included in the Table, since all union affiliation fees are payable direct to the central Party body, only a part of the full amount derived from the subscriptions of political branch members is so included. In all States the subscription payable by members of political branches is fixed (either by the Party rules, or at the discretion of each political branch) at a rate in excess of that laid down as payable to the State Executive, the branch retaining the difference for its own administrative expenses or, in some States, paying part of it to intermediate bodies in the Party structure. But this consideration, while noteworthy, does not materially affect the dominant part played by affiliated unions in all States in supplying the Party's administrative expenses.

The affiliated unions' share of contributions to A.L.P. election campaign funds is very much more difficult to assess. The only available estimates of their share in relation to recent elections are set out in

2 The exceptions are minor. In N.S.W. and Tas. there are intermediate bodies (district assemblies and divisional councils, respectively) with which unions can be directly affiliated; if so affiliated, they pay an additional affiliation fee direct to the body concerned, usually at a nominal rate.
3 As in N.S.W. and Vic.
4 As in Qd., S.A., W.A. and Tas.
5 A.L.P., Rules; N.S.W., r.41; Vic., r.34; Qd., r.112; S.A., r.4 (a); W.A., r.19(b); Tas., r.9.
However, these estimates are of limited value for two reasons.

In the first place, the estimates do no allow for campaign funds carried over from previous elections; nor do they take account of funds other than those initially earmarked for use in elections. They therefore exclude campaign finances drawn from surpluses left after normal administrative expenses have been met out of regular affiliation fees and subscriptions. This may be an important source of campaign funds. Indeed, in Western Australia union affiliation fees were increased by fifty per cent. in 1949 'for the purpose of financing elections.'

In the second place, and more important, the estimates are restricted to funds which passed through the hands of the central executive bodies. Since these bodies are not the only points at which campaign funds are collected and expended, the figures given in the Table are subject to two major qualifications. On the one hand, donations from sources other than unions are received and expended by A.L.P. bodies apart from Party executives. On the other hand, the unions themselves do not confine their donations to the campaign funds of Party executives. These two qualifications operate in contrary directions in relation to the estimates given in Table 14. The first tends to diminish the figures given, the second to increase them. To what extent they cancel each other out it is impossible to say since the relevant figures are not available. The most that can be done, therefore, is to give some idea of the ways in

6 Official Report, 20th General Council, July 1956, 28. The move was unsuccessful, unions adopting various expedients to avoid paying higher total affiliation fees, and the rate was dropped again in 1953, though not to its original level.
which A.L.P. campaign funds may be collected and expended other than through the central executive bodies.

In all States the A.L.P. machine includes bodies established on the basis of both Federal and State electorates with the main function of conducting election campaigns. In most cases the Federal electorate bodies have no other functions; but those operating in relation to State electorates are standing bodies with a variety of functions. In all States the latter bodies are entitled to a regular income for administration expenses, and those in New South Wales, Victoria and Queensland are also empowered to impose levies on their constituent political branches. In the Victorian State elections of 1955, according to a prominent Party official, the State electorate councils each spent up to £100 in support of candidates for the Legislative Assembly and up to £200 (the electorates in such cases being larger) in support of Legislative Council candidates. In most cases the bulk of this money came from political branches and sources other than unions, but a number of donations were made direct to the councils by affiliated unions. This practice is usually discouraged by State executives, but various unions in most States follow it from time to time where the Labor candidate is favoured for some reason.

For Federal elections, union donations to the A.L.P. Federal Executive come from Federal unions whose State branches, together with State unions,
usually make their own contributions to the Federal campaign fund of the appropriate State Executive. During the 1955 Federal elections, for example, Victorian unions donated £7,757 to the State Executive as compared with corresponding contributions of £29 from political branches and £318 from 'other sources'. On the other hand, Party bodies concerned with the campaign at the electorate level were said to have spent about £150 in each of thirty-three Victorian Federal electorates, most of the money being drawn from political branches and 'other sources'.

Campaign funds are also held by the various parliamentary Labor parties. These funds are alleged to be substantial in cases where the Party's parliamentary representatives have a record or prospects of electoral success, and, for obvious reasons, they are probably the most frequent destination of donations from 'other sources'. Although in some cases money from them has been transferred to the relevant A.L.P. Executive, the existence of such funds is on the whole regarded without favour by union officials and leaders of the Party machine. It is argued that their disbursement is too often at the discretion of the parliamentary leaders who can use them to bolster their own position or group. But closer to the bone, especially where a Labor Government is concerned, is the belief that funds of this sort are likely to be large enough to lessen materially the

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10 short of the total contributed to the State Executive by affiliated unions: see Table 1.n.
11 For a rough estimate of the total campaign funds collected by State executives for the 1946 Federal elections, see Overacker, The Australian Party System, 284. Her comment that the Federal Executive takes no part in raising or expending campaign funds is no longer correct.
financial dependence of the parliamentarians on the Party machine and the unions. Moreover, in many Party quarters it is suspected, and resented, that these funds attract contributions from interests that are incompatible with those of the bulk of Labor supporters. Such contributions, it is felt, compromise the parliamentarians and blunt their Labor principles - as well as possibly lessening their responsiveness to the Party machine.

The strength of this attitude was indicated by the inclusion among the charges made against V.C. Gair, Premier of Queensland, at the time of his expulsion from the A.L.P., of the charge of 'soliciting and obtaining financial support from non-Labor sources and sources definitely unsympathetic to Labor...without accounting to any individuals or any body such as the Q.C.E.' The Queensland Central Executive apparently considered the matter of sufficient importance, as a means of gaining support, to continue attacking Gair on this point after his expulsion.

Notwithstanding the prevailing attitude, it appears that in the Federal sphere at least some unions have in the past contributed to the fund controlled by the Federal Parliamentary Labor Party. But the general union view of the practice is illustrated by discussions that took place in 1954 on the question of the way in which unions should contribute to Federal election campaigns. The matter was raised by the A.C.T.U. with the Federal Secretary of the A.L.P. and the Leader of the Federal Parliamentary Labor Party. The Federal Leader, H.V. Evatt, argued that unions should be free to make donations direct to the 'Federal Parliamentary Fund'.

13 Labor News (A.L.P., Queensland Central Executive), May 1957.
15 Regarding the foundation of this fund, see Overacker, op. cit., 284-5.
A.C.T.U. officials, on the other hand, pressed for a more 'regular procedure'. They suggested that contributions from Federal unions should be sent to the A.L.P. Federal Executive, and those from the State branches of such unions should be made in accordance with the 'normal practice' to the appropriate State branches of the Party, the disposal of the funds by the bodies concerned being 'a matter for their own decision'. These suggestions were finally agreed upon.

The custom of giving financial assistance direct to individual Labor candidates is long-established and fairly prevalent among certain unions. It is not, however, officially recognized by the A.L.P. nor as extensively practised as it is in the United Kingdom, where many of the large unions not only assume financial responsibility for, but actually select, parliamentary candidates. The practice is in general frowned on by A.L.P. executives, and occasional attempts by unions to specify the electorates in which their contributions to the central campaign fund are to be spent have usually been rebuffed. In Tasmania, however, the State Executive does accept funds which the contributing union wishes to earmark for a particular State electoral division: under the State's proportional representation system, this does not mean that the contribution will be used to support a single candidate, and its acceptance is conditional on its being used in support of all the Labor candidates within the specified division. But unions wishing to help a particular Labor candidate normally do so directly. Many unions make a point of contributing to the campaign expenses of their own officials or ex-officials; and some, on occasion, give such support to other favoured candidates. The A.W.U. appears to have followed this policy

most consistently and most extensively of all; it has also, particularly in Queensland, often placed the services of its officials, its office equipment and vehicles at the disposal of Labor candidates in general. 19

Apart from the activities of individual unions, most central trade union organizations contribute in various ways and to a varying extent to A.L.P. election campaigns. Up to the 1954 Federal elections, the A.C.T.U. customarily spent about £1,500 on national broadcasts, only part of which was refunded by its affiliated unions. This was discontinued in view of the burden it placed on the organization's limited financial resources, but the A.C.T.U. has continued its previous policy of appealing to its affiliated unions for contributions to A.L.P. Federal election funds. State trades and labour councils, too, usually make appeals for Federal election funds, and sometimes finance advertisements and meetings. The Trades and Labor Council of Queensland was particularly active in this respect during the 1955 Federal elections, when it sponsored more than three hundred meetings, a number of State broadcasts by Federal Labor leaders, and supplies of leaflets, posters and 'stickers'. 20

In all States, other than Western Australia, where the Trade Unions' Industrial Council is part of the A.L.P. structure and has no separate funds of its own, the main trades and labour councils take some part in State election campaigns. With the occasional exception of the Labor Council of New South Wales, they do not make direct financial contributions to A.L.P. campaign funds. But they usually make appeals to their affiliated unions for such contributions, and during the 1956 Tasmanian election the Hobart

19 See Courier-Mail (Brisbane), 24/1/1957.
Trades Hall Council took the exceptional step of actually collecting funds and forwarding them to the A.L.P. State Executive. The various councils have given help in other ways. The United Trades and Labor Council of South Australia frequently sponsors newspaper advertisements; the New South Wales Labor Council makes available additional free time over its radio station for A.L.P. speakers; the Melbourne Trades Hall Council finances the publication of election leaflets, and spent £248 in this way during the 1955 State election campaign. But only in Queensland and Tasmania have councils, in recent years at least, played an active role in coordinating union election activities. Before the Tasmanian State elections of 1955, the Hobart Trades Hall Council took the lead in formulating a programme of electioneering work to be carried out by the unions to obtain campaign funds and support for Labor candidates. In the post-war years up to 1957 the Trades and Labor Council of Queensland appears to have taken little part in State election campaigns by contrast with that of trades and labour councils in other States - and with its own activity in relation to Federal elections. But in the State elections that followed the 1957 crisis in the State Branch of the A.L.P., the Council organized and financed an 'independent Trade Union campaign' in support of the A.L.P., and carried it through with vigour.

The many points at which A.L.P. campaign funds may be, and are, collected and expended make it impossible for even Party officials to fix

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21 Minutes, Hobart Trades Hall Council, 22/11/1956. In 1956 the Council also made a special appeal on behalf of the State Labor Government's Chief Secretary, A.J. White, at the time a Council member and its immediate past President: circular to affiliates, 26/9/1956.
22 Melbourne Trades Hall Council, Statement of Accounts, Year ended 30/9/1955
23 Minutes, Hobart Trades Hall Council, 13/1/1955.
with any accuracy the total amount spent during an election campaign or the sources from which the money is derived. For this reason, the estimates given in Table 14 of the union share of election donations handled by A.L.P. central executive bodies are of strictly limited value. Nevertheless, the estimates do suggest a conclusion which is perhaps worth outlining on the assumption that the central executives probably represent, in most cases, the main point at which campaign funds are collected. It is that a Labor Party out of power, or likely to lose power, is more dependent on the unions for election finance than a Labor Party in office, or likely to gain office.

As shown in the Table, the union share of campaign funds collected by A.L.P. central executives in relation to the elections indicated was markedly less in New South Wales and Tasmania than in all other cases. Labor had held office for many years in these two States, and had reasonable prospects of retaining its position. In Western Australia, where the union share was somewhat higher, a Labor Government was also in power but the likelihood of its return seemed rather more doubtful. In all other cases the union share was significantly large in circumstances which gave Labor small prospect of success. In Victoria and Queensland, the elections had been forced on Labor governments by dissension in their own ranks, and the A.L.P. faced the electorate harried by vote-splitting ex-Labor candidates. The 1955 Federal elections were fought by a Labor Opposition at a time deliberately chosen by the Government in order to take advantage of the current unpopularity and disunity of the A.L.P. And in South Australia, where

union contributions represented almost the sole source of the State Executive's campaign funds, the Party formed a near-permanent Opposition. 26

The conclusion suggested here was most dramatically illustrated, however, by the variation in the union share of the campaign funds accumulated by the Queensland Central Executive for the 1956 and 1957 State elections. As Table 14 shows, this share represented about 80 per cent. of the total in 1957 when the A.L.P. had its back to the electoral wall. On the other hand, in 1956, when Labor was entering its twenty-fifth consecutive year in office, the union share, according to a responsible Party official, was a mere 20 per cent. The difference in these proportion resulted partly from a fall in the 1957 contributions received from 'other sources', whose purses were open to a united Party assured of success but not to a divided one facing probable electoral defeat. But primarily it resulted from an increase in the amounts of money extracted from the unions by the circumstances of the 1957 elections, during which, incidentally, the State Party collected and expended nearly twice the total amount it had in the course of the 1956 campaign. To this extent, the low union share of 1956 was a function of union parsimony, which was in turn largely the product of Queensland Labor's unparalleled electoral record since its first major success in 1915. With Labor entrenched in government by the mechanics of the State electoral system, unions were understandably reluctant to dip into their funds to the extent they would have had the result been less readily

26 Perhaps an indication of the S.A. Party's financial straits was given by the recent rules amendment to impose a 2½% salary levy on State and Federal parliamentarians from the State for election purposes: A.L.P., S.A. Rules, r.4. (a)
predictable; and their reluctance was reinforced by the knowledge that considerable funds were already available, chiefly to the Parliamentary Party, from sources outside the Party and the unions. The tendency was, therefore, either to make token donations or to withhold them altogether, or - and this practice appears to have been followed on a wide scale in Queensland - to make them direct to favoured candidates from whom special consideration might be expected. A leading member of the Gair Cabinet, at the time of the split in the Party, acknowledged this last avenue of union contributions before he went on to claim that 'as to the central organization, less than £1,000 was contributed directly to the political campaign by the whole of the trade union structure of Queensland' during the 1956 elections.

5. Union Control of the Party Machine

The A.L.P. machine, as the term is used here, is the Party structure outside parliament, which has been described in preceding sections of this chapter. Control of the machine means, briefly, the continuing ability in practice to exercise a determining influence on its decision-making process. The key to control of the machine, at the Federal level and in each of the States, is found, first, in the supreme body in each case which makes final decisions binding on all members of the Party and on all units of the Party structure within its area; and, second, in the central executive body which administers the Party's affairs between meetings of the supreme body. These bodies, Conference and Central Executive, (the latter

27 The reverse is also likely to apply. Even as the most reliable source of election funds, the unions' enthusiasm, as has been evident in S.A., is naturally dampened where the Party has been repeatedly defeated: see Crisp, *The Parliamentary Government of the Commonwealth of Australia*, 99
28 The amount gathered in the 'Premier's Fund' for the 1956 State elections was alleged to be at least £12,000: *Courier-Mail* (Brisbane), 24/1/1957.
term including those State executive bodies with a two-tier structure), are at the centre of the power structure of the A.L.P. machine. Control of the machine in general necessarily involves control of the relevant Conference and Central Executive.

In terms of formal organization, as has been shown, the unions are in a position to control the A.L.P. machine in all States, and thereby the Federal machine. In every State the membership of affiliated unions far outstrips the Party's political branch membership. As a result, their representatives constitute (in fact if not always on paper, as in Queensland) the majority of delegates at State Conferences; and in most States they also 'have the numbers' on the central executive bodies. In every State, too, they provide the bulk of the Party's running expenses through their affiliation fees, and they are the most reliable, if not always the most generous, source of election campaign funds. But to assert that 'the unions could retain control of the party for their own purposes because of the relative lack of strong interest-groups that had to be compromised'1 is to imply that union leaders invariably act together, and that therefore the formal description given above completely describes the power structure of the A.L.P. In practice the position is less clear-cut. The formal description is meaningful in potential but rarely in actual terms, because union leaders do not invariably act together. The history of the A.L.P. in all States is studded with struggles between competing groups of union leaders for control of the Party machine. Changes in the membership and strengths of such groups have been frequent, because the factors that divide

1 Kuhn, 'Why Pressure-Group Action by Australian Trade Unions?', (Sept., 1952) 24 Australian Quarterly 66.
union leaders on different issues and at different times run the gamut from principle to expediency. For this reason their classification as nothing more than factions, intent merely on the achievement of the power that control of the Party machine can bring, is tempting. It is not, however, completely accurate; it overlooks the genuine disagreements on policy which are normally of undeniable, if indeterminate, importance in struggles within the machine. Disagreements of this kind are reflected in the existence of certain more or less stable core groups of unions. In distinguishing these groups and discussing the unions outside them, it should be kept in mind that the attitudes discussed are essentially attitudes held by union leaders. The independence of attitude of union leaders in relation to their members varies considerably from union to union, from place to place, and from time to time. But, however conditioned, that attitude is of determining importance in the present context.

Three core groups are generally distinguishable in the Australian trade union movement. In the first place, it has always been possible to describe the trade union movement in terms of a left-wing and a right-wing, and it is in this connection that the division on principle most consistently arises. A complex of attitudes is involved on each side but, broadly speaking, the distinction between the left-wing and right-wing core groups can be described in terms of two major issues. Industrially, the general distinction is between unions favouring strike action and unions clinging firmly to the procedures of industrial arbitration. Politically, the general distinction is between Communist-controlled unions or, within the

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2 For a summary of the fluctuating character of the controlling groups in the N.S.W. Party machine up to 1941, see Rawson, The Organization of the Australian Labor Party, 1916-41, 11.
A.L.P.'s frame of reference, unions that regard the socialization objective as something more than a misty ideal and are wedded to its realization by constitutional means, and, on the other hand, unions to whom the socialization objective is, if not anathema, at least highly embarrassing and unrealizable. These industrial and political attitudes on each side tend to go together; and unions that regard the two issues of the strike and socialization from the same extreme also tend to take up the same attitudes over a wider range of issues. These two core groups exhibit a consistent concern with aims apart from, or at least additional to, personal aggrandizement, a concern involving fundamental beliefs that usually prevent them finding common ground on all but the most neutral issues. The composition of these two core groups is comparatively stable over a period of time, but may vary from time to time and from place to place. Differences in the attitudes of their officials may lead to the various State organizations of a Federal union being attached to a different core group, or attached to neither. A change of officials, or less commonly the threat of a change heard in the rumbling of the rank and file, may swing a union from one group to another or into the larger pool of uncommitted unions.

The uncommitted unions, as the adjective implies, range in attitude across the spectrum on which the left-wing and right-wing core groups are the extremes. The uncommitted unions are not firmly identified with either of these two core groups, and their industrial and political attitudes are less rigid. The tight organization of right-wing and left-wing core groups (readily observable at inter-union conferences) is less frequent, and certainly less lasting, among the uncommitted unions. They take sides on particular issues and may for a time consistently accept the leadership
of one or the other of the two core groups: as the price of attracting their support they may oblige the left-wing or right-wing group to compromise its principles but rarely to abandon them. It is primarily within the pool of uncommitted unions that the strictly factional division occurs — whether as a product of personal ambition, personal antipathies or of conflict between the industrial interests of particular unions — and cuts across divisions of principle separating the left-wing and right-wing core groups. This is far from saying, however, that all divisions occurring within this pool are based on factional advantage.

The large pool of uncommitted unions is not a group as such. It lacks the unity of purpose and of organization that characterizes the groups at its extremes. It does, however, enclose the third and most readily distinguishable core group in the shape of the Australian Workers Union (A.W.U.) — use of the term 'group' being continued in this connection for the sake of simplicity. The independent role of the A.W.U. in the trade union movement in general has been discussed elsewhere. This role as a symptom of the A.W.U.'s power is, however, of greatest significance within the structure of the A.L.P. machine, in which are reflected the divisions outlined above in relation to the trade union movement in general.

The role of the A.W.U. as the third core group within the structure of the A.L.P. machine is derived not from the rigidity of its leader's beliefs, as in the case of the right-wing and left-wing core groups, but from certain qualities that give it, as a single union, a peculiar importance within the machine. These qualities are the size and distribution of its membership and its officials' close and constant preoccupation with political activities, combined with its ability as an uncommitted union to shift its

3 See Chapters 3 and 4.
position in a way that is not normally open to either of the other two core groups. Although its leadership is traditionally conservative in attitude, the A.W.U. has shown a marked ability in its alliances to swing from one end to the other of the area between the left-wing and right-wing groups - a characteristic it shares, of course, with many other uncommitted unions whose individual weight is less significant. By far the largest of all Australian unions, with a huge membership scattered through all States, the A.W.U. has the distinction of being the only union that was represented on every State Executive of the A.L.P. in 1957. Its strength and influence within the machine varies from State to State. The weight of its State memberships, consisting chiefly of rural and metal mining workers, is important but counts for less in the Party councils of the heavily industrialized States of Victoria and New South Wales. On the other hand it is dominant in Queensland, where the Party rules as well as its enormous membership enhance its position; and it is of first importance in the other three States where its membership outstrips any other union. Moreover, in two of these States, South Australia and Western Australia, it is able to exert its full strength in important Party ballots owing to the existence of the card vote.4

The widespread strength of the A.W.U. at the State level, together with the fact that all States are equally represented on Federal bodies of the A.L.P., usually gives its officials a membership on these bodies and influence as a group at the Federal level that is out of all proportion to their union's strength in the union movement as a whole. Among the members of the A.L.P.

4 Thus the S.A. State Secretary of the A.W.U.® 'The thing that does aid us... is that...we have a card-system, and when we vote...we cast a vote for every member of the organisation': Official Report, A.W.U., 69th Annual Convention, Jan. 1955, 176.
Federal Executive in 1957, for example, two of the six union officials were State secretaries of the A.W.U., and at least one other member, a parliamentarian, was a former A.W.U. organizer. Similarly, of the sixteen union officials attending the 1957 Federal Conference, five were officials of the A.W.U. and at least two other delegates, both parliamentarians, were closely associated with the union - one as a former organizer and the other as a current member of a State Executive of the union. The possible strength of the A.W.U. at the Federal level of the Party was strikingly demonstrated in an important vote taken at the 1951 Federal Conference. The issue was an application by the union for membership of the Federal Labor Advisory Committee, which consisted at the time of representatives from the Federal Parliamentary Labor Party, the Federal Executive and the A.C.T.U. Despite strong opposition from the President, Secretary and other office-holders of the A.C.T.U., all of whom were delegates, the application was approved by a vote of eighteen to seventeen. Of decisive importance was the fact that sixteen of the eighteen favourable votes came from A.W.U. members distributed among the various State delegations.

The three core groups outlined above constitute the primary divisions within the power structure of the A.L.P. In large measure it is the interplay of these three groups that determines control of the Party machine, at least one of them usually forming the nucleus of each of the larger

5 In addition, it is possible that some of the other parliamentarians were members of the A.W.U. in view of the practice, prevalent in some States, of Labor politicians taking out membership tickets - a practice made possible by the general terms of the A.W.U.'s constitution, and desirable by that union's generosity to the campaign funds of favoured candidates and by the general political advantage to be gained from being able to speak as a unionist.

6 The missing vote was that of A.A. Calwell, who was absent from the conference room at the time.

groups that from time to time struggle for control of the Party machine. For, normally, no single core group is in a position where it can achieve decisive power in the machine without allies. It may draw allies from three sources. In the first place, a core group may form an alliance with another core group. The crucial limitation on this process is the rarity with which the left-wing and right-wing union groups find a common cause to bring them together; and the divergence between them has been sharpened since the second world war by the tendency of prosperity and full employment to shift the right-wing further to the right. This limitation enhances the position of the third core group, the A.W.U., since it alone is free to join forces with either of the other two.

In the second place, even for a combination of two core groups it is usually necessary to attract the support of a significant section of those unions which are committed wholeheartedly to no particular group and, like the floating voter of parliamentary concern, feel free to shift their allegiance in accordance with the demands of the moment. Moreover, the fact that such divisions exist among the unions and that, by itself, no core group can normally expect to muster the absolute majority necessary in the main Party bodies, frequently gives the political branches of the Party an importance that the comparative smallness of their membership would not otherwise have. Indeed, the creation of political branches composed of their own supporters, and the 'stacking' of existing branches, is a tactic that has not been neglected by groups controlling the Party machine (and thus controlling the grant of branch charters) and anxious to entrench themselves in this position. It was used to good effect by the J.T. Lang

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group in the struggles within the New South Wales Branch of the A.L.P. during the 'thirties. More recently, it has been alleged that the same policy was followed on a grand scale by Industrial Group-controlled executives in New South Wales and Victoria:

I suggest that the A.L.P. members should look back from the end of 1951, and think of the amazing increase in A.L.P. membership in the Branches...I guarantee that the whole membership has doubled in the last two years in Victoria and New South Wales...Why this sudden rush in thousands to join the A.L.P? Obviously, it is a surging forward of the organization of the Movement. 10

In Queensland, too, as shown above, the State Party's rules are framed in a way that enables the A.W.U., in particular, to influence the selection of many political branch delegates to the triennial Labor-in-Politics Convention. Apart from deliberate tactics of this sort, however, divisions within and among political branches can be expected to conform to something like the pattern existing among affiliated unions; and in disputes over the control of the A.L.P. machine, 'it is usual to find two rival union groups competing for power, each supported by a number of leagues.' 12

In the third place, the Party's parliamentarians are usually an important factor in any struggle for control of the machine. In theory, the parliamentarians as a group are subordinate to the Party machine, that is, to whichever group controls the machine. But in practice, parliamentary groups, particularly when Labor holds the reins of government, are often in a position where they are not only largely self-determining but may actually have a hand in controlling the machine that purports to control them. The question of the relationship between the Party machine and Labor parliamentarians and governments is discussed fully in the two

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11. See Section 2 of this chapter.
succeeding chapters. For present purposes it is sufficient to note that parliamentary Labor parties, and especially the members of Labor governments, form a group with views and interests which are a product of their official status, and frequently with an influence in the Party machine outside parliament that makes their opposition or support a matter of crucial importance to the groups of unions, centred on the core groups, seeking to control the machine.

Union core groups may find it necessary to draw support from Labor parliamentary groups and from the political branches if they are to exercise a determining influence on the Party machine. But, owing to the numerical weight of affiliated unions and the importance placed on sheer numbers by the Party's structure, they are ultimately dependent on the support of at least a significant section of the uncommitted unions and usually also on the support of one other core group.

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The role of the core groups in the power structure of the A.L.P. is perhaps best demonstrated by an examination of the interests involved in the recent struggle for control of the Queensland Party machine, a struggle that in 1957 finally led to the election of the State's first non-Labor government in twenty-five years. A single illustration does not, of course, constitute conclusive proof of the validity of an analysis made in the general terms of that outlined above. The examination of the Queensland dispute is intended as no more than an illustration. It is contended, however, that it does exemplify a pattern which is usually discernible in previous and contemporary struggles for control of the A.L.P. machine in other States as well as Queensland. - The same pattern is evident, for example, in the
split in the Victorian Party in 1955, and in the uneasy balance of forces that overlays the continuing struggle since 1955 in the New South Wales Party machine.

All three core groups are clearly distinguishable in the Queensland case: a left-wing centred among the unions affiliated with the Trades and Labor Council of Queensland; a right-wing consisting of a number of unions controlled by Industrial Group supporters; and, finally, the A.W.U. In addition, there is a Parliamentary group dominated by a strong Labor Cabinet with strong influence in the Party machine. A combination of the last two core groups working closely with the Parliamentary group was in complete control of the Party machine until 1955, but from early in that year open signs of the combination's ultimate break-up appeared.

Before the ruling combination began to disintegrate, the most important of its constituent groups was the Queensland Branch of the A.W.U., whose enormous numerical superiority was enhanced by the terms of the Party rules. This role is one that the A.W.U. has traditionally filled in Queensland Labor politics. In the past, it has not only provided many of the State Labor parliamentarians from its officials, but has provided over nearly forty years of Labor rule the solid support which has enabled the Parliamentary leaders, with rare exceptions, to stamp the Party machine in their own image. The strength of the A.W.U. was not exaggerated by the Queensland delegate to the union's Federal Convention who, unaware of his own prescience, voiced the opinion that 'if this Union were forced into the position of opposing our Labor Government, we would lose the Labor Government in Queensland.' The A.W.U.'s influence was of major importance

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13 See Section 2 of this chapter. In Queensland before 1955 the nearest rival to the A.W.U.'s affiliated membership of 82,000 was the Federated Clerks Union with 20,000, an Industrial Group-controlled union. Between them these two covered half the total number of unionists affiliated with the State Party.

in securing official A.L.P. recognition in Queensland of the Industrial Groups. One of its leading officials, R.J.J. Bukowski, was an original member of the committee set up by the 1947 Labor-in-Politics Convention to organize the Groups, and he continued to act as one of the three State organizers for several years. In its adoption of this policy, the A.W.U. was in sympathy with the officials of other unions supporting the Groups and also, after 1952, with the Parliamentary group led by the Premier, V.C. Gair, and the Treasurer, E.J. Walsh, whose rise to dominant positions in both Caucus and the Queensland Central Executive (Q.C.E.) of the Party was in large measure the product of A.W.U. support. This combination centred on the A.W.U. was able to command a regular four-fifths majority on the Q.C.E.

There were, however, aspects of the relationship between the A.W.U. and the Parliamentary group - in effect, the Government - which reflected a decline in the union's influence and were a potential source of dispute. Gair and his predecessor, E.M. Hanlon, had broken the line of ex-A.W.U. Labor Premiers in Queensland. Unlike their forerunners in office they were somewhat less sanguine about the traditional dependence on the A.W.U. for financial and organizational support. While C.G. Fallon was State Secretary of the union, however, these undercurrents were largely submerged beneath the harmonious personal relationship that existed between him and the Premier, Hanlon. With Fallon's death in 1950 the situation changed. The new State Secretary of the A.W.U. was H. Boland, while R.J.J. Bukowski became State President. The new leaders continued the alliance with the Parliamentary

15 *Courier-Mail* (Brisbane), 21/9/1953.
group in the Party machine. At the same time, and particularly after Gair's succession to the Premiership in 1952, they sought to tighten the union's hold on the Government leaders by using its financial support as a bargaining counter - a tactic that caused the Government increasingly to look elsewhere for such support. Nevertheless, despite the strains evident in such a situation, there was sufficient cooperation between the two to rule out the possibility of the A.W.U. leaders seeking new allies outside the Parliamentary group and the Industrial Group unions, since this could only mean the left-wing unions centred on the Trades and Labor Council.

The Trades and Labor Council was under strong Communist and militant left-wing influence, some of its leading officials being avowed Communists. It was inflexibly opposed to the Industrial Groups. Many of its member-unions were also affiliated with the A.L.P., but were mainly outside the ruling groups within the Party. It was to be expected, therefore, that the Council's general attitude towards the 'Tory Labor Government' and its supporters in the Party machine was usually highly critical.18

Relations between the leaders of the Party machine and the Trades and Labor Council were, to put it mildly, strained during the post-war years up to 1955. The Party leaders' attitude is reflected in the terms of a recommendation issued in relation to a conference of all unions that had been called by the Trades and Labor Council. The Party's Inner Executive stated that 'it considers the conference to be sponsored and inspired by Communist influences. All trade unionists and ALP members are, therefore, advised to take no part in this so-called conference.'19 But the depths to which relations between the two bodies had sunk is perhaps best illustrated

18 The attitude of the Meat Industry Employees Union may be taken as typical: see Kenneth F. Walker, Industrial Relations in Australia, 187-8.
19 Courier-Mail, 21/4/1954/
in the controversy over the comparatively minor matter of Labor Day celebrations.

The organization of the Labor Day procession through Brisbane, and the sports meeting that followed, had customarily been handled by the Trades and Labor Council. After the Labor Day of 1947, the year when Industrial Groups were officially recognized in Queensland, most unions affiliated with the A.L.P. refused to participate, alleging that the proceedings were Communist-controlled. In 1949 the Q.C.E. stepped in and obtained the necessary police permit for the 1950 procession and also the booking of the Exhibition Grounds for the sports meeting. At a meeting of fourteen affiliated unions, including the A.W.U., an Australian Labor Day Celebrations Committee (A.L.D.C. Committee) was formed to organize proceedings, the Trades and Labor Council announcing at the same time that it would conduct its own procession despite its lack of a permit.

The dispute reached such proportions that the President of the A.C.T.U. took up the matter with Hanlon, the Premier, on behalf of the Trades and Labor Council which was the A.C.T.U.'s State Branch. As reported to the Council, the Premier thought that agreement on a united procession could be reached, and he undertook that the procession permit would be given to the Council in the future. However, when the A.C.T.U. President saw the three officers of the A.L.D.C. Committee, including Bukowski of the A.W.U. and two union officials closely connected with the Industrial Groups, he was told that they would not agree to a joint procession and that 'as far as they were concerned they would have the permit for the next year also.'

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20 Ibid., 2/5/1950.
22 Ibid., 29/3/1950.
23 Ibid.
A right-wing union's resolution suggesting that all unionists should
march in the A.L.P. unions' procession was not accepted by the chairman at
a Trades and Labor Council meeting. But in the event, Hanlon's comprom-
isng influence prevailed and a joint procession was held. In 1951,
on the other hand, no compromise was forthcoming. The A.L.D.C. Committee
officers, accompanied by the Premier and Deputy Premier, led the Labor Day
procession while the Trades and Labor Council, after threatening to march
despite its lack of a permit, held a 'display' outside the Trades Hall
surrounded by a ring of policemen. In 1952 the Council re-affirmed its
right to conduct the Labor Day celebrations, but after an unsuccessful
attempt to obtain the cooperation of A.L.P.-affiliated unions in order to
allow it to exercise the right, its leaders took part in the A.L.P. pro-
cession as individual union members. For Labour Day, 1953, the Council
dropped its claim to conduct the procession and sought, again without suc-
cess, to confer with the A.L.D.C. Committee, with a view to the formation
of a 'united committee' that would bring about a 'united Labor Day'.
In 1954 the process was repeated and the Premier congratulated the A.L.D.C.
Committee 'for having taken control of the celebrations from Communists'.

The Trades and Labor Council's view of the relations between the Gov-
ernment and its supporters in the A.L.P. machine, particularly the A.W.U.,
was summed up by a member of the Council's Executive in 1953 when he com-
mented on the State Treasurer's repeated refusal to discuss workers' compen-
sation with the Council: 'the reason Mr. Walsh was dodging the unions

24 Ibid.
26 Ibid., 1/5/1951.
27 Minutes, T. & L.C. of Qd., 24/10/1951.
28 Courier-Mail, 6/5/1952.
apparently was that he was endeavouring to give the Australian Workers' Union all the credit for any improvements achieved in the Compensation Act."

The first public sign of the change that was to take place after 1954 in the relationships discussed above was when, in November 1954, the two Queensland delegates to the A.L.P. Federal Executive voted on opposite sides on the crucial decision to dismiss from office the elected members of the Industrial Group-dominated Victorian Central Executive. While Gair, the State Premier, opposed the motion, his fellow-delegate, J.M. Schmella, State Secretary of the A.L.P., supported it and ensured the narrowest possible majority necessary for its passage. This vote followed H.V. Evatt's attack on the Industrial Groups. More importantly, from the point of view of the Party in Queensland, it also followed a similar attack launched the previous month in The Australian Worker, the Federal journal of the A.W.U. - an attack that was publicly supported by Bukowski, Queensland State President of the union, with the reservation that the Industrial Groups in Queensland were 'non-sectarian' and 'apparently worked differently from those in New South Wales and Victoria'.

Further signs of the impending change soon appeared. At the subsequent meeting of the Queensland Inner Executive, a motion was carried dissociating the Queensland Party from Schmella's action; but Boland, State Secretary of the A.W.U., abstained from voting, and Bukowski was absent from the meeting. When the issue was raised before the Q.C.E. a few days later, however, Bukowski led the opposition to a motion moved by M.T. Brosnan, his former colleague on the A.L.P. Industrial Groups Committee, instructing

32 Ibid., 13/11/1953.
34 Courier-Mail, 13/11/1954
the State delegates to the Federal Executive on the course they should take at the Executive's next meeting. Faced with this opposition, the Industrial Group supporters were forced to substitute a successful compromise motion which, in effect, left the delegates free to act at their own discretion. At the annual State delegate meeting of the A.W.U. later the same month, Bukowski echoed the attacks made on the Industrial Groups by A.W.U. leaders in the southern States; and the Federal Convention of the union shortly afterwards provided the setting for a full-scale assault on the same lines by the A.W.U. leadership, with the complete concurrence of the Queensland delegation.

The rift that this sequence of events indicated, between the A.W.U. and the other members of the combination controlling the Queensland Party machine, was fully confirmed at the Federal Conference of the A.L.P. held in Hobart in March 1955. The Conference met after the Federal Executive had decided to accept the credentials of the anti-Industrial Group delegation from Victoria in preference to those of the Industrial Group-supported delegation. Seventeen of the delegates entitled to attend boycotted the Conference in protest against the Executive's decision. Among them were five of the six Queensland delegates, including the Premier and the Treasurer, Gair and Walsh, and three Industrial Group union officials. The one Queensland delegate who attended the Conference was Boland, State Secretary of the A.W.U. The Q.C.E. subsequently rejected a censure motion against the five abstaining delegates by thirty-one votes to twenty-three. But the vote had a significance apart from its result. Not only was the minority

36 Ibid., 7/1/1955
37 Ibid., 18/1/1955
vote substantial by previous standards, but it included the A.W.U. block, the unsuccessful resolution having been moved by Bukowski.

The breach opened in this way was not to be healed by the later unanimous acceptance of the Federal Conference decisions by both the State Labor Caucus and the Q.C.E., the relevant motion in the latter case having again been proposed by Bukowski. The dispute had, among other things, clearly exposed the inability of the A.W.U. leadership to bring its partners in the Party machine into line behind it. From this time on the efforts of the A.W.U.'s leaders were directed toward bringing the Parliamentary group and its Industrial Group union supporters to heel, and the only way this could be done was by cementing the newly-founded alliance with the left-wing unions.

The changing attitude of the A.W.U. and those A.L.P.-affiliated unions which followed its lead is illustrated by further reference to the conduct of Labor Day processions. In January 1955 the Trades and Labor Council again sought a meeting with the A.L.D.C. Committee of the A.L.P., with a view to obtaining a united procession. In reply, the A.L.D.C. Committee merely reiterated its resolution of 1952 that only delegates of unions affiliated with the A.L.P. could attend its meetings. The Trades and Labor Council was prepared to continue negotiations on this basis but soon had reason to complain about the 'lack of co-operation' shown by the Committee's officer. Shortly after this, however, the full Committee forced a change of policy, and for the first time in five years a joint Labor Day procession was held in Brisbane - a number of placards being

39 Courier-Mail, 26/3/1955
40 Ibid., 16/4/1955
42 Ibid., 23/2/1955
43 Ibid., 9/3/1955
carried expressing sentiments which had been banned by the A.L.D.C. Com-
mittee the previous year on the ground that they were 'Communistic'.

The following year the initial approach for a united procession came from
the A.L.D.C. Committee instead of the Trades and Labor Council. By
1957 cooperation between the two bodies had reached a pitch where the
Council was referring interstate correspondence on Labor Day activities to
the A.L.D.C. Committee, and seeking the Committee's permission to enter
a float in that year's procession. The course of the Labor Day question
reflects the changed relationship between the A.W.U. and the left-wing
unions. The benediction on the new relationship was pronounced by the
President of the Trades and Labor Council, an avowed Communist, when he
asked delegates to the 1955 State Trade Union Congress to 'pay tribute
and respect to that tremendously powerful organisation of workers, the
great Australian Workers' Union'. The importance of this alliance was
soon evident.

During 1955 the A.W.U. and its new allies concentrated their efforts
on securing a majority on the Q.C.E. and, more important in the long-run,
a majority at the Party's triennial Labor-in-Politics Convention which
was to be held early in 1956. A number of left-wing unions re-affiliated
with the Party, including the 10,000-strong Building Workers Industrial
Union; other unions, previously affiliated on only a number of their
branches, affiliated on their State-wide membership in order to increase
their representation on the Q.C.E. A number of affiliated unions follow-
ed the lead of the A.W.U. and dropped their association with the Industrial

47 Ibid., 6/3/1957
48 Ibid., 17/4/1957.
49 Courier-Mail, 20/10/1955.
50 Ibid., 19/10/1955.
Groups, and with it their support within the Party machine for the Parliamentary leaders - many union officials, indeed, had previously affiliated, or other found it wiser to be counted as Group supporters, in order to avoid being opposed by Group candidates in union elections.

By late in 1955, on the industrial issue of three weeks annual leave, this combination was able to obtain a large majority on the Q.C.E. against the opposition of the Parliamentary group and one major Industrial Group union, but its strength on other issues was less sure. However, the main struggle centred on the selection of political branch delegates to the triennial Convention, since under the system of representation provided in the Party's rules control of Convention by any combination of unions is impossible without the support of a number of branch delegates.

The conclusive test of strength at the Convention was the voting for the eleven delegates elected by Convention to the Q.C.E. At the Rockhampton Convention in 1953 the political ticket (the term 'political', like 'industrial', is used here for the sake of simplicity rather than accuracy) had swept the board: it had included five parliamentarians, one A.W.U. official, four officials of strong Industrial Group unions, and one from an uncommitted union whose name was also on the industrial ticket. At Mackay in 1956, however, the political ticket, this time without A.W.U. representation, was soundly defeated. Only one of the men on it, the Premier, was elected. He owed his election to the inclusion of his name also on the industrial ticket, which was completely successful. Three parliamentarians were elected to the Q.C.E. at the 1956 Convention by

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51 Ibid., 12/11/1955, 22/12/1955
52 See Section 2 of this chapter.
53 Courier-Mail, 25/3/1953
54 Telegraph, (Brisbane), 27/2/1956
comparison with the five elected in 1953. The two elected in addition to the Premier were J.E. Duggan and R.C.S. Dittmer, neither of whom had been on the political ticket in either 1953 or 1956. In the elections as in other issues, the pattern was set by the block votes of eighty 'industrial' and fifty 'political' cast in the first vote of the Convention. The nature of the alliance that had made the majority vote possible, and the change it represented, was shortly stated by an observer who placed G. Whiteside, State Secretary of the Federated Engine Drivers and Firemans Association, alongside the A.W.U. and uncommitted union officials regarded as leaders of the 'industrial' block, and recalled Whiteside's stand at the 1953 Convention as 'the leader of a tiny band of seven delegates who strenuously resisted adoption of a report on A.L.P. industrial groups'.

The dominance of the new combination was confirmed at the subsequent meeting of the Q.C.E. at which, although called on short notice, the number of union delegates present was the greatest on record. The seven-member Inner Executive elected at this meeting included Boland and Bukowski of the A.W.U. as President and Vice-President, respectively, Whiteside and J. Egerton (both members of the Trades and Labor Council Executive, the latter being Vice-President), J.M. Schmella (State and Federal Secretary of the A.L.P.), and two parliamentarians, the Premier and the Deputy Premier, Duggan. The previous Inner Executive elected in 1953 had also included Boland, Bukowski and Gair. But the other four members had consisted of two parliamentarians, Walsh and T. Rasey - both members of the A.L.P. committee set up in 1947 to organize the Industrial Groups - and two Industrial

55 Courier-Mail, 28/2/1956
56 Ibid., 23/2/1956
57 Ibid., 31/3/1956
58 Ibid.
Group union leaders, C.R. Muhldorff of the State Service Union and A. Cole of the Railway Maintenance Employees Union. 59

In the succeeding months up to April 1957, when the crisis point was reached and a Labor Premier was expelled from the A.L.P. for the first time in Queensland's history, many issues arose - or were raised - to drive deeper the wedge between Government and A.W.U. leaders. At the same time these issues also served to emphasize the A.W.U.'s dependence on the left-wing union group for its position in the Party machine, a dependence that received implicit and final recognition in July 1956, when the A.W.U. re-affiliated with the Trades and Labor Council after an absence of nearly twenty years. Because of its enormous membership and the terms of the Party rules, the A.W.U., as a core group, was more strongly placed in the Queensland Party machine than any of the other core groups. Indeed, its position was probably stronger than that of any core group in any of the other A.L.P. State machines. But even with the backing of faithful uncommitted unions, it was still not strong enough to retain control of the Party machine without the support of at least one of the other core groups. Once it had broken with the right-wing union core group and with a strong parliamentary group similarly inclined, the A.W.U. was inevitably forced, unless its leaders were prepared to abdicate, to come to terms with the left-wing union core group. And in this case, the left-wing group, though weak while the previous alliance lasted, could gather further strength from the fresh affiliation of other left-wing unions (by April 1957 even the Australian Railways Union was affiliated after being outside the Party

59 Ibid., 17/7/1953
60 Minutes, T. & L.C. of Qd., 25/7/1956
for more than thirty years), and from the effect that the withdrawal of
the A.L.P. *imprimatur* from the Industrial Groups had had on elections in
other affiliated unions. But until after April 1957, when the disaffili-
ation of the three strongest right-wing unions removed the backbone of
the right-wing group on the Q.C.E., even the new alliance with the block
votes of the A.W.U. and the left-wing union group combined found it wise
to marshal its issues with care in order to hold sufficient of the uncomm-
itted unions' votes. When the campaign against the Premier was at its
height in 1957, the seriousness of the position clearly persuaded many
uncommitted unions to incline to caution in their voting performance on
the Q.C.E. Thus a watered-down version of a motion, originally accepted
by the Inner Executive, that criticized the contentious Petrol Bill then
before the State Parliament was accepted in the Q.C.E. by only thirty-two
to twenty-seven votes. Nevertheless, when the supreme test came in the
two votes resulting in the Premier's expulsion, the voting figures were
thirty-five to twenty-seven on the motion asking him to show cause why
he should not be expelled, and thirty-five to thirty on the subsequent
expulsion resolution. The narrowness of these majorities demonstrated
that the alliance with the left-wing group was imperative if the A.W.U.
was to continue to hold its traditional position in the Party machine.
The lesson was underlined by the action of two officials of the A.W.U. who
cast their votes against their colleagues on the two expulsion motions.

61 These were the Federated Ironworkers Association, the Federated Clerks
Union and the State Service Union.
62 Sydney Morning Herald, 12/4/1957
63 Ibid., 19/4/1957
64 Ibid., 25/4/1957
65 'Political Chronicle', (1957) 3 Australian Journal of Politics and
History, 106-7
The preceding discussion has been concerned chiefly with the divisions which produce disparities between the formal power structure of the A.L.P. and the actual situation. The notion of union control predicates the agreement of the great majority of the unions, or rather their leaders, on the ends to which the Party machine should be used. While it may be broadly true, as Miller implies, that union leaders will normally tend to share common views on general industrial questions, trade union unity on such questions can easily be over-emphasized.

Particularly in recent years the right-wing of the union movement, organized around the A.L.P. Industrial Groups, introduced attitudes on industrial matters which have sharply divided union leaders - the right-wing advocacy of court-controlled union elections and of a basic wage tied to a productivity index have proved the most contentious. But Miller's generalization does hold in the sense that the common interest of unionists in industrial questions which affect them immediately will often result in united action cutting across otherwise strong lines of division. The unifying effect of such an issue was shown in the case of one of the narrowest votes recorded in the Queensland Central Executive in the days before the tight combination of the A.W.U., the Parliamentary group and the right-wing unions was broken. The motion, urging the Government to grant an extra day's holiday over the Christmas period was, with the combined weight of the A.W.U., the parliamentarians and only some of the right-wing unions thrown against it, defeated by a bare twenty-two votes to twenty. Two years later, when the A.W.U. no longer flew

66 J.D.B. Miller, 'The Development of Party Discipline in Australia' (II), (1953) 5 Political Science 29
67 Courier-Mail, 23/11/1953
automatically to the defence of the Government, and Industrial Group
officials were no longer so sure of their union positions, a solid union
vote on the Q.C.E. directing the passage of three weeks annual leave
legislation was broken by only a single right-wing union. On the same
issue a year later, when the implied threat to the Government was far
greater, a vote of fifty-one to eleven was recorded, the minority includ-
ing only three right-wing unions. Even on non-industrial matters the
union movement has on occasion shown almost complete unity, the most
striking example being the unanimity with which the unions opposed con-
scription for overseas military service in 1916 and 1917.

However, as far as control of the A.L.P. machine is concerned, it
can rarely be said that over a period of time the unions as a whole, or
even the great bulk of them, act in concert to bend the machine in a
direction on which they are all agreed. Some unions, in the shape of
their officials, are at most times in a position to control the machine
or at least to exercise considerable influence within it. The compara-
tively rare occasions when the great bulk of the unions have tended to
act together have usually been in response to some pressing threat to
their broad industrial aims or gains, or to their independence. Such
occasions usually arise in relation to the actions of parliamentary Labor
parties and Labor governments, the control of whose activities is, after

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68 Ibid., 12/11/1953. Although most supported the Q.C.E. motion, the right-
wing unions did, however, attempt to relieve the resultant pressure on
the Government by calling a meeting of A.L.P.-affiliated unions to plan
a combined approach to the State Industrial Court. The move failed after
it had been attacked by both the T. & L.C. (Minutes, 30/5/1956) and the
State President of the A.W.U. (Courier-Mail, 24/5/1956).

69 Courier-Mail, 1/3/1957

70 See Childe, 'How Labour Governs', 45
after all, one of the main incentives for seeking control of the Party machine. It is only on such occasions, and even then the categories are rarely water-tight, that the struggle for control of the machine can be more or less accurately described as a struggle between the industrial and political wings of the Party.
LABOR PARLIAMENTARIANS

There are, broadly speaking, two ways in which trade unions can hope to influence the actions of Labor parliamentarians and thereby the policies adopted by parliamentary Labor parties (P.L.P's). In the first place, the unions, individually or collectively, may exert influence directly on parliamentarians. In the second place, they may bring influence to bear through the medium of the A.L.P. machine. These two questions are discussed here in relation to P.L.P.'s generally, regardless of whether they constitute government parties. The special questions arising in relation to Labor governments are dealt with in the next chapter.

1. Direct Influence

Personal relationships are of considerable importance in this connection. But their precise significance, either generally or in a particular case, can be a matter only for conjecture. The following discussion of the ways in which trade union influence can be exerted directly on Labor parliamentarians is, therefore, confined mainly to what may be called the institutional aspect of the question. In a sense, of course, the institutional aspect is the context within which the personal factor operates as a most important element, and to this extent its examination may help to throw some light on the working and importance of the personal factor.

The direct institutional relationship is considered below in terms of three categories: briefly, consultation, duplicated membership, and
direct pressure on individual members of P.L.P.'s.

Consultation:

Ad hoc consultation is commonplace between P.L.P. representatives and central trade union organizations. Formal standing bodies facilitating consultation between central union organizations and P.L.P.'s have been resorted to in two of the States. In Victoria a Parliamentary Advisory Committee has functioned, though somewhat spasmodically, since the 'thirties: it is composed of two leading members each of the Melbourne Trades Hall Council, the A.L.P. State Executive and the State P.L.P., and meets when the occasion demands. A similar body, identically named, has operated in South Australia since the second world war: its composition is the same (the United Trades and Labor Council of South Australia being the relevant union organization) and it meets regularly to consider State legislation. But the question of formal bodies of this kind has been of greatest concern at the Federal rather than the State level, a natural consequence of the less intimate personal relationships possible between trade union leaders and Federal parliamentarians in general. The fact that the Federal Parliament sits in Canberra while Federal trade union headquarters, including those of the A.C.T.U., are situated mainly in Melbourne or Sydney clearly adds to the attractions of a formal standing body acting as a channel for regular consultation.

Before the establishment of the A.C.T.U. in 1927, the difficulty faced by the Federal P.L.P. in obtaining trade union views was the lack of a corresponding union body. If P.L.P. leaders wished to consult with more than the officials of a few big unions, they had to convene a national conference of Federal unions. This was done, for example, in
June 1921 when the A.L.P. Federal Executive called a Trade Union Congress because, as stated by E.J. Holloway, Federal President of the Party and Secretary of the Melbourne Trades Hall Council, 'the Party leaders felt that in that time of rapid transition they might have lost touch'. The disadvantages of this procedure were, from the P.L.P. point of view, that it was extremely cumbersome and, from the trade union viewpoint, that it was irregular and left the initiative largely in the hands of the parliamentary and Party machine leaders. Shortly after the creation of the A.C.T.U., moves were made on both sides in an effort to develop adequate channels of communication between the new central union organization and the Federal P.L.P. The practice of ad hoc consultation between the two bodies was early established, and was from the first a two-way affair. In 1928, for example, the Federal P.L.P. initiated this sort of consultation on one occasion by appointing two of its members with the task of discussing a specific matter with the A.C.T.U. Executive; on another occasion, the initiative was taken by the A.C.T.U. which asked that representatives of the P.L.P. should be appointed to take part in discussions on certain questions. This pattern continued into the 'thirties, though while the P.L.P. tended to restrict the topics on which it sought discussion to industrial issues before the Federal Parliament, the A.C.T.U.'s approaches were made on an appreciably wider range of matters.

For ten years after the formation of the A.C.T.U. no formal consultative body existed. The nearest thing to one was the standing committee set up by the P.L.P. in December 1930 to act as a liaison with the union

1 Crisp, The Parliamentary Government of the Commonwealth of Australia, 90-91
2 Crisp, The Australian Federal Labour Party, 1901-1951, 190
3 Ibid., 193-4
movement, but its main task in this respect was restricted to discussion on the Scullin Labor Government’s proposals to amend the Conciliation and Arbitration Act. In 1938, however, a Federal Labor Advisory Committee was set up as the result of a suggestion by the President of the A.C.T.U. for a standing consultative body to provide for 'closer collaboration' between the A.C.T.U., the Federal P.L.P. and the A.L.P. Federal Executive. The Committee, modelled on the Victorian Parliamentary Advisory Committee, consisted of two representatives from each organization. Its constitution was endorsed, in the face of criticism from A.W.U. delegates, by the 1939 A.L.P. Federal Conference. While Labor formed the Federal Opposition, the Committee apparently functioned effectively if irregularly, and, especially during 1941, was frequently convened. But after Labor took office in October 1941, the Committee was convened on only three occasions during the remaining years of the war and did not meet after 1945. In 1948 an A.C.T.U. proposal that the Committee should be revived was endorsed by the A.L.P. Federal Conference. The composition of the re-established Committee was as before, but its operation was put on a regular footing by providing that it should meet at quarterly intervals. During its brief second-life the Committee was claimed to have been successful in 'securing common action over a large range of subjects'. In 1951, however, the Committee again went into eclipse after the A.L.P. Federal Conference of that year approved an application from the A.W.U. for full and equal representation with the A.C.T.U. on the Committee. The A.C.T.U. Interstate Executive refused to continue its representation on these terms, and at

4 Ibid., 192
5 Ibid., 194-7
the Committee's next meeting the A.C.T.U. members withdrew when the A.W.U. representatives appeared. The A.L.P. Federal Executive upheld the later ruling of its President that the Committee should be disbanded on the ground that all its member-bodies were no longer taking part.\(^7\)

So long as the division between the A.C.T.U. and the A.W.U. continues, and the A.W.U. remains a power in the A.L.P. machine, it is likely that formal consultative machinery on the lines of the Federal Labor Advisory Committee will, as Crisp has phrased it, 'be conspicuous by its absence, or at least tortuous in its operation'.\(^8\) Up to 1956 Crisp's first alternative applied. At the same time as it decided to withdraw from the Committee, the A.C.T.U. Interstate Executive directed its officers to confer with leaders of the Federal P.L.P. 'whenever warranted by the circumstances'. Consultation between the two bodies thus continued, but on an ad hoc basis - and sometimes, as in the case of discussions held in 1954 on the industrial matters to be included in the Federal Leader's election policy speech, in conjunction with Federal officials of the A.W.U.\(^9\) 1956 saw the development of more formal machinery which, though somewhat more 'tortuous in its operation' than the Federal Labor Advisory Committee, achieves substantially the same end.

In April 1956 the Federal P.L.P. set up an Industrial Committee under the chairmanship of P.J. Clarey, former President of the A.C.T.U., with the function of formulating the Opposition's attitude towards the major amendments that the Menzies Government proposed to make to the Conciliation and Arbitration Act and the Stevedoring Industry Act. On the Committees

\(^7\) Crisp, ibid., 203-4
\(^8\) Ibid., 204
\(^9\) Report on decisions, Minutes, Melbourne Trades Hall Council, 12/4/1951
\(^10\) Minutes, A.C.T.U. Emergency Committee, 1/6/1954
suggestion, A.C.T.U. officials had preliminary discussions with it which were continued when the Government finally introduced the legislation in Parliament.\textsuperscript{11} The Committee remained in existence after the enactment of these measures, and was again used as a means of consulting with the A.C.T.U. later in the year when other industrial legislation was before Parliament.\textsuperscript{12} The Industrial Committee has since then established itself as a permanent channel of communication with the A.C.T.U. Discussions between the two bodies, which are usually attended by the Opposition leaders in both Houses, are fairly regularly held. In effect, the only significant difference between this machinery and the Federal Labor Advisory Committee is that it is not a formal body established by the Party machine and the A.L.P. Federal Executive does not directly take part in the discussions. The present machinery is favourably regarded by A.C.T.U. leaders, who consider it adequate in the circumstances although they would prefer a body constituted on the more formal lines of the Federal Labor Advisory Committee. It does at least satisfy their wish to confer regularly with the Federal P.L.P. on industrial matters.

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**Ad hoc** consultation with P.L.P. leaders is frequently initiated by individual unions as well as central union organizations. Preference is given to unions affiliated with the A.L.P.; unaffiliated unions are normally required to make approaches through a recognized central union organization.

Written representations to P.L.P. caucuses from the same sources are also frequent and usually subject to the same conditions. But practice

\textsuperscript{11} Ibid., 16/4/1956; 27/4/1956
\textsuperscript{12} Ibid., 31/10/1956
may vary according to the circumstances. On at least one occasion relations between the Trades and Labor Council of Queensland and the State P.L.P. reached a stage where the P.L.P. was refusing officially to receive in Caucus correspondence from the Council, on the ground that the Council was not a 'constituent body' of the A.L.P. The same description is applicable to every other central union organization in the country, but this has not prevented their making representations in this way.

The right to make oral representations to P.L.P. caucuses has been rarely granted to either individual unions or central union organizations. Occasional attempts have been made at both the Federal and State levels to secure such a right, but almost invariably without success. On the other hand, following the defeat of the Queensland Labor Government in 1957 the Trades and Labor Council has pressed, apparently with some prospect of success, for the right to make oral representations to the Labor Opposition Caucus.

**Duplication of Membership:**

Labor parliamentarians who are, or have been, trade unionists are likely to provide one of the most important channels of communication between the trade union movement and P.L.P.'s. It does not follow, however, that because a parliamentarian is an existing or former unionist, he has first-hand experience of the workings of union politics, or first-hand knowledge of union policies or of the background and strength of union attitudes. He may have been merely an inactive ticket-holder who rose to prominence in Labor circles solely through activity within the Party machine. To allow for such cases, the analysis of double membership given in Table 15 includes only those parliamentarians who were at the time existing or former union

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13 Minutes, Trades & Labor Council of Qld., 26/11/1947
rather than merely union members. No distinction is made between paid and honorary officials. It is sufficient for present purposes that the best practicable indicator of active participation in union affairs is election or appointment to an official union position, whether this be shopsteward or general secretary. Use of this criterion means that while the majority of Labor parliamentarians are usually former or current union members, and may or may not have been active in union affairs, the figures given in the Table cover the smaller proportion who clearly have been active unionists. For example, out of the total of eighty-seven Labor members in both Houses of the Federal Parliament covered in the survey, sixty-five, or nearly seventy-five per cent., were members of unions at some stage in their careers; but only forty-three, less than fifty per cent., had been union officials. 15

Most union officials who enter parliament do not retain their union positions, and their ties with the union movement are correspondingly weakened. Those that do retain their positions, or shift from a paid to an honorary position on election, can be expected to be rather more sensitive to shifts in union attitudes and policies. In this group, those who retain positions not merely in individual unions but in the executive bodies of central union organizations are likely to be especially important as channels of communication. There are not many in this category, as is shown in Table 16, but their existence is notable.

The effectiveness of unionist-parliamentarians as channels of communication from the trade union movement to P.L.P.'s should not be over-est-

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imated. Communication is two-way. Because of this, the policies that
the parliamentarian supports in union circles are as likely to reflect his
P.L.P's views (and, where the Party is in power, the mellowing influence
of political responsibility) as the policies the union official supports
in parliamentary circles are likely to reflect his trade union background.
In other words, it is questionable whether the politician will tend to think
as a unionist or the unionist as a politician, with the odds probably on
the latter when political office is achieved or in sight.

The trade-union leader...emphasises the improvement of wages and
conditions; as a politician he finds it necessary to consider care­
fully the views of those who are neither trade unionists nor members
of the Party; as a Cabinet Minister he finds it obligatory to take
into account the still wider national interest.¹⁶

The alternatives are not, of course, mutually exclusive at all points,
and their blending varies according to personality and circumstances. At
one extreme are to be found such notable union officials-turned-politicians
as W.M. Hughes, Prime Minister and for long the leader of the Waterside
Workers Federation, and W.G. Spence, member of Hughes' Cabinet and pioneer
and leader of the Australian Workers Union. Their leadership of the fight
for overseas conscription in 1916, in the teeth of fierce opposition of a
trade union movement - including their own unions - which has rarely shown
such unity of purpose, is perhaps the classic example of the parliamentar­
ian subordinating the unionist. Of course, the conflict does not usually
arise in terms as dramatic as these. Until the election of H.V. Evatt as
Leader of the Federal P.L.P. in 1951 all Federal leaders of the Party had
been drawn from the ranks of the unions, though not necessarily from the
ranks of union officialdom. But no Federal Government under such leader­
ship has ever been prepared to go to the lengths necessary to fulfil union

¹⁶ Lloyd Ross, 'The Role of Labour', in Australia (ed., Grattan), 251
aspirations, and has therefore never satisfied the unions - with the possible exception of the first Federal Labor Ministry of 1904, whose term of office was too short for much to be expected from it, and whose performance was in any case regarded less than its achievement. On the other hand, the failure of Labor governments to satisfy union aspirations fully should not obscure the likelihood that where such governments include a significant unionist element they will go further to give effect to at least the industrial demands of the union movement than Labor governments in which this element is less significant. For example, referring to the early Queensland Labor government's record of industrial legislation and administrative policies favourable to the unions, Childe ascribes the contrast this provides with the record of the early Labor governments in New South Wales to the fact that in Queensland there was a higher proportion of unionists in both the P.L.P. and Cabinet. 17

The almost inevitable clash between an individual's role as a parliamentarian and as a union official, which arises most forcefully when the P.L.P. is in office and the official is a cabinet member, has been admirably illustrated in the case of A.J. White, a member of the Cosgrove Labor Government in Tasmania. White was President of the Hobart Trades Hall Council from September 1949 until his resignation in August 1956; over the same period he was also, as Chief Secretary, the Minister primarily concerned with industrial matters. 18 He took his presidential position as seriously

17 Childe, How Labour Governs, 72
18 There was a precedent, though not an exact one. P.J. Clarey was Minister for Labour in the Victorian Labor Government of 1945-47; over the same period he was also President of the A.C.T.U.
as his ministerial duties. He reported frequently and at length to
the Council on the progress of legislation under his care, the proceedings
of relevant Parliamentary committees and the administrative policies of
the Government which were of concern to the unions. In the eyes of some
of his colleagues on the Council he was rather more 'thin-skinned' about
union criticism of the Government's industrial policies than he need have
been. On numerous occasions he left the chair to reply to delegate's
criticism of those policies. Because of the generally admitted sincerity
of his desire to satisfy as fully as possible the demands of both positions,
members of the Council, as one official put it, found it 'embarrassing at
times when we had to attack the Government'. As a result, the Council felt
obliged to carry by acclamation frequent resolutions commending the efforts
made by the Chief Secretary to satisfy union demands, and trusting that he
would long continue in that office. It was also accepted as an unwritten
rule that criticism of the Government's industrial policy was to be directed
at the Government as a whole and never specifically against the Chief Sec-
retary who was primarily concerned with that policy. Only after seven
years in both positions did White finally abandon the attempt to reconcile
them. The issue on which he resigned was minor compared with many of those
previously raised and decided by the Council in opposition to his views.
He treated a motion critical of the Government's delay in formulating its
policy for the 1956 Premier's Conference as a vote of confidence in himself
as President, and resigned after it was carried despite the fact that the

19 For example, at one Council meeting from which White was absent a motion
proposing that an action of the Chief Secretary, relating to the freezing
of the State basic wage, should be condemned was soundly defeated on a
counter-motion 'granting permission to withdraw' the original motion; the
meeting later carried resolutions condemning the Government as a whole
for the policy to which objection was taken; Minutes, Hobart T.H.C.,
19/11/1953
majority was a small one and that the Council at the same meeting gave him a unanimous vote of confidence. The really surprising feature of his resignation, however, was not that he should have resigned on this particular issue, but that he should have persevered for so long as both President and Chief Secretary, a double function that was neither easy nor, it appears, congenial to him since it was generally considered that as far as the presidential office was concerned he had 'carried his resignation in his pocket' for a considerable time. Clearly a less earnest trade unionist would have abandoned the venture much earlier or, more likely, never even attempted it.

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Up to this point the discussion has been concerned with the duplication of membership between unions and P.L.P.'s in the strict sense. There is, however, a looser form of duplication which is relevant in this context. This occurs in cases where parliamentarians, either as individuals or as P.L.P. representatives, sit in on union meetings or those of central union organizations, and may in this way act as a channel of communication.

In the case of a few unions, parliamentarians who were formerly associated with them as officials sometimes pay visits to union meetings and conferences. Occasionally, as in the case of the 1957 delegate conference of the Amalgamated Engineering Union, a prominent Labor parliamentarian may be invited to open proceedings without actually sitting in on them. In recent years, Labor parliamentarians, other than those who may happen to be present as union officials or delegates, have rarely, if ever, attended meetings of the main central union organizations in Queensland, South Australia or Tasmania, or, in the Federal sphere, the biennial Congresses of 20 Minutes, Hobart T.H.C., 9/8/1956. He continued, however, to act as a delegate to the Council from the Federated Clerks Union.
the A.C.T.U. In New South Wales, one or two State parliamentarians who were formerly delegates have continued to put in occasional appearances as visitors at Labor Council meetings. The rules of the Melbourne Trades Hall Council provide that members of both Federal and State P.L.P.'s are entitled to a seat on the Council with the right to speak on all matters, but without the right to vote or nominate for Council office unless credentialled delegates. From time to time advantage has been taken of this provision, but the practice has declined in recent years. Curiously enough, the question of liaison in this form has aroused greatest concern in Western Australia, where, as the Deputy Leader of the Federal P.L.P. claimed, the unified organization of the industrial and political wings has obviated the 'need for extra consultative organizations such as Advisory Committees' to link the unions and the State P.L.P.22

In 1952 a 'Re-organization Committee' reporting to the General Council of the Western Australian Branch of the A.L.P. suggested that 'a close link should exist between the political and industrial sections of the Movement', and recommended that the Leader and Deputy Leader of the State P.L.P. and 'other selected Parliamentarians' should be asked to attend meetings of full-time union officials, executives and general meetings and to address job meetings of unionists.23 Little has flowed from this proposal. Most parliamentarians rarely attempt to carry it out except when they are involved in pre-selection ballots or, in the case of a few, where they have kept up their association with the union of which they were formerly members. As for the unions, invitations to parliamentarians to attend meetings have also been rare: many union officials are inclined to view the proposal with

21 Laws of the Trades Hall Council, Melbourne, 1946, r.3 (d)
22 Calwell, op. cit., 78-9
reserve, regarding its application as possibly driving a wedge between themselves and their members. On the other hand, full advantage has been taken of an invitation extended in 1954 to members of the State P.L.P. to attend meetings of the Trade Unions Industrial Council. A representative of the P.L.P. has since then regularly attended Council meetings while Parliament is not sitting, and often when it is in session.

**Direct Pressure on Individuals:**

The ability of unions directly to influence individual Labor parliamentarians can be expected, saving the factor of personality, to vary in accordance with three factors: the closeness of the ties between the parliamentarian and the union concerned; the financial or other help which the union may make available at election time; and the ability of the union to 'deliver' a significant proportion of votes either for or against a parliamentary candidate.

Attempts by unions to influence particular parliamentarians, usually on industrial matters of immediate concern, are not uncommon and occur especially at the State level. Normally reliance is placed on enlisting the sympathy of parliamentarians rather than on threatening possible reprisals. A union wishing to put its views before a P.L.P. caucus through a caucus member attempts, where possible, to work through parliamentarians who are former or existing members and whose association with, and personal contacts within, the union can be expected to incline them favourably towards its demands. The existence of this sort of connection with P.L.P.'s is generally considered to be of some value in union circles, though its limitations are fully realized. The view of the militant union official,

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24 Minutes, T.U.I.C., 10/8/1954
faced with a lack of such connections, is probably typical: 'At times, as Secretary of the Branch, he felt severely handicapped through being unable to go down to Parliament House, and round up say half a dozen members who had come from our ranks, and tell them what we wanted done.'

This attitude is reflected in the direct financial support given by a number of unions to the election campaigns of their ex-officials or members standing as parliamentary candidates. The withdrawal of such support may be a potent threat in some cases, but it is a threat than can be used only in extreme circumstances and has, therefore, a limited use as a means of exerting pressure. Use of this sanction was implicit in the threat made by the Queensland Branch of the A.W.U. in 1955 to expel from the union a number of parliamentarians - a measure that an A.W.U. official pointed out would involve the withdrawal of the union's 'political support' and the parliamentarians' 'virtual end.' The charge of 'having failed to carry out union policy' was levelled against five members of the State Labor Cabinet and one Federal parliamentarian, and followed a 'talk for politicians on industrial groups' to which the union had summoned the twelve State, and one Federal, parliamentarians who were members of the A.W.U. Five of those summoned, including four State Ministers, had sent apologies; and one Minister who did attend the 'talk' had later, as an A.W.U. delegate on the Queensland Central Executive of the A.L.P., voted against the A.W.U.-sponsored motion censuring the State delegates who had boycotted the Federal Conference of that year. The threat, which was later carried out in relation to the Ministers, failed completely to bring them into line.

25 Quoted by Walker, Industrial Relations in Australia, 188
26 See Chapter 12
27 Courier-Mail (Brisbane), 1/4/1955
28 Ibid., 26/2/1955
29 Ibid., 1/4/1955
Its presence in the background, however, was sufficient to induce the seven private State members to act in accordance with A.W.U. policy.

The ability of any single union or any group of unions to swing a significant proportion of votes against an endorsed Labor candidate is questionable. Few unions are in a position to claim such an ability as a means of exerting pressure on parliamentarians. The strongest claimants are probably the coal mining unions of New South Wales. The question has arisen, but has apparently never been tested, in relation to 'coalfields politicians' from the Newcastle, South Coast and Lithgow districts of New South Wales, where the miners' vote is of considerable importance and their remarkable cohesion as unionists gives a promise that the Miners' Federation and other mining unions can 'deliver' their vote. The Federation has been accustomed to pressing State parliamentarians in particular to espouse its causes in the Labor Caucus. Its leaders have on occasion spoken openly of 'directing' the coalfields politicians to take certain action. These directions apparently persuaded two New South Wales M.L.A.'s to threaten to resign from the P.L.P. in 1957 if the State Labor Government did not fall in with the Federation's proposals concerning the current employment crisis in the coal industry. The Government's subsequent action in diverting a coal order from the Western to the Northern field was described by a Western union leader as a result of the fact that five Labor parliamentarians were from the Northern area against one from the Western. Previously, in 1938, the Miners Federation attempted to instruct a number of parliamentarians, not officials of the union, on the attitude they should take to the split which had occurred in the A.L.P. in New South Wales. One of the

30 See, e.g., Sydney Morning Herald, 7/3/1957
31 Daily Telegraph, (Sydney), 28/6/1957
32 Ibid., 27/7/1957
four Federal members and seven of the nine State members summoned by the Federation to a meeting on the question actually attended; but most who did so managed to avoid falling in with the Federation's wishes despite considerable pressure. However, in this case, unlike the more recent case cited above involving the A.W.U., it was significant that even in relation to a non-industrial matter of this sort, as Rawson points out, none of the parliamentarians concerned apparently felt strong enough to dispute the Federation's right to instruct them.

Apart from the coal miners' unions, the A.W.U., which covers metal miners in many States, has been thought to be in a position to influence voting behaviour materially in a number of areas, particularly in some of the electorates in western Queensland. This supposition, however, seemed to have been falsified by the voting pattern of these electorates in the State elections of 1957, when A.L.P. candidates were opposed by candidates put up by the breakaway Queensland Labor Party.

It is difficult, if not impossible, to assess with any accuracy the importance of direct pressure as a means by which unions may influence individual parliamentarians to act against their own inclinations. But it does appear that in general it is not very great. On the other hand, as a means of informing parliamentarians, and through them P.L.P.'s, of union views, particularly on industrial matters, the direct approach made on a consultative rather than a directive basis may prove of value to the union concerned and of importance in reinforcing representations usually made by central union organizations.

34 Ibid., 290
2. Control Through the A.L.P. Machine

Union attempts to control the members of the P.L.P.'s have usually been made through the A.L.P. machine. The prospect of the tactic being successful is, in the first place, a function of the unions' ability to control the machine itself. That question has been discussed in the previous chapter. In the second place, given an ability to control the machine, the question then becomes one of the ability of the machine to control P.L.P. members. This question involves some examination of the channels of communication between the machine and the relevant P.L.P. More important, it also involves examination of the sanctions available to the machine for use against recalcitrant members of the P.L.P., and of the effectiveness of those sanctions.

Communication:

The formal transmission to P.L.P.'s of motions carried by the bodies that constitute the A.L.P. machine is only one, and perhaps the least important, of the ways in which Labor parliamentarians are kept informed of the views of dominant groupings in the machine. Of greater importance are informal contacts and discussions between leaders of the machine and members of the appropriate P.L.P. There are, in addition, other means of communication between the two bodies which are likely to have special significance when a Labor government is in power and leading members of the P.L.P. are less readily accessible owing to the pressure of their ministerial duties.

The parliamentary advisory committees of Victoria and South Australia, described in the previous section, include representatives of the State Executive of the A.L.P. in each case, and thus facilitate communication of the type discussed here. But the more important and more widespread way of ensuring regular communication between P.L.P.'s and the Party machine is
through the participation of parliamentarians in the proceedings of major bodies within the machine, particularly the executives. The number of parliamentarians on the various A.L.P. executives, and the proportion they form of the executive membership, is set out in Table 17. In each case, apart from the Victorian and Federal organizations, Party rules expressly provide for P.L.P. representation on the Executive concerned.¹ As indicated in the Table, the South Australian and Tasmanian provisions relate only to the State P.L.P., while those of New South Wales, Queensland and Western Australia affect both State and Federal P.L.P.'s. In practice, however, it almost invariably happens that both Federal and State parliamentarians are found on every executive, with the weight of number usually favouring the State P.L.P.'s on the State executives and often on the Federal Executive also.

Parliamentarians are invariably found among the delegates attending Party Conferences. In South Australia and Western Australia provision is made for the attendance of a voting delegate from both the State and Federal P.L.P.'s;² and in Queensland, as in South Australia, the rules provide that all parliamentarians are entitled to attend and speak, but not to vote unless they are credentialled delegates.³

The existence of these links between P.L.P.'s and the Party machine is, of course, no guarantee of control of the former by the latter - indeed, they may facilitate quite the reverse. But they do provide a regular means by which a P.L.P. may be aware not only of specific criticisms of its performance, but more importantly of the degree of dissatisfaction existing among machine leaders. This places P.L.P. leaders in a better position to

¹ See notes to Table 17.
² A.L.P., Rules: S.A., r.14 (a); W.A., r.11 (a)
³ A.L.P., Rules: Qld., r.22; S.A., r.14 (a)
judge how far they should go, where necessary, to placate such dissatisfac-
tion. To this extent, the existence of these links is likely to be a factor of some significance in the relationship between the Party machine and P.L.P.'s.

Sanctions:

Behind the recommendations or instructions of the A.L.P. machine to P.L.P.'s stand two formal sanctions that constitute the machine's power to discipline Labor parliamentarians. The first, applicable to all Party members, is expulsion, which, in the case of a parliamentarian, automatically involves exclusion from the P.L.P. of which he is a member. As with other voluntary associations, expulsion is the Party's ultimate sanction; and it is one against which, by a decision of the High Court concerning the A.L.P., members have no redress through the courts.  

The rules of each A.L.P. State branch, with the exception of those of the South Australian Branch which contain an implied power to this effect, expressly provide powers to expel for 'disruptive tactics or disloyal or unworthy conduct', or 'violation of Party discipline', or for similar reasons which are defined with varying precision. Although the political branches of each State Party can expel members, subject to review by higher Party organs, the most important body in this respect is, in all States except South Australia, the Central Executive. In South Australia the Central Executive has the power only to investigate charges against members and to recommend expulsion, or other penalties, in its report to the Central Council which has the decisive voice. In New South Wales the original

4 Cameron v. Hogan (1934), 51 C.L.R. 358
5 A.L.P., Rules: N.S.W. r.51(a); Vic., rr. 29, 86; Qld., rr. 32(n), (u), 105; S.A., r.40; W.A., rr.13(o), 17(e); Tas., rr.8,75(v)
expulsion power of the Central Executive is implicit in its general powers, but in the other four States it is expressly placed in the hands of each Central Executive. All Executive expulsion decisions are subject to an appeal to the relevant State Conference. The rules of the A.L.P. Federal Executive do not refer specifically to expulsion but it is covered by the general rule giving the Executive 'plenary powers to deal with and decide any matter which, in the opinion of at least seven members of the Executive, affects the general welfare of the Labor Movement', subject to appeal to the Federal Conference.

The second sanction is applicable solely to parliamentarians: it is the withdrawal of the A.L.P. endorsement of a parliamentarian's candidature for re-election. Withdrawal may be effected in one of two ways: through a selection ballot or by the decision of a Central Executive.

The selection of parliamentary candidates for both Federal and State elections is conducted by each of the A.L.P. State branches. The methods of selection are not uniform. For present purposes the significant variations of method are those which affect the ability of affiliated unions to bring their weight of numbers to bear on the selection process.

In New South Wales, Victoria, Queensland and Western Australia selections are made by ballot of individuals qualified to vote as individuals. Only in New South Wales do the rules restrict those so qualified to the members of political branches, thus excluding, as such, the members of affiliated unions. In the other three States affiliated unionists, as well as political branch members, are entitled to vote in selection ballots.

6 A.L.P., N.S.W., Rules, r.3 (b)
7 A.L.P., Federal Executive Rules, 1957, r.9 (i)
8 A.L.P., N.S.W. Rules, rr.146-8
9 A.L.P., Rules: Vic., rr.63,65; Qld., rr.41-3,56; W.A., r.20(n)
A unionist is qualified to vote in a Victorian selection ballot relating to the electorate in which he resides if, for at least three months preceding the closing of nominations, he has been a financial member of a union which has been affiliated for at least twelve months. Similar qualifications are laid down in Queensland, except that the period in each case is six months. In Western Australia only the required period of financial membership (three months) of an affiliated union is specified. Unlike those of the other two States, however, the Victorian rules add the further conditions that, at the time of voting, an affiliated unionist must sign the A.L.P. Pledge and produce signed union membership tickets, or a 'voting authorization form' issued by the union, in order to enable a comparison of signatures. The opportunity for affiliated unionists to vote in Queensland selection ballots ('plebiscites') is enhanced by a provision allowing members in country districts to cast a postal vote.\(^\text{10}\)

In South Australia selections of candidates are made by card vote at the annual Convention, except in the case of country electorates where an Electorate Council operates.\(^\text{11}\) This system, as we have seen, operates in favour of the unions. In Tasmania the Party rules, as amended in 1956, stipulate that candidates are to be selected either by ballot at the annual Conference or by general meetings of political branches and affiliated unions in the electorate concerned; voting power in each case is assessed on the basis of one vote for each Conference delegate or for each such delegate to whom a branch or union is entitled.\(^\text{12}\)

\(^{10}\) A.L.P., Qd., Rules, rr.66-9
\(^{11}\) A.L.P., S.A., Rules, r.44 (f)
\(^{12}\) A.L.P., Tas. Rules, r.79. Up to 1956 the selection and endorsement of candidates was solely in the hands of the General Executive. The drafting of the new rules leaves much to be desired and complexities in the present selection system are apparent.
The main State executive bodies have extensive powers in connection with the selection of parliamentary candidates. In all States except Western Australia and Tasmania, the Central Executive (in South Australia the Central Council) may withdraw the nomination of any person contesting a selection ballot on grounds other than formal eligibility. Moreover, in all States except New South Wales and South Australia, the Executive may withdraw the endorsement of a person who has won a selection ballot for reasons other than breach of the rules governing such ballots. Apart from these general powers, there are local variations which further extend the Executive's power to influence the selection of parliamentary candidates. The New South Wales Executive itself selects the candidates for the State Legislative Council; and, like the South Australian Central Council, and the Queensland Central Executive, it is empowered to select candidates in an emergency. The Queensland Central Executive may also, for any reason, declare a selection ballot null and void. The normal powers given State executives are occasionally extended. For example, the Queensland Central Executive suspended all selection ballots held in connection with the 1950 State elections and made the selections itself, with the subsequent approval of the triennial Convention. The Tasmanian General Executive in 1957 took

13 A.L.P., Rules: N.S.W., r.143; Vic., r.55; Qd., r.32(b); S.A., r.44(d). The Q.C.E., for example, exercised this power on two occasions in 1953.  
14 A.L.P., Rules: Vic., r.85(a); Qd., r.32(c); W.A., rr.13(n),17(g); Tas.r.30  
15 A.L.P., N.S.W. Rules, r.133. The five P.L.P. representatives on the Central Executive are not entitled to take part in selection and endorsement proceedings before the Executive: ibid., r.4(e)  
16 A.L.P., Rules: N.S.W., r.132; Qd., r.32(d); S.A., r.44(e). In South Australia, this power was exercised by the Central Executive up to 1955.  
17 A.L.P., Qd. Rules, r.32(e). In such cases, the Q.C.E. itself selects the candidate. This was done in the case of three disputed plebiscites in 1952.  
18 Courier-Mail (Brisbane), 28/12/1952
upon itself to select the Party's Senate candidates, a move that was bitter-
ly opposed by many union leaders who pressed for use of the selection pro-
cedure laid down in the rules. In Victoria, following the split in the
State Branch, the Central Executive was empowered by Conference to make the
selections for the Federal and State elections of 1955, and this power was
renewed for a further year in 1956 and again in 1957.

The methods by which parliamentary candidates are selected give affiliate-
at ed unionists, in most States, a weight corresponding to their numbers. On
occasion the votes of affiliated unionists have been important less for their
number than for the difficulty experienced in ensuring that they are validly
cast: 'nearly all the corrupt practices which in the past have disfigured
Labor selection ballots have involved the misuse of unionists' voting rights'.
The conditions and qualifications laid down for voters in selection ballots
in New South Wales, Victoria and South Australia, in particular, reflect
experience of this sort. But undoubtedly the most important sources of
control over the selection of parliamentary candidates, as over the use of
the expulsion weapon, are chief executive bodies within the State machines.

The Federal bodies of the A.L.P. play little or no part in the select-
ion of Federal parliamentary candidates. The Federal Executive has a limit-
ed power - which has not yet been used - to hear and decide an appeal from
a candidate for a Federal seat whose endorsement has been 'withheld or unduly
delayed for any cause which, in the opinion of the Federal Executive, affects
the Federal Labor Platform or Federal Policy, or the attitude of any member

19 Advertiser (Adelaide), 19/8/1957
20 See Note in Vic. Rules, 34; also Decisions, Annual Conference, June 1957,
No. 11. To meet criticisms of this policy the Executive in 1957, when it
selecting its candidate for the by-election consequent on the death of the
State P.L.P. Leader, invited two representatives from each branch in the
electorate concerned to observe the selection proceedings.
22 See Overacker, The Australian Party System, 107
of the A.L.P. thereto'. Similarly, although the Federal Executive has
in recent years increased its stature within the A.L.P. machine as a whole
and in relation to the Federal P.L.P., it has never used its power of ex-
pulsion against Federal parliamentarians, preferring to leave disciplinary
action of this kind to the competent State bodies. But in a 1957 case in-
volving two Federal parliamentarians, the Federal Executive's resolution
referring the disciplining of the members to the State bodies concerned, was
couched in terms amounting to a direction to expel, and was accompanied by
the Federal President's comment that the Federal body would take further
action if the punishment administered at the State level was considered in-
sufficient. This action followed the narrow defeat of a proposal that the
Federal Executive should exercise its expulsion powers.

The Question of Control:

Control of the A.L.P. machine carries with it, as we have seen, the
formal ability to exercise or to threaten severe disciplinary action against
Labor parliamentarians. For the parliamentarian, withdrawal of endorsement
has substantially the same result as expulsion. Both sanctions also have
the same flaw - their severity. Within the framework of the A.L.P., expul-
sion and non-endorsement correspond to the supreme penalties of public law.
But the Party law, unlike public law, has no effective intermediate sanctions.
And because the very severity of the Party's sanctions means that normally
they will be applied only in extreme cases, parliamentarians have a margin
of safety within which they can afford to disregard the Party machine without
arousing opposition intense enough to bring down either, the supreme penalties
on their heads. The margin can be expected to vary according to two major

23 A.L.P., Federal Executive Rules, 1957, r.9 (h)
24 See Rawson, The Organization of the Australian Labor Party, 1916-1941,
380-3
25 Sydney Morning Herald, 29/8/1957
fac uors• On the one hand, there is the stature of the parliamentarian concerned, that is, the extent of his personal following both within the P.L.P. and in the Party outside parliament. On the other hand, there is the effect his expulsion or non-endorsement may have on the P.L.P.'s position in parliament or on the Party's unity when it faces the electors. To a great degree, of course, these factors intertwine. Their importance, and thereby the margin of safety they provide, is most marked in relation to the leaders of a Labor government, a question which is considered in the next chapter. Of present concern, however, is the question of the effectiveness of these sanctions in relation to ordinary members of the P.L.P.'s.

The significance of the backbencher in this context lies in the extent to which leaders of the Party machine may be able to influence the way he votes in caucus by threatening disciplinary measures. His margin of safety will usually depend less on any personal following he may have than on the strength and position in parliament of the P.L.P. concerned. Thus where Labor is in opposition or is in power with a safe majority, the machine will be in the strongest position to employ such tactics; correspondingly, the parliamentarian is likely to be most susceptible to them.

Queensland Labor politics provide two cases where these tactics were fully employed by unions controlling the Party machine. On both occasions a Labor government was in office with a strong parliamentary majority. In the first case the issue chosen was the statutory enactment of the forty-four hour working week. The State Labor-in-Politics Convention of 1923 adopted a resolution advocating the immediate introduction of legislation on these lines. State Government leaders declined to carry out the proposal on the ground that existing economic circumstances were unfavourable. The

leaders of the Party machine thereupon directed their efforts towards inducing a sufficient number of parliamentarians to support the Convention resolution in order to obtain a majority in Caucus and so reverse the Government's policy. The threat of withdrawal of endorsement was levelled against backbenchers, many of whom were already uneasy about their prospects in future selection ballots in the light of the publicity their performance in Caucus and Convention votes on this and other controversial issues had received in union journals. These tactics were completely successful. The desired majority was obtained in Caucus, and the Government leaders, after an abortive walk-out, were forced to capitulate.

In the second case, the struggle for control of the Queensland P.L.P. Caucus extended over a longer period and ended less successfully for the Party machine leaders. A resolution carried by the Labor-in-Politics Convention of 1953 advocated legislation increasing the amount of annual leave to which employees were entitled. The matter was taken up by the Queensland Central Executive (Q.C.E) late in 1955 when it urged the Government to put this proposal into effect. At its first vote on the matter, Caucus unanimously endorsed the Government's contention that the economic situation was not suitable for the introduction of such a measure. The Q.C.E. responded with a direction to the P.L.P. to bring down immediate legislation. A union member of the Q.C.E. made it clear that if any parliamentarian opposed the direction, the Q.C.E. 'would have to take steps to withdraw his endorsement and call fresh nominations for his seat before the next State election'. Caucus nevertheless reaffirmed its earlier decision; but in place of the previous unanimous support for the Government's

27 'Political Chronicle', (1956) 1 Australian Journal of Politics and History, 258
28 Courier-Mail (Brisbane), 12/11/1955
stand, twenty of the forty-eight members present cast their votes against the Government. Re-consideration of the question early in 1956, on the request of the Q.C.E., resulted in a Caucus vote of thirty to nineteen in support of the Government. The matter was then referred to the Labor-in-Politics Convention which carried a resolution constituting endorsement of the Q.C.E.'s policy. Although it was clear that the union leaders expected the Government to bow to this decision, no reference was made to annual leave in the legislative programme announced for the parliamentary session that opened later in 1956.

After this, the campaign to swing the few votes that the Q.C.E. leaders needed for control of Caucus began in earnest. An Inner Executive decision, in September 1956, to write to all parliamentarians asking them whether they were prepared to support the introduction of annual leave legislation before the end of the year was followed by a Caucus vote of twenty-eight to nineteen in support of the Government. This was followed a few days later by an identical vote on the Government's refusal to intervene in the pastoral strike which, while ostensibly a separate issue, divided the Party on the same lines as the annual leave issue, the vote in this case demonstrating the hardening lines of that division. The pressure on individual parliamentarians was maintained. All members of the P.L.P. were summoned during October before a special committee set up by the Q.C.E. Expulsion and non-endorsement were threatened. A Cabinet Minister was expelled, ostensibly for corrupt practices disclosed by the Royal Commission that had investigated the administration of land leases, though the Commission's report had been made public more than four months earlier.

29 'Political Chronicle', (1956) 1 Australian Journal of Politics and History, 258
30 Ibid.
31 Courier-Mail, 27/9/1956
32 Ibid., 4/10/1956
33 Ibid., 26/10/1956
A private member was suspended for a statement criticizing the Q.C.E., the real reason, it was claimed, being to enable the Q.C.E. to 'get the remainder of those [parliamentarians] who were there to accept the direction'. In this way, the Government lost two Caucus votes and the Q.C.E.'s determination was made clear. A new supporter of the Q.C.E. was returned at a by-election. Attempts were made to rescind the P.L.P. rule of Cabinet unanimity in Caucus, in the knowledge that this would release at least one Cabinet member. In March 1957, the Q.C.E. re-affirmed its stand on the annual leave issue. Parliamentarians were again warned that those persisting in their opposition would be 'dealt with' under the Party's rules; and just before the subsequent Caucus meeting letters were sent to all P.L.P. members threatening to withdraw their endorsement. The last Caucus vote on the matter supported the Government by a majority of twenty-six to twenty-one. The leaders of the machine then played their trump card and expelled the Premier. The strength of the division within the Party and the inability of the Q.C.E. to gain control of Caucus was demonstrated when twenty-two Labor members followed the Premier while twenty-four remained with the Party.

The second Queensland episode illustrates the shortcomings of the sanctions available to the Party machine as a means of gaining control of P.L.P.'s in circumstances where parliamentarians are resolved to take a firm stand. The Q.C.E. could make examples of two members in the hope

34 Ibid.
36 Courier-Mail, 1/3/1957
37 Ibid., 23/3/1957
38 Ibid., 28/3/1957
39 See 'Political Chronicle', (1957) 3 Australian Journal of Politics and History, 107. One of the 24 was a Minister whose vote on the leave issue had been held captive by the rule requiring Cabinet unanimity in Caucus. Thus no more than two pro-Government members changed sides only when the question of leaving the A.L.P. became a matter for personal decision.
that these would bring others into line. But, even in Queensland where Labor was so strongly entrenched as to have been in almost continuous control of Parliament for over forty years, the Q.C.E. did not dare embark on the mass expulsions which in the end were clearly necessary if Caucus voting strengths were to be reversed. Instead, it chose as a last resort to expel the key man in the P.L.P., the Premier, gambling on the chance that the majority of his supporters would be unwilling voluntarily to follow him out of the Party and would be cowed into obedience by such a striking illustration of the machine's determination and power.

The circumstances of the two Queensland cases also indicate a further significant limitation on the power of the Party machine to control a P.L.P. by means of the sanctions at its disposal. The issue involved, or introduced, was in each case of a character that ensured it would attract strong support to the machine leaders from the ranks of the unions and the Party. In both cases crisis point was reached and the parliamentarians were made acutely aware that their margin of safety had reduced to vanishing point. But crisis conditions cannot be sustained once the crisis has eventuated or been averted. When this point has passed, the extreme nature of the sanctions available to the Party machine once again restores parliamentarians' margin of safety. Thus any effectiveness that the sanctions may have as a control mechanism is not continuing but is limited to a particular set of circumstances. Moreover, as we have seen, even in a crisis the mechanism may not ensure control of Caucus.

Deliberate attempts to solve the problem of continuing control have led to the formation of an alliance between the leaders of the Party machine

40 When the Q.C.E. carried the motion summoning the Premier to show cause why he should not be expelled, a move was made to summon also all those who had supported him on the leave issue in Caucus: the move was rejected by the Q.C.E. Ibid., 106.
and a faction within the P.L.P., an alliance which is based, in the first instance, on the faction's need to strengthen its position rather than on its established ability to dominate the P.L.P. The most clear-cut and instructive example of this tactic is the J.T. Lang episode in New South Wales.

In 1926 the New South Wales Party machine endowed Lang, and later reinforced the grant, with powers over his parliamentary colleagues greater than any that have been wielded by a Labor political leader, on the understanding that he would control the P.L.P. in accordance with the direction of the machine leaders. But Lang's power, and the prestige that accompanied it, became such that by 1936 when his support within the machine began to fade he dominated not only the politicians but also the machine. The attempt to achieve effective continuing control of the P.L.P. by indirect means had rebounded, and the union leaders who had raised Lang to his pinnacle turned to the long and bitter struggle necessary to pull him down again.

41 For a detailed account and interpretation of this episode, see Rawson, The Organization of the Australian Labor Party, 1916-1941, chapters VI, VII, X.
CHAPTER 14

LABOR GOVERNMENTS

The extent to which the trade unions can influence the policies of Labor governments varies according to time and place. Labor government leaders probably start from the assumption that the benefit of the doubt should be given to union claims. Beyond this, however, the weight they give such claims is likely to be less a matter of instinct than the product of a number of variables: the nature of the claims made; the reactions they evoke from other sections of the community; the strength and unity of the unions both inside and outside the A.L.P. machine; the strength of the dominant union group within the machine; the strength of the government in the electorate, in parliament and in caucus; and the personalities of the union and government leaders concerned — to mention only the most prominent.

The actual and potential character and combinations of these factors are endless. In 1942 the Labor Prime Minister, John Curtin, bluntly told union leaders that if they 'thought they were going to have a political fixation of wages whilst Labor was in office, then they were mistaken'; and he was as good as his word. Curtin clearly faced a combination of factors very different from that facing E.G. Theodore, Labor Premier of Queensland in 1924. Theodore bitterly opposed a union demand for legislation introducing the forty-four hour working week; but after being forced to the brink of resignation as the result of union pressure on members of his parliamentary party, he was obliged to satisfy the unions' wishes in full. Both these combinations were different again from that involved in the case of another Queensland Premier, V.C. Gair, who refused to accede to a union demand for legislation increasing employees' annual leave, even at the point 1 Report, Convention of Federal Unions called by the Federal Government, June 1942, 5.
2 This episode is discussed further in section 3 below.
where his expulsion from the A.L.P. was certain if he failed to do so.\(^3\)

These examples indicate the possible range of union influence on Labor governments. In the first case, Curtin took his stand and that was the end of the matter. In the second case, Theodore took his stand but was forced to capitulate before the pressure the unions brought to bear. And in the third case, Gair took his stand and did not depart from it despite the unions' ability and determination to use against him the most extreme measures within their power. But to cite examples is one thing; to give a general explanation of the extent and effectiveness of union influence in this context is another, and more difficult task. Nevertheless, some light may be thrown on these questions by an examination of union attitudes to Labor governments, of the ways in which union views may be brought to bear on them, and of the extent to which such governments have realized union aims in relation to certain matters of close concern to unionists.

1. **Union Hopes and Union Expectations**

Trade union leaders no longer— as they were inclined to fifty years ago— equate their hopes of what a Labor government may do to realize union policies with their expectations of what it will do. Their fundamental expectation is that a Labor government will seek and seriously consider their advice on industrial matters at least; their hope is that the government will act on that advice. These are the basic elements in the general union attitude to Labor governments.

In return for the fulfilment of their expectations and the possible fulfilment of their hopes, the unions have usually shown a greater readiness

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3 This episode is discussed also in Chapter 12, and is considered further in Section 3 below.
4 For what is meant by 'industrial matters' in this context, see Chapter 2.
to smooth the path of a Labor than a non-Labor government, by cooperating in
the application of government policy and by refraining from industrial action
that might embarrass the government. But their cooperation and restraint are
less assured to the extent that their expectations are flouted or their hopes
dashed too often, or in relation to issues on which they are committed too far
to compromise. For example, in 1941 the accession to office of the Federal
Labor Government led by Curtin was accompanied by a noticeable change in the
readiness of unions to submit to the greater wartime regulation which previous
non-Labor governments had regarded as necessary, but which was largely put in-
to effect by the Curtin Government. On the other hand, it was not long before
union leaders were pointing out that even a Labor government should not take
the support of the trade union movement for granted. P.J. Clarey, speaking
for the A.C.T.U., expressed the unions’ primary expectation on this score.

The Trades Union Movement wished to consult with the Government on
all matters affecting the rights of Trade Unionists...Unfortunately
there has been a tendency on the part of the Government that because
the Trades Union Movement supports the political labour party, that
such movement can be ignored particularly when big questions of prin-
ciple are being decided. Of late principles for which the Trades
Union Movement has fought for and established have been curtailed and
the movement has not been consulted. He thought at this stage they
should tell the Government they were not prepared to continue that
co-operation unless they were consulted...on all matters [by] which
they were directly affected, such as the pegging of wages and so on.
The Government continued to do these things despite their protest and
he would say that they must accept the responsibility of their actions
if they persisted in ignoring the Movement as any Government acting in
this way was running a grave risk of losing the support of the Movement.

This rebuke, administered at a conference called on the initiative of the
Minister for Labour and National Service, apparently struck home. Four months
later the Prime Minister, flanked by an imposing array of his Ministers, pre-
sided over a conference of Federal unions convened for the purpose of

5 See E. Ronald Walker, The Australian Economy in War and Reconstruction,
289; Butlin, War Economy 1939-42, 486; Hasluck, The Government and the
People 1939-41, 604.
6 Report. Conference of Federal Unions convened by Minister for Labour
and National Service, February 1942, 12.
explaining the Government's policy to the unions.

2. Consultation

A good Labor government, as one union official put it, should know union views 'almost instinctively'. But since experience has shown that this ideal is rarely realized, consultation is an important element in the relationship between the trade union movement and Labor governments. The informal links between unions and parliamentary Labor parties, discussed in the preceding chapter, are usually considered of less importance as channels of communication when a Labor government is in power. In such circumstances, a State union leader maintained, 'Caucus means nothing to us; we deal direct with ministers'.

Views differ on the machinery desirable for such consultation, particularly between the Federal and State spheres. A.C.T.U. leaders tend to favour rather more formal machinery in their dealings with Federal Labor governments than do trades and labour council officials in relation to State Labor governments. The difference is natural since informal meetings with State government ministers can be more frequent, and major union leaders are usually more closely involved in a State Labor administration than in its Federal counterpart.

The post-war experience of Federal trade union leaders has been that, with a single significant exception, it has proved 'far easier' to confer with the ministers in a non-Labor than in a Labor government. Generally speaking, non-Labor ministers have shown a greater readiness to meet union representatives. The notable exception to this rule was the Labor Prime Minister, J.B. Chifley, whose approachability was one of the main reasons why he is perhaps the only Federal leader of a majority Labor government to emerge from office with an enhanced reputation among union leaders.
Nevertheless, even with Chifley the A.C.T.U. found it necessary in 1947, before the revival of the Federal Labor Advisory Committee, to assert its claim to be associated with discussions on industrial matters between the Prime Minister and the A.L.P. Federal Executive, which appears for a time to have superseded the A.C.T.U. in this respect. When the Federal Labor Advisory Committee was re-established in 1948, however, not only were the two regular representatives of the Federal P.L.P. Cabinet members, but Chifley himself frequently attended the Committee's meetings and always kept in close touch with its activities.

The Government's readiness to by-pass the A.C.T.U. towards the end of the war and in the immediate post-war period was partly the result of increased Communist influence within the A.C.T.U. which led to some friction with the Federal P.L.P. But to a large extent it also reflected an attitude common to both Labor and non-Labor governments. Ministers tend to assume that because of their own experience and social contacts they are sufficiently conversant with views of their steady supporters, and that therefore it is necessary to ascertain directly only the views of other significant sections of the community with which they are less familiar. Moreover, governments are often more energetic in conciliating these sections in the hope of obtaining cooperation from them, than those whose support can be relied on.

Acting on this assumption, Labor ministers have tended to find it more necessary to consult with employers' organizations than with the unions, while non-Labor ministers have inclined to the reverse policy. The steps

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1 Crisp, The Australian Federal Labour Party, 1901-1951, 198
2 (1949) 203 Commonwealth Parl. Debs. 1399
3 Crisp, op. cit., 200; and see, generally, Chapter 13 above.
4 Calwell, 'The Australian Labour Party', in The Australian Political Party System, 79
taken by the Menzies Government to resume regular meetings between ministers and the Federal Executive of the Liberal Party were prompted by mounting criticism of the Government for its failure to consult its followers outside Parliament; and it was trenchantly argued by a political observer that this was also the main reason behind the Government's establishment in 1956 and 1957 of the Economic Advisory Committee, on which businessmen were strongly represented. On the other hand, the Menzies Government had earlier done much more than its Labor predecessors, for example, to enlist the active cooperation and assistance of the union movement in carrying out the migration programme. Similarly, although employers' organizations as well as the union movement were represented on the Ministry of Labour Advisory Council set up in 1954, the Council's main immediate value to the Menzies Government was clearly that it provided a regular and established channel of communication with the unions.

The prevailing attitude of Federal Labor ministers in the post-war period is illustrated by E.J. Holloway's reaction to a suggestion from the A.C.T.U. that permanent machinery should be set up to facilitate regular consultation with him. Holloway was Minister for Labour and National Service in the Chifley Government and a former Secretary of the Melbourne Trades Hall Council. He expressed strong indignation at the suggestion that formal arrangements were necessary for dealing with a man who had such an intimate knowledge of the union movement. The existence of this attitude did not, of course, mean that all consultation between the trade union movement and the Labor Government was channelled through the Federal Labor Advisory Committee once that body had been set up. Consultations of various degrees of formality with ministers were frequent.

5 Sydney Morning Herald, 1/3/1957
But the comparison outlined above is of some significance.

The difficulties experienced in the matter of consultation with Federal Labor ministers have been evident, in varying degree, in the five States (the exception being South Australia) that have had Labor governments since 1945.

In only two cases did a Labor government initiate moves, in both cases abortive, to set up a standing consultative body with union representation. In 1953 the Victorian Labor Government made statutory provision for the establishment of a Labour and Industry Advisory Board, which was to consist of three representatives, each of employers and employees, the latter to be appointed on the nomination of the Melbourne Trades Hall Council. Although Labor remained in power until 1955, the Board was never set up.

In 1954 the Tasmanian Labor Government extended to the Hobart Trades Hall Council what the Council described as a 'belated invitation' to appoint a representative to an Economic Advisory Committee, which included employers' representatives and had been set up mainly to advise the Government on cost of living problems. The Trades Hall Council accepted the invitation but soon expressed doubt about the Committee's effectiveness. Partly in response to the Council's criticism, an Industrial Advisory Committee was set up later the same year on the Premier's suggestion. The new body, composed solely of union representatives, was to consider proposals for industrial legislation submitted to it by the Government.

It was not long-lived. After a few months the Trades Hall Council was complaining about the Government's failure to consult the Committee 'prior to any action being taken with regard to amendments to legislation', and still later found it necessary to pass a resolution asking the Government

6 Labour and Industry Act 1953, s.19
7 Minutes, Hobart Trades Hall Council, 28/1/1954
8 Ibid., 23/6/1955
to 'submit' to the Committee the draft of a proposed amendment to the Factories and Shops Act 'before same is presented to Parliament'.

Experience in relation to ad hoc consultation varies from State to State. Informal discussions based on personal contact between Labor ministers and union leaders are important in many cases. This form of consultation is likely to be of particular importance in New South Wales where many of the leading union officials concurrently occupy seats in the State Legislative Council; the Minister for Labour and Industry, for example, is also a member of this body. Formal deputations from the New South Wales Labor Council have ready access to State ministers from the Premier down, though individual unions, not always without blame to themselves, occasionally strike trouble in their dealings with ministers.

In Victoria ad hoc consultation with the minority Labor Government of 1945-47 was easy and frequent, the Government, in which the Minister for Labour and Industry was also President of the A.C.T.U., accepting legislation drafted by the Melbourne Trades Hall Council. During the term of office of the last Labor Government (1952-55), however, difficulty was experienced by non-Industrial Group union officials in gaining access to some Cabinet members who were closely associated with the Groups. But access to ministers was otherwise easy for the central union organizations and A.L.P.-affiliated unions.

Consultation between the Hawke Labor Government of Western Australia and the Industrial Committee of the Trade Unions Industrial Council, which consists of the Council's executive officers and the President and

9 Ibid., 8/12/1955
10 See, e.g., Sydney Morning Herald, 26/8/1955; Daily Telegraph (Sydney), 3/7/1957
and Secretary of the State A.L.P., is particularly free; and Cabinet members have shown a constant readiness to confer with the Industrial Committee, whether in their own offices or in the Trades Hall. In addition, ministers have often accepted invitations to attend full meetings of the Trade Unions' Industrial Council in order to explain Government policy and hear delegates' comments. On matters other than those affecting more than one union, which the Government usually prefers to deal with through the Council, deputations from individual unions are readily received by ministers.

In Tasmania, the Chief Secretary in the Cosgrove Labor Government, as past President and subsequently an executive member of the main union organization, the Hobart Trades Hall Council, has been a most important channel of communication between the unions and the Government. But in any event, union officials, and particularly leaders of the Trades Hall Council, normally have ready access by deputation to ministers, and to the Premier where ministers have failed to give satisfaction. The expectations of State union leaders are pitched rather higher than this, however, and their disappointment is reflected in instructions which the Trades Hall Council gave to its representative on the newly-formed State Economic Advisory Committee in 1954:

1. To place before Ministers and the Premier the reactions of the Trades Union Movement...in respect to industrial legislation not being submitted to the Trades Union Movement for consideration before being submitted to Parliament.
2. The treatment of the Trades Union Movement by the Government in respect to...the Government...extending belated invitations to the Trades Union Movement to be represented on the Conferences and Committees set up by the Government to deal with this [cost of living] matter.12

11 The positions of President and Secretary on both the T.U.I.C. and the A.L.P. have customarily been occupied by the same men.
12 Minutes, Hobart Trades Hall Council, 28/1/1954.
Relations between Queensland Labor governments up to 1957 and the main trade union body, a strongly left-wing Trades and Labor Council of Queensland, were rather less intimate than in other States. This was particularly so during the Gair Government's term of office from 1952, though signs of strain had been evident from the time the A.L.P. Industrial Groups were established in the State. As late as 1948, shortly after the bitterly-fought Queensland railway strike, the Labor Premier of the day, E.M. Hanlon, attended a meeting of the Trades and Labor Council to explain the Government's views on price control. This policy, which demonstrated (especially in the existing circumstances) a considerable readiness on the part of the Government to exchange views with the Council, was not repeated in later years. The Government's changed attitude was reflected in the fact that from 1950 until 1955, when the Trades and Labor Council began to assume a new importance with the struggle in the A.L.P. machine, no member of Cabinet addressed the annual State Trade Union Congress held under the auspices of the Council, although this had previously been common practice. Indeed, it was claimed in 1955 that no minister had so much as set foot in the Trades Hall for an even longer period. Generally speaking, the Government preferred to work where it could through bodies other than the Council in its dealings with the trade union movement. The major unions represented on the Queensland Central Executive of the A.L.P. often took the place of the Trades and Labor Council in this respect, and the Central Executive set up an Industrial Committee formed for the purpose. However, in most cases Government leaders could not afford to ignore the Trades and...
Labor Council completely. Consultation by deputation to ministers, on the Council's initiative, was fairly frequent, but was marked by difficulties which indicated Government reluctance. Much more often than seems to have occurred in other States, ministers declined to meet deputations from the Council, often on matters of considerable importance. Not all ministers practised this policy, which was most prevalent among the large section of Cabinet with strong Industrial Group sympathies. In 1953 the Trades and Labor Council protested against the 'continued refusal by certain Ministers to discuss by deputation matters of vital importance which have been raised by Council'. Two years later it again complained that 'for some time now responsible political representatives...have refused to meet recognised Trade Union Bodies such as the Trades and Labor Council...and we call on the Premier to meet deputations from the T. & L.C. and that he instruct his ministers to do likewise.' A subsequent interview with the Premier evoked an optimistic report on the matter from the Council's President, but within a few days three ministers had reaffirmed their previous refusals to see Council deputations. The Treasurer, E.J. Walsh, powerful in Cabinet and an original member of the A.I.P. committee set up in 1947 to organize Industrial Groups in Queensland, was the worst offender. A further Council resolution referred to 'very strong feeling among Unions about Mr. Walsh's persistent refusal to meet Council deputations'. The Treasurer was apparently determined to have nothing whatever to do with the Council: repeated attempts by the Council over a period of years to discuss the Workers Compensation Acts with him were invariably rebuffed. A number of

17 Minutes, Trades and Labor Council of Qld., 2/12/1953
18 Ibid., 4/5/1955
19 Ibid., 1/6/1955
20 Ibid., 15/6/1955
21 Ibid., 2/11/1955
deputations discussed these difficulties with the Premier without improvement, until he himself refused to discuss the matter any further.22

3. The Question of Control

The question of the unions' ability to control Labor parliamentarians was discussed in general terms in the preceding chapter. Normally, however, the question assumes major proportions only when Labor is in power. It is less important at other times because, on the one hand, P.L.P. leaders are usually more agreeable to union wishes when their function is to oppose and not to operate the government, and, on the other hand, the unions do not expect from a P.L.P. in opposition the results that can only accompany occupancy of the government benches. Conversely, when Labor is in power, its parliamentary leaders incline to caution while the unions seek the translation of promises into action. Moreover, as we have seen, in these circumstances the unions look less to the P.L.P. as a whole than to its leaders in cabinet. Control of caucus, in the ways discussed earlier, thus becomes merely one means of reinforcing attempts to control government policy by methods aimed directly at cabinet, which may involve independent action by the unions or action through the Party machine. The ability of unions to exercise some form of direct control on the policies adopted by a Labor government varies according to the means chosen and the strength of the union or unions concerned in exploiting them.

The threat of large-scale industrial trouble by a militant union or group of unions represents a greater political danger to a Labor than to a non-Labor government because, as a general rule, the electorate closely identifies Labor governments with the trade union movement. For this

22 Ibid., 19/9/1956
reason, a Labor government may be inclined to yield to threats of direct action in order to avoid a major strike which is likely to antagonize marginal voters, and so to have unfavourable electoral repercussions for the government. On the other hand, a Labor government may not only refuse to yield to threats of this nature but may take drastic steps to avert or break a strike precisely in order to demonstrate to the marginal voter that it does not in fact 'take orders' from the unions. The latter tactic is likely to be used only in relation to serious strikes, especially in cases where the strikers are not whole-heartedly supported by the remainder of the trade union movement - as in the case of the coal miners' strike of 1949, involving a Federal Labor administration.

A Labor government will probably be more prepared to resist union demands, and to take strong action against striking unions, when it has little need to fear those of its normal supporters whom it may antagonize by such action. Thus in the case of the Queensland railway strike of 1948 the State Labor government employed extreme measures to break the strike, secure in the knowledge that it was so firmly entrenched in office by the mechanics of the electoral system, and also in the Party machine that its position could not be affected by the unions concerned. Yet even in these circumstances, strong measures can occasionally react against a Labor government. Despite the electoral strength of the McCormack State Government and the fact that its methods of breaking the Queensland railway strike of 1927 were supported by Caucus, the State A.L.P. machine and a majority of the unions, the Government's defeat in the 1927 elections was in large measure caused by embittered railwaymen and other militant unionists withdrawing their support. Nevertheless, threats by unions to withdraw electoral

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1 See Morrison, 'Militant Labour in Queensland, 1912-1927', (1952) 38 Journal, Royal Aus' n. Historical Society, 232-4; see also Kendall, Australia
support, whether numerical or financial, are normally unlikely to be con-
sidered as seriously jeopardizing the position of Labor governments.
Labor in power, as we have seen, is probably less dependent than Labor
out of power on union election contributions; and the general ability of
unions - even their willingness when the moment for action comes - to
change the ingrained voting behaviour of most of their members is doubtful.

The threat of disaffiliation from the A.L.P. because of a Labor gov-
ernment’s policies is also a weapon of dubious force. Disaffiliation
directly affects the Party machine, chiefly by depriving it of affiliation
fees, rather than the government or P.L.P. concerned. Thus the threat of
disaffiliation is usually a tacit admission of weakness rather than a show
of strength. If a union threatening such action can enlist the Party
machine’s support for its attitude, then disaffiliation is not only super-
fluous but damaging to its cause. A Labor government is usually prepared
to pay more attention to the views of unions prominent in the Party machine
than to those of a union that has shown itself to be out of step with major
Party opinion. However, if the disaffiliation threat is carried out, it
may indicate to government leaders the intensity of feeling aroused, for a
decision to disaffiliate is a serious matter which must usually overcome a
tradition of allegiance to the Party, especially where rank and file re-
presentatives have a voice in the decision.

As was shown in the preceding chapter, control of caucus as a means of
controlling a Labor government is more likely to be achieved through the
Party machine than through direct union pressure on parliamentarians. But

2 See Chapter 12
3 Thus in 1957 when officials of the W.A. Society of Railway Employees, a
union long associated with the State A.L.P. and having an affiliated mem-
ership second in size only to the A.W.U., threatened disaffiliation from
the Party in protest against the Labor Government’s policy on closures of
railway lines, it was because they could not carry the State Executive wit
here again, as was also shown, the disciplinary measures available to leaders of the Party machine by no means guarantee control of caucus. Indeed, their potency can be expected usually to be weaker when Labor is in power, because the parliamentarian's margin of safety is increased by the natural hesitancy of Party leaders to jeopardize the government's parliamentary majority. Moreover, even if the machine's attempt to dominate caucus is successful, its ability thereby to force a Labor government to follow a particular policy against its will is only as great as the ability of caucus to control cabinet. Theoretically, the Labor caucus does control cabinet, ultimately through its function of electing its leader and the members of a Labor ministry. In practice, however, the dominance of caucus is more often apparent than real. Individually and as a group, ministers are normally able to exert strong influence on caucus members and even, in some cases, to rely on the loyalty of the individual followers for support. As a last resort, the potent threat of dissolution is in their hands. Labor governments have in fact shown a marked ability to reverse the theory of caucus control and, occasionally, a readiness to by-pass caucus altogether, or even to act in the teeth of its known views.

Effective union control of Labor governments through caucus is, therefore, likely to be rare on questions about which union and government leaders hold strong and conflicting opinions. On smaller matters the issue does not arise in these terms. The tactic has, however, been used successfully in at least one important case. In 1924 unions operating chiefly through the A.L.P. machine were successful in forcing a majority of the

them in the matter. Nevertheless, the proposal was rejected at a subsequent delegate conference of the union.

Queensland Labor Caucus to support their claim for immediate legislation to introduce the forty-four hour working week, the methods used being described in the preceding chapter. Cabinet members, led by the Premier, E.G. Theodore, bitterly opposed the proposal in Caucus. When it was clear that their combined influence was insufficient to retain their previous majority, they played their trump card and tendered their resignations. Contrary to expectations, these were accepted by Caucus. The ministers and their followers immediately left the room, but the impending split was averted when they returned a few minutes later after holding a brief meeting and deciding to accept the inevitable. The resignations were withdrawn, and the legislation was put through Parliament during the following session in accordance with union wishes. The fact that this tactic may get results is enough to ensure that it will not be neglected — indeed, it was used to the hilt, falling just short of success, between 1955 and 1957 in the course of the Queensland dispute on the annual leave question.

The nature of the formal disciplinary sanctions which the Party machine can use against Labor parliamentarians was examined in the preceding chapter. The question of control, whether by these or other means, not only arises most frequently in relation to the members of Labor governments, but the problem of enforcing control through the sanctions of expulsion and non-endorsement becomes much more difficult. For it is in this context that the two main factors determining the parliamentarian's margin of safety — his personal stature and the Party's parliamentary position — are almost certain to be at their peak.

Government leaders are likely to have, at least initially, a substantial

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5 Morrison, op. cit., 223
6 See Chapter 13
personal following within the Party machine, and are certain to have such a following within the P.L.P. itself. In addition, the prestige attaching to their official position may extend the area of their influence in the Party outside parliament. Thus an attempt to take disciplinary action against a government leader is, in the first place, liable to split the Party outside parliament unless he has deeply antagonized all major elements. A split on these lines was, for example, one result of the expulsion the Labor Premier of Queensland, V.C. Gair, in 1957. On the other hand, the expulsion of a number of Labor's parliamentary leaders who supported the conscription referendum in 1916 and the Premier's Plan in 1932 was achieved without drastically splitting the Party because the unions were almost unanimously opposed to these proposals and the political branches were only a little less united. But, as the history of the A.L.P. shows, even if the Party outside parliament passes through such a crisis substantially intact, the P.L.P. concerned does not. As an immediate result, expelled leaders have invariably been followed out of the Party by a number of parliamentarians sufficient to deprive it of its parliamentary majority. Where an election has followed, this loss has been confirmed by an electorate confronted with the charges and counter-charges of embittered former colleagues, and often with vote-splitting ex-Labor candidates as well.

Where disciplinary action is contemplated against Labor government leaders, therefore, those who control the Party machine, even though sure of their own strength in the machine, are faced with a serious dilemma. They must decide whether to accept the almost certain succession of a non-Labor government with which they can hope to have little influence, and which may reverse favourable policies established by its Labor predecessors; or to retain a Labor government which, while highly unsatisfactory in
certain important respects, is at least certain to continue established Labor policies and in most cases to be sympathetic, if not always responsive, towards Party and union wishes. This dilemma is inevitable, and it is the key determinant of the extent to which Labor government leaders can disregard the opinions of powerful sections of the Party without rousing them to the point where they prefer Labor out of power to Labor in power with its existing parliamentary leaders. On almost all of the few but critical occasions when the Party's sanctions have been directed against Labor government leaders, the crisis point was reached because the leaders had misjudged their margin of safety in these terms. The point is well illustrated by Childe's comment on the attitude of W.A. Holman, Labor Premier of New South Wales, whose endorsement was withdrawn in 1916 by the A.L.P. State Executive owing to his stand on the conscription issue: 'He could not imagine that the unionists should not prefer a Labour Government of whatever kind to a Tory one'.

But the margin of safety is normally wide, and within it Labor government leaders can count on considerable freedom of action. The action against Holman, for example, represented more the culmination of union discontent with the policies followed by his and the previous McGowen Labor governments than a sudden difference of opinion on the specific issue of conscription. Their industrial policies had been a bitter disappointment to unionists who had expected so much from the first Labor administrations. During the referenda campaigns of 1911 and 1913, in which the Federal Labor Government sought to extend the Commonwealth's power over industrial and commercial matters, the leading members of the State Labor Government had ostentatiously avoided giving public support to the proposals submitted,

7 Childe, op. cit., 39
despite the instructions of Party conferences that they should give posi-
tive support to the Federal Government in the matter. No action was taken
against them. Again, in 1916, when most of the unions combined to form
an 'industrial section' and captured the A.L.P. State Conference and the
Central Executive, Conference censured Holman for failing to honour his
undertaking to the 1915 Conference to reform the Legislative Council and
place it under Labor control. Holman thereupon obtained the agreement of
Caucus to the resignation of his Ministry - though he delayed handing in
its formal resignation to the Governor. Faced with the prospect of losing
its most able parliamentarians for the forthcoming election campaign, and
with an unwilling and doubtful new P.L.P. Leader elected by Caucus, Con-
ference finally backed down on its demand that reform of the Legislative
Council should be the Government's central election policy and accepted
Holman's undertaking not to oppose a referendum on the question. The
Holman episode demonstrates the wide margin of safety available to Labor
government leaders. It also shows how a strong parliamentary leader can
turn the tables on the Party machine by threatening resignation if it fails
to fall in with his wishes, or at least to moderate its demands.

It is in the face of these obstacles that the Party machine has used
its powers of expulsion and non-endorsement against the leaders of Labor
governments. They remain its most effective, if imperfect, sanctions.
Their inadequacy as a means of control lies in the fact that they have been,
and can be, used only at crisis-points in the Party's history. Thus the
threat implied by their presence is unlikely to oblige strong Labor govern-
ment leaders, aware of their wide margin of safety (and usually, it appears,
over-estimating its width), to follow slavishly the line laid down by the

8 Ibid., 28-32
9 Evatt, Australian Labour Leader, 383-7
Party machine or the unions dominant within it. Labor governments are less likely to comply with the 'instructions' of the Party machine out of fear of its formal sanctions than because they regard the machine's proposals as having political merit in their own right. Apart from this, the basic sympathy of Labor government leaders with general union aims has some part to play, and industrial matters close to the heart of these aims can be expected usually to receive more favourable attention than in the case of a non-Labor government.

If the sanctions available to the Party machine did in fact enable the close and constant control of Labor governments' policies that is often alleged to exist, then, as Parker points out, 'a great deal more of the Labor Platform might be on the Statute Book, and Conferences and unionists would have to spend far less time worrying over how to bring the politicians into line'. Confronted with determined government leaders, the Party machine is almost invariably obliged to compromise because in all but the most exceptional circumstances its only effective sanctions are unusable. Moreover, experience has shown that they are less a means of control than a means of reprisal - 'when it comes to a question of forcing a Labour Government to give effect to their platform or realize the ideals they have been sent into Parliament to accomplish the organization has broken down'.

Even as a means of reprisal, use of the sanctions has not always provided the exemplary lesson intended.

In conclusion, it is apparent that, whether directly or through the

10 R.S. Parker, chapter on N.S.W. in State Government in Australia, (ed., Davis), (MS) 59
11 Childe, op. cit., 53
12 For example, the expulsion of W.M. Hughes, Federal Prime Minister, and the withdrawal of endorsement from W.A. Holman, N.S.W. Premier, in 1916 did not automatically rob them of office, which they each retained for some time afterwards - though most of their followers suffered a somewhat earlier political demise.
Party machine, the unions have little ability to exercise a continuing control over Labor government leaders in the sense of forcing their acceptance at all points of policies pushed by union leaders. On the other hand, it is also clear that in the long-run the unions can make or break such leaders. Labor's political leaders cannot afford consistently to antagonize the major union groups on large issues. Ultimately, efforts to control are re-directed to secure the leaders' punishment rather than their reform— even at the cost of converting a Labor government into an opposition. The conclusion drawn by Miller from the J.T. Lang episode, though he implies a unanimity of action among union leaders that is rarely found, is equally supported by the other cases where Labor leaders have been broken by the Party machine:

No Labour leader can retain his position without the support of the trade union movement. If he loses it, his parliamentary supporters drift away from him. If he retains it, however, as Curtin and Chifley did, he can marshal 'solidarity' behind him in Parliament and out of it. 13

Recognition by Labor government leaders of this ultimate determinant of their position ensures, in varying degree, that the policies of their governments will reflect union influence if not union control.

4. The Measure of Union Influence

Trade unions are more often united in their approach and more deeply committed on industrial matters than on any others. It is, therefore, in the area of their industrial competence that Labor governments are normally likely to be subjected to greatest union pressure to exercise their power in a given direction.

Of all the policies which may receive union support, it is in relation 13 Miller, op. cit., 27 1 For a definition of 'industrial matters' in this context, see Chapter 2
to those concerning industrial matters that the margin of safety of Labor government leaders is usually least certain in so far as the unions are in a position to embark on disciplinary action. It follows that Labor governments tend to place a corresponding emphasis on their functions in the industrial field, and the minister chiefly concerned with industrial matters in Labor cabinets is almost invariably a former (in some cases an existing) trade union official. As a rule, Labor governments can also be expected to adopt, or at least to go some way towards meeting, union views on industrial policy with somewhat greater readiness than in the case of more general matters. It is noteworthy, for example, that while the 'characterless and dispiriting respectability' developed by the Victorian P.L.P. after many years in opposition or minority governments produced a 1955 election platform that was barely distinguishable from its opponents', only the Labor policy included a specifically industrial plank in the shape of proposed amendments to the Factory and Workers Compensation Acts. More important, however, was the same P.L.P.'s record during the term of its first majority government in the history of Victoria. In the Parliament preceding the 1955 elections, the Cain Labor Government had passed long-service leave legislation that was more favourable to unionists than any of the corresponding measures enacted by other Labor governments up to that time. In addition, it had also been the first Labor Government to enact legislation compelling State industrial tribunals to provide for automatic quarterly adjustments to the basic wage following the Federal Arbitration Court's decision to abandon this system.

The Victorian example is a significant one. The Cain Government did not have a large parliamentary majority; nor was it entrenched in office in

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2 Alan Davies, chapter on Victoria in State Government in Australia, (ed., Davis), (MS.) 58
the way that the Queensland and South Australian governments were at that
time. In these circumstances it might be expected that the Government
would have hesitated to take action of this sort, which was clearly detri­
mental to the interests or opposed to the views of many in those sections
of the electorate whose support the Government needed to retain or gain if
it was to survive the next election. The principle involved in terms of
electoral support has been enunciated in this way:

To make extreme concessions to one interest at the expense of the
others is likely to be fatal to the alignment of interests that
make up the constituency of a major party. The process moderates
the course of party action...4

In Australia, as in the United States to which this statement was pri­
marily related, the union movement is only one interest group in the elect­
orate at large and by no means exercises a dominating influence despite its
large membership. But the importance of the Australian trade unions in
party-politics is less a matter of their strength in the electorate than of
their actual or potential strength within the framework of a single party.
Whatever the position of the unions in the electorate, the nature of the
A.L.P. machine means that the unions constitute, or can constitute, the
dominant interest group within that Party. Ultimately, therefore, they
are in a position to decide the fate of Labor's political leaders in a way
that has nothing to do with the electoral support the A.L.P. has among union­
ists. Moreover, while rejection of these leaders by the electorate entails
their exclusion from government, there are prospects that the exclusion is
only temporary. On the other hand, the nature of the party system usually
means that exclusion from the Party itself, or from its list of endorsed
candidates, involves exclusion from political office of a decidedly more

3 For an explanation of the situation in these two States, see below in
this section.
4 E.E. Schattschneider, Party Government, 85
permanent nature - it normally involves exclusion from parliament also.

The force of this consideration as an influence on Labor government policies in any particular case varies in accordance with the factors already enumerated in this connection. But its force is almost invariably greatest in relation to the unions' industrial aims. The extent to which governments have applied or supported industrial policies advocated by the unions is, therefore, likely to be the most significant and readily discernible indicator of union influence on them.

In the first place, union influence as reflected in industrial policies normally varies in accordance with whether the government concerned is Labor or non-Labor. The provisions of the main industrial legislation of Queensland and South Australia provide the most marked contrast between the enacted industrial policies of Labor and non-Labor governments. The legislative contrast is shown in Table 18. These two States are the extreme examples. Between 1915 and 1956, the year when the legislation analysed in the Table was in force, Labor had dominated State politics in Queensland for all but three years and non-Labor governments had held office in South Australia for all but a total of eight years - and even during those years South Australian Labor governments were invariably confronted with a hostile Legislative Council, an institution which a Queensland Labor Government was able to abolish in 1922. In each of these States the dominant party had been continuously in office for more than twenty years up to 1956, the A.L.P. since June 1932 in Queensland and the Liberal Country League since April 1933 in South Australia. Moreover, by virtue of the perpetuation of electoral boundaries and voting systems favourable to the government party, each was normally assured of re-election and could regard

5 See the introductory remarks to this chapter.
themselves as firmly entrenched—saving a split in their own ranks, as occurred in Queensland in 1957.

In 1956, therefore, the governments of Queensland and South Australia were in a position which differentiated them from their counterparts in all other States and in the Commonwealth sphere. For even where, as in New South Wales and Tasmania, one party—in both cases the A.L.P.—had retained office for more than fifteen years, the electoral mechanism was not so blatantly favourable to the government of the day. By comparison with Queensland and South Australia, the character of industrial legislation in all other cases falls between the extremes represented by these two States. To a large extent this may be attributed to the element of electoral uncertainty, which persuades Labor governments to apply union demands in moderation and non-Labor governments to hesitate before tampering with legislation favourable to the unions. In addition, Labor governments in Victoria (where majority Labor governments have been almost as rare as in South Australia), Western Australia and Tasmania chronically suffer upper houses in which they do not command a majority. A situation of this nature has persisted in Tasmania over more than twenty years of continuous Labor rule. Even in New South Wales, where it prefers control to abolition of the Legislative Council, Labor was in office seven years before it finally secured a Council majority in 1948.

The Queensland and South Australian comparison, set out in Table 18, thus illustrates union influence in the present context at its highest and its lowest. In no other State, or in the Commonwealth sphere where the parliamentary industrial power is more limited, is the corresponding industrial legislation quite as favourable to the unions as in Queensland, or
quite as ungenerous to them as in South Australia. The variations between these two extremes occur among Labor governments as well as between Labor and non-Labor governments. They can perhaps be best appreciated in a brief space by an examination of the attitudes and performance of different governments in relation to a number of industrial issues to which the unions attach a great deal of importance. The issues considered below from this viewpoint are: government influence on industrial tribunals; wages policy; preference in employment for unionists; long-service leave; anti-strike legislation; and court-controlled union ballots. Aspects of all of these issues have been the subject of recent controversy. Discussion of them, however, will not in all cases be confined to their immediate background.

Industrial Tribunals and Governments:

In 1926 statutory provision was made to enable the Commonwealth Attorney-General to intervene, 'in the public interest', in Federal Arbitration Court proceedings relating to the basic wage or standard hours. In the same year, the non-Labor government that had enacted the amendment intervened in a case involving a union application for a forty-four hour week: it neither supported nor opposed the application, maintaining that it was intervening merely to allow, in accordance with the terms of the Act, other interested parties to give evidence on the matter.6 Earlier, in 1920, a Federal non-Labor government had declined an invitation from Judge Higgins to give its views on a similar union claim then before the Court.7 In 1930 the Commonwealth again exercised its intervening power when the Attorney-General in the Scullin Labor Government actively supported the union case and opposed an application for a reduction in the basic wage.8

6 24 C.A.R., at 793
7 14 C.A.R., at 846
8 30 C.A.R., at 29-30
The Attorney-General later applied unsuccessfully for the Court's order granting a reduction to be suspended for three months on the ground that immediate enforcement would 'embarrass the Government in completing its proposals for economic rehabilitation'.

Again, it was a Federal Labor Government that intervened in the Court's Standard Hours Inquiry of 1947 to support the unions' claim for a forty hour working week. By contrast, the Liberal-Country Party Government 'adopted...an attitude of what may be described as neutrality' when it intervened in the 1950 and 1953 Basic Wage Inquiries; and in the 1956 and 1957 Inquiries it directly opposed the unions' claim for the restoration of automatic quarterly adjustments of the basic wage.

A similar pattern is evident in the case of State governments on the occasions when they have appeared before the Federal Arbitration Court. In general, State governments, whatever their political colour, have been content merely to give evidence of the effect any proposed change would have on government instrumentalities and State finances. There have, however, been some significant variations in this practice. Thus in the 1947 Standard Hours Inquiry the Labor governments of New South Wales, Victoria, Queensland and Tasmania (and also that of Western Australia before its defeat at elections held during the hearing) urged the Court to give immediate force to the unions' claim for a forty hour week. On the other hand, the non-Labor Government of South Australia expressed support for the forty-hour principle but opposed its immediate application, the newly-elected non-Labor Government of Western Australia taking substantially the same view. Only State non-Labor governments troubled to intervene in the

9 Ibid., at 74
10 77 C.A.R., at 486
1950 Basic Wage Inquiry, and either opposed or expressed no opinion on
the unions' claim for an increase. However, a new factor was imported
into succeeding basic wage cases in the shape of the fate of automatic
quarterly adjustments of the basic wage in accordance with changes in the
cost-of-living index. So far as the union claim for an increase in the
basic wage was concerned, all State governments in the 1953 and 1956 cases
neither supported nor opposed the claim; but the importance of the political
character of the different governments was apparent in relation to the
question of quarterly adjustments. In the 1953 case the Labor governments
of New South Wales, Victoria, Queensland, Western Australia and Tasmania
all opposed the employers' application for the abandonment of quarterly
adjustments, while the non-Labor Government of South Australia, like that
of the Commonwealth, adopted a neutral attitude. Again in the 1956 case
the Labor governments of New South Wales, Queensland, Western Australia
and Tasmania supported the unions' claim for restoration of quarterly adjust­
ments, while the non-Labor Government of South Australia opposed it and
that of Victoria stood neutral.

The formal intervention of State governments in proceedings before the
Federal arbitral tribunal is based on their role as representatives of the
public interest in their respective spheres. In this capacity, that is
as other than employers party to a dispute, 'State governments seldom ex­
press firm opinions on matters to be decided by the court' - 'the excep­
tions represent the use of a means of expression of union or employer views

11 No State Labor government intervened in the 1957 basic wage case, ap­
parently on the assumption, which proved correct, that the Court's atti­
tude on the question of quarterly adjustments was settled. The non-Lab­
or Government of S.A. intervened to oppose both the claim for restoration
of adjustments and for an increase in the basic wage, while that of
Victoria professed neutrality.
supplementary to the advocates already appearing before the court'.

The exceptions from the rule have become more frequent since this passage was written, but the assessment of their character and motivation still holds.

State governments rarely appear before State industrial tribunals other than in their capacity as employers. There is, generally speaking, less need for Labor governments to take such action because industrial tribunals at the State level have not the same constitutional insulation from government as have their Federal counterparts, and they can be given specific legislative direction on the policies they are to follow. Nevertheless, intervention on these lines may be resorted to in exceptional circumstances. The Western Australian Labor Government, for example, accepted an invitation from the State Arbitration Court to make submissions on the question of the resumption of quarterly adjustments to the basic wage following the Government's unsuccessful attempts to get legislation to this effect through a hostile Legislative Council. The Government's advocate came down solidly on the union side, submitting that 'the time has arrived for the Court to once again allow quarterly adjustments'.

It is difficult to assess the extent to which the expression of government views affects the decisions of industrial tribunals. Perhaps the clearest indication of the weight one tribunal on a particular occasion has attached to government submissions was given in the judgement handed down by the Federal Arbitration Court in the Standard Hours Inquiry of 1947, when the Court granted the unions' claim for a forty hour working

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12 R.J. Cameron, The Role of the Arbitration Court', (1953) 6 Historical Studies: Australia and New Zealand, 214
13 Transcript of Basic Wage, Quarterly Declaration for the June Quarter case, W.A. Arbitration Court, August 1955, 28
week. In the course of the Inquiry, the Court had declared its approval in principle of the unions' claim, leaving the question to be decided whether the existing economic circumstances justified immediate introduction of the forty hour week.

The Court, which showed an acute awareness of the legislative function involved in deciding the case, was clear that 'the popular will if it could be ascertained is, in a fundamental question of this kind, a matter which this Court should not ignore'. On this ground it regarded as significant the fact that no government had opposed the principle of a forty hour week and, of 'first importance', the fact that four States ('which included the greatest both in population and economic activity') and the Commonwealth had favoured the principle's immediate application. But although in this case the Court could attach 'very substantial weight' to the views of the Commonwealth and the four State governments, it did not follow that a consistent weight could in all circumstances be given to government views.

The matter was considered by the Federal Arbitration Court in the basic wage case of 1956, after counsel for the Tasmanian Labor Government had cited the *dicta* of the 1947 standard hours case as giving 'specific weight' to government views. The Court replied that in the circumstances it was impossible to attach weight to the 'mere expression' of government views when, in relation to the question of quarterly adjustments to the basic wage, the views expressed were so diverse and, in some cases, inconsistent.

14 Of the three judges who handed down the Court's unanimous decision, Drake-Brockman, C.J., and Foster, J., had formerly been associated with employers and unions, respectively, before their elevation to the bench 20 years earlier, while Sugerman, J., had no such connections.
15 59 C.A.R., at 533
16 Ibid., at 591
17 Ibid., at 589
18 Ibid., at 592
sistent with policies followed by the governments concerned.  

With the notable exceptions of the Federal tribunal's decisions in the two cases referred to above, industrial tribunals, whether State or Federal, have not been in the habit of publicly acknowledging the weight they have attached or may be prepared to attach to government views. Thus it is usually impossible to establish with any precision the extent to which the members of a given tribunal react or have reacted to such views - whether the views have been formally submitted or are public knowledge, and whether a policy coinciding with them has been applied solely on the tribunal's initiative or as the result of informal government pressure. However, to deny government views some importance in this connection is to regard industrial tribunals as impersonal institutions concerned with problems to which there is only one correct solution, when in reality they are institutions composed of men who have their own personal beliefs and attitudes and deal with complex social and economic problems which are not susceptible to strict legal definitions of right and wrong.

Whatever may be the precise effect of government views on the decisions of industrial tribunals, the trade union movement at least does not under-estimate their possible influence - if anything, union leaders are convinced that there is often a close relationship between the two. The A.C.T.U. Secretary made this point in relation to Federal industrial tribunals: 'The overriding factor has - generally speaking - been the close relationship of arbitral decisions...with Government policy'. One result of this view is that major cases before the Federal arbitral authorities in particular are often accompanied by strong union pressure on Labor

19 Reasons for Judgment, 11 I.I.B., at 397
governments to intervene in support of the union advocates. Although Labor governments have responded on a number of occasions to the request to intervene, the unions have been rather less successful in obtaining from them firm support for the union case. In Federal basic wage hearings Labor governments have usually adopted the 'neither supporting nor opposing' formula in relation to claims for basic wage increases, which indicate that they are intervening merely to supply any factual information the tribunal may require. On the other hand, long term policies on which hopes are most strongly concentrated, such as the forty hour week and the retention or restoration of automatic quarterly adjustments to the basic wage, have received the active support of intervening Labor governments.

The expression of views is not the only way in which a government may influence the decisions of an industrial tribunal. It may do so more directly by giving specific and detailed legislative directions as to conditions of employment and other industrial matters. Federal governments are subject to constitutional limitations in this respect, but the technique has been used extensively by State Labor governments, the industrial legislation of New South Wales and Queensland, in particular, being studded with examples of its use. In its extreme form, legislative direction involves taking decisions out of the hands of the tribunal concerned, though formal execution of the policy laid down is usually left to the tribunal. Labor governments have resorted to legislative directions as a

21 In the case of State tribunals, for example, the W.A. Trade Unions Industrial Council has pressed the State Labor Government to intervene before the State Arbitration Court in support of all applications by A.L.P.-affiliated unions for preference or compulsory unionism: Minutes, T.U.I.C., 8/5/1956
22 For Queensland, see Table 18,
means of reversing the established policies of tribunals. On at least one occasion, a Labor government has by-passed a tribunal altogether in the course of reversing its policy and giving effect to union claims.

The President of the Western Australian Arbitration Court had refused to alter the State basic wage after each of the first two quarterly reviews conducted by the Court in 1942, despite rises in the cost-of-living index. Shortly after the second review, the Federal Labor Government, at the suggestion of the Western Australian Labor Premier, exercised its wartime powers to authorize the Premier to adjust the basic wage in accordance with the cost-of-living index if the Court failed to do so. Two days before the Court conducted the third quarterly review of the year, the Federal Government gazetted a further regulation empowering the Premier to adjust the basic wage to the level it would have been had the Court adjusted it after the two previous reviews. The Court adjourned its third quarterly review on the first day of the proceedings, after the President had indicated he was against increasing the basic wage even though the cost-of-living index had again risen. The following day, the Premier exercised his power under the Federal regulations to increase the basic wage by varying all State awards to this effect.

Except under wartime emergency powers, Federal governments are unable to control directly the content of arbitral awards in the manner open to State governments. But they may, up to a point, achieve the same end by

23 For example, in 1945 the N.S.W. Labor Government passed legislation reversing the State Industrial Commission's policy of not granting annual leave and sick leave in the same award: see K.F. Walker, 'Australia', in Comparative Labor Movements (ed., Galenson), 228
25 Ibid., 1942 S.R., No. 344
26 22 W.A.I.G., at 227
27 Ibid., at 230
statutory extension or limitation of the matters with which Federal tribunals are competent to deal. This technique is most effective in its negative aspect, for while a tribunal cannot deal with a matter which is removed from its jurisdiction, the mere inclusion of a matter is no guarantee that the tribunal will decide it in the desired way. Use of the technique is illustrated below in connection with preference to unionists, anti-strike measures and court-controlled union ballots.

Apart from legislation directly relating to the powers of industrial tribunals or the way in which they are exercised, a government may influence a tribunal's decisions by the nature of its general policies. The Federal Arbitration Court in its 1956 basic wage decision, while disclaiming that it could place any weight on government views formally submitted to it, was on the other hand clearly disposed to place considerable weight on the Federal Government's announced economic policies. A similar connection was even more apparent when a judge of the same Court, acting on the assumption that the existing Federal Labor Government intended to assist employers affected by any added costs arising from his award, made an award increasing wage rates and suspended its operation until the Government had taken the appropriate action. Influence exerted in this way has not been confined to tribunals within the constitutional jurisdiction of the government concerned. This was clearly demonstrated in the Federal Arbitration Court's Standard Hours Inquiry of 1947.

While the hearing in this case was in progress, the New South Wales Labor Government enacted legislation prescribing a forty hour working week (the claim the unions were making to the Federal Court) for all workers under State awards. At the same time, the Queensland Labor Government...

28 See Reasons for Judgment (roneoed), 1956, 37, 76, 83
29 See Foenander, Industrial Regulation in Australia, 15-16
announced its intention of bringing down an identical measure, regardless of the Court's decision in relation to Federal award workers. The New South Wales Act came into operation on 1 July 1947, and by September, when the Federal Court handed down its decision, the effects of the measure in the most heavily-industrialized of the States were becoming plain. Nearly fifty per cent. of employees in the State were working under State awards. In many cases, State and Federal awards covered different employees in the same establishment. Employers faced with this situation had either to operate their plant for forty-four hours a week in accordance with Federal awards, and pay their State award employees for four hours' overtime, or to give their Federal award employees a forty hour week. According to a union estimates, most employers preferred the second solution. When it gave judgement in September, the Federal Court showed awareness that it alone was in a position to ensure the uniform application of the forty hour week, a uniformity beyond the constitutional competence of any one government and 'so essential for ordered business and harmonious industrial relations'. The situation in New South Wales meant, in effect, that if uniformity was the aim, then there was only one course open to the Court:

...it is of course very obvious that the New South Wales Act did alter very material economic and political factors and did, during the hearing of the case, present this Court with a fait accompli in relation to a substantial section of its industry and to that extent did affect the freedom with which the Court might otherwise have acted.

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Finally, among the ways in which governments may influence the decisions of industrial tribunals, there is the question of the men who

30 This measure was enacted in October and came into force at the same time as did the Court's decision, on 1 January 1948.
31 59 C.A.R., at 589
32 Ibid.
compose the tribunals. Both Labor and non-Labor governments frequently make appointments from the ranks of their supporters. Labor appointees have not always come up to expectations, and union criticism of them is common. On the other hand, some non-Labor appointees have been highly regarded by the unions. But while few appointments made in the hope that they will influence an industrial tribunal's policies can be expected to satisfy the interests involved on all points and at all times, the nature of such appointments is rightly regarded as being of considerable importance. In particular cases they do not usually result in a dramatic change in the tribunal's policy, though this has occurred on occasion. But there is reason to believe that they have inclined tribunals to favour one side.

The importance of the appointment factor was evident in the formation of the Queensland Industrial Court's policy on the question of preference to unionists and compulsory unionism. This policy and some of the factors contributing to the high incidence of preference clauses in Queensland awards have been described above. A further, and perhaps the most important, factor in this situation appears to have been the nature of the appointments made to the award-making tribunal.

The overwhelming proportion of Queensland awards which include preference or compulsory unionism clauses is not of recent origin. At the end of 1929, eighty per cent. of all State awards contained preference clauses of one sort or another; by the end of 1954 the proportion had risen by only nine per cent. The proportion of these clauses that prescribed compulsory unionism rose in the same period from sixty-seven to eighty-nine

33 E.g., see the W.A. Arbitration Court's change in attitude to the question of quarterly cost-of-living adjustments to the basic wage, described below under 'Wages Policy'.
34 See Chapter 7
35 See Table 8
36 In absolute figures, as Table 8 shows, the rise is much greater.
per cent. Thus it can be said that the preference clause, and compulsory unionism in particular, had become firmly entrenched as a feature of Queensland awards by the end of 1929. But perhaps the most striking increase in these proportions occurred in the space of little more than four years preceding the end of 1929: between 1925 and 1929 preference clauses of all kinds increased by half, from fifty-three to eighty per cent., and the proportion of these clauses that prescribed compulsory unionism more than doubled, from thirty-one to sixty-seven per cent. The base established by the Court of Industrial Arbitration during its eight years of operation up to 1925 was substantial by standards in other jurisdictions; but there was clearly an intensified drive during the four years after 1925 to increase the number of preference clauses and, particularly, to increase the number prescribing compulsory unionism - the increase in the total number of awards over this period being relatively slight.

With this in mind, the alterations made to the structure of the awarding tribunal in 1925 are significant. In that year the State Labor Government abolished the Court of Industrial Arbitration and set up in its place a Board of Trade and Arbitration. Whereas the Court had consisted of two judges, the new Board was composed of one judge and two lay members. The point of the new body was shown in the Government's judicious choice of the lay members. One was W.J. Dunstan, State Secretary of the A.W.U.; the other was W.N. Gillies, who stepped down from the office of Premier to take the appointment - after he had seen the amending Bill safely through Parliament. The appointment of these two, as we have seen, was followed by a substantial rise in the number of preference clauses in Queensland awards and a sharp increase in the proportion of these clauses which provided for compulsory unionism.  

37 See Table 8
unionism. The influence of the new members was also evident in the Board's extensive use of preference clauses applying to existing as well as new employees. The former Court of Industrial Arbitration had normally excluded existing employees from the operation of its preference clauses; the Board reversed this policy, 'following the practice of the Board in favour of well disciplined unions of long standing'.

When Labor was defeated in 1929, the National-Country Party Government replaced the Board with an Industrial Court composed of two judges, and reduced the two former lay members to the position of conciliation commissioners with very limited powers that did not include the ability to grant preference clauses. On Labor's return to power in 1932, the Industrial Court was re-constituted on the lines of the old Board of Trade and Arbitration. The two lay members, W.J. Riordan, State Secretary of the A.W.U., and T.A. Ferry, a former Under-Secretary of the Chief Secretary's Department, who had originally been appointed to the Board by the State Labor Caucus early in 1928 after Gillies' death. Repairing the damage caused by the Moore Government's prohibition on preference clauses in 1930 was one of the main tasks assumed by the re-constituted Court: 'In restoring preference clauses that were so deleted, the Court has adhered as nearly as possible to the form of preference previously contained in awards'.

Wages Policy:

Wages policy is discussed here in the light of the controversy in recent years over the question of quarterly adjustments to the basic wage in accordance with changes in the cost-of-living index. The system of automatic adjustments made on this basis was adopted by the Commonwealth

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38 (1926) 11 Q.I.G., at 937
39 Brisbane Telegraph, 3/3/1928
40 (1933) 18 Q.I.G., at 211
Arbitration Court in 1921; and provisions on these lines were soon incorporated in most Federal awards.\(^4^1\) Over thirty years later, the Arbitration Court abolished the system and, in effect, pegged the Federal basic wage at the level obtaining when it handed down its judgement, subject to later changes made directly by the Court in response to applications from the parties concerned. At the time the Court gave its decision, September 1953, the system of quarterly adjustments, usually on an automatic basis, was followed in relation to the basic wages determined in all State industrial jurisdictions. So far as the States were concerned, the Court's action placed wages policy squarely in the political arena because State governments, unlike their Federal counterpart, are constitutionally competent to direct their industrial tribunals to follow specified policies.

One of the main factors in the Federal Court's decision was its conviction that the system had constituted an 'accelerating factor in the rapid increase in prices',\(^4^2\) and that its abolition would therefore give 'good ground for an expectation that the prices of commodities, particularly consumer commodities, will tend at least to be stabilized'.\(^4^3\) Irrespective of whether these considerations in fact dominated the Court's thinking, as has been suggested,\(^4^4\) it is nevertheless clear that the decision was widely accepted as an attempt to stabilize the economic situation. Regarded in this way, the decision inevitably raised the question of whether the same policy should be followed at the State level—indeed, the Federal Court based its expectation that its decision would encourage economic stability partly on the assumption, 'if general effect be given to the decision'.\(^4^5\)

\(^4^1\) R.J. Hawke, 'The Commonwealth Arbitration Court - Legal Tribunal or Economic Legislature?', (1956) 3 Annual Law Review (W.A.), 460.
\(^4^2\) 77 C.A.R., at 498.
\(^4^3\) Ibid., at 532.
\(^4^4\) Hawke, op. cit., 471.
\(^4^5\) 77 C.A.R., at 532.
The New South Wales Industrial Commission, which had previously applied the automatic quarterly adjustment system to all State awards, abandoned the system in 1953 in compliance with the statutory direction that it should follow Federal Court decisions in the matter. The Labor Premier refused to reverse the decision by legislation, on the ground that this would only lead to a price rise. Less than two years later, in August 1955, the same Government announced its intention to bring down legislation restoring automatic quarterly adjustments in State awards and raising the State basic wage to the level it would have reached had it not been frozen at the September 1953 level; the decision was also to be applied by executive action to all State Government employees working under Federal awards. The consequent Act came into force in December 1955. The Government's change of policy, particularly in so far as it applied to the Government's Federal award employees, was regarded by the unions as resulting largely from the pressure they had brought to bear. It is noteworthy in this connection that the wave of industrial unrest which characterized the first half of 1955 in New South Wales was in part a product of the union campaign for restoration of automatic quarterly adjustments.

Victorian wages boards in September 1953 were empowered, at their own discretion, to provide for automatic quarterly adjustments. Very nearly all their determinations included provisions on these lines. Immediately following the Federal Court's decision, a number of wages boards deleted the provisions. However, in November, before the process could become widespread, the State Labor Government enacted legislation requiring the inclusion of such provisions in all determinations; it also applied the same policy by executive action to its own employees working under Federal awards. Labor's

46 111 T.G.(N.S.W.), at 41
47 Sydney Morning Herald, 10/8/1955
defeat in the elections of May 1955 brought no immediate change. But a
year later the new Liberal Government reversed the executive decision and
repealed the legislative direction to wages boards, leaving them free to
decide whether or not to continue the system; the relevant provisions were
subsequently deleted from all State determinations.

Up to 1953 the Queensland Industrial Court had carried out quarterly
reviews of the State basic wage and adjusted it in accordance with changes
in the cost-of-living index. It did not depart from this practice after
the Federal Court's decision. The State Labor Government, however, took
no steps to give those of its employees working under Federal awards the bene­
fit of quarterly adjustments. But the number of employees concerned was,
in any event, extremely small.

Before September 1953, the State 'living wage' of South Australia had
followed the Federal basic wage (both in amount and in the method of comput­
ation), the quarterly adjustments to it being made by the President of the
Board of Industry. No adjustments were made by the President after the
Federal Court's decision. The Liberal Country League Government has taken
no steps to alter the position in relation to its own employees.

The Western Australian Arbitration Court follows the Queensland practice
of conducting quarterly reviews of the State basic wage. Up to September
1953 it had usually made adjustments in accordance with changes in the cost­
of-living index. In the first quarterly review held after the Federal Courts
decision, the President of the State Court ruled that because the Federal tri­
bunal's basic wage policy had normally been followed in the past, 'consistency
alone' demanded that the Court should refuse to increase the basic wage in
accordance with changes in the cost-of-living - though he also considered the

48 See (1953) 38 Q.I.G. (Supp.) 551
49 See (1953) 25 S.A.I.R. 293
Federal Court's decision to be 'plainly right'. The quarterly reviews were continued without any change in the State Court's attitude until April 1955, when the new President, appointed by the State Labor Government, expressed doubts about the efficacy of the basic wage 'freeze' as a means of stabilizing the cost-of-living, but for the time being followed his predecessor's policy. However, in August 1955, after hearing submissions made by employers' unions and the Labor Government, the latter supporting the union case, the President decided in favour of a return to the practice of adjusting the basic wage on the lines of the Court's policy before 1953. The Court has since continued to make quarterly adjustments. Before the reverted to this policy, the State Labor Government had attempted to take the initiative in the matter. But its three attempts to enact legislation restoring quarterly adjustments were each defeated in the Legislative Council. Cabinet considered, but decided against, applying the principle to government employees by executive action. Its stated reasons for doing so included the uncertainty of the future financial burden involved and the possibility of unrest among private employees; but chief emphasis was laid on the argument that the Government would incur the wrath of the Grants Commission, which would undoubtedly refuse to meet any portion of the State's deficit arising from such a policy.

Since the State Arbitration Court's decision to restore quarterly adjustments in relation to State award employees, the Government has made no move to extend the principle to those of its employees covered by Federal awards, though as in Queensland, very few are affected in this way.

50 (1953) 33 W.A.I.G., at 502
51 (1955) 35 W.A.I.G. 177. This was the second quarterly review in which the new President had taken part; in the first he had refused to lower the basic wage in response to a fall in the cost-of-living index: ibid., 38.
52 Ibid., 431.
53 Report given by A.L.P. General Secretary on behalf of the Premier, Minutes, Trade Unions Industrial Council, 13/4/1954.
Policy on the question of automatic quarterly adjustments has been more erratic under the Tasmanian Labor Government than in any other State. At September 1953 all State determinations contained automatic adjustment clauses. Shortly after the Federal Court's decision, the State Labor Government called a compulsory conference presided over by the Chairman of all wages boards, who heard the views of employers' and unions' representatives, then gave his opinion that the State basic wage should be frozen for a 'reasonable trial period'. This meant that, as chairman of each board, he would exercise his casting vote in favour of the suspension of quarterly adjustments. By early December his decision had been applied to all State determinations. Union agitation for restoration of the adjustment system increased in 1955 when the cost-of-living index began to rise after a period of stability. In an attempt to relieve the pressure the Government announced in July that it would convene the wages boards after the Federal Court had given a decision on a union application for restoration in relation to Federal awards. But the next day it expressed the 'hope' that the wages boards would be convened not later than September. As the prospect of an early Federal decision receded, the Government finally called a second compulsory conference on the 1953 pattern in November, at which the Chairman of wages boards stated that he was in favour of restoration, provided it did not take effect until February 1956 in order to allow a 'serious attempt' to be made to reduce prices so that the 'impact of the increase [in the basic wage] will not be so great'. The Chairman's view was speedily embodied in all State determinations. Late in June 1956, after the Commonwealth Court's refusal to restore automatic quarterly adjustments, a third compulsory conference was called by the Government.

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54 Department of Labour and Industry Bulletin (Tas.), Nov. 1956, 133
55 Ibid., 134
at which the Chairman of wages boards stated that his casting vote on any wages board would again be exercised in favour of suspending automatic adjustments 'in an endeavour to achieve some measure of stability'. The Chairman's view was applied by all but one of the seventy 'operating' wages boards, the exception affecting only a few employees, and there was no change in the situation at the end of 1957. At no time during this period did the Government apply the principle of quarterly adjustments to the large number of its own employees covered by Federal awards.

Preference to Unionists:

The question of preference in this context falls into two categories. On the one hand, a government's legislative ability to apply preference of employment to unionists generally, either directly or by empowering an industrial tribunal to do so; and on the other hand, the ability of a government to follow such a policy in relation to its own employees under its executive powers.

Federal, unlike State, governments normally cannot apply preference generally by legislation, though a Labor Government was able to legislate for compulsory unionism in the stevedoring industry under the Commonwealth's interstate trade and commerce power. But they can determine the jurisdiction of Federal Industrial tribunals in this respect. In 1947 the Chifley Labor Government deleted the 'other things being equal' proviso from the provision setting out the Federal Arbitration Court's power to award preference to unionists, thus enabling the Court, at its discretion, to grant

56 Ibid., 135
57 Stevedoring Industry Act 1947. Previously the Scullin Labor Government attempted to provide preference in employment for members of the W.W.F. in the industry. Regulations to this effect were disallowed on eleven occasions during 1931 by the hostile Senate, the final set being repealed by the new non-Labor Government early in 1932.
stronger forms of preference. The same Government was later subject, but did not succumb, to pressure from the budding A.L.P. Industrial Group movement to extend the Court’s power to an award of compulsory unionism. The experience was not a new one. During the second world war, the unions had pressed hard for the direct application of compulsory unionism under the Commonwealth’s sweeping wartime powers. The Secretary of the A.C.T.U. recalled in 1945 that three years earlier at a conference of Federal unions, the Prime Minister ‘had promised to implement [compulsory unionism] later but no attempt had been made’. The 1945 A.C.T.U. Congress asked the Government to ‘introduce Compulsory Unionism without delay’. The Government did not respond.

The history of the statutory power of the New South Wales Industrial Commission to award preference, particularly in the period since the first world war, reflects attempts by Labor governments to extend that power and by non-Labor governments to limit it. It was a Labor Government that, in 1953, realized for the first time in Australia the union/(since modified in the light of experience with this legislation) of compulsory unionism applied on a general scale by statute.

In 1953 the first majority Labor Government in Victoria’s history consolidated and amended the legislation governing wages boards. The Melbourne Trades Hall Council’s request for deletion of the long-standing statutory prohibition against preference clauses in wages boards determinations was refused by the Premier. He was apparently uneasy about the possible

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58 A similar amendment introduced by the Scullin Labor Government in 1930 was rejected by the Senate.
59 See (1949) 203 C’wealth Parl. Debs. 2099
60 Minutes, A.C.T.U. Congress, June 1945, Tenth Session, 2.
61 Ibid.
62 See Chapter 7 for this and other State preference provisions referred to below.
political repercussions of such a move, and particularly about the effect it might have on a number of non-Labor members of the Legislative Council whose votes were required to pass the other amendments through the Council.

The new Queensland Labor Government's attempt in 1916 to empower the State industrial tribunal to award preference was defeated in the Legislative Council. But the tribunal later interpreted its enabling Act as including an implicit power of this sort. It was not until after the Moore non-Labor Government had enacted a ban on preference awards that Labor considered it necessary, when it repealed the ban in 1932, to give the Industrial Court express discretionary power to grant preference on whatever terms the Court considered advisable. As the proportion of State awards containing preference clauses indicates, Queensland Labor governments have never found it necessary to apply preference or compulsory unionism directly by legislation. The Liberal-Country Party Government elected in 1957 has not yet attempted to alter this situation. It has, however, taken steps to throw the full burden of policing and enforcing preference clauses on to the unions.

The Labor governments formed in South Australia before Labor there was converted into a near-permanent Opposition were invariably faced by a hostile Legislative Council. The repeal of the statutory prohibition on awards of preference by the Industrial Court, let alone the insertion of a direction to make such awards, was therefore beyond their power.

In Western Australia, too, Labor governments have always been faced by a Legislative Council opposed to measures of this kind. On the other hand, non-Labor governments have not attempted to reverse the State Arbitration Court's interpretation of its enabling statute as including an implied power to grant preference and compulsory unionism.

Tasmanian Labor governments have made no move to enable wages boards to
include preference clauses in their awards. One Tasmanian union official claimed to have challenged several State ministers on the matter. 'Their invariable replies were: "It was political dynamite"; "it might be the means of their being defeated"; and "even if we got it in, an Upper House would get it out".\footnote{Official Report, A.W.U., 69th Annual Convention, January 1955, 233}

While there have been differences in the readiness of Labor governments to enact legislation providing generally for preference to unionists or compulsory unionism, they have usually shown themselves more prepared to apply such policies to their own employees as a matter of administrative policy. Where they have taken action on these lines, it has usually been reversed by succeeding non-Labor governments. The normal pattern was clearly illustrated by Commonwealth employment policy before the first world war.

In September 1911, the Minister of Home Affairs in the Labor Government, King O'Malley, directed that preference was to be given to unionists in the engagement of employees by the Director-General of Works.\footnote{(1911) 60 Commonwealth Parl. Debs., 716. As translated in a departmental circular, the instruction was that 'all things being equal, absolute preference' should be given to unionists, and non-unionists were to be first dismissed in cases of reduction of labour. O'Malley said he knew nothing about the dismissals policy, and, as the other curious provision, placed emphasis on the 'other things being equal formula': ibid., 717. The Prime Minister laid down the Government's policy as preference to unionists 'other things being equal': ibid., 788.} Later, this requirement was inserted in all contracts to which the Government was a party. It appears also that compulsory unionism was at this time enforced in at least one other department, the Postmaster-General's. A measure of Opposition feeling on the matter - and perhaps of the extent to which the Labor administration had applied the principle - was given by the Cook Government's

\footnote{Report, N.S.W. Commission of Inquiry on Industrial Arbitration, 1913, 120.}
introduction of a Government Preference Prohibition Bill 'to prohibit in relation to Commonwealth employees preferences and discriminations on account of membership or non-membership of an Association'. The Bill was rejected twice by the Labor-controlled Senate, in 1913 and 1914, after which the Government obtained a double dissolution but did not survive the elections. The succeeding Labor Government resumed the preference to unionists policy but soon modified it in favour of ex-servicemen, in an effort to boost the military recruiting campaign.

More recently, the Curtin Labor Government issued a directive shortly after its accession to power in 1941 stating that salary increases awarded by the Commonwealth Public Service Arbitrator were to be given only to employees who were members of the unions or associations concerned, with the exception of ex-servicemen. The directive was rescinded by the Menzies Government soon after it took office.

In New South Wales compulsory unionism as a condition of employment was applied to at least a section of State employees soon after Labor's return to office in 1941. A notice issued by the Commissioner for Railways in September 1941 to the staff under his control directed, 'in pursuance of a decision by Cabinet', that 'all railway employees must not only be prepared before October 6 next to satisfy an authorised officer that they have become members of an industrial union recognised by the State Industrial Court (sic) or the Commonwealth Arbitration Court, as directed by notice issued to staff on July 11, 1941, but each employee must remain a financial member of such union'. A direction to the same effect was issued by the Minister of

67 C'wealth Parl. Debs. 2835; 73 C'wealth Parl. Debs. 664
68 Scott, Australia During the War (Official War History), vol. XI, 296
69 Quoted in McVicar v. Commissioner for Railways (N.S.W.) (1950), 5 I.I.B. 705
Transport to all his departmental employees in 1952. Since 1953, government employees, most of whom are apparently covered by State awards, have been affected by the compulsory unionism provisions of the Industrial Arbitration Act. But the Public Service Board found it necessary in 1956 to remind public servants of their statutory obligation, and to insist that they honour it.

In Victoria, a circular issued under the Premier's signature to all State departments in 1947, announced that the Cain Labor Government 'expected' its employees to join an appropriate union. No general steps were taken to enforce the Government's view, though some ministers apparently applied the policy more strongly within their own departments. The Melbourne Trades Hall Council approached the second Cain Government on the same question in 1954, but its deputation reported that it 'had not succeeded in convincing the Premier of the wisdom of compulsory unionism' in the public service. Again, however, a number of ministers made some attempt to enforce this policy in their own departments.

After the first of Queensland Labor's many electoral successes in 1915, State employees were 'practically required' to be or become members of an appropriate union. This was achieved in two ways. In the first place, preference was given to unionists at the point of engagement; and in the second place, wage increases negotiated with the unions concerned were given only to members of those unions. The National-Country Party Government

70 Minutes, Labor Council of N.S.W., 20/3/1952
71 Sydney Morning Herald, 3/5/1956
72 Minutes, Melbourne Trades Hall Council, 14/10/1954
73 McCawley, J., 'Arbitration and Conciliation', (1924) 9 Q.I.G. 506
74 (1930) 157 Qd. Parl. Debs. 2850
75 Brisbane Telegraph, 23/5/1929. This technique's effectiveness was indicated by the President of the State Court of Industrial Arbitration: 'in the public service where the conscientious objector is asked to choose between a smaller wage and being a non-unionist and a larger wage and being a unionist, the conscience always gives way': McCawley, J., op. cit., 507
decided at its first Cabinet meeting in 1929 to do away with compulsory unionism in the public service. The succeeding Labor Government promptly re-applied the previous policy which operated until Labor's defeat in 1957.

The Minister for Labour in the Hawke Labor Government of Western Australia advised the unions, shortly after Labor's election in 1953, that the Government's policy was 'to give preference to unionists' so far as its own employees were concerned. The Government has encouraged the insertion of preference and, in some cases, compulsory unionism clauses in State awards covering its employees. Compulsory unionism clauses have been included in a number of Government contracts; and in all other cases contractors are expressly required to adhere to relevant awards covering State employees, which usually provide for preference to unionists.

Permanent employees of the Tasmanian Labor Government and its instrumentalities are not obliged to become unionists, nor does it appear that preference of employment to unionists is applied in this respect. However, preference usually operates in relation to employees of State instrumentalities who are covered by awards and determinations; and in some cases compulsory unionism is enforced. The Labor Government has also customarily included a compulsory unionism clause in its contracts. The unions have sometimes found it necessary to complain that this policy, in relation to instrumentalities as well as to contractors, was not being enforced. But on at least one occasion the Minister for Lands and Works publicly threatened to cancel a contract where the contractor had failed to comply with its preference clause. On the other hand, it has been alleged that the Tasmanian Labor Government has sometimes opposed the insertion of preference clauses.

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76 Brisbane Telegraph, 23/5/1929
77 Minutes, W.A. Trade Unions Industrial Council, 10/11/1953
78 Minutes, Hobart Trades Hall Council, 14/10/1954
79 Ibid., 25/3/1954
in Federal awards to which it is a party, even when the private employers concerned have agreed to it.

Long-service Leave:

Legislation granting long-service leave to employees in private industry has been enacted by State Labor governments in New South Wales (1951), Queensland (1952), Victoria (1953) and Tasmania (1956). The Tasmanian legislation is applicable only to workers covered by State determinations. The Victorian Act, on the other hand, applies to all employees including those covered by Federal awards. In 1955 the New South Wales and Queensland measures, both originally restricted to State award employees, were brought into line with the Victorian Act in this respect.

The Labor Premier of Western Australia promised long-service leave legislation applicable to private employees in his 1956 election policy speech. On its re-election, the Government devoted considerable energy to devising an ambitious scheme aimed at giving long-service leave to casual workers, but an actuary's report finally showed the scheme to be impracticable. The consequent modification of the scheme met with a great deal of union opposition despite the fact that it, or indeed any other plan likely to be acceptable to the unions, was given little hope of receiving the Legislative Council's approval.

Following a series of deputations from the United Trades and Labor

81 In all States and in the Commonwealth salaried public servants (and, in some cases, government wages employees), already received long-service leave. In the eastern States coal miners had earlier been granted long-service leave by legislation.
82 A similar scheme was earlier rejected by the Qd. Labor Government; but the Qd. legislation is exceptional in providing long-service leave for seasonal workers regularly employed in the sugar and meat industries.
83 An agreement since concluded between the Trade Unions Industrial Council and the Employers Federation provides long-service leave for employees covered by State awards and agreements: Sydney Morning Herald, 26/3/1958.
Council, the entrenched Liberal Country League Government of South Australia finally agreed to introduce long-service leave legislation in 1957. However, the measure finally enacted was less long-service leave in the sense of the other State Acts than an extension of annual leave.

**Anti-Strike Legislation:**

In all jurisdictions except Victoria, the Acts establishing industrial regulation systems contain provisions enabling unions to be fined for strike action. Union agitation against anti-strike legislation in recent years has largely concentrated on these monetary penalties. However, as has been shown, it is only in the Commonwealth and New South Wales jurisdictions that any great use has been made of them.

The penal clauses of the Federal Conciliation and Arbitration Act were inserted by the Liberal-Country Party Government in 1951: earlier provisions on the same lines, enacted by the Bruce-Page Government in 1928, were deleted by the succeeding Scullin Labor Government. The New South Wales clauses, on the other hand, are a milder version (inserted in 1918 by the Nationalist Government of the ex-Labor Premier, W.A. Holman) of penal provisions originally enacted by the McGowen Labor Government in 1912. Successive State Labor governments have failed to repeal or mitigate them. The Cahill Government's ostensible justification for its inaction, as explained to Labor Council deputations, is that removal of the anti-strike clauses would be improper without also repealing the penal provisions relating to breaches of awards by employers, a proposal that is unacceptable to the unions. By contrast, the

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85 See Chapter 6
86 The Premier showed a curious approach to the matter when he suggested that the Prime Minister should consider 'modifying or removing' the Federal penal provisions: Sydney Morning Herald, 23/7/1955
Hawke Labor Government of Western Australia has since its election in 1953 made two attempts, both rebuffed by the Legislative Council, to repeal the penal provisions enacted by its non-Labor predecessor.

**Court-controlled Union Ballots:**

The Chifley Labor Government amended the Commonwealth Conciliation and Arbitration Act in 1949 to provide for inquiries into disputed union elections and for elections to be conducted by the Industrial Registrar on the request of the union concerned. These provisions were later supplemented by the Menzies Liberal-Country Party Government in 1951, the main feature of its amendment being that a section of a union's members were empowered to request that the Industrial Registrar conduct elections of its officials. The 1949 amendment, which represented a striking departure from traditional Labor policy, was distinguished from that of 1951 by the A.C.T.U.'s official approval of the principles involved - obtained largely as a result of disclosures of Communist malpractices in union elections. Union leaders in general have proved less enthusiastic about the changes made by the Menzies Government.

Up to the end of 1957, provisions on the lines of those in the Federal measure had been enacted in only two States. The New South Wales Labor Government modelled its 1951 amendment of the Industrial Arbitration Act on that of the Federal Labor Government, while the non-Labor Government of

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87 See Appendix VIII for both the 1949 and 1951 provisions.
88 See (1949) 203 Commonwealth Debs., 1399-1400, 1623, 1629; also, Federal Arbitration Court Controlled Ballots (A.C.T.U. pamphlet), 1954, 3
89 See Leroy S. Merrifield, 'Regulation of Union Elections in Australia' (1957), 10 Industrial and Labor Relations Review, 258
90 The Qld. Country-Liberal Party Government, elected in 1957, is expected to introduce similar legislation during 1958
91 The N.S.W. measure was enacted a month before that of the Menzies Government, but the latter's terms had been well-publicized owing to their incorporation in an unsuccessful private member's Bill put forward by R.G. Menzies in 1949.
Western Australia in 1952 repeated the Federal Act's provisions as supplemented by the Menzies Government.

--- o0o ---

The comparative performances of Labor and non-Labor governments in relation to the six issues dealt with above indicate that a fairly clear line can be drawn between the policies adopted by each of them in the industrial field. But it is also evident that the line is by no means unwavering. On some issues and at some times, the industrial policies of different Labor governments are as wide apart as they can be, and the distinction between Labor and non-Labor seems to have little meaning. Nevertheless, over a range of issues and a period of time the distinction undoubtedly is important as a reflection of union influence.
PART V

CONCLUSION
INDEPENDENT TRADE UNIONISM

The activities and internal affairs of Australian trade unions are regulated by law to a degree that is perhaps unparalleled in any other political democracy except New Zealand. This has meant that the unions are to a great extent dependent on the state for the detailed determination of their rights and duties. There is much to be said for the view that this development is 'not very far from making the union really an agency of the Government'. But a description of Australian trade unions in these terms, as 'agents of the State' or 'organs of the State', can be misleading if it is regarded as extending beyond a description of the unions' legal character. When Blackburn, writing in 1940, concluded that industrial arbitration was converting the unions into 'something like the corporations of Italy', he overstated his case because he had extended his description beyond the legal field.

In the first place, a mere recital of the legal provisions setting out the formal state-trade union relationship is not sufficient basis for a statement of this kind. It is necessary to know not only what the law is, but what its effective application is at important points. Thus, to take what is perhaps the central point, although strike action by Australian unions is almost invariably illegal, the unions have never conceded the right to strike and continue to exercise it despite the law. Similarly, it

1 Maurice Blackburn, Trade Unionism, 13.
2 P.H. Partridge, 'Trade Unions and the State', in Australian Trade Unionism (J.D.B. Miller, ed.), 46.
4 Blackburn, op. cit., 13.
5 See Chapter 6 above.
is no secret that the New South Wales legislation regulating union political funds is freely flouted; while, to take a specific case, the Western Australian union directly affected by the Supreme Court's decision debarring political levies and expenditures by State unions has not stopped contributing to the Labor Party treasury. Other examples of discrepancies between law and practice could not doubt be found. For present purposes, however, it is enough to note that in crucial areas there are such discrepancies.

In the second place, the statutory arbitration machinery is primarily concerned with industrial action, and there are other means, much less subject to legal control, by which the unions can hope to achieve their main objectives. They can act through the Labor Party, of which they are the main constituents. They have found increasingly that it is both practicable and profitable to deal with non-Labor governments. It is especially their recent successes in the latter field which indicate that the unions are more than mere agents of the state. The period since Blackburn made his reference to Italian corporations has seen intensified legal regulation of Australian trade unions, but it has also seen the trade union movement stronger industrially than at any time in its history. One result of this has been a greater readiness on the part of non-Labor governments to improve their relations with the movement, and to seek its cooperation on a wide range of matters.

The extensive legal regulation to which they are subject may well have been the chief factor influencing the unions' past emphasis on

6 True v. Australian Coal and Shale Employees Federation, W.A. Branch (1949), 51 W.A.L.R. 73.
party-political at the expense of industrial and direct pressure-group action. 7 Nevertheless, since the second world war at least they have shown a more balanced approach to the question, and have more completely utilized the methods available to them. Industrial strength is inseparable from this policy. It is the foundation of both industrial and effective pressure-group action. But to expect the unions to renounce party-political action, the one method open to them that is not in the first instance a function of their industrial strength, is either to overlook or, as one suspects in the case of some non-Labor advocates of this course, to appreciate the truth of Laski's statement: 'The purposes of trade unionism can never be war on the economic battlefield alone. At every critical point the struggle moves on to the political stage'.

On the assumption that a measure of trade union independence from the state is essential to the survival of political democracy, it is obvious that there are dangers which affect more than trade unionists in the continuing trend towards greater legal regulation of the unions. However, to describe the unions' position solely in these terms is to misconstrue the nature of the relationship between Australian trade unions and the state. The fact that all three methods of union action are not only available but are actually employed by the trade union movement gives it a measure of independence despite the law. This is the surest safeguard against the dangers inherent in legal control of trade unionism.

7 See Blackburn, op. cit., 15.
8 Harold J. Laski, Trade Unions in the New Society, 172.
TABLES

APPENDICES

and

BIBLIOGRAPHY
TABLE 1

Membership of Australian Trade Unions: 1891-1954

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Members</th>
<th>Percentage of Total Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1891</td>
<td>54,888</td>
<td>4.1</td>
</tr>
<tr>
<td>1896</td>
<td>55,066</td>
<td>n.a</td>
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<tr>
<td>1901</td>
<td>97,174</td>
<td>6.1</td>
</tr>
<tr>
<td>1906</td>
<td>175,529</td>
<td>n.a</td>
</tr>
<tr>
<td>1911</td>
<td>364,732</td>
<td>27.9</td>
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<tr>
<td>1916</td>
<td>546,556</td>
<td>47.5</td>
</tr>
<tr>
<td>1921</td>
<td>703,009</td>
<td>51.6</td>
</tr>
<tr>
<td>1926</td>
<td>851,478</td>
<td>55.2</td>
</tr>
<tr>
<td>1931</td>
<td>769,006</td>
<td>47.0</td>
</tr>
<tr>
<td>1936</td>
<td>814,809</td>
<td>44.1</td>
</tr>
<tr>
<td>1941</td>
<td>1,075,680</td>
<td>49.9</td>
</tr>
<tr>
<td>1946</td>
<td>1,284,362</td>
<td>50.8</td>
</tr>
<tr>
<td>1951</td>
<td>1,690,271</td>
<td>60.0</td>
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<tr>
<td>1952</td>
<td>1,637,542</td>
<td>60.0</td>
</tr>
<tr>
<td>1953</td>
<td>1,679,758</td>
<td>60.0</td>
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<tr>
<td>1954</td>
<td>1,787,504</td>
<td>62.0</td>
</tr>
</tbody>
</table>

Source: Percentages for the years 1891, 1901 and 1911 are from Kenneth F. Walker, 'Australia' in Comparative Labor Movements (Galenson, ed.), 185; all other figures are from the Commonwealth Labour Reports.
## Table 2

Interstate or Federated Trade Unions: 
Their Share of the Trade Union Membership

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**No** = Number of unions in the category.

**%** = The membership of the unions in each category as a percentage of the total membership of all Australian unions.

<table>
<thead>
<tr>
<th>Year</th>
<th>Unions covering Four or More States</th>
<th>Unions Covering Five or More States</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>%</td>
</tr>
<tr>
<td>1912</td>
<td>41</td>
<td>53</td>
</tr>
<tr>
<td>1917</td>
<td>65</td>
<td>74</td>
</tr>
<tr>
<td>1922</td>
<td>73</td>
<td>70</td>
</tr>
<tr>
<td>1927</td>
<td>78</td>
<td>74</td>
</tr>
<tr>
<td>1932</td>
<td>83</td>
<td>72</td>
</tr>
<tr>
<td>1937</td>
<td>83</td>
<td>74</td>
</tr>
<tr>
<td>1942</td>
<td>86</td>
<td>82</td>
</tr>
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<td>1947</td>
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<td>82</td>
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<td>1952</td>
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<td>1953</td>
<td>115</td>
<td>84</td>
</tr>
<tr>
<td>1954</td>
<td>116</td>
<td>83</td>
</tr>
</tbody>
</table>

**Source:** Calculated from data in the *Commonwealth Labour Reports*. 
TABLE 3

Trade Union Background of Federal Labor Members : 1901-54.

<table>
<thead>
<tr>
<th>Year</th>
<th>Had Held Office or post in a union %</th>
<th>Had held full-time secretarial office %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901-10</td>
<td>59</td>
<td>20</td>
</tr>
<tr>
<td>1910-17</td>
<td>55</td>
<td>18</td>
</tr>
<tr>
<td>1917-29</td>
<td>60</td>
<td>24</td>
</tr>
<tr>
<td>1929-31</td>
<td>56</td>
<td>22</td>
</tr>
<tr>
<td>1931-40</td>
<td>53</td>
<td>27</td>
</tr>
<tr>
<td>1940-49</td>
<td>49</td>
<td>23</td>
</tr>
<tr>
<td>1949-54</td>
<td>50</td>
<td>22</td>
</tr>
</tbody>
</table>


Note: The figures cover members in both the House of Representatives and the Senate. The percentages given in the second column are of the total membership of the Parliamentary Labor Party and are included in the first column.
### TABLE 4

Preference to Unionists Clauses in Awards: 1954

<table>
<thead>
<tr>
<th></th>
<th>Type of Preference</th>
<th></th>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>C.U.</td>
<td>A.P.</td>
<td>Q.P.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Commonwealth</strong></td>
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</tr>
<tr>
<td><strong>Total of awards in force.</strong></td>
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<tr>
<td><strong>Total of preference clauses.</strong></td>
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<tr>
<td><strong>Compulsory unionism clauses.</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>Absolute preference clauses.</strong></td>
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<td><strong>Qualified preference clauses.</strong></td>
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<td><strong>Clauses</strong></td>
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<td>81</td>
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<td><strong>Total of awards in force.</strong></td>
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<td>275</td>
<td>275</td>
<td></td>
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</tr>
<tr>
<td><strong>Total of preference clauses.</strong></td>
<td>245</td>
<td>25</td>
<td>5</td>
<td></td>
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<tr>
<td><strong>Commonwealth</strong></td>
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<td><strong>Type of Preference</strong></td>
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<tr>
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<td>22</td>
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<tr>
<td><strong>Q.P.</strong></td>
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<td><strong>Total of awards in force.</strong></td>
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<td><strong>Total of preference clauses.</strong></td>
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<td><strong>Commonwealth</strong></td>
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<td><strong>Type of Preference</strong></td>
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<tr>
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<td>30</td>
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<tr>
<td><strong>A.P.</strong></td>
<td>25</td>
<td>25</td>
<td>25</td>
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<tr>
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<td>28</td>
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<td><strong>Total of preference clauses.</strong></td>
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<tr>
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<td><strong>Total of preference clauses.</strong></td>
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<td><strong>Commonwealth</strong></td>
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<td><strong>Type of Preference</strong></td>
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<td><strong>C.U.</strong></td>
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<td>2</td>
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<td></td>
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<tr>
<td><strong>A.P.</strong></td>
<td>2</td>
<td>2</td>
<td>2</td>
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<tr>
<td><strong>Q.P.</strong></td>
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<td>2</td>
<td>2</td>
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</tr>
<tr>
<td><strong>Source:</strong> Compiled from an examination of the awards concerned.</td>
<td></td>
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<tr>
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<td></td>
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<tr>
<td>Coal I.T: Coal Industry Tribunal</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>P.S.Arb: Public Service Arbiter</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ind. Ct: Industrial Court</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arb. Ct: Arbitration Court</td>
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<td></td>
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</tr>
<tr>
<td>R.C. Bd: Railways Classification Board.</td>
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<td></td>
</tr>
</tbody>
</table>

(For notes see next page)
Notes: (Table 4)

1. Except in the case of the Commonwealth Arbitration Commission awards, all awards covered in the survey were those in force at 31 December 1954; in the case of the Commission awards, the corresponding date is 31 August 1954. Only awards of a general character are included, and those restricted to wages or to one or two specific conditions of employment are excluded from the figure for total awards in force.

2. Federal awards in 1954 operated under the authority of the Arbitration Court, which the Arbitration Commission has now replaced: the latter title is used here merely to avoid confusion.

The figures in squared brackets are the numbers and percentages arrived at when awards restricted to the Australian Capital Territory are included in the calculations: the figures outside the brackets are therefore exclusive of these awards, which not only cover very small numbers of employees compared with most other Federal awards, but, in relation to preference are, as we have seen, the result of circumstances that set them apart from the general policy of the Arbitration Commission in this respect.

Almost a quarter (13) of the preference clauses in awards of the Arbitration Commission, other than those restricted to the A.C.T., were in awards covering journalists.
TABLE 5

Preference to Unionists Clauses in Agreements: 1954(1)

Agrees = Total of agreements in force.
Clauses = Total of preference clauses.
C.U. = Compulsory Unionism clauses.
A.P. = Absolute preference clauses.
Q.P. = Qualified preference clauses.

<table>
<thead>
<tr>
<th>Type of Preference</th>
<th>C.U.</th>
<th>A.P.</th>
<th>Q.P.</th>
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<tr>
<td>%</td>
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</table>

Source: Compiled from an examination of the agreements concerned.

C.Agrees: Certified agreements.
I.Agrees: Industrial agreements.

(For notes, see next page)
1. In the case of Federal certified agreements and the industrial agreements of Queensland and W.A., those covered in the survey were all the agreements in force at 31 August 1954 (Commonwealth) or at 31 December 1954 (Qld. and W.A.). As far as Federal and S.A. industrial agreements are concerned, there are no lists available of those in force at any given time; the survey therefore covered only those agreements filed during the ten-year periods of 1 September 1944 to 31 August 1954, in the case of the Commonwealth and of 1 January 1945 to 31 December 1954 in the case of S.A., eliminating repetitions or renewals in each case. Only agreements of a general character are included, and those restricted to wages or to one or two particular conditions of employment are excluded from the figure for total agreements in force.

2. The preference clauses in these agreements are not enforceable at law; they are included as having some relevance to the question, touched on in the text, of the influence of industrial tribunals' policies on agreements concluded and enforceable altogether outside the legal framework: see Table 7.

3. The agreement in which one of the preference clauses was included had been made a common rule.
### TABLE 6

Conditions attached to Preference to Unionists Clauses in Awards and Agreements; and the Incidence of Anti-Discrimination Clauses: 1954 (1)

|--------------------------------------|-------------------------------|-------------------------------|---------------------------------|-----------------|-----------------|-----------------|

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<th><strong>Awards</strong></th>
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</tbody>
</table>

**Source:** Compiled from an examination of the awards and agreements concerned. (For notes, see next page)
Notes: (Table 6)

1. The anti-discrimination clauses are all in awards or agreements which do not include preference clauses, except in the case of three Federal (Arbitration Commission) awards in which the anti-discrimination clause is accompanied by a preference clause applicable to only one of the States covered by the award as a whole. One other Federal award including an anti-discrimination clause indicated that absolute preference would be given under an agreement with two of the respondent companies; the agreement was apparently an informal one.

2. The figures include awards restricted to the Australian Capital Territory.
TABLE 7

Proportion of Awards and Agreements with Preference Clauses: 1954

- Awards
- Enforceable Agreements
- Non-enforceable Agreements

Note: The diagram is based on the data presented in Tables 4 and 5. Only the awards of the main industrial tribunals are dealt with; and, in the case of Federal awards, those restricted to the Australian Capital Territory are excluded. The non-enforceable agreements included are industrial agreements filed and published under the Commonwealth Conciliation and Arbitration Act.
TABLE 8

Queensland

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<td>No.</td>
<td>%</td>
<td>No.</td>
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<td>19</td>
<td>15</td>
<td>8</td>
<td>5</td>
<td>2</td>
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Source: Compiled from a survey of the contents of all awards in force at the specified dates.
TABLE 9

Unionists as Members of Government Advisory and Administrative Bodies in Australia: 1957

Explanation

Although the bodies listed below are divided into two categories, administrative bodies almost invariably carry out advisory (or consultative) functions. The distinction is based on the fact that while advisory bodies have no powers other than those of advising, administrative bodies combine advisory with definite administrative powers within the field with which they are concerned.

Two types of bodies on which unionist-members are found are excluded from the Table. First, those to which such members are elected by popular vote, as in the case of municipal councils. Second, those whose functions are restricted to dealing with staff matters within the public service or within government instrumentalities, such as public service boards and tribunals dealing with superannuation, classification or appeals against promotions.

Column I - The order in which the bodies are set out in this column is of no particular significance, but roughly speaking the body heading the list in each case is considered of greater importance than that at the bottom. In cases where there is more than one body of the same kind, the number in existence is given in squared brackets in the same column.

Column II - The name of the constituting statute omits both the formal 'Act' and the dates of enactment and amendment, in order to save cluttering the Table. Where no statute is indicated, the body has been established by administrative decision.

Column III - The total memberships given include in every case the chairman. Where there is more than one body of the same type and their total memberships are not uniform, the existing range of membership is given where possible: in the case of all bodies of this type, the total membership is made up of an equal number of union and employer representatives plus an independent chairman.

Column IV - The union or central union organization with which unionist-members are associated, or were previously associated in an official capacity, is given below the numeral. Where a unionist is known to have been appointed on the nomination of a central union organization, though not an official of that organization, he is designated as associated with the organization and not his individual union. Where there is more than one body of the same type, union representatives come from the unions concerned in each case; this is indicated by the term 'various'.
Column V - The status of unionist-members refers to the character of their appointment, whether in a personal capacity or as a union or employees' or consumers' representative. In the first place, the category depends on the specification laid down in the constituting Act. If no requirement for a union or employees' representative is laid down then the unionist appointee is taken to have been appointed in a personal capacity - unless there is provision for a consumers' representative and the unionist has specifically been appointed in this capacity. In cases where an employees' representative is specified, but the Act requires that he should be nominated by a union or union organization, or that a relevant union should be consulted, the member is here specified as a union representative.

Where the body concerned has been established by executive decision and not under any Act, the status of unionist members is given according to the capacity in which they are regarded as acting by the government authorities. It should be noted that in many cases where a unionist appointee is neither specified as a union representative by statute nor technically regarded as such by the government authorities, the relevant union or central union organization is frequently consulted before the appointment is made and may even be asked formally to nominate the appointee.

Column VI - The year indicated is the year in which the body concerned was first constituted (or statutory provision was first made for its constitution) with unionist-membership. In the case of advisory bodies this information is given where unionist-members are designated as union or employee representatives or as acting in a personal capacity. But in the case of administrative bodies it is given only where such members are designated as union or employee representatives. Thus the year of appointment of unionist-members to administrative bodies in a personal capacity, and to both administrative and advisory bodies as consumers' representatives, is not given. All years before 1940 are indicated by the term 'Pre'.

Column VII - Payments are those to which unionists are entitled as members of an advisory or administrative body, and are subdivided here into meetings fees, annual fees and salaries. Meetings fees are paid on the basis of each meeting (or each day of a meeting) attended: they are usually modest, but in some cases are considerable over a period, as in one case where a rather higher fee (£5.5.0) than usual is paid to members of a body which has fifty-two meetings a year. Annual fees are set sums related to membership and not to the number of meetings attended: in the case of bodies dealt with here, annual fees are usually about £50 or £100, but a number are much larger and run as high as £750 for part-time membership of some administrative bodies. Salaries are, of course, paid in the case of full-time positions. Other payments, such as compensation for wages lost or reimbursement of travelling expenses incurred in attending meetings, are not included in the Table.
Key to Abbreviations:

General

Adv. ... Advisory
AF ... Annual Fee
Bd. ... Board
C'cil ... Council
Comm. ... Commission
CR ... Consumers' representative
C'tee ... Committee
EN ... Equal numbers of employers' and employees' representatives.
ER ... Employees' representative
MF ... Meetings fee
P ... Personal appointment
Pre ... Pre-1940
S ... Salary
UR ... Union representative

Organizations

ACTU ... Australian Council of Trade Unions
AMIEU ... Australian Meat Industry Employees Union
ARU ... Australian Railways Union
ASE ... Australian Society of Engineers
AWU ... Australian Workers Union
BMU ... Brick Makers Union
BOA ... Bank Officials Association
BTE ... Baking Trades Employees Federation
BUs ... Building Unions (combined)
CSE ... Coal and Shale Employees Federation
CU ... Carpenters' Union
ETU ... Electrical Trades Union
FBA ... Fire Brigade Association
FEDFA ... Federated Engine Drivers and Firemen's Association
FMM ... Federated Millers and Mill Employees Association
FPE ... Federated Pastrycooks Employees etc. Union
FS&P ... Federated Storemen and Packers Union
FTH ... Fremantle Trades Hall
FTU ... Furnishing Trades Union
GEU ... Federated Gas Employees Union
GMU ... General mining Unions
HEA ... Hospital Employees Association
HEF ... Hairdressers Employees Federation
HTHC ... Hobart Trades Hall Council
IM ... Institute of Marine and Power Engineers
LC ... Labor Council of N.S.W.
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<th>Abbreviation</th>
<th>Full Name</th>
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<tr>
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</tr>
<tr>
<td>MHEU</td>
<td>Metropolitan Hairdressers Employees Union (W.A.)</td>
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<tr>
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<td>Municipal and Shire Council Employees Union</td>
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<td>Melbourne Trades Hall Council</td>
</tr>
<tr>
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<td>Moulders Union</td>
</tr>
<tr>
<td>MWU</td>
<td>Miscellaneous Workers Union</td>
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<td>Painters Union</td>
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<td>PGU</td>
<td>Plumbers and Gasfitters Union</td>
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<td>PU</td>
<td>Plasterers Union</td>
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<td>Queensland Colliery Employees Union</td>
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<tr>
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<td>Railway Maintenance Employees Union</td>
</tr>
<tr>
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<td>Seamens Union</td>
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### Table 9

**A. Advisory Bodies**

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**New South Wales**

| FACTORY WELFARE BD. FACTORIES & SHOPS | FACTORIES & SHOPS | 3 | 1 | ER | 1941 | MF |

(N.S.W. Continued.....)
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**Victoria**

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**Queensland**

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**South Australia**

|    | Workmens Compensation Adv. C'tee | 3 | 1 | UR | 1953 |    |
|    | Apprentices Bd. | Apprentices | 8 | 2 | UTLC |    |
|    | Trade C'tees [14] | ditto | EN(6) | various | UR | Pre. |    |
|    | Prices (Bread) C'tee | Prices | 7 | 1 | BTE |    |

**Western Australia**

|    | Housing Adv. Panel | 11 | 2 | UR | 1947 |    |
|    | BMU, GU |    |    |    |    |    |

**Tasmania**

|    | Standards C'tee | 10 | 2 | UR | 1957 |    |
|    | Ladies Hairdressers Adv. Bd. | Hairdressers & Beauty Culturists | 5 | 2 | HEP | ER | Pre. | MF |

(Administrative Bodies....)
### TABLE 9

**B. Administrative Bodies**

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<th>II Act</th>
<th>III Total Membership</th>
<th>IV No. of Unionists</th>
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**New South Wales**

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### Victoria

| | | | | | | |
|---|---|----|----|---|---| |
| State Electricity Comm. | State Electricity Commission | 4 | 1 | P | - | AF |
| Melbourne and Metropolitan Tramways Bd. | Melbourne & Metropolitan Tramways | 3 | 1 | ER | 1954 | S |
| Melbourne Harbour Trust | Melbourne Harbour Trust | 6 | 1 | UR | 1953 | AF |
| Gas and Fuel Corporation of Vic., Bd. of Directors | Gas & Fuel Corporation | 7 | 1 | P | - | MF |

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**Queensland**

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<td></td>
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</tr>
<tr>
<td>Board of Industry</td>
<td>Industrial Code</td>
<td>5</td>
<td>2</td>
<td>UR</td>
<td>Pre.</td>
<td>MF</td>
</tr>
<tr>
<td>Industrial Boards [67]</td>
<td>ditto</td>
<td>5-9</td>
<td>2-4</td>
<td>ER</td>
<td>Pre.</td>
<td>MF</td>
</tr>
<tr>
<td>Savings Bank Bd. of S.A.</td>
<td>Savings Bank of S.A.</td>
<td>6</td>
<td>1</td>
<td>P</td>
<td></td>
<td>MF</td>
</tr>
<tr>
<td>Royal Adelaide Hospital Bd.</td>
<td>Hospitals</td>
<td>3</td>
<td>1</td>
<td>P</td>
<td></td>
<td>AF</td>
</tr>
<tr>
<td>National Trust of S.A.</td>
<td>National Trust of S.A.</td>
<td>25</td>
<td>1</td>
<td>UR</td>
<td>1955</td>
<td></td>
</tr>
<tr>
<td>School of Mines and Industries C'cil</td>
<td>School of Mines and Industries</td>
<td>12</td>
<td>1</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sanitary Plumbers Examining Bd.</td>
<td>Sewerage (regulations)</td>
<td>4</td>
<td>1</td>
<td>ER</td>
<td>Pre.</td>
<td>MF</td>
</tr>
<tr>
<td>Hairdressing Registration Bd.</td>
<td>Hairdressers Registration</td>
<td>5</td>
<td>2</td>
<td>UR</td>
<td>Pre.</td>
<td>AF</td>
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### Western Australia

<table>
<thead>
<tr>
<th>I</th>
<th>II</th>
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<th>IV</th>
<th>V</th>
<th>VI</th>
<th>VII</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court of Arbitration</td>
<td>Industrial Arbitration</td>
<td>3</td>
<td>1</td>
<td>SEALP (13)</td>
<td>UR</td>
<td>Pre.</td>
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<td>State Electricity Comm.</td>
<td>State Electricity Commission</td>
<td>8</td>
<td>1</td>
<td>SEALP</td>
<td>UR</td>
<td>1945</td>
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<td>State Housing Comm.</td>
<td>State Housing</td>
<td>7</td>
<td>1</td>
<td>BUs</td>
<td>UR</td>
<td>1946</td>
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<td>Fremantle Harbour Trust, Bd. of Commissioners</td>
<td>Fremantle Harbour Trust</td>
<td>5</td>
<td>1</td>
<td>WWF</td>
<td>P</td>
<td></td>
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<td>Workers Compensation Bd.</td>
<td>Workers Compensation</td>
<td>3</td>
<td>1</td>
<td>TUIC</td>
<td>UR</td>
<td>1948</td>
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(Western Australia continued....)
(Western Australia continued)

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<tr>
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<th>VII</th>
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<tbody>
<tr>
<td>Metropolitan Market Trust</td>
<td>Metropolitan Market</td>
<td>5</td>
<td>1</td>
<td>CR</td>
<td>-</td>
<td>MF</td>
</tr>
<tr>
<td>W.A. Potato Marketing Bd.</td>
<td>Marketing of Potatoes</td>
<td>6</td>
<td>1</td>
<td>CR</td>
<td>-</td>
<td>MF</td>
</tr>
<tr>
<td>W.A. Onion Marketing Bd.</td>
<td>Marketing of Onions</td>
<td>5</td>
<td>1</td>
<td>CR</td>
<td>-</td>
<td>MF</td>
</tr>
<tr>
<td>Charcoal Iron and Steel Industry Bd. of Management</td>
<td>Wood Distillation &amp; Charcoal Iron &amp; Steel Industry</td>
<td>5</td>
<td>1</td>
<td>ER</td>
<td>1943</td>
<td>AF</td>
</tr>
<tr>
<td>Trade and Industries Promotion C'cil</td>
<td>-</td>
<td>17</td>
<td>1</td>
<td>UR</td>
<td>1956</td>
<td>-</td>
</tr>
<tr>
<td>Bd. of Management, King Edward Memorial Hospital</td>
<td>Hospitals</td>
<td>9</td>
<td>1</td>
<td>P</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Library Bd. of W.A.</td>
<td>Library Board of W.A.</td>
<td>13</td>
<td>1</td>
<td>P</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Hairdressers Registration Bd.</td>
<td>Hairdressers Registration</td>
<td>5</td>
<td>2</td>
<td>UR</td>
<td>1946</td>
<td>MF</td>
</tr>
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</table>

**Tasmania**

<table>
<thead>
<tr>
<th>I</th>
<th>II</th>
<th>III</th>
<th>IV</th>
<th>V</th>
<th>VI</th>
<th>VII</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hydro-Electric Comm.</td>
<td>Hydro-Electric Commission</td>
<td>4</td>
<td>1</td>
<td>P</td>
<td>-</td>
<td>AF</td>
</tr>
<tr>
<td>Metropolitan Transport Trust</td>
<td>Metropolitan Transport</td>
<td>5</td>
<td>1</td>
<td>P</td>
<td>-</td>
<td>AF</td>
</tr>
<tr>
<td>Apprenticeship Comm.</td>
<td>Apprentices</td>
<td>5</td>
<td>2</td>
<td>ER</td>
<td>1942</td>
<td>MF</td>
</tr>
<tr>
<td>Trade C'tees [7]</td>
<td>ditto</td>
<td>7-15</td>
<td>3-7</td>
<td>UR</td>
<td>1942</td>
<td>-</td>
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</table>

(Tasmania continued....)
(Tasmania continued)

<table>
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<th>IV</th>
<th>V</th>
<th>VI</th>
<th>VII</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages Bds.</td>
<td>Wages Boards</td>
<td>5-15</td>
<td>2-7</td>
<td>ER</td>
<td>Pre.</td>
<td>MF</td>
</tr>
<tr>
<td>[70]</td>
<td>various</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers (Occupational Diseases) Relief Bd.</td>
<td>Workers (Occupational Diseases) Relief Fund</td>
<td>3</td>
<td>1</td>
<td>ER</td>
<td>Pre.</td>
<td>MF</td>
</tr>
<tr>
<td>Miners Pensions Bd.</td>
<td>Miners Pensions</td>
<td>3</td>
<td>1</td>
<td>UR</td>
<td>1944</td>
<td>AF</td>
</tr>
<tr>
<td>Plumbers Registration Bd.</td>
<td>Plumbers Registration</td>
<td>5</td>
<td>1</td>
<td>UR</td>
<td>1951</td>
<td>MF</td>
</tr>
</tbody>
</table>

Notes

1. In February 1958 the Interstate Executive of the A.C.T.U. decided to withdraw from the Ministry of Labour Advisory Council, this decision affecting, of course, the A.C.T.U. members of the Council's Standing Committee.

2. The Rehabilitation Vocational Advisory Committee operated within Victoria only.

3. Although the Apprenticeship Advisory Committee was set up in 1955 a union representative was not appointed to it until early in 1958. Strictly speaking therefore this body is outside the scope of the Table, which in all other cases is limited to bodies in existence with unionist-members as at the end of 1957: it has been included for the sake of completeness.

4. This figure excludes five members, one of them a professor, who represented the N.S.W. Technical Teachers Association.

5. These members were elected by the combined vote of all the unions concerned with apprenticeship matters.

6. The membership of these bodies varied widely.

7. The Act requires that this member of the Stevedoring Industry Authority should have been 'associated with trade union affairs'.
8. The union in this case had in fact withdrawn its endorsement from the unionist-member originally appointed on its nomination and attempted, unsuccessfully, to secure his replacement.

9. In the case of the Central Committee and each of the Local Committees covering the blacksmithing trade, the full membership is three, including a single union representative.

10. The Re-employment Committees, one in Newcastle and the other in Lithgow, are concerned with unemployed coal mine workers. Neither their total membership nor the number of union representatives is fixed; the figures given represent the usual attendance at meetings.

11. This figure excludes two representatives of the academic and non-academic staff associations.

12. State Labor governments have since 1925 followed the practice of having one member of the Industrial Court drawn from the ranks of union officials, though the position is technically a personal one.

13. The State Executive of the A.L.F. is also the main central union organization in W.A. It has, however, handed over some of its powers in this field to its subordinate body, the Trade Unions Industrial Council. The State Executive has representatives on government bodies other than those noted in the Table; but only those on which the State Executive nominees clearly represent the industrial rather than the political side of the labour movement are noted.
### TABLE 10

Composition of Membership: A.L.P. State Branches

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>U.M.</td>
<td>400,000</td>
<td>220,000</td>
<td>200,000</td>
<td>73,000</td>
<td>62,094</td>
<td>25,400</td>
</tr>
<tr>
<td>B.M.</td>
<td>40,000</td>
<td>19,000</td>
<td>12,000</td>
<td>3,500</td>
<td>1,002</td>
<td>2,700</td>
</tr>
<tr>
<td>Total</td>
<td>440,000</td>
<td>239,000</td>
<td>212,000</td>
<td>78,500</td>
<td>63,096</td>
<td>28,100</td>
</tr>
<tr>
<td>U.M.P.</td>
<td>90%</td>
<td>90%</td>
<td>94%</td>
<td>95%</td>
<td>98%</td>
<td>90%</td>
</tr>
</tbody>
</table>

**Sources:** In the case of W.A., calculated from the figures of union and branch membership for which credentials for delegates were available at the 1956 State Conference, and brought up to date by verbal information; in all other cases, based solely on verbal information from responsible Party officials.

**Note:** All figures, except those for W.A., are approximations only.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chief Executive Bodies</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12(4)</td>
<td>42</td>
<td>25(5)</td>
<td>7</td>
<td>20</td>
<td>8(7)</td>
<td>11</td>
</tr>
<tr>
<td>U.O.</td>
<td>6</td>
<td>26</td>
<td>19</td>
<td>3</td>
<td>6(6)</td>
<td>5</td>
</tr>
<tr>
<td>%</td>
<td>50</td>
<td>62</td>
<td>76</td>
<td>43</td>
<td>30</td>
<td>62</td>
</tr>
<tr>
<td><strong>Intermediate Executive Bodies</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>T.M.</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>C.E.</td>
<td>C.C.</td>
<td>S.E.</td>
</tr>
<tr>
<td>U.R.</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>66</td>
<td>200(8)</td>
<td>82</td>
</tr>
<tr>
<td>%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>53</td>
<td>149</td>
<td>48</td>
</tr>
<tr>
<td><strong>Conferences</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36(10)</td>
<td>711</td>
<td>363</td>
<td>134</td>
<td>195</td>
<td>178</td>
<td>208</td>
</tr>
<tr>
<td>U.R.</td>
<td>16(11)</td>
<td>481</td>
<td>300</td>
<td>59</td>
<td>146</td>
<td>126</td>
</tr>
<tr>
<td>%</td>
<td>45</td>
<td>68</td>
<td>83</td>
<td>44</td>
<td>75</td>
<td>71</td>
</tr>
</tbody>
</table>

**Sources:** In the case of the N.S.W. Central Executive, from the list of members published in the *Sydney Morning Herald*, 21/6/1957; in the case of the W.A. General Council, calculated from the list of delegates given in *Official Report*, 20th General Council, July 1956, 6-12; in all other cases, the figures are based on verbal information given by the appropriate A.L.P. Secretary.

(For notes, see next page)
Notes: (Table 11)

1. The Qd. Convention and the W.A. General Council are held triennially, and in these cases the figures are for 1956. In the case of all other bodies, the figures are for 1957.

2. In almost every case, the respective secretaries were former union officials and, except in Tasmania, were full members of the relevant chief executive body and, where applicable, intermediate executive body. With the exception of one whose case is considered in note 4 below, the secretaries have not been included in the Table as union representatives.

3. The figures for the Qd. Inner and Central Executives are as at March 1957, before the expulsion of V.C. Gair, M.L.A. After his expulsion in April, the total membership of the Inner Executive fell to six. The number of union delegates on the Central Executive had, by September, fallen to 48 as a result of changes in union affiliations.

4. The distribution of union officials among the various State delegations was: N.S.W. - 1; Vic. - 2; Qd - 1; S.A. - none; W.A. - 1; Tas. - 1. The figure includes F.E. Chamberlain (at the time Federal President and W.A. State Secretary of the A.L.P., Secretary of the W.A. Trade Unions' Industrial Council, and the A.L.P., W.A. Executive's delegate to the A.C.T.U. Interstate Executive) whose classification as a union official is open to doubt. In 1955 the question of his qualifications was considered by the Interstate Executive after it had been disclosed that he was not a member of a trade union. It was decided that the question of a delegate's qualifications was an internal matter for decision of the A.C.T.U. branch concerned, in this case the A.L.P., W.A. Executive: Minutes, A.C.T.U. Interstate Executive, May, 1955.

5. The figure is as after the death of John Cain, M.L.A., who was replaced by an official of the Melbourne Trades Hall Council.

6. This figure is exclusive of three parliamentarians (two State and one Federal) who held union positions.

7. This figure includes F.E. Chamberlain, whose qualifications have been discussed in note 4 above.

8. This figure does not include the members of the Central Executive who are also members of the Central Council.

9. In the case of the Federal Conference union officials are strictly speaking not union representatives but representatives of A.L.P. State branches. In the case of State conferences it usually happens that some affiliated unions, mainly small ones, fail to take
advantage of their right to representation: at the Victorian annual Conference of 1957, for example, credentials were available for 385 union delegates but only 300 union delegates actually attended.

10. The Federal President and Secretary are not included in this figure as they were not present as voting delegates.

11. This figure is exclusive of one Federal parliamentarian who was also at the time a union official. The distribution of union officials among the various State delegations was: N.S.W. - 3; Vic. - 4; Qld - 4; S.A. - 2; W.A. - none; Tas - 3. The figure for union officials, like the corresponding figures throughout the Table, includes only members who were union officials at the time. The figure is therefore much lower than those given by Crisp, whose figures include both current and former union officials, the latter being chiefly parliamentarians. On this basis, the proportion of union officials (current and former) who were delegates between 1934 and 1951 never fell below 64 per cent. at any Conference, and rose as high as 75 per cent: see Crisp, The Australian Federal Labour Party, 1901-1951, 315.
TABLE 12


<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Union</td>
<td>ACTU</td>
<td>LC</td>
<td>MTHC</td>
<td>TLCQ</td>
<td>UTLC</td>
<td>TUIC</td>
<td>HTHC</td>
</tr>
<tr>
<td>Members</td>
<td>2</td>
<td>2</td>
<td>6</td>
<td>5(1)</td>
<td>6</td>
<td>7(2)</td>
<td>1</td>
</tr>
</tbody>
</table>

Sources: Verbal information from the Secretary of the appropriate central union organization.

Notes

1. More important in the case of Queensland was the duplication occurring relation to the Inner Executive of the State Party: three of the Inner Executive members (a total of seven to April, and six thereafter) were also members of the Trades and Labor Council Executive.

2. This figure includes two members elected by the T.U.I.C. as direct representatives on the A.L.P., State Executive. Two of the other duplicating members were President and Secretary, respectively, of both bodies.
### TABLE 12

Annual Affiliation and Membership Fees: A.L.P. State Executives

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>U</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rate</td>
<td>(1/-m)</td>
<td>(1/-m)</td>
<td>1/6</td>
<td>1/9</td>
<td>(3/6 f)</td>
<td>(1/-m)</td>
</tr>
<tr>
<td>Paid</td>
<td>(6d f)</td>
<td>(8d f)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>9d</td>
<td></td>
<td>1/6</td>
<td>1/9</td>
<td>(4/6 f)</td>
<td>2/-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Paid</strong></td>
<td>£16,805</td>
<td>£12,995</td>
<td>£15,000</td>
<td>£6,400</td>
<td>£9,000</td>
<td>£1,479</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£18,393</td>
<td>£13,594</td>
<td>£15,300</td>
<td>£6,700</td>
<td>£9,200</td>
<td>£1,744</td>
</tr>
<tr>
<td><strong>U.P.</strong></td>
<td>91%</td>
<td>95%</td>
<td>94%</td>
<td>96%</td>
<td>98%</td>
<td>85%</td>
</tr>
</tbody>
</table>

**Sources:** In the case of N.S.W. and Victoria, the statement of accounts contained in the Executive Reports to the respective 1957 Conference; in the case of W.A., calculated from the membership figures given in Table 10; in all other cases, verbal information from responsible Party officials. The rate of fees per member is from the State Constitution and Rules in each case.

**Note:** Except in the case of N.S.W. and Victoria, all figures of amounts paid or payable are approximations only. Where 1957 is the relevant year, the amounts indicated are payable; in the case of 1956, the amounts are those actually paid. There is usually a discrepancy between the two: thus the total amounts owing to the Victorian Central Executive in 1956 were £16,820 and £1,082 from unions and branches, respectively, but the amounts actually paid were £12,996 and £598.
## TABLE 14
The Union Share of Donations for Election Campaign Funds Handled by A.L.P. Executives

<table>
<thead>
<tr>
<th>Executive</th>
<th>Fed.</th>
<th>N.S.W.</th>
<th>Vic.</th>
<th>Qld.</th>
<th>S.A.</th>
<th>W.A.</th>
<th>Tas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Election(1)</td>
<td>1955</td>
<td>1953(2)</td>
<td>1955</td>
<td>1957</td>
<td>1956</td>
<td>1956</td>
<td>1956</td>
</tr>
<tr>
<td>Union Share of Total Donations Received</td>
<td>85%</td>
<td>50%</td>
<td>75%(3)</td>
<td>80%</td>
<td>95%</td>
<td>65%</td>
<td>36%</td>
</tr>
</tbody>
</table>

**Sources:** Verbal information given by responsible officials, except in the case of Victoria where the figure is calculated from the statement of contributions listed in the A.L.P., Victorian Central Executive Report, 1955-56, 21.

**Notes**

1. The election years noted are those of State elections except in the case of that indicated under the Federal Executive.

2. The 1953 State election is preferred to the later election of 1956, because in 1956 the split in the N.S.W. Party had led to the formation of a 'rebek' group of unions which collected and distributed campaign funds independently of the State Central Executive.

3. Contributions from interstate sources, including unions, were comparatively large for this election as a result of a special appeal prompted by the fact that the former Victorian Central Executive, controlled by Industrial Group supporters, had retained control of the Victorian Party's assets after its dismissal by the Federal Executive; among the assets was a substantial 'election campaign account'. As they are exceptional, contributions from interstate sources are not included in the figures from which the Victorian percentage is calculated.
### TABLE 15

**Duplication of Membership:**
**Trade Union Officials and Labor Parliamentarians**

- **P.L.P.** = Number of parliamentary Labor party members.
- **U.O.** = Number of former or existing union officials in the P.L.P. membership.
- **Per cent.** = Number of union officials as a percentage of the P.L.P. membership.
- **H.R.** = House of Representatives.
- **L.A.** = Legislative Assembly.
- **L.C.** = Legislative Council.
- **H.A.** = House of Assembly.

<table>
<thead>
<tr>
<th></th>
<th>P.L.P.</th>
<th>U.O.</th>
<th>Per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commonwealth: September 1954</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H.R.</td>
<td>58</td>
<td>28</td>
<td>48</td>
</tr>
<tr>
<td>Senate</td>
<td>29</td>
<td>15</td>
<td>52</td>
</tr>
<tr>
<td>Totals</td>
<td>87</td>
<td>43</td>
<td>49</td>
</tr>
<tr>
<td><strong>New South Wales: March 1956</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L.A.</td>
<td>49</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>L.C.</td>
<td>35</td>
<td>21</td>
<td>60</td>
</tr>
<tr>
<td>Totals</td>
<td>84</td>
<td>25</td>
<td>30</td>
</tr>
<tr>
<td><strong>Victoria: June 1955</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L.A.</td>
<td>21</td>
<td>8</td>
<td>38</td>
</tr>
<tr>
<td>L.C.</td>
<td>15(1)</td>
<td>2</td>
<td>13</td>
</tr>
<tr>
<td>Totals</td>
<td>36</td>
<td>10</td>
<td>28</td>
</tr>
<tr>
<td><strong>Queensland: March 1953</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L.A.</td>
<td>49</td>
<td>18</td>
<td>37</td>
</tr>
<tr>
<td><strong>South Australia: June 1957</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H.A.</td>
<td>15</td>
<td>5</td>
<td>33</td>
</tr>
<tr>
<td>L.C.</td>
<td>4</td>
<td>4</td>
<td>100</td>
</tr>
<tr>
<td>Totals</td>
<td>19</td>
<td>9</td>
<td>47</td>
</tr>
<tr>
<td><strong>Western Australia: September 1953</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L.A.</td>
<td>26</td>
<td>13</td>
<td>50</td>
</tr>
<tr>
<td>L.C.</td>
<td>12</td>
<td>5</td>
<td>42</td>
</tr>
<tr>
<td>Totals</td>
<td>38</td>
<td>18</td>
<td>47</td>
</tr>
<tr>
<td><strong>Tasmania: June 1955</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H.A.</td>
<td>15</td>
<td>5</td>
<td>33</td>
</tr>
<tr>
<td>L.C.</td>
<td>4</td>
<td>1</td>
<td>25</td>
</tr>
<tr>
<td>Totals</td>
<td>19</td>
<td>6</td>
<td>32</td>
</tr>
</tbody>
</table>
Table 15

Sources: The figures for each of the State parliaments were compiled from information obtained from leading trade union and A.L.P. officials in the State concerned. Those for the Commonwealth were calculated from data contained in *Australian Labor Party: Federal Personnel 1901-1954*, compiled by Crisp and Bennett.

Footnotes

1. This figure includes five members who at the time were members of the Victorian Labor Party (Anti-Communist); they have been included because they were originally elected as endorsed A.L.P. candidates.
**TABLE 16**

Labor Parliamentarians as Executive Members of Central Union Organizations: 1957.

Parls = Parliaments (Federal or State) of which parliamentarians were members.

ACTU = Australian Council of Trade Unions.
NSLC = Labor Council of New South Wales.
MTHC = Melbourne Trades Hall Council.
QTLC = Trades and Labor Council of Queensland.
UTLC = United Trades and Labor Council of South Australia.
TUIC = Western Australian Trade Unions Industrial Council.
HTHC = Hobart Trades Hall Council.

<table>
<thead>
<tr>
<th></th>
<th>ACTU</th>
<th>NSLC</th>
<th>MTHC</th>
<th>QTLC</th>
<th>UTLC</th>
<th>TUIC</th>
<th>HTHC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>State</td>
<td>2</td>
<td>4</td>
<td></td>
<td>3</td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>2(1)</td>
<td>4(2)</td>
<td></td>
<td>3(3)</td>
<td></td>
<td></td>
<td>2(4)</td>
</tr>
</tbody>
</table>

**SOURCE:** Information obtained from the appropriate central union organization secretaries.

(For notes, see next page)
Notes: (Table 16)

1. This figure is as after the A.C.T.U. Congress of September 1957. The previous Interstate Executive had included three State parliamentarians and one Senator. Up to 1957 the A.C.T.U's unwritten 'law' that politicians, and especially Federal parliamentarians, should not be Executive members had been honoured more in the breach than in the observance owing to the Hobart Trades Hall Council's predilection in recent years for electing a parliamentarian to its presidential office, its President usually being nominated as one of the two Interstate Executive members to which the Council was entitled before September 1957. The single member that the Council was entitled to nominate after this date was its Secretary. The two State parliamentarians noted in the Table as members (one of them was the Junior Vice-President) were both members of the N.S.W. Legislative Council, membership of which is regarded in a rather different light from that of any other parliamentary chamber. Unlike their counterparts in the lower house and in any other State, or the Commonwealth, M.L.C's in N.S.W. are selected by a vote of the State parliamentary parties instead of by popular election. This, together with the remuneration (more in the nature of an honorarium than a salary) attached to the office, gives it the character of a 'spoils' appointment, and it is so regarded by union officials, who, unless promoted to Cabinet rank, continue in their union positions. The presence of these members on the Interstate Executive is therefore not viewed as a breach of the unwritten 'law' referred to above.

2. All these were members of the N.S.W. Legislative Council, and included the President, Secretary and Assistant Secretary.

3. One of these was the President and the other the past-President.

4. One of these, a Senator, was President; the other parliamentarian was Chief Secretary in the State Labor Government and immediate past president.
TABLE 17


<table>
<thead>
<tr>
<th>Exec.</th>
<th>T.M.</th>
<th>Federal</th>
<th>State</th>
<th>T.P.</th>
<th>P.P.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>12</td>
<td>1(1)</td>
<td>2(2)</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td>N.S.W.</td>
<td>42</td>
<td>2</td>
<td>3</td>
<td>5(3)</td>
<td>12</td>
</tr>
<tr>
<td>Victoria</td>
<td>25</td>
<td>3</td>
<td>2(4)</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Queensland</td>
<td>66(5)</td>
<td>1</td>
<td>6</td>
<td>7(6)</td>
<td>11</td>
</tr>
<tr>
<td>S.A.</td>
<td>20</td>
<td>2</td>
<td>8(7)</td>
<td>10</td>
<td>50</td>
</tr>
<tr>
<td>W.A.</td>
<td>82(8)</td>
<td>1</td>
<td>15</td>
<td>16(9)</td>
<td>20</td>
</tr>
<tr>
<td>Tasmania</td>
<td>11</td>
<td>1</td>
<td>4(10)</td>
<td>5</td>
<td>45</td>
</tr>
</tbody>
</table>

SOURCE: Information obtained from the appropriate A.L.P. secretaries.

(For notes, see next page)
Notes: (Table 17)

1. A Senator from W.A.

2. One from W.A., the other from Tasmania.

3. All these members were selected by the relevant P.L.P. Caucus: two from the State Legislative Assembly, one from the State Legislative Council and two from the Federal Parliament. Politicians are otherwise ineligible for election to the Executive: A.L.P., N.S.W., Rules and Constitution, 1954-56, as amended to 1957, r. 4(e), (f).

4. This figure is for the Executive as elected by the 1957 Conference, and includes the late John Cain, Leader of the State P.L.P., whose replacement was not a parliamentarian. The figure also includes the former Deputy Leader, L.W. Galvin, who was defeated in the 1955 State elections but whose return to Parliament appears to be only a matter of time.

5. These figures are for the period immediately preceding the expulsion of the Premier, V.C. Gair, in April 1957. Following his expulsion the number of State parliamentarians on the Q.C.E. fell from six to two. In April the total membership of the Inner Executive of the Queensland Party numbered seven, including three parliamentarians, one of them the Premier. After his expulsion this body's total membership was six, including two parliamentarians; both these members, however, were defeated in the ensuing elections.

6. Under the rules, the State and Federal P.L.P.'s each elect one representative direct to the Q.C.E: A.L.P., Qd., Constitution and General Rules, 1957, r. 28(b).


8. Including eight Executive Officers, of whom two were State parliamentarians.


10. The Leader of the State P.L.P. included in this figure, is an ex officio member: A.L.P., Tas., Platform, Constitution and Rules, 1953, as amended to 1956, r. 64.
TABLE 18

<table>
<thead>
<tr>
<th>Queensland (Labor)</th>
<th>South Australia (Non-Labor)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trade Union Acts</strong></td>
<td></td>
</tr>
<tr>
<td>1. Unions may expend funds for political purposes.</td>
<td>1. No corresponding provision.</td>
</tr>
<tr>
<td>2. Unions immune from tortious liability.</td>
<td>2. No corresponding provision.</td>
</tr>
<tr>
<td>3. Union official not liable in tort for counselling strikes.</td>
<td>3. No corresponding provision.</td>
</tr>
<tr>
<td>4. Civil conspiracy doctrine not applicable to trade disputes.</td>
<td>4. No corresponding provision.</td>
</tr>
<tr>
<td>5. No corresponding provision.</td>
<td>5. The Act does not enable courts recover union dues and penalties.</td>
</tr>
</tbody>
</table>

**Industrial Arbitration Acts**

<table>
<thead>
<tr>
<th>Queensland (Labor)</th>
<th>South Australia (Non-Labor)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Only the President of the Industrial Court must be legally-qualified.</td>
<td>1. All members of the Industrial Court must be legally-qualified.</td>
</tr>
<tr>
<td>2. No corresponding provision.</td>
<td>2. The definition of strike includes a refusal to accept employment.</td>
</tr>
<tr>
<td>3. Striking not an offence if 'authorized' by secret ballot.</td>
<td>3. All strikes in the State are illegal.</td>
</tr>
<tr>
<td>4. Peaceful picketing permitted.</td>
<td>4. All picketing illegal.</td>
</tr>
<tr>
<td>5. Registered union may sue members for fines, fees, levies and dues.</td>
<td>5. Registered union may sue for dues, but only for levies for funeral, sick and accident funds.</td>
</tr>
<tr>
<td>6. Registered union officials have right of entry on authority of union president or secretary.</td>
<td>6. Right of entry available only on the authority of the President of the Industrial Court.</td>
</tr>
<tr>
<td>7. Court may award preference of employment to unionists.</td>
<td>7. Court debarred from awarding preference.</td>
</tr>
<tr>
<td>8. All awards must prescribe a 40-hour working week.</td>
<td>8. No corresponding provision.</td>
</tr>
<tr>
<td>9. Overtime rates to be not less than time-and-a-half.</td>
<td>9. No corresponding provision.</td>
</tr>
<tr>
<td>10. At least two weeks annual leave.</td>
<td>10. No corresponding provision.</td>
</tr>
<tr>
<td>11. At least one week sick leave a year.</td>
<td>11. No corresponding provision.</td>
</tr>
<tr>
<td>12. Three months long-service leave.</td>
<td>12. No corresponding provision.</td>
</tr>
<tr>
<td>13. Registered union not liable for acts of agent connected with a strike if these done unknown to or against instructions of union's governing body.</td>
<td>13. No corresponding provision.</td>
</tr>
</tbody>
</table>

APPENDIX I

The Composition and Powers of the Main
Australian Industrial Tribunals

1. Commonwealth

AWARD-MAKING

Conciliation and Arbitration Commission:

Composition
Presidential members: a President and at least two Deputy Presidents, all with legal qualifications.
Commissioners: at least five, for whom no qualifications are specified.
The Commission is constituted by a number of members (not less than three) sitting together, or by members singly.

Jurisdiction
To make awards and orders and certify conciliation agreements on industrial matters (as defined by the Act) which are involved in an interstate dispute, subject to a division of the Commission's original jurisdiction on such matters between the Commission in Presidential Session (i.e. composed of at least three Presidential members) and the Commissioners sitting alone. The Commission in Presidential Session has exclusive jurisdiction over questions relating to the basic wage, standard hours, and long-service leave. All other matters fall exclusively within the original jurisdiction of the Commissioners in relation to disputes in the industry or group of industries with which each is assigned to deal. Jurisdiction corresponding to that of the Commissioners is exercisable by the Presidential members, sitting singly, who are assigned to deal with disputes in the maritime industry, the stevedoring industry and the Snowy Mountains area. On the other hand, on the application of a party to a dispute and subject to the President considering the dispute of sufficient public importance, a dispute within a Commissioner's jurisdiction may be referred for determination to the Commission constituted by not less than three members, of whom at least one must be a Presidential member and one, where practicable, the Commissioner concerned.

Procedure
Conciliation and arbitration: proceedings initiated by application or on the Commission's own motion.
Appeals

To the Commission, composed of not less than three members of whom at least two must be Presidential members, from any decision or award of a Commissioner provided that the Commission considers the matter of sufficient public importance.
Apart from this, all awards are final and conclusive, and may not be challenged in any court—subject to the original jurisdiction of the High Court, under the Constitution, to entertain proceedings by way of mandamus or prohibition against officers, such as members of the Commission, of the Commonwealth. 5

Composition

Boards of Reference:

Usually equal numbers of employer and employee representatives under the chairmanship of a Commissioner, Conciliator (see below) the Industrial Registrar or a Deputy Industrial Registrar; but may simply consist of a Commissioner or Conciliator.

Jurisdiction

To deal with matters arising out of the operation of the award under which a board is established.

Procedure

Where employer and employee representative are members, each have a single vote, the chairman deciding the matter in cases of deadlock.

Appeals

To the Commission as provided in the case of most awards. The Commission will consider an appeal only where the matter is of sufficient importance; 6 no appeal lies unless so provided in the award concerned. 7

Conciliators:

Numbers

Any number may be appointed; no qualifications are specified.

Jurisdiction

Limited to conciliation, except where constituting, or chairman of, a board of reference. Competent to preside over a compulsory conference.

Procedure

Called in to assist the settlement of a dispute by a member of the Commission, or on the request of the parties.

Local Industrial Boards:

Composition

May be a Conciliator, a State industrial authority, or a 'local board' consisting of equal numbers of employer and employee representatives with an independent chairman.

Jurisdiction

Limited to investigation and report, and conciliation, in accordance with powers delegated by the Commission.
**Commonwealth Industrial Court:**

**Composition**
Three members: a Chief Judge and not more than two other judges, all legally-qualified.

**Jurisdiction**
Exclusive powers to interpret awards and conciliation agreements.

**Procedure**
Initiated on application.

**Appeals**
No appeal from the Court's interpretation lies to the High Court.

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**Award-Enforcement**

**District, County and Local Courts and Courts of Summary Jurisdiction:**

**Jurisdiction**
To impose maximum fines of £100 on a registered organization, or an employer who is not a member of such an organization, and £10 in the case of a member of a registered organization for breach or non-observance of orders, awards and conciliation agreements.

**Appeals**
To the Industrial Court.

**Conciliation and Arbitration Commission:**

**Jurisdiction**
In Presidential Session, to suspend or cancel all or any of the terms of an award or conciliation agreement so far as they apply to, or are in favour of, a registered organization and its members, where the organization has committed a breach or non-observance of the award, conciliation agreement, or of an order of the Industrial Court - or for any other reason.

**Commonwealth Industrial Court:**

**Jurisdiction**
To impose fines as in the case of ordinary courts; to impose maximum fines of £500 on a registered organization, £200 - or imprisonment for up to twelve months - in the case of an employer or an office-holder in a registered organization, and £50 in the case of any other person for contempt of the Court - i.e. failure to comply with an order of the Court relating to breach or non-observance of an award or conciliation agreement. To cancel the registration of an organization where its rules are contrary to the terms of an order, award or conciliation agreement, or where it has wilfully neglected to obey an order of the Court, or for any other reason.
## 2. New South Wales

**AWARD-MAKING**

### Industrial Commission:

**Composition**
Up to six legally-qualified members, sitting as a Full Bench of three, or singly.

**Jurisdiction**
To make awards and orders on all industrial matters (as defined by the Act) whether or not they are the subject of a dispute.

**Procedure**
Conciliation and arbitration; proceedings initiated by application or on own motion.

**Appeals**
From single member's decision to Full Bench, otherwise decisions are final and conclusive - subject to appeal to Supreme Court on the question of exceeding jurisdiction.

### Conciliation Commissioners:

**Number**
Not more than five; no qualifications specified.

**Jurisdiction**
May call a compulsory conference on any industrial matter that is, or is likely to be, the subject of direct action; but may make award on such matter only if the Industrial Commission so directs. Further powers as conciliation committee chairman (see below).

**Procedure**
As for Industrial Commission.

**Appeals**
To Industrial Commission.

### Conciliation Committees:

**Composition**
Equal numbers of employer and employee representatives under the chairmanship of a Conciliation Commissioner.

**Jurisdiction**
To make awards and orders, by agreement or decision, on all industrial matters relating to the industry or group of industries covered.

**Procedure**
Agreement must be unanimous; where unanimity is not reached, the chairman decides the question at issue. He may refer any question to the Industrial Commission for determination or direction. Proceedings initiated by application or by reference from Industrial Commission.

**Appeals**
To Industrial Commission which may also, on application or its own motion, prohibit any proceedings, or vary or rescind any award of a conciliation committee.
AWARD-INTERPRETATION

Power vested in both the Industrial Commission and conciliation committees in relation to both awards and industrial agreements.¹³

AWARD-ENFORCEMENT

**Industrial Magistrates:**

**Jurisdiction** To impose a fine of up to £100 on a person for breach of an award or industrial agreement; to issue an injunction restraining further or other breaches.

**Appeals** To Industrial Commission.

**Conciliation Committees:**

**Jurisdiction** Variation of award, including suspension or cancellation of any of its terms, under their general award-making powers.

**Appeals** To Industrial Commission.

**Industrial Commission:**

**Jurisdiction** On appeal from an industrial magistrate, to impose fines on individuals; to rescind or vary awards, under general powers; to cancel the registration of a union 'for any reasons which appear to it to be good.'

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3. **Victoria**¹⁴

**AWARD-MAKING**

**Industrial Appeals Court:**

**Composition** Three members; one with legal qualifications to be President; no qualifications for the other two members except that they be appointed to represent employers and employees, respectively.

**Jurisdiction** Appellate jurisdiction only in relation to all wages board determinations. Exercises all the powers of a wages board (see below).

**Procedure** Questions of law decided by the President alone; all other questions by majority.
Appeals
Decisions final; may not be reviewed or altered within the succeeding twelve months except by the Court itself or, with the Court's permission, by a wages board.

Wages Boards:

Composition
In the case of ordinary wages boards, equal (but not set) numbers of employer and employee representatives under an independent chairman appointed from a permanent panel of up to three. In the case of the General Board, two members representing employers generally and two representing employees generally, with an independent chairman, and additional representatives may be appointed from particular trades when the Board is dealing with them.

Jurisdiction
To make determinations, relating to the craft or industry or groups of them covered, on all industrial matters (as defined by the Act) whether or not they are the subject of a dispute. The General Board has similar powers in relation to trades, or sections of them, which are specified by the Minister as not being covered by the ordinary boards.

Procedure
Each representative has one vote, the chairman deciding any question on which a majority of members fail to agree.

Appeals
To the Industrial Appeals Court. To the Supreme Court only on the ground of illegality.

State Government:

Powers
The Governor in Council may suspend the operation of a determination for up to six months; the relevant wages board must, during the period of suspension, reconsider its determination.

AWARD-INTERPRETATION
Neither the Industrial Appeals Court nor the wages boards are empowered to interpret determinations. Legally, interpretations can only be obtained in the course of enforcement proceedings. In practice, the wages boards have ignored this limitation on their powers.

AWARD-ENFORCEMENT

Metropolitan Industrial Court:

Jurisdiction
Limited to the Melbourne metropolitan area. To impose fines of up to £25 (first offence), £5-50 (second offence) and £50-100 (subsequent offences) on any person contravening or failing to comply with a determination.
Appeals To Industrial Appeals Court.

Courts of Petty Session:

Jurisdiction Outside the Melbourne metropolitan area. Powers as for the Metropolitan Industrial Court.

Appeals To Industrial Appeals Court.

Wages Boards:

Jurisdiction Variation of determinations, including suspension or cancellation of any of their terms, under general powers.

Appeals To Industrial Appeals Court.

Industrial Appeals Court:

Jurisdiction Appellate jurisdiction only.

Appeals Decisions final.

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4. Queensland

AWARD-MAKING

Industrial Court

Composition Up to five members; one with legal qualifications to be President; no qualifications specified for the other members. May sit as a Full Court of three, or singly.

Jurisdiction To make awards and orders and certify conciliation agreements on all industrial matters (as defined by the Act) whether or not they are the subject of an industrial dispute; in addition, the Court may deal with any matter, 'whether industrial or not', which it believes to be connected with a strike or lockout.

To act as 'mediator' in any question, related to an industrial matter or dispute, 'whether or not it is within the jurisdiction of the Court', where the member of the Court concerned considers such action desirable in the public interest.

Procedure. Conciliation and arbitration; proceedings initiated by application or on own motion.
Appeals Single member may state case for decision by the Full
Court; it is mandatory for him to do so if a party makes
application in this direction. Otherwise decisions are
final and conclusive - subject to appeal to Supreme Court
on ground of lack of jurisdiction.

Industrial Magistrates:

Jurisdiction To exercise such powers of the Industrial Court as the
Court delegates at any time or in relation to a particular
matter, dispute, industry or locality. To act as 'mediator' with the same jurisdiction as in the
case of members of the Industrial Court.

Procedure As in the case of the Court.

Appeals To the Industrial Court.

AWARD-INTERPRETATION

Power vested in the Industrial Court, and in industrial
magistrates subject to appeal to the Court, in relation
to awards, conciliation agreements and industrial agreements.

AWARD-ENFORCEMENT

Industrial Magistrates:

Jurisdiction: On remission from the Industrial Court, to impose monetary
penalties on individuals and registered unions for breach
of an award or industrial agreement: for a first offence,
up to £50 in the case of an employer or union, and £10 in
the case of an employee; for a second offence against the
same provision, up to £100 and £20 respectively.

Appeals To the Industrial Court.

Industrial Court:

Jurisdiction To impose fines, as above; to issue injunctions restrain­
ing further or other breaches subject to a maximum penalty
of £1000; to issue orders relating to a first offence,
subject to a penalty of up to £100; variation of an award,
including suspension or cancellation of any of its terms,
under the Court's general powers; to suspend or cancel
the registration of a union for disobedience of an order
of the Court, or for any other reasons.
AWARD-MAKING

Industrial Court:

Composition: A President and up to two Deputy Presidents, each legally-qualified, sitting together or singly.

Jurisdiction: To make awards and orders and certify conciliation agreements on all industrial matters (as defined by the Act) whether or not they are the subject of a dispute; but its original jurisdiction is excluded in cases where an industrial matter affects an industry covered by an industrial board and the matter is within the board's jurisdiction.

Procedure: Conciliation and arbitration; proceedings initiated by application or on its own motion.

Appeals: All decisions final and conclusive - subject to appeal to the Supreme Court on the ground of lack of jurisdiction.

Industrial Boards:

Composition: Equal numbers of employer and employee representatives under an independent chairman nominated by a majority of the representatives or, where no majority is forthcoming, by the Industrial Court.

Jurisdiction: To make determinations, relating to the industry, section of an industry or group of industries covered, on certain industrial matters; annual leave, sick leave and right of entry, for example, are outside their (though within the Industrial Court's) jurisdiction - unless there is a 'custom or usage' as to such matters in the industry concerned. Nor can the boards determine wage rates above a specified amount.

Procedure: Each representative has one vote; in the event of deadlock, the chairman may decide the question in any way he sees fit. Proceedings are initiated by application or on reference from the Industrial Court.

Appeals: To the Industrial Court.

Board of Industry:

Composition: A President (either the President or a Deputy President of the Industrial Court) and four Commissioners - two representing employers and two employees.
Jurisdiction: To declare the State basic wage ("living wage"). To make recommendations to the Minister about the establishment, dissolution and jurisdictions of Industrial boards.

Procedure: The President has a casting as well as a deliberative vote.

Appeals: No provision.

Powers:

State Government:

The Minister of Industry: to cancel, on the recommendation of the Board of Industry, any determination, or part thereof, of an industrial board; to refer a Board's determination, or any part thereof, in "any case of extreme urgency", to the Industrial Court for its consideration. The State Governor: to suspend the operation of any determination, or part thereof, in circumstances of "extreme urgency", and refer it to the relevant industrial board for reconsideration.

AWARD-INTERPRETATION

Power vested exclusively in the Industrial Court in relation to awards, determinations, conciliation agreements and industrial agreements.

AWARD-ENFORCEMENT

Special Magistrates:

Jurisdiction: To impose maximum fines of £250 in the case of a union, £100 in the case of an employer, and £10 in the case of an employee for breach of an award or order of the Industrial Court or of an industrial agreement, or of £100, £20 and £10 respectively, for breach of an industrial board's determination.

To issue an injunction restraining further or other breaches of an award, order or industrial agreement, subject to penalties of imprisonment for up to three months and, in the case of a union, a maximum fine of £250.

Appeals: To the Industrial Court.

Industrial Boards:

Jurisdiction: Variation of determinations, including suspension or cancellation of any of their terms, under general powers.

Industrial Court:

Jurisdiction: On appeal from an industrial magistrate, to impose fines; to vary or cancel awards, under general powers; to cancel the registration of a union for wilfully neglecting to obey a judgement, order or award of the Court, or for any other reason.
AWARD-MAKING

Court of Arbitration:

Composition
Three members; one with legal qualifications to be President; no qualifications specified for the other two except that they be appointed on the recommendation, respectively, of workers' and employers' organizations. May be constituted by the President and at least one lay member, but in certain matters the President may act alone.

Jurisdiction
To make awards and orders on all industrial matters (as defined in the Act) whether or not the subject of an industrial dispute. The President alone is empowered to certify conciliation agreements and to call compulsory conferences.

Procedure
Conciliation and arbitration; proceedings initiated by application or on own motion. Decisions are by majority opinion; or, where the Court is constituted by two members, according to the President's decision.

Appeals
All decisions final and conclusive; and the possibility of an appeal to the Supreme Court on the ground of lack of jurisdiction is narrowed by the statutory direction that the Arbitration Court's decision as to whether any matter is an industrial dispute within its jurisdiction, is final and conclusive and may not be questioned.

The Conciliation Commissioner:

Jurisdiction
To deal with any industrial matter remitted to him by the Arbitration Court, with the powers delegated to him by the Court for the purpose.

Procedure
The procedure directed by the Arbitration Court.

Appeals
To the Arbitration Court.

Boards of Reference:

Composition
Equal numbers of employers' and employees' representatives, with an independent chairman.

Jurisdiction
To deal with matters, in the way specified, arising out of the constituting award in each case.

Appeals
To the Arbitration Court.
AWARD-INTERPRETATION

Power vested in the Arbitration Court in relation to awards, conciliation agreements and industrial agreements.27

AWARD-ENFORCEMENT

Industrial Magistrates:

Jurisdiction To impose fines up to a maximum of £500, as specified in an award or industrial agreement, for breach of them.

Appeals To the Arbitration Court.

Court of Arbitration:

Jurisdiction To impose fines, as above, for breach of an award, order or industrial agreement; to punish contempts of its authority, including contravention of its orders, in the same way as the Supreme Court by fines or imprisonment; to suspend or cancel, under express statutory authorization to this effect, all or any of the terms of an award, conciliation agreement or industrial agreement so far as it applies to a registered union and its members who have contravened it. The President alone is empowered to cancel the registration of a union that has wilfully neglected to obey an order of the Court, or for any other reason.

Appeals To the Court of Criminal Appeal, but only in the case of a sentence of imprisonment or the imposition of a fine exceeding £20 on an individual.

7. Tasmania28

AWARD-MAKING

Wages Boards:

Composition Equal (but not standard) numbers of employer and employee representatives, with an independent chairman - one government official acting in this capacity for all boards.

Jurisdiction To make determinations, relating to the industry or industries covered in each case, on all industrial matters (as defined by the Act) whether or not they are the subject of a dispute.

Procedure Each representative has one vote, the chairman deciding any question on which the representatives are deadlocked.
Appeals To the Supreme Court, but only on the ground of lack jurisdiction.

State Government:

Powers The Chief Secretary may summon a compulsory conference, in order to prevent or settle an industrial dispute, or may convene a meeting of the appropriate wages board for the purpose. He may also convene a wages board, at any time after it has made a determination, for the purpose of reconsidering the determination.

AWARD-INTERPRETATION

Wages boards have no statutory power to interpret their determinations; and the only way in which an interpretation can be legally obtained is through enforcement proceedings. As in Victoria, Tasmanian wages boards have turned a blind eye to this limitation on their powers.

AWARD-ENFORCEMENT

Police Magistrates:

Jurisdiction To impose a penalty of up to £20 on any person contravening or failing to comply with a determination.

Appeals No statutory provision.

Wages Boards:

Jurisdiction Variation of determinations, including suspension or cancellation of their terms, under general powers.

Appeals As in award-making.

Notes:

1. The operative statute is the Conciliation and Arbitration Act 1904-56.
2. A Presidential member may be assigned to deal alone with any industrial dispute or with all disputes in any industry, in which case he has the same jurisdiction as a Commissioner.
3. In relation to the maritime and stevedoring industries (under the interstate trade and commerce provisions of the Constitution) and to the Snowy Mountains hydro-electric scheme (under the Constitutional defence power), the Commission's jurisdiction is not restricted to industrial matters that are the subject of an industrial dispute but, as in the States, includes such a matter whether or not it is in dispute. The jurisdiction
of the Coal Industry Tribunal is extended in the same way within New South Wales by virtue of an agreement between the government of that State and the Commonwealth.

4. For discussion of the implications of combining conciliative and arbitral powers in the one body, see G. Sawer, 'Conciliation and Arbitration of Industrial Disputes' (1947), 23 Economic Record 269-71; and A. C. Gray, 'Two Years of Conciliation Commissioners' (March 1950), 22 Australian Quarterly 54-6.

5. R. v. Commonwealth Court of Conciliation and Arbitration; Ex parte Brisbane Tramways Co. Ltd. (1913) 18 C.L.R. 54; see also (1949) 78 C.L.R. 389 and (1950) 82 C.L.R. 54.


7. Jackett Bros. v. Federation Millers & Mill Employees Ass'n (1925), 22 C.A.R. 190; see also (1934) 33 C.A.R. 1009.

8. Boards of reference have no power to interpret the terms of awards setting them up (despite provisions to this effect in some awards) but some do carry out this function with the consent of the parties: Foenander, Industrial Regulation in Australia, 29.

9. The operative statute is the Industrial Arbitration Act 1940-57.


12. A union or employer may apply, in the first instance, to either the Industrial Commission or the relevant conciliation committee; in practice the choice made usually depends on the customary procedure in the trade or industry concerned.

13. It appears that the committees do no usually exercise this power; the Industrial Commission has frequently advised them against doing so: Foenander, Better Employment Relations, 86.


15. In practice, the panel has never included more than two members.

16. This power has rarely been used.

17. Under the Act, the term 'trade' may be defined in relation to the business or occupation of an employer, or in relation to that in which a worker is employed: wages boards may be established on an industry or craft basis, or cover a mixture of both.

18. Boards may determine 'any industrial matter whatsoever' with the express exceptions that they cannot make determinations relating to preference of employment for unionists or prescribing lower piece-work rates for minors than for adults.


20. Awards operating outside Brisbane usually empower an industrial magistrate to convene compulsory conferences in the case of disputes under the award, and allow him, on the request of any party to the dispute, to determine the matter if no agreement is reached at the conference - subject to a right of appeal to the Industrial Court.


22. The Court is expressly debarred from making an award of preference in employment to unionists.

23. With the exception of boards covering public service, railway and local body employees which operate on a State-wide basis, industrial boards are restricted in their coverage to the Adelaide
Metropolitan area, the Industrial Court having original jurisdiction over the relevant trades and industries in all other parts of the State.

24. There are a total of six chairmen who cover all industrial boards.

25. **Boarding House, Cafe etc. Employees' Case (1914), 17 S.A.I.R. 279.** In many cases an industrial board's determination is supplemented by an award of the Industrial Court dealing with matters outside the board's jurisdiction.

26. **Industrial Arbitration Act 1912-52.**

27. The Court may amend the terms of an award in order to remedy any defect or to give them fuller effect shown to be necessary in the light of its interpretation; it cannot amend an industrial agreement in the same circumstances.

28. **Wages Boards Act 1920-51.**

29. Under the Act, the term 'trade' is interpreted in relation to the trade, industry, business or occupation of employers alone; thus wages boards in Tasmania may be established only on an industry basis.
APPENDIX II

The Instruments of Industrial Regulation

THE AWARD

Application:

C'wealth. Binds only those organizations and persons named and notified as parties to an industrial dispute settled by the award,\(^1\) including future members of organizations, successors in title of an employer, and a named employer who is not in dispute with his existing employees or who does not employ any members of the union concerned.\(^2\)

N.S.W. May bind all employers and employees in the industry or trade and locality concerned as a common rule, or may bind only the parties to a dispute or to negotiations - according to the directions given by the award-making body.

Victoria Determinations are automatically common rules.

Q'ld. Automatically a common rule.

S.A. 1. Award of the Industrial Court is initially binding only on the parties to it; but, on separate application, the Court may declare it a common rule.\(^3\)

2. Determinations of Industrial Boards are automatically common rules.

W.A. Automatically a common rule.

Tasmania Determinations are automatically common rules.

Term of Operation:

C'wealth. For any period specified in the award up to five years from the date made; but after expiry of the period, continues in force until a new award is made.

N.S.W. Up to three years; but continues in force as in the C'wealth.

Victoria No limit set; remains in force indefinitely as amended from time to time.

Q'ld. Up to one year; but continues in force as in the C'wealth.

S.A. Up to three years; but continues in force as in the C'wealth.

W.A. Up to three years; but continues in force as in the C'wealth.

Tasmania Up to two years; but continues in force as in the C'wealth.
Variation and Cancellation:

C'wealth

May be varied during currency, but such variations are limited to the 'ambit' set by the claims of the parties to the dispute in relation to which the award is made. Variations in effect, if not in form, are possible through the creation of another dispute and the making of another award, between the same parties, which may deal with the same subject-matter as the original award. An award may be cancelled, suspended, or set aside during its currency.

N.S.W. )
Victoria) Every award- or determination-making body is empowered to vary
Q'ld. ) or rescind any of the provisions of its own awards or determina-
S.A. ) tions. There is no limitation, as there is in the C'wealth
W.A. ) jurisdiction, on the variation power.
Tasmania) - - - o0o - - -

THE CONCILIATION AGREEMENT

How Made:

C'wealth

Agreement reached in statutory conciliation proceedings; must be certified by the appropriate member of the Arbitration Commission. Certification may be refused if the certifying authority considers the agreement is not in settlement of an industrial dispute, if it contains provisions outside the authority's power to grant in an award, or if it is not in the 'public interest' that it should be certified. Most agreements are made into consent awards.

N.S.W. No provision.6 Consent awards frequent.
Victoria No provision.
Q'ld. Provision as in the C'wealth; but exercise of the power is mandatory. Agreements are invariably converted into consent awards.
S.A. Provision as in the C'wealth; but exercise of the power is mandatory. Agreements are invariably converted into consent awards.
W.A. Provision as in the C'wealth; but only the President can certify, and the power is not discretionary. Agreements are invariably converted into consent awards.
Tasmania No provision.

Status:

In all the relevant jurisdictions, conciliation agreements have the same force and effect as awards, and may be varied in the same way by the industrial authority.7

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THE INDUSTRIAL AGREEMENT

Contents:

C'wealth May provide only 'for the prevention and settlement of industrial disputes existing or future by conciliation and arbitration.'

N.S.W. No restrictions on subject-matter.

Victoria No provision for filing industrial agreements.

Q'LD. As in N.S.W.

S.A. As in N.S.W.

W.A. As in N.S.W.

Tasmania No provision for filing industrial agreements.

Application:

C'wealth Binds only persons and organizations - including their members - who are parties to it.

N.S.W. Binds only parties to it.

Q'LD. Binds not only parties to it but also all employees, not members of a participating union, who are employed by an employer bound by the agreement, either as a party or as a member of a participating employers' organization. The Industrial Court may declare an agreement a common rule.

S.A. Binds only the parties to it. But in an industry or locality not covered by the Industrial Court or an industrial board, an agreement entered into by at least three-fifths of the employers and employees concerned and dealing with matters within the competence of an industrial board has the force of a board's determination (after its legality has been confirmed by the Industrial Court), thus operating as a common rule.

W.A. As in Queensland.

Term of Operation:

C'wealth For any period specified in the agreement up to five years; but after expiry of the period it continues in force until one party gives notice of an intention to terminate it.

N.S.W. Up to five years; but continues in force as in the C'wealth, until one party gives notice of termination, or the Industrial Commission rescinds it.

Q'LD. Up to three years; but continues in force except in regard
to parties who notify their intention of retiring from it.

**S.A.**
Up to three years; but continues in force as in the C'wealth until one party gives notice of termination.

**W.A.**
Up to three years; but continues in force except in regard to parties who notify their intention of retiring from it.

**Status:**

In all the relevant jurisdictions industrial agreements are enforceable in the same way as awards.

**Variation and Cancellation:**

**C'wealth**
May be varied or rescinded during its currency by another industrial agreement between the same parties; the Arbitration Commission has no general power to vary.

**N.S.W.**
May be varied or cancelled during its currency by a subsequent agreement between the parties; the Industrial Commission may vary or cancel it.

**Q'ld.**
May be varied or cancelled during its currency by a subsequent agreement between the parties; subject, in the case of an agreement declared a common rule, to the consent of the Industrial Court; the Court may vary or cancel any industrial agreement.

**S.A.**
May be varied or cancelled during its currency by a subsequent agreement between the parties; the Industrial Court may vary or cancel it.

**W.A.**
May be varied or cancelled during its currency by a subsequent agreement between the parties, subject, in the case of an agreement declared a common rule, to the consent of the Arbitration Court; the Court may suspend or cancel all or any of the terms of any agreement, but has no general power of variation.

**Inconsistency with Awards:**

**C'wealth)**

**N.S.W.**) No provision.

**Q'ld.**
The Industrial Court may prohibit either the making or enforcement of an industrial agreement that is inconsistent with a relevant award, where it considers this advisable in the public interest.

**S.A.**
The Industrial Court may vary the terms of an agreement to conform with a common rule award, an industrial board determination (automatically a common rule), or a common rule agreement.
The Arbitration Court may vary an agreement that is inconsistent with an award or with another agreement declared a common rule.

Notes:

1. Thus the general Federal industrial power does not include the making of an award operating as a common rule: Australian Boot Trade Employees Federation v. Whybrow & Co. (1910), 11 C.L.R. 311; see also (1949) 78 C.L.R. 389 and (1950) 81 C.L.R. 64. On the other hand, where they are operating under constitutional provisions other than the general industrial power, Federal tribunals are able to make awards as common rules: the Arbitration Commission can do so in relation to a Commonwealth territory, the maritime and stevedoring industries and the Snowy Mountains hydro-electric scheme; the Coal Industry Tribunal in relation to the N.S.W. coal industry; and the Public Service Arbitrator in relation to the Federal Public Service.

2. Acceptance of these principles has played an important part in lessening the handicap imposed by the inability to make a common rule: see G. Sawyer, 'Conciliation and Arbitration of Industrial Disputes' (1947), 23 Economic Record 268.

3. The Court does not do so automatically, the burden of proving sufficient reason rests on the applicant for a common rule: Baking Trades (Common Rules) Case (1920), 3 S.A.I.R. 189.

4. Gas Employees Industrial Union v. Metropolitan Gas Co. Ltd. (1919), 27 C.L.R., at 84, 85, 90; also see (1920) 28 C.L.R. 209 and (1945) 55 C.A.R. 869. Thus if the original dispute involved a union wage claim of £20 and an employers' counter-claim of £10 a member of the Commission, who is restricted in making his award to a figure within these limits is similarly restricted when it comes to varying his award. In practice, particularly in the case of wages, this has caused unions to make excessive claims in anticipation of future applications to vary the award. No similar restrictions exist in the case of Federal tribunals operating in the special fields indicated in footnote 1.

5. Wartime apart, certification is not often refused even where the terms of agreements are manifestly beyond the jurisdiction of the arbitral authority; it is doubtful, however, that the relevant tribunals would feel competent to enforce such terms.

6. Provisions relating to conciliation agreements were deleted from the Industrial Arbitration Act in 1943.

7. The Federal Arbitration Commission is somewhat more cautious in varying conciliation agreements than in the case of its own awards: see Foenander, Industrial Regulation in Australia, 49-50.

8. The general industrial power of the Commonwealth Parliament extends no further than this provision in relation to industrial agreements, which enables 'parties voluntarily to provide for a method of conciliation and arbitration other than that of the Court created by the Act'. Federated Engine Drivers & Firemens Ass'n v. Broken Hill Pty. Co. Ltd. (No. 3) (1913), 16 C.L.R. at 730.
Nevertheless, industrial agreements not limited in this way are accepted for filing and are published in the C.A.R., though they are not enforceable either at common law or by the industrial tribunals under the Act: ibid, 715.

9. There are no common rule agreements operating at the present time.

10. The W.A. Arbitration Court will declare an agreement a common rule only on the application of a party to it: Re Kalgoorlie & Boulder Shop Assistants (1920), 1 W.A.I.G. 52.

11. Merchant Service Guild v. C'wealth Steamship Owners' Ass'n. (1912) 6 C.A.R. 6; also (1917) 11 C.A.R. 584. The Arbitration Commission has, however, the power to vary an industrial agreement relating to employment in a Commonwealth territory to bring it into conformity with a common rule applied by the Commission in relation to such territory: it appears that under the wider industrial powers of the Commonwealth in the case of its territories, an industrial agreement operating within them may be enforceable in regard to industrial matters generally.

12. Re Kalgoorlie & Boulder Shop Assistants (1920), 1 W.A.I.G. 52; also (1943) 23 W.A.I.G. 185.
APPENDIX III

Australian Anti-Strike Legislation

1. Strikes in Essential Services

C'wealth Crimes Act 1914-50: Applicable to any public service carried on by the Commonwealth and its agencies and to industries concerned with interstate and international trade and commerce. An offence if a person, by violence, threat, intimidation or, 'without reasonable cause or excuse, by boycott or threat of boycott of person or property', obstructs or hinders the operation of the service or industry, compels or induces an employee to leave his employment or prevents a person from accepting employment in connection with the service or industry: penalty, imprisonment for up to one year.

Public Service Act 1922-54: If found guilty of 'directly fomenting or taking part in' a strike preventing or interfering with the work of the public service or any Federal utilities, an employee must be dismissed by the Public Service Board.

N.S.W. Industrial Arbitration Act 1940-57: All strikes by employees of the State government and of its instrumentalities are illegal; penalties as in the case of illegal strikes in general.

Victoria Essential Services Act 1948: Applicable to 'essential services', relating to transport, fuel, light, power, water, sewerage and any other services that may be specified by order-in-council. A strike or 'similar interruption' in such a service is an offence unless a secret ballot conducted previously by the Chief Electoral Officer has resulted in a majority of those entitled to vote being in favour of the strike: penalties, £1000 in the case of a union official or trustee, and £50 in any other case.

2. Examples of Emergency Legislation

TEMPORARY

C'wealth National Emergency (Coal Strike) Act 1949: Prohibited the payment of strike allowances to strikers by the unions involved in the 1949 coal strike; and prohibited other unions registered under the C. & A. Act, from giving financial help to the strikers or their unions: penalties, £1000 in the case of a union, and £100 or imprisonment for 6 months (or both) in the case of a person.
**Q'LD. Industrial Law Amendment Act 1948:** Enacted to meet the State railway strike. Prohibited any form of picketing or demonstrations in support of a strike that was in defiance of an order of the State Industrial Court or was not authorized as prescribed by the I.C. & A. Acts, and gave the police extensive powers to prevent picketing and search premises: penalties, £100 and 6 months' imprisonment.

**STANDING**

**C'wealth Crimes Act 1914-50:** The Federal government may proclaim that there exists a 'serious industrial disturbance prejudicing or threatening trade or commerce with other countries or among the States'. During the currency of a proclamation it is an offence to urge or encourage in any way a strike connected with interstate or international trade and commerce, or with the provision of any public service by the Commonwealth and its agencies: penalties, imprisonment for a year or, if not Australian-born, deportation.

**Stevedoring Industry Act 1956:** The minister administering the Act may declare that a state of emergency exists at any port, and thereafter it is an offence to contravene orders issued by the Stevedoring Industry Authority: penalties, £10 in the case of a waterside worker, and £100 in the case of any other person (such as a union official).

**N.S.W. Emergency Powers Act 1949:** The Governor may proclaim that it appears to him that 'from any cause the supply or provision of essential services or essential commodities is or is likely to be interrupted or dislocated or become less than is sufficient for the reasonable requirements of the community' - an essential commodity includes any commodity so proclaimed, and an essential service is specified as those relating to transport, fuel, light, power, water, sewerage, public health and any service so proclaimed. During the currency of a proclamation the Governor has almost unlimited powers to make regulations: penalties for disobeying such regulations, £500 in the case of a corporate body, and £200 and imprisonment for 12 months in the case of an individual.

**Victoria Essential Services Act 1948:** The Governor in Council may proclaim a state of emergency where it appears that any action interrupts or dislocates, or is likely to do so, any essential services defined as outlined above in relation to legislation concerning strikes in essential services. During the currency of the proclamation the minister administering the Act has extensive powers to control or regulate any essential service, as also defined above.

**Q'LD. State Transport Act 1938:** The Governor in Council may proclaim a state of emergency if for any reason he considers that the 'peace, welfare, order, good government, or the public safety' of the State are 'imperilled'. During the currency of the
proclamation the Governor in Council has unlimited power to make regulations: penalties, £100 in the case of any person, or as specified by regulation.


N.S.W. All strikes are illegal if begun before the expiry of 14 days after a notice of intention to strike has been given in writing to the Minister for Labour and Industry: penalties, for taking part in or aiding or abetting an illegal strike, £500 in the case of a union registered under the State Trade Union Act; for aiding or instigating, £50 or 6 months' imprisonment in the case of a person, and £100 in the case of a newspaper publisher or proprietor; for attempting to induce someone to take part in an illegal strike (this is directed against picketing), £10 or 1 month's imprisonment. It is an offence, regardless of whether a strike is illegal, to try to persuade or compel anyone to ban the handling of any article or commodity in sympathy with the strike: penalties, £100 in the case of a registered trade union, and £10 or 1 month's imprisonment in the case of an individual.

Q'LD. All strikes are illegal unless they have been 'authorized' and, in the case of unorganized workers or of a union operating outside the State arbitration system, authorization is constituted by a favourable vote in a secret ballot conducted by the State Industrial Registrar among the employees concerned: penalty, in the case of any person taking part in, instigating or aiding an unauthorized strike, £10.

S.A. All strikes are illegal; penalties for taking part in, £500 in the case of any union or person or, in the case of a person, imprisonment for 3 months. All picketing is illegal: penalties, £20 or imprisonment for 3 months.

W.A. All strikes are illegal, and it is an offence to participate in a strike or to make a gift or donation to a striker or to a union with striking members: penalty, £50 in the case of any individual.
Penal Provisions Applicable only within Industrial Regulation Systems

STATUTES

C'wealth There is no express prohibition of strikes as such. But it is an offence for a union official or agent to advise or encourage a unionist bound by an award to refrain from accepting or offering for work or from working in accordance with the award, to use 'go-slow' methods or otherwise limit output, or to depart from customary work-procedures; it is also an offence for an official to try to hinder or prevent a unionist bound by an award from accepting or offering for work, from working or from complying with the award: penalty, £100.

An offence for a registered union to impose (or state an intention to do so) a penalty on a member because he is working (has worked or intends to) in accordance with an award: penalty, £100.

N.S.W. 1. Any strike in an industry wholly or partially covered by a State award or registered industrial agreement is illegal; penalties, as in the case of strikes in general. 2. Failure to comply with an order of the Coal Industry Tribunal is an offence penalty, £100 and imprisonment for 6 months.

Victoria No provision of this character.

Q'LD. An offence for a person to take part in, instigate or aid a strike not authorized by the registered union concerned (a strike is authorized after a majority of union members affected have voted for it by secret ballot, and the Industrial Registrar has been informed of the ballot results and details): penalties as in the case of unauthorized strikes in general, plus a fine of £100 against a registered union.

S'A. An offence in the nature of a strike to refuse or neglect, without 'reasonable cause or excuse', to accept or continue to work on the terms of an award or determination: penalties as in the case of illegal strikes in general, plus a prohibition against the Industrial Court making its awards or orders retrospective where any of the employees or a union concerned have been connected with a strike.

W.A. An offence for members of a registered union to take part in a strike or for a union to order its members to refuse to accept employment in order to enforce employee-demands: penalty, £500 in the case of a union.

An offence for a member of a registered union to refuse or neglect to accept employment, 'without reasonable cause or excuse', on the terms of a binding industrial agreement:
penalties as in the case of strike action generally.\textsuperscript{18}
It is a condition of the registration of a union that its rules should prescribe, first, that all industrial disputes involving the union must be referred for settlement within the arbitration system if not settled by consent; and, second, that no part of the union's funds may be applied in connection with a strike within the State: these rules are enforceable by the Arbitration Court.

Tasmania
An offence for trade unions, their members and employees generally to advise, take part in or assist a strike concerning a matter covered by a wages board determination: penalties, £500 in the case of a trade union, £20 in the case of an individual.

AWARDS AND DETERMINATIONS\textsuperscript{19}

C'wealth
The standard clause, inserted in a number of appropriate awards, forbids unions bound by the award to be 'in any way, whether directly or indirectly...a party to or concerned in any ban, limitation or restriction upon the performance of work in accordance with this award'.\textsuperscript{20}
Many awards require the employee to work 'reasonable' amounts of overtime at the prescribed overtime wage rate, and forbid unions concerned to be 'in any way, whether directly or indirectly, a party' to a ban or limitation on the 'working of overtime'.
Some awards are restricted to the prohibition of go-slow, forbidding a union, any group of employees or an employee to 'limit the amount of work [or] restrict the rates or quantity of output'.\textsuperscript{21}
Penalties, as for breaches of awards: £100 in the case of a union, and £10 in the case of a union member. The standard type of anti-strike clause usually prescribes that a new and separate breach of the clause is committed by the union for every day of the strike, in which case the union is liable to the maximum penalty for each day its members are on strike.\textsuperscript{22}

W.A.
The standard clause, inserted in an appropriate award, usually only were a strike exists or threatens, prescribes that any stoppage of work by members of unions concerned constitutes a breach of the award by the unions: penalty, £500 as for breach of award.\textsuperscript{23}

LABOUR INJUNCTIONS

C'wealth
The Industrial Court may order compliance with an award and enjoin a registered union or a person from committing or continuing a contravention of the Act or a breach or non-observance of an award. Failure to comply with an order constitutes contempt of the Court: penalties, £500 in the case
of a union, £200 or imprisonment for 12 months in the case of a union official, and £50 in the case of a union member.

N.S.W. The Industrial Commission may issue orders: penalties for strikes in general are applicable.

Victoria No provision.

Q'LD. The Industrial Court may issue orders, whether or not a strike is 'authorized' penalties for strikes in general are applicable, plus £100 in the case of an individual who disobeys an order.

S.A. The Industrial Court may issue orders: penalties for strikes in general are applicable.

W.A. The Arbitration Court may issue orders. Failure to comply constitutes contempt of the Court, which has the same power to punish contempts as the State Supreme Court: penalties, fines and prison sentences.

Tasmania No provision.

5. The Powers of Arbitration Courts to Deregister Striking Unions

C'wealth The Industrial Court may cancel the registration of a union under the C. & A. Act for any reasons it considers good or, specifically, if the union wilfully neglects to comply with an order of the Court (e.g., one directing that a strike be ended).

N.S.W. The Industrial Commission may cancel a union's registration under the Industrial Arbitration Act for any reasons it considers good or, specifically, if the union has aided or instigated an illegal strike by another union.

Q'LD. The Industrial Court may suspend or cancel a union's registration under the I.C. & A. Acts for any reasons it considers good or, specifically, if the union has wilfully neglected to obey an order of the tribunal.

S.A. The Industrial Court may cancel the registration of a union under the Industrial Code for any reasons it considers good or, specifically, if the union wilfully neglects to comply with an order of the Court.

W.A. The President of the Arbitration Court alone is empowered to cancel the registration of a union under the Industrial Arbitration Act for any reasons he considers good or, specifically, if a union has wilfully neglected to comply with an order of
the Court or has failed to observe its own rules: the latter
ground is relevant here in view of the fact that a registered
union in W.A. is required by statute to include what is in
effect a strike-prohibition in its rules as a condition pre-
cedent to registration. 28

The Effects of Deregistration: The main effect of deregistration
is to deprive a union of the right to initiate proceedings for
an award or variations of an award before the relevant arbit-
ration court. Except in South Australia and possibly Queensland
(in the latter case under the provision allowing at least twenty
employees to be represented before the Industrial Court) dereg-
istration also prevents a union being represented in award
proceedings at any stage.
Deregistration further lays a union open to the threat of the
registration of a rival union (with the right to represent the
class of employees concerned before the court to the exclusion
of the old union) as a consequence of the general policy against
recognizing more than one organization in a given field. In
the Federal jurisdiction the award obtained by a union is auto-
matically cancelled on the union's deregistration, subject to an
order which the Industrial Court may make declaring the award
to have full force in all respects apart from the benefits to
which the deregistered union and its members were formerly en-
titled under it. The effect of such an order, by virtue of the
constitutional pre-eminence of Federal awards over State awards
and legislation, is to prevent employers who are parties to the
Federal award being bound by a State award in relation to their
employees who are members of the deregistered union: see, e.g.,
Eggleston, in Essays on the Australian Constitution (Else-Mitchell,
ed.), 199. Of the State arbitration court jurisdictions, only
in N.S.W. is the deregistration power directly linked with power
to cancel a relevant award or agreement, but cancellation is
not automatic as in the Commonwealth and is at the discretion
of the Industrial Commission. Cancellation of relevant awards
in these circumstances is, of course, available in the other
jurisdictions under the Court's general powers.

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6. Strike Ballots

C'wealth The Arbitration Commission, composed of at least three members
including a presidential member, may order a secret ballot where
a union registered under the C. & A. Act is concerned in an
industrial dispute within the Commission's jurisdiction and the
Commission considers that the views of its members or any part
of them should be ascertained: penalties for obstructing a
ballot, £50 or imprisonment for 6 months.29
N.S.W. The Minister for Labour and Industry may direct the taking of a secret ballot to ascertain whether a majority of those concerned are in favour of the strike, and he may exercise this power whenever he has reason to believe that a strike is contemplated by a union or at any time, or from time to time, during the progress of a strike whether or not it is illegal: penalties for obstructing a ballot, £50 or imprisonment for 6 months. Applicable to unions inside and outside the State arbitration system.

Q'ILD. A secret ballot must be taken of the employees concerned, by the union itself in the case of a union registered under the I.C. & A. Acts, or by the Industrial Registrar in all other cases, before a strike may be 'authorized.'

W.A. The Arbitration Court may order a matter to be submitted to a vote by secret ballot of the members, or a section of them, of a registered or deregistered union where the Court considers that their views ought to be ascertained: the ballot to be conducted by a State official.

Notes:
1. The term 'boycott' includes a refusal to accept employment where it is normally accepted by those concerned: (1928) 41 C.L.R. 136.
2. All penalties noted in this Appendix are maxima.
3. The Act was held to be a valid exercise of the Commonwealth's general industrial and incidental powers under the Constitution: (1949) 79 C.L.R. 333.
4. There appears to be some doubt about the constitutional validity of these provisions: see Foenander, Studies in Australian Labour Law and Relations, 8n.
9. The provisions dealt with here are additional to those applicable to strikes in general in the State jurisdictions.
11. Such a provision is within the legislative power of the Federal Parliament (23 C.L.R. 226), and was included in the original C. & A. Act until deleted in 1930.
12. It is a statutory defence against prosecution to prove that there are reasonable grounds for such conduct, provided they are unrelated to the terms of the award or arise from an employer's failure to observe the award.
13. All these provisions apply to unions operating under any arbitration tribunal established under Federal legislation.
14. A strike is illegal even where it represents an attempt to force
an employer to observe an award or industrial agreement ([1913] A.R. (N.S.W.) 35). The Act permits a union to withdraw from an award that has operated more than 12 months if approved by a secret ballot of its members, conducted as prescribed. The strike-prohibition relating to industrial agreements also affects unions registered solely under the Trade Union Act which are empowered to conclude such agreements.


16. The only statutory anti-strike sanction applicable solely within the State wages board system appears to be the minister's power to suspend a determination, which is outlined in the text.

17. Although a union avoids certain statutory penalties and is formally given the right to strike after fulfilling the requirements regarding 'authorization', this does not preclude the State Industrial Court from taking other action and imposing other penalties within its power and an authorized strike may still be declared illegal by the Court: (1949) 43 Q.J.P. 97.

18. Under the Act, this prohibition is not specified as applicable in relation to awards.

19. Strike-prohibitions in awards are of greatest importance in the Federal jurisdiction where no general prohibition is contained in the Act. There is less need for award provisions of this sort in the States since in all cases but Victoria general statutory prohibitions are in force; their use in W.A. appears to have arisen from special conditions which are outlined below in note 23.

20. This clause first appeared in 1951 in the Metal Trades Award (71 C.A.R. 507). Earlier anti-strike clauses varied in their terms, some prohibiting strikes aimed at enforcing demands about matters covered by the award (e.g., 35 C.A.R., at 433), others prohibiting strikes aimed at enforcing any demands if such action was 'unreasonable' (e.g., 68 C.A.R., at 547). The present standard clause applies in the case of a concerted refusal to accept employment on award conditions as well as a cessation of work; the circumstances in which the clause was first inserted in the Metal Trades Award involved union action in both these ways. In the absence of such a clause employees are not obliged to accept employment on award conditions and even a concerted refusal to do so is not a breach of the award (21 C.L.R. 642). Further force is given the standard clause by the fact that it makes the union responsible for unofficial as well as official strikes.

21. The High Court held by a majority that the repeal of the statutory anti-strike provisions in 1930 did not prevent the insertion of clauses in awards on these lines (54 C.L.R. 626). It seems that a clause of this sort is valid so long as the strike action prohibited relates to any industrial matter defined by the Act, whether or not it is covered by the terms of the award (54 C.L.R. 640).

22. These penalties are not now usually relied on since heavier penalties are available under statutory provisions relating to labour injunctions: see note 24.
23. This procedure was customarily followed before September 1952 because it enabled a fine of £500 to be imposed on a union for strike action as a breach of the relevant award, whereas the corresponding general penalty available against striking unions was only £100. The procedure was resorted to during the metal trades strike early in 1952: see, e.g., 32 W.A.I.G. 78. Similarly, in relation to individual union officials and strikers, use of the injunction was preferred during this strike (see, e.g., 32 W.A.I.G. 80) because breach of an injunction was subject to a fine of up to £100 as against the £10 which was the maximum amount that individuals could be fined under the general anti-strike provisions of the Act. The amendment to the Act passed in September 1952, however, raised the general penalties for strike action to £500 in the case of industrial unions and £50 in the case of an individual, and therefore appears to have made the previous circuitous procedure largely redundant.

24. Because this procedure enables heavier penalties to be imposed than in the case of breach of an award, its use has been preferred in recent years. The normal procedure is as follows: employers concerned apply to the Arbitration Commission for the insertion in the award of the standard anti-strike clause and of a clause enabling them to 'stand-down' employees not taking part in the strike, then an order restraining breach of the anti-strike clause is obtained from the Industrial Court; and on the union's failure to comply with the order, proceedings for contempt of the Court are begun.

25. See note 23 above regarding the use of this power.

26. The grounds for deregistration given here are only those which may be directly connected with strike action. In all cases there are other statutory grounds specified also.

27. This power may well be vested in the Arbitration Commission, or some other body, since it is not a judicial power under the Constitution ((1925) 36 C.L.R. 442); and it appears that the Industrial Court is incompetent to exercise a power of this sort ((1957) 31 A.L.J. 670).

28. See (1936) 16 W.A.I.G. 349.

29. C. & A. Act. This power has usually, if infrequently, been used where a strike is in progress or threatens. (See Appendix VIII.)

30. Ind. Arb. Act. See Appendix VIII.

31. I.C. & A. Acts. See Appendix VIII.

32. Ind. Arb. Act. See Appendix VIII.
APPENDIX IV

Commonwealth

The Terms of Preference Clauses and Attached Conditions in Awards and Agreements: 1954

1. Arbitration Commission Awards

(a) Preference Clauses:

Compulsory Unionism:

In the case of the sixteen awards, other than those restricted to the Australian Capital Territory, all were either consent awards or their compulsory unionism provisions had been the subject of consent. Of these compulsory unionism clauses, eight, all of which were in awards relating to journalists, stipulated simply that it should be "condition of employment" of a new employee that he should be or become a member of the union. Two clauses prescribed that all employees should be, or become within a specified time of their engagement, financial members of the union: one of these two, which was applicable only to Queensland, though the award itself was of wider application, also elaborated a procedure in regard to the dismissal of unfinancial unionists and to the position of members expelled for reasons other than a failure to pay dues. Four clauses, one of them in an award confined to the Northern Territory, provided in the first place that absolute preference in employment should be given to members of the union, and in the second place that all non-unionist employees should become members within a specified time. One clause, applicable only to New South Wales but in an award which also covered Victoria, Tasmania and Mount Gambier, provided that only members of the union could be employed by the employer. Finally, one award, restricted in application to the Northern Territory, included an unusual clause involving implicit compulsory unionism: its provisions stipulated that the employer should not pay to any non-unionist employee any of the benefits provided by three other specified clauses of the award - these dealt with payment, respectively, for public holidays, annual leave and sick leave.

The 23 compulsory unionism clauses in awards applicable solely to the A.C.T. followed a standard formula. In the first place it was prescribed that first preference, other things being equal, should be given to ex-servicemen with satisfactory records of service, and that second preference should be given, on the same terms, to members of the designated union - or in some cases to unionists generally. In the second place it was stipulated that any employee, other than an ex-serviceman, who was not a member of the relevant union must make application to join within a specified time of his engagement or of the date on which the award was published.

Absolute Preference:

Ten of these clauses stipulated simply, without qualification, that preference should be given to members,
usually financial members were specified, of the designated union: two of these clauses, though the awards as a whole had a more general coverage, applied only in regard to South Australia, and one other was applicable only in "States where an employee is required by law (Commonwealth or State) to join an organization of employees"! Three clauses prescribed that preference should be given to financial members of the union and to applicants who undertook to join the union within a specified period of their accepting employment. Two clauses, one of which was confined in application to Queensland though the award itself was more general, provided for preference to be given to unionists subject to suitability, and if no suitable unionist was available preference was to be given unconditionally to a non-unionist applicant who undertook to become a union member within a specified period after his engagement. Finally, one clause in this category stipulated unconditionally that preference was to be given to members of the union at the point of engagement and also laid down in detailed terms a procedure whereby unionists were to be given absolute preference in regard to the continuity of employment.  

Qualified Preference:  

Twentytwo of these clauses, including those of the four A.C.T. awards, were content with the requirement that preference in employment was to be given to unionists, other things being equal, as between members of the union and other persons offering or desiring service or employment at the same time. One clause repeated these provisions but modified them with the stipulation that such preference was not to operate against the members of other unions covered by the Commonwealth awards. Two clauses stipulated that preference, other things being equal, should be given to unionists in both the engagement and dismissal of employees. One clause specified merely that "preference" should be given to members of the union, but excluded this requirement so far as certain work, classified in the award, was concerned.  

(b) Conditions Attached to Preference Clauses:  

Open Union:  

Twentytwo of the open union requirements were in awards restricted to the A.C.T., and were part of the standard A.C.T. compulsory unionism clause, stipulating that in the event of the union's rules being altered to restrict in any way the admission of new members, the preference and compulsory unionism provisions were to cease to have effect. Of the fifteen open union requirements in general Commonwealth awards, ten accompanied compulsory unionism provisions. Twelve of these requirements stipulated briefly that the union should admit to membership any person who was eligible or was of good character. Two provided that the union might refuse applications for membership by eligible persons only for a good cause which was approved by the Board of Reference established under the award. One clause, more elaborate than the others, provided that any employee whose application for membership was rejected, or who had been expelled for a reason other than a failure to pay his
dues, should be deemed to be a unionist for the purposes of the award — including the preference clause.

Fee Restriction:

The one provision of this sort set out in detail the maximum fees and subscriptions which the union might charge and the way in which they should be paid, and stipulated that only so long as these terms were adhered to by the union would the preference provisions of the award be applicable.

Conscientious Objectors:

The compulsory unionism clauses of the six awards, all relating to journalists, that provided for the exemption of conscientious objectors from the terms of the clause, each prescribed that an employee might be exempted from joining the union if he made a statutory declaration that he had conscientious objections to doing so and forwarded a copy of the declaration to a specified official of the union: in one case it was added that in addition to fulfilling these requirements the conscientious objector should demonstrate to the satisfaction of the Industrial Registrar that his declaration was made in good faith.

(c) Anti-discrimination Clauses:

Ten of the anti-discrimination provisions prescribed that the employer should not discriminate against members of the union in regard to the engagement, promotion or dismissal of employees. Four provided that such discrimination should not be exercised in relation to the employment or dismissal of employees. Two prohibited discrimination as far as the employment only of workers was concerned. One limited its prohibition in this respect to the dismissal of employees. Eight consisted of a general prohibition against any discrimination whatsoever. One provision, applicable only to Victoria, though the award as a whole was of wider application, provided that employers should not discriminate in the engagement or dismissal of employees against members of the designated union, and that they should not discriminate in favour of the members of any union other than the designated organization. One provision simply indicated that as the employers had undertaken not to discriminate against the members of the union, 'no express stipulation for preference in favour of such members' was included in the award. Some of these clauses provided also that in the conduct of his business the employer should do nothing with a view to injuring the union, directly or indirectly.
2. Coal Industry Tribunal Awards

(a) Preference Clauses:

Compulsory Unionism:

Of the two compulsory unionism clauses, one, applicable to deputies and shotfirers in the Maitland and Newcastle coal fields of New South Wales, stipulated simply that all employees affected should become members of the union within a certain time after their engagement. The other, covering Queensland miners, repeated the standard clause inserted in awards made by the Industrial Court of that State, providing in the first place that preference of employment should be given to financial members of the union or to persons who gave an undertaking to become members within a specified time; and in the second place, that no non-unionist employee should be continued in employment unless he had applied for membership within a specified time after he had been engaged or after the award had come into effect.

Absolute Preference:

These four clauses prescribed absolute preference in identical terms, each providing simply that preference of employment should be given to applicants who were members of a union which was registered under the Commonwealth Conciliation and Arbitration Act.

Qualified Preference:

The one clause in this category was applicable only to Queensland though the award as a whole also covered engine drivers employed in the New South Wales, Victorian and Tasmanian coal industries: it prescribed that a unionist should be given preference subject to his possession of 'good fame and character' and the requisite qualifications.

(b) Conditions Attached to Preference Clauses:

The only condition explicitly attached in this way was one restricting fees. It accompanied a compulsory unionism clause, and stipulated that the entrance fee prescribed by the rules of the union at the date on which the award was made should not be increased without the consent of the Industrial Registrar of the Commonwealth Arbitration Court - a provision that was unique in its terms.

3. Public Service Arbitrator Determinations

Preference Clauses:

The two preference clauses both provided
for absolute preference in identical terms, stipulating that preference in employment should be given to financial members of the designated union and to persons undertaking to become members within a specified time after their accepting employment. Both these clauses were indeterminations covering employees of the Australian Broadcasting Commission.

4. Certified Agreements

(a) Preference Clauses:

Compulsory Unionism:

One compulsory unionism clause stipulated simply that all employees must be or become members of the union within a specified period. The clause was restricted in application to Queensland, but the agreement as a whole was more generally applicable. The other clause, in an agreement covering the Northern Territory, required the employer to notify the union before making any appointments, and to give absolute preference to members of the union; any employee not being, or becoming within a fortnight of his engagement, a member of the union was to be dismissed if the union requested this and a unionist was available and willing to do the work.

Absolute Preference:

The seven absolute preference clauses were all couched in the simplest terms, stipulating merely that preference of employment should be given to members of the designated union.

Qualified Preference:

The two qualified preference clauses provided for preference of employment to be given to members of the specified union conditional on competence.

(b) Conditions Attached to Preference Clauses:

Open Union:

The single open union requirement accompanied a compulsory unionism clause; it provided that any employee whose application for membership was rejected, or who had been expelled for a reason other than a failure to pay his dues, should be deemed to be a unionist for the purposes of the award.
(c) **Anti-Discrimination Clauses:**

The four anti-discrimination clauses prohibited discrimination against members of the relevant union, in general terms in two cases, and expressly in regard to engagement, promotion and dismissal in one case, and to engagement and retention in another case.

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5. **Industrial Agreements**

(a) **Preference Clauses:**

**Compulsory Unionism:**

Six of the thirteen compulsory unionism clauses prescribed in the first place that preference should be given to unionists (absolute preference in the case of five, and qualified preference in the other one) at the point of engagement; and stipulated in the second place that in the event of a non-unionist being employed he must join the union. Five clauses laid down union membership as a condition of employment for any new employee in the industry concerned. The remaining two compulsory unionism provisions stipulated that all existing and future employees should be or become members of the union on pain of dismissal.

**Absolute Preference:**

Ten of the eleven clauses stipulated merely that preference of employment should be given to members of the designated union, with the additional provision in one case that equal preference should be given to persons who undertook to join the union if engaged. The remaining clause in this category provided that absolute preference should be given to financial members of the union at the point of engagement, and also required the employer to give reasonable notice of his intention to engage staff, and to dismiss any employee who failed to join the union when asked to do so if there was a unionist available and willing to take his job.7

**Qualified Preference:**

Of the nine qualified preference clauses, five relied on the 'other things being equal' formula. Three, applicable to the continuity of employment as well as at the point of engagement, provided that no person other than a member of the union should be employed or continued in employment if there were unionists 'willing, ready and competent to perform the work to the satisfaction' of the employer. The remaining clause prescribed preference to unionist applicants at the point of engagement conditional on their having 'qualifications suitable' to the employer.
(b) **Conditions Attached to Preference Clauses:**

**Anti-Strike:**

The single provision laid down, in effect, that the terms of the preference clause were to cease to have effect in the event of a strike taking place without the authorization of the union's executive, unless the strike was 'of a minor nature'.

**Open Union:**

Five of the six provisions directed that the union should not refuse membership to eligible persons applying in accordance with the provisions of the compulsory unionism clause. In the case of the sixth, it was stipulated that the compulsory unionism clause was not to operate where an applicant was refused admission to the union.

**Fee Restriction:**

The single provision of this type directed that the compulsory unionism clause in the agreement was to cease operating if the event of the union's entrance fee or weekly subscription being increased above a specified minimum.

**Conscientious Objectors:**

These three provisions were each linked with compulsory unionism clauses. Two, one relating to metal workers and the other to motor workers, provided that an employee might be exempted from the compulsory unionism requirement if he had a *bona fide* conscientious objection to union membership in general, based on religious grounds, and if he filed a statutory declaration to this effect which included an undertaking to contribute to the funds of the union an amount equal to a member's subscription. The third agreement, covering bank officials, provided for the exemption of employees from the compulsory unionism requirement if they made a statutory declaration of their conscientious objections to becoming union members.

(c) **Anti-Discrimination Clauses:**

Of the five anti-discrimination clauses, two prohibited discrimination against unionists in any way; and the other three prohibited discrimination expressly in relation to the employment and dismissal of employees. In two cases, it was also added that the employer should do nothing in the conduct of his business with a view, directly or indirectly, injuring the union.

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**Notes:**

1. This award was made before the enactment of the N.S.W. compulsory unionism legislation; the provision seems to be directed at Qd.
where a State award covering the industry as a common rule was probably the 'law' referred to.

2. This clause, in the Clothing Trades Award, was declared invalid by the High Court (81 C.L.R. 537) in 1950. The clause has been included in the survey as it was not deleted even though the award had been under consideration between 1950 and 1954; it was consolidated in 1953. Its provisions would appear, however, to be legally unenforceable.

3. Three awards, each applicable to more than one State, but divided into separate sections each dealing with one State, included more than one anti-discrimination clause. In such cases only one clause has been attributed to the award for present purposes.

4. Seven of these, all relating to ships' officers or engineers, added that a State law or the determination of any State tribunal was invalid to the extent that it operated to compel employers to give preference of employment to members of the designated union or of any other union.

5. This is an unusual provision in that almost all preference clauses in Australian awards and agreements in 1954 provided that the preference prescribed should be given to the members of the union or unions specifically designated in the clause, or to 'the union', meaning the organization party to the award or agreement.

6. Of the six awards without specific preference clauses, four (three covering miners and one deputies) referred to the continuance of existing customs and practices, which probably included compulsory unionism in view of the nature of this industry. The other two covered colliery staff employees.

7. This clause and one other were the only clauses in all the agreements and awards examined that expressly referred to 'absolute' preference.

8. In one of these clauses it was added that members of the union should not be discriminated against because they were not members of another union.

9. The injunction that 'all workers shall work together in harmony' was added to one of these clauses.
The terms of more than 90% of the compulsory unionism clauses followed the same pattern, the only variation of any significance in this standard type being the extent to which union members were, in the first place, given absolute preference at the point of engagement. Most of the standard clauses opened with the stipulation that preference of employment should be given to financial members of the specified union or unions or to persons who gave an undertaking in writing to become financial members within a specified period after their engagement; in other words, preference was given not only to the unionist but equally to the non-unionist who was prepared to become a union member. Nearly as common, however, was the initial requirement that preference of employment should be given to financial union members and, if no such persons are available, only then should preference be given to non-members prepared to give an undertaking to take out a union ticket: in other words, the unionist was entitled to first preference, and the non-unionist willing to become a member was given second preference. The heart of this provision (the 'more or less standard clause of the Court on the question of preference') lay in two requirements which normally followed the strictly preferential provisions of the clause. The first requirement was that no employee who was not a financial member of the union should be continued in employment unless he had made application to become a financial member within a specified time after his engagement or after the award came into force; and the second was that no employee might be continued in employment for more than a specified period after the employer had been notified that the worker had ceased to be a financial member of the union. In most cases both these requirements were included, but in some, one or the other - usually the second - was omitted, without impairing the general effect of the clause. A machinery provision often included in the standard clause laid down that no application for membership would be considered to have been made until the appropriate fee had been tendered to the union.

The remainder of the compulsory unionism clauses were chiefly content with the brief stipulation that all employees covered by the award must be or become financial members of the specified union.
Absolute Preference:

Of the twenty-five clauses which prescribed absolute preference to unionists, twelve directed simply that preference was to be given to members, usually financial members, of the union. In four cases it was prescribed that preference was to be given to unionists or to persons who had applied for membership before their engagement. Nine clauses provided for equal preference to be given to unionists and to non-unionists who gave an undertaking to join the union within a certain time after their engagement. The provisions of these last nine clauses approach nearest to explicit compulsory unionism in that true preference to unionists, as such, is almost negligible; and it is likely that in the administration of such a clause, an undertaking by a non-unionist to join the union would tend to be interpreted as being more a pre-requisite of any employment at all rather than of preferential treatment. A number of these clauses directed that an employee who had failed to carry out such an undertaking was to be dismissed.

Qualified Preference:

Two of the five awards with qualified preference clauses, both applicable to the meat industry, prescribed preference to unionists subject to suitability and competence. The other three, covering seamen, prescribed preference subject to qualifications and records. Though on their face these clauses fall into the least effective preference category, there were additional provisions in each case which suggest that in practice they would operate far more effectively than appears from a strict interpretation of their terms. Each of the three seamen's awards provided for the engagement of men through the union office outside the normal picking-up times; and one also provided, in relation to a person who had been employed before the date of the award and had been refused admission to the union, that he might be continued in employment 'notwithstanding the fact that he is not a member of the union,' while another added that nothing in the clause should be construed to restrict the employers' right to appoint all employees from members of the union. One of the meat industry awards provided for a list of unemployed union members to be made available to the employer and kept up to date by the union; and the other provided for compulsory unionism in regard to non-apprenticed juniors, as well as requiring the union to admit to membership all apprentices on completion of their term and any person employed in the industry at the date of the award.

(b) Conditions Attached to Preference Provisions:

Anti-Strike:

Three of the six anti-strike provisions laid down that the preference clause should remain in force only so long as the union submitted all disputes to the Court and refrained
from taking part in a strike. Two provided that in the event of a strike the employers might apply to the Court for the abolition of the preference provisions. One anti-strike provision was applicable only in the case of a strike which was not sanctioned by the executive of the union, in which case, unless the stoppage was of a 'minor nature', the preference clause was to cease to have effect in the area affected.

Open Union:

Sixteen of these provisions were attached to compulsory unionism clauses; four to absolute preference clauses; and two to qualified preference clauses. Twelve of them bound the union in regard to applicants for membership generally, eleven stipulating briefly that the union was to admit to membership any employee making application in accordance with the terms of the award's preference clause, and one provided that any person whose application for membership had been refused, or who had been expelled for a reason other than failure to pay dues, was to be considered as a member of the union for the purposes of the award. The other ten open union requirements were applicable only to a specified group of persons, in most cases non-unionist employees employed at the time compulsory unionism was inserted in the award. It was provided either that the union was bound to admit such persons on application, or that if their applications for membership were refused by the union they might be continued in employment notwithstanding the provisions of the award - one stipulating that the preference clause should cease to apply in the event of such a refusal.

Fee Restriction:

In three awards it was provided that the preference clause should operate only so long as the union's entrance fee did not exceed 5s.

(c) Anti-Discrimination Clauses:

One of the two clauses directed that employers should not discriminate in any way, either at the point of engagement or during the course of employment, against members of the specified union or any other members of a registered union. The other took the form of an undertaking by the employers' organization that its members would not discriminate against members of the union either in engagement or during employment (the union gave a corresponding undertaking not to object to the employment of non-unionists).

2. Industrial Agreements

(a) Preference Clauses:

Compulsory Unionism:

All but a few of these clauses followed
one or other of the variations of the standard compulsory unionism clause found in awards, and described above. The remainder mainly directed merely that all employees should be or become members of the specified union.

Absolute Preference:

Eleven of the fourteen clauses prescribed simply without qualification, that preference should be given to financial members of the union. The remaining three repeated these terms but added that equal preference should be given to applicants who undertook to join the union within a specified time of their engagement.

Qualified Preference:

Each of the three clauses provided that preference should be given to unionists with the necessary qualifications and ability to do the work involved. Two of these clauses showed signs of a stronger brand of preference by virtue of additional provisions which suggested that labour was normally to have been recruited through the union.

(b) Conditions Attached to Preference Clauses:

Anti-Strike:

The only anti-strike provision provided that if a strike affecting the industry occurred, the employers might apply to the Industrial Court for the abolition of preference, either wholly or partially.

Open Union:

The two open union requirements covered clerical workers employed by unions; they provided that the union should admit to membership any employee making an application in accordance with the terms of the agreement.

Notes:

1. The great bulk of preference clauses of all types in Queensland awards and industrial agreements were expressly applicable to unionists who were financial members of their union. Preference provisions in these terms may not be applied in favour of unfinancial union members: (1946) 31 Q.I.G. 115. The question of the financial standing of a member involves not only the payment of all normal fees and subscriptions but also the payment of fines imposed by the union: see (1946) 161 Qd.G.G. 717. Under the standard compulsory unionism provisions, the onus is on the union to notify the employer that an employee has ceased to be a financial member or has ceased to be a member at
Moreover, notification of this kind must be explicit and unambiguous in order to be sufficient: (1952) 46 Q.J.R. 70. On the other hand, where financial union membership is a condition of employment, the employer is under an obligation not only to ask applicants for employment whether they are financial members but also to ask them to produce evidence to this effect: (1935) 21 Q.I.G. 30.

2. A number of the clauses classified as prescribing compulsory unionism did so only in regard to permanent employees (i.e., engaged on a weekly basis), and prescribed absolute preference in relation to casual workers.

3. A few of these clauses are restricted in application to the main towns and cities in the area covered.


5. One of the clauses classified as absolute preference, prescribed such preference only in relation to permanent employees, but prescribed compulsory unionism for casuals.

6. It has been held that the employer is bound to carry out the 'spirit' of an absolute preference clause by taking all reasonable steps, before filling a vacancy, to ascertain whether a unionist is available before employing a non-unionist: (1919) 13 Q.J.P.R. 90.
APPENDIX VI

Western Australia

The Terms of Preference Clauses and Attached Provisions in Awards and Agreements 1954

1. Arbitration Court Awards

(a) Preference Clauses:

Compulsory Unionism:

Thirteen of these clauses stipulated more or less briefly that all workers covered by the award were to be or become members of the union. Twelve prescribed in the first place that preference, qualified in ten cases and absolute in two, should be given to unionists at the point of engagement; and in the second place that any non-unionists who might be engaged or employed were to join the specified union within a certain period of their engagement. Two clauses provided in the first place that no discrimination should be exercised by employers in the engagement of employees, and in the second place that all non-unionist employees were to join the union within a specified time of their engagement. Three clauses provided for unqualified preference to be given to members of the union at the point of engagement, and for qualified preference, conditional on competence, to be given to them in relation to the continuance in employment of a non-unionist: they provided further that it should not be a breach of the clause for an employer to employ a non-unionist if the latter applied to join the union, within a specified time after his engagement. To this extent, these three clauses were identical to those which fall within the 'qualified preference' category below, but they were converted into compulsory unionism requirements by virtue of an additional stipulation that the employment of a non-unionist, who was in the employment of the employer at the date of the award, was to cease not later than 21 days from that date unless in the meantime the employee had become a union member.

Absolute Preference:

Nineteen of these clauses stipulated simply that preference of employment should be given to members of the designated union or, in four cases, to members of any other recognized union provided that such members joined the designated union on the expiry of their old ticket. Five clauses prescribed that preference of employment should be given to financial members of the specified union at the point of engagement, and further that the employer should not continue to employ a non-unionist if a unionist were available and produced reasonable proof of his experience in the class of work being done. One clause directed that qualified preference, conditional on competence and qualifications, should be given to unionists,
but its inclusion in this category is justified by the addition of a provision stipulating that 'employees shall be selected from the lists supplied by the Unions that are parties to this Award.'

Qualified Preference:

Six of these clauses relied on the 'other things being equal' formula. Seventeen provided that equal preference of employment should be given to members of the designated union, to members of any other registered union party to an award or industrial agreement in the same industry, and to persons who gave the employer an undertaking to join a relevant union within a specified time after accepting employment; such preference was to be given only provided that there were members of a relevant union, or intending members, applying for employment at the same time as, and equally qualified with other workers offering their services for the same employment. The remaining five clauses were framed in terms which at first sight appear to have provided at least for absolute preference, if not for compulsory unionism. However, as interpreted by the Conciliation Commissioner these clauses fall into the qualified preference category. They provided in the first place that preference, without qualification, should be given to unionists at the point of engagement and, further, that an employer who employed a non-unionist would commit a breach of the award if during such employment there were unionists competent to do the work and available and ready to do it: an additional provision in each case stipulated that, notwithstanding the above requirements, it would not be a breach of the clause for the employer to employ a non-unionist if the latter, within 14 days of the beginning of his employment, applied to join the union and completed such application on its acceptance by the union.4

Preference to Employers:

These two clauses were unique among Australian awards and agreements in force at that time. Both provisions, accompanying compulsory unionism clauses, were drafted in similar terms. They prescribed that preference of service was to be given to members of the employers' organization by members of the workers' union, a member of the union being held guilty of a breach of the award if he was employed by an employer not a member of the organization at a time when employers who were members had labour vacancies.5

(b) Conditions Attached to Preference Clauses:

Anti-Strike:

Two of the twenty-seven anti-strike provisions were attached to compulsory unionism clauses; three to absolute preference clauses; and twenty-two to qualified preference clauses. Seventeen provided that in the event of a strike in the industry, or
any restriction of output by a section of the workers acting in concert, the operation of the preference clause would automatically cease to apply in relation to the union or unions involved. Seven provisions stipulated that if the union or a majority of its members were concerned in anything in the nature of a strike, then the preference clause would cease to have effect. The corresponding provisions in the remaining three cases were more limited: they laid down that the benefit of the preference clause should not apply to any worker who had taken part in a strike or stop-work meeting during the currency of the award.

Open Union:

Five compulsory unionism clauses and seventeen qualified preference clauses were accompanied by open union requirements. Twenty of these provided that the preference clause should operate only if the rules of the union concerned permitted any worker of good character, and with suitable qualifications where necessary, to become a member on payment of the subscription and entrance fee laid down by the rules. Two prescribed that the operation of the preference clause was to cease if the union in any way obstructed the admission to membership of a bona fide worker.

Conscientious Objectors:

The single provision of this sort accompanied a compulsory unionism clause. It provided that no worker with any 'religious or other scruples' about union membership should be compelled to join the union, nor was it obligatory on the employer in such a case to dismiss the employee concerned. If the union was dissatisfied with a conscientious objector's reasons for not joining, it could refer the matter for determination by the Board of Reference set up under the Award.

(c) Anti-Discrimination Clauses:

Ten of these clauses prescribed that no employer should dismiss a worker, 'injure him in his employment, or alter his position to his prejudice,' by reason merely of the fact that the worker was a member of the union or was entitled to the benefits of the award. Three clauses prohibited any discrimination by an employer against unionists in the employment and dismissal of employees, one of these provisions adding a prohibition against any employer doing anything in the conduct of his business with a view to injuring the union. The remaining clause prohibited discrimination against unionists, in relation to employment, where the available members of the union were capable of doing the work concerned and willing to accept employment.
2. **W.A. Coal Industry Tribunal Awards**

(a) **Preference Clauses:**

The Tribunal’s four awards each included compulsory unionism clauses framed in almost identical terms. They directed that all workers engaged by the employer should apply for membership of the designated union within a certain time of their engagement.

(b) **Conditions Attached to Preference Provisions:**

In the case of each of these four awards an identical open union requirement was attached to the compulsory unionism clause. The requirement stipulated that the union was to accept as members all employees who applied, provided that they were persons of good character and tendered the entrance fees and subscriptions prescribed by the union’s rules.

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3. **Railways Classification Board Awards**

(a) **Preference Clauses:**

Both of the Board’s two awards included clauses prescribing absolute preference in identical terms: they stipulated simply that preference in employment should be given to unionists.

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4. **Industrial Agreements**

(a) **Preference Clauses:**

**Compulsory Unionism:**

Twentyfive of these clauses provided, more or less briefly, that all employees covered by the agreement were to be or become members of the relevant union. Ten prescribed, in the first place, that preference – absolute in nine cases and qualified in one – should be given to members of the designated union, or to unionists generally in the case of four clauses; and, in the second place, that any non-unionists employed should become members of the specified union within a given time. Two clauses began by prohibiting any discrimination against members of the union in regard to employment, and then directed that any non-unionists employed were to become members of the union within a specified time of their engagement.

**Absolute Preference:**

Twenty-nine of these clauses prescribed
briefly, and without other qualification, that preference in employment was to be given to members of the designated union - in most cases financial members only were specified. The other three clauses directed that preference should be given to members of the union provided they were competent to do the relevant work: the inclusion of these clauses in the category of absolute preference is justified by the additional provisions indicating that the bulk of labour engaged by the employer was to be obtained through the union office.

**Qualified Preference:**

Five of the eleven clauses provided for preference to be given to members of the designated union conditional on either 'other things being equal' or other qualifications being equal. Four prescribed equal preference to members of the designated union, members of any other registered union party to an award or industrial agreement in the same industry, and to persons who undertook to join such a union within a specified time after accepting employment, provided that persons entitled to preference should be equally qualified with others offering their services for the same work at the same time. One clause directed (in the same terms as those in awards which have been discussed in detail above) that members of the designated union should be entitled to preference at the point of engagement and, given equal competence to do the work, in relation to the job of a non-unionist, provided that an employer might employ a non-unionist, and continue to employ him, if the non-unionist had applied within a specified period to join the union and had completed such application on its acceptance. Finally, one clause made provision for preference by implication; it laid down that the employer was to give the union one day's notice of any intention to engage new labour.

**(b) Conditions Attached to Preference Clauses:**

**Anti-Strike:**

Three of these provisions were attached to compulsory unionism clauses, and four to qualified preference clauses. Four of them stipulated that in the event of a strike in the industry concerned, or a restriction of output by workers in any section of it, the preference clause would cease to operate in relation to the union or unions concerned. Three provided that the preference provisions would cease to apply in the event of the union, or a majority of its members, taking part in anything in the nature of a strike.

**Open Union:**

Three open union requirements were attached to compulsory unionism clauses and four to qualified preference clauses.
Four requirements stipulated that the preference provisions in favour of unionists should operate only if the union's rules permitted the admission to membership of any worker of good character, with the necessary qualification if any, on payment of the subscription and entrance fee prescribed by the rules. In one case the operation of the preference clause was conditional on the union not refusing to accept as a member any worker, eligible under the rules, who applied for membership in accordance with the rules. The remaining two provisions simply noted that the union had guaranteed to admit to membership any worker employed by the employers concerned.

Conscientious Objectors:

These two provisions, both in agreements covering journalists, provided that an employee with 'conscientious objections' might be exempted from the agreement's compulsory unionism clause if he made a statutory declaration regarding his objections and forwarded it to the union secretary.

(c) Anti-Discrimination Clauses:

Two of the four clauses prohibited, in general terms, any discrimination against members of the union, one specifying unionists with good conduct records and qualified to do the work involved, the stipulating that such discrimination should not be 'without just cause' and specifying unionists with good conduct records who agreed to work according to the terms of the agreement (the latter added that the discrimination referred to 'was unjust discrimination in favour of persons not members of the union, not discrimination between members of the union'). One provision prohibited discrimination against members of the union in the engagement of employees, while the remaining provision applied the prohibition to both the employment and dismissal of unionists, and added that in the conduct of their business the employers should not do anything with a view to injuring the union.

Notes:

1. One clause included in this category prescribed compulsory unionism in regard to one group of employees and absolute preference in regard to others. The clause is not included in any other category.
2. See note 4 below.
3. The Court is reluctant to grant an exclusive right of preference to the members of a single union in an industry with which other unions are connected: (1940) 20 W.A.I.G. 462. Thus a comparatively high proportion of the preference clauses in Western Australian awards and industrial agreements are applicable not only to the members of designated unions but also to the members
of other registered unions, either in general or in regard to those connected with the industry. Nevertheless, on at least one occasion a preference clause applicable to the members of a number of unions concerned with the industry was amended to prescribe membership of the union that had obtained the award as an obligation on all employees irrespective of their former membership: (1953) 33 W.A.I.G. 212. The Court took this action in view of continual disputes over the question of union membership.

4. The Conciliation Commissioner held that, under a clause of this type, if a non-unionist and a unionist applied for employment at the same time, the employer was free to engage the non-unionist, a breach of the clause arose only if a competent unionist applied for the job at the end of the specified period - usually 14 days - and the non-unionist employee had failed in the meantime to make application to join the union. The Commissioner ruled, therefore, that the unionist could, in the last analysis, claim preferential treatment only where he was equally competent with the non-unionist employee, and the non-unionist had failed either to apply for union membership within the stipulated period or to complete an accepted application. There was thus no binding obligation on the employer to give preference at the point of engagement, on the Commissioner's interpretation. He ruled also that the employer was under no obligation to ensure that a non-unionist employee had applied for membership of the union; nor was he obliged to find out whether competent unionists were available for employment: (1953) 33 W.A.I.G. 396. Earlier, an industrial magistrate had held that, despite the absence of an express requirement to this effect in an absolute preference clause, it was obligatory for the employer to notify the union when labour of a specific kind was required: (1940) 19 W.A.I.G. 537.


6. Two of the clauses in this category prescribed compulsory unionism in regard to one group of employees and absolute preference in regard to others. The clause is not included in any other category above.

7. See note 4 above.
APPENDIX VII

South Australia

The Terms of Preference Clauses
in Industrial Agreements

Preference Clauses:

All four of these clauses prescribed compulsory unionism. Three directed simply that employees covered by the agreement should be or become members of the union - financial membership was specified in two cases - within a certain period. One clause merely provided that employees who were not financial members of the union concerned would not be entitled to the benefits of the agreement. No conditions were attached to any of these clauses.

Anti-Discrimination Clause:

The one clause of this type prohibited any discrimination against members of the union by the employers in the engagement and dismissal of employees, and stipulated that in the conduct of their business the employers should do nothing with a view to injuring the union, directly or indirectly. This provision also enjoined that 'all workers shall work together in harmony.'
APPENDIX VIII

Australian Statutory Provisions Relating to
Union Internal Affairs

Categories:

1. Constitution and Rules: General
2. Political Activities
3. Admission to Union Membership
4. Resignation from Union Membership
5. Enforcement of Union Rules: General
6. Expulsion from Union Membership
7. Union Elections
8. Fees, Dues, Fines and Levies
9. Ballots of Union Opinion
10. Returns and Records

Explanation:

The categories into which the statutory provisions outlined below are grouped are roughly divisible into those connected with rule-making and those connected with rule-enforcing. The division, however, is not strict enough to enable the categories to be placed in a corresponding order: to do this would mean, for example, that the provisions concerning union elections would have to be split into two separate parts. While this procedure might make for a more systematic arrangement of the material, it would certainly render it more difficult to obtain a clear picture of the statutory regulation of union elections, which is here considered the more important. It may be indicated, however, that categories 1-4, 9 and 10 relate solely to rule-making in the sense that the provisions in them either specify the sorts of things union rules must or may provide for, or lay down the actual terms of union rules, or direct that certain things connected with the internal management of unions must be done. On the other hand, categories 5 and 8 are concerned exclusively with the enforcement of union rules. Categories 6 and 7 contain elements of both rule-making and rule-enforcement. The order of the categories thus represents a compromise between the divisions of rule-making and rule-enforcement and an estimation of the relative importance of the different categories.

The terms 'trade union' and 'industrial union' are used as defined in the text, and 'industrial union' being a union registered under an industrial arbitration Act and a 'trade union' being one registered under a trade union Act or registered under no Act. Normally, however, apart from those affecting industrial unions, the statutory provisions outlined below relate only to registered trade unions, and where they apply also to unregistered trade unions this will be specified. In most cases trade unions' internal affairs are dealt with in the appropriate trade union Act, and industrial unions' in the relevant industrial arbitration Act. The exceptions, mainly registered trade unions affected by the N.S.W. Industrial Arbitration Act, are indicated where necessary.

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1. Constitution and Rules: General

TRADE UNIONS

N.S.W. 1. In order to qualify for registration an applicant trade union must make provision in its rules in relation to a number of specified matters, which are as follows: the name and meeting-place of the trade union; the whole of its objects; the purposes for which its funds may be expended and the conditions under which any member may become entitled to any benefit provided; the fines and forfeitures which may be imposed on members; the manner of making, altering, amending and rescinding rules; the investment of funds and a periodic audit of accounts; the inspection of the books and the list of members by anyone with an interest in the union's funds; the appointment and removal of a general committee of management and of officers; and the manner of dissolving the trade union. The conditions which must be included in rules dealing with political expenditure are laid down in detail; they are set out below under the heading of political activities. In addition, a registered union's rules may provide for any other 'lawful object or purpose', but it is expressly laid down that no rule may be registered which is contrary to any term of provision of an award of the Industrial Commission.1

2. The Industrial Commission has a limited power to alter or annul a registered trade union's rules; its jurisdiction in this respect is limited to rules relating to the admission of members.2

3. The Registrar may cancel the registration of a trade union on proof that such registration has become void owing to one of the union's purposes, as embodied in the rules, being unlawful.3

Victoria 1. A registered trade union's rules must provide for the same matters as those enumerated in relation to N.S.W. (para. 1).

2. The registration of a trade union may be cancelled on the ground set out in relation to N.S.W. (para. 2).

Q'LD. 1. Registered trade unions' rules must provide for the same matters as those specified above in relation to N.S.W. (para. 1), and must also require the keeping of separate accounts for particular funds and for the expenses of management. In addition, the rules of any trade union, whether registered or not, may make provision for 'any lawful objects'.

2. No amendment to any of the rules of a registered trade union is valid until registered by the Registrar.

3. The Registrar may cancel the registration of a trade union where he is satisfied that its constitution has been altered so that its 'principal objects' are no longer 'statutory objects', or where the principal objects for which the union is 'actually being carried on' are not statutory objects.
S.A. 1. Registered trade unions' rules must provide for the same matters as those enumerated above in relation to N.S.W. (para. 1), except that there is no requirement that such rules should specify the manner of the union's dissolution.

W.A. 1. A registered trade union's rules must provide for the same matters as those enumerated in relation to N.S.W. (para. 1), and must in addition set out the terms of admission of members, the consequences of a failure by a member to pay a subscription or fine, the manner of holding meetings and the right of voting, and provide for an annual return to be made to the Registrar of the union's accounts and list of members.

2. No amendment to any of the rules of a registered trade union is valid until registered by the Registrar, who is prohibited from registering an amendment that is in any respect illegal or 'contrary to public policy'.

3. The registration of a trade union may be cancelled on the ground set out in relation to N.S.W. (para. 3).

Tasmania 1. A registered trade union's rules must provide for the same matters as those enumerated in relation to N.S.W. (para. 1).

2. The registration of a trade union may be cancelled on the ground set out in relation to N.S.W. (para. 3).

**INDUSTRIAL UNIONS**

C'wealth 1. As a condition of its registration, the rules of an applicant union must specify the purposes for which it is formed and the industry covered, and must also provide for certain enumerated matters: conditions of eligibility for membership; the election of officers, committees and conferences; the powers and duties of officers and committees of management; the manner of removal of officers and members of committees; the control of committees of management by members; the manner of calling meetings; the times when and terms on which persons may become or cease to be members; the method of executing industrial agreements and other documents; the power of submitting industrial disputes to conciliation and arbitration; the way in which property is to be controlled and funds invested; the conditions on which funds are to be disbursed; the yearly audit of accounts; the office of the union and its branches; the alteration of the rules. The Act also lays down in detail the provision that must be made in relation to the election of officers; these are set out below under the heading of union elections. Apart from these specified matters, a union's rules may provide for any other matter 'not contrary to law'; and it is specified that they may debar from holding or continuing in, or nominating for, a union office any person who is a member of an association advocating the violent overthrow of established government, or who has advocated such a policy during the previous twelve months. It is stipulated that no rule shall be contrary to law, or to an order or award; tyrannical or oppressive; prevent members observing the law
or an order or award; or impose unreasonable conditions upon the membership of any member or on any applicant for membership.
2. Any change in the name of a registered union, or an alteration to its rules setting out the industry with which the union is connected and the conditions of eligibility for membership, can have effect only if the Industrial Registrar, on application to him, consents to the change or alteration. Further, no alteration of any of the rules of a registered union can have effect until the Industrial Registrar has certified that, in his opinion, the alteration is not inconsistent with any statute, the regulations made under the C. & A. Act, or with any Federal award or order.
3. The Industrial Court is empowered to disallow or to direct the alteration of any rule of a registered union on any one of the following grounds: that it is contrary to law or to an order or award made by a Federal authority; that it is tyrannical and oppressive; that it prevents or hinders members from observing the law or the provisions of an order or award; or that it imposes unreasonable conditions upon the membership of any member or upon any applicant for membership.
4. The Industrial Court is empowered to cancel the registration of a union for reasons relating to the union's rules: These reasons are that the rules do not comply with the conditions relating to registration, have not bona fide been observed, are contrary to the terms of an order or award, do not (or their administration does not) provide reasonable facilities for the admission of new members or impose unreasonable conditions on the continuance of their membership, or are in any way 'tyrannical or oppressive'. Where the ground for deregistration is a defect in the union's rules, the Court may direct their alteration to remedy the defect, making deregistration conditional on a failure to carry out such an alteration within a specified time.

N.S.W. 1. Provisions applicable as in the case of registered trade unions. But, in addition, the Industrial Commission or the Industrial Registrar may disallow, or direct the alteration of any proposed amendment to the rules of an industrial union - a power which will be exercised where the amendment is tyrannical, oppressive, contrary to law or to 'the public interest', or would impose unreasonable conditions on any applicant for membership.
2. The registration of an industrial union may be cancelled by the Industrial Commission for 'any reasons which appear to it to be good', which has been held to cover circumstances where a union's rules are inconsistent with the Act.

Q'ld. 1. With its application for registration as an industrial union, a union must include copies of its rules and must indicate rules setting out the whole of its objects, the conditions on which persons may become and continue to be members, the
fines and forfeitures to which members are liable, and the manner of making, amending and rescinding rules. Registration may be refused if the rules of an applicant union or their administration fail to provide reasonable facilities for the admission of new members, or if they impose unreasonable conditions on the continuance of new members' membership, or if the rules are in any other way tyrannical or oppressive.

2. No alteration to the rules of a registered union is valid until approved and registered by the Industrial Registrar, who must first ascertain that the alteration does not conflict with the provisions of the Act or with any order or award made under it.

3. The Industrial Court may deregister an industrial union if it appears that the union's rules or their administration do not provide reasonable facilities for the admission of new members or impose unreasonable conditions on the continuance of their membership, or are in any way tyrannical or oppressive.

S.A.

1. As a condition of its registration, the rules of an applicant union must make provision for a number of specified matters similar to those set out above in relation to registered trade unions in S.A.; in addition, such rules must define the powers and duties of the union's committee of management and officers, and the terms on which persons may become and cease to be members. They may provide for any other matters 'not contrary to law.'

2. No alteration to a registered union's rules is valid until registered by the Industrial Registrar who must first ensure that all the statutory requirements have been complied with, and need not register an alteration if he considers that it would 'prejudicially affect' the members of the applicant union or of any other union registered under the Act.

3. The Industrial Court may deregister a union for reasons connected with union rules and their administration which are set out above in relation to Queensland (para. 3); in addition, rules failing to conform with the prescribed conditions of the Act is specified in S.A. as a ground for deregistration.

W.A.

1. As a condition of registration, a union's rules must provide for a number of specified matters similar to those set out above in relation to registered trade unions in W.A. In addition, such rules must define the powers and duties of the union's committee of management and officers, and the terms on which persons may become and cease to be members; and they must expressly provide that no person who is not a worker shall be a member, that the union's property and funds shall not be used in connection with a strike within the State, and that all industrial disputes involving the union shall be referred, unless settled by mutual consent, for settlement in accordance with the terms of the Act. A registered union's rules must also fulfil certain requirements relating to union elections as laid down in detail.
by the Act; these requirements are set out below under the heading of union elections. The rules may also provide for any other matters 'not inconsistent' with the Act or otherwise 'contrary to law'.

2. No alteration to a registered union's rules is valid until registered by the Industrial Registrar, who must first ensure that it does not conflict with the provisions of the Act. But in the case of an alteration to the union's 'constitution' (i.e. as defined by the Act, the rules setting out qualifications for membership, the union's purposes, and the area and industry over which it is authorized to operate), the approval of the President of the Arbitration Court is necessary.

3. The Arbitration Court may disallow or direct the alteration of any rule of a registered union on the same grounds as those accompanying the corresponding power in the Commonwealth, which are set out above in para. 3 (C'wealth).

4. The Arbitration Court may deregister a union for reasons identical to those operating in S.A. and referred to in para. 3 above (S.A.)

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2. Political Activities

TRADE UNIONS

N.S.W. A registered trade union may expend funds for the 'furtherance of political objects' subject to certain conditions which must be set out in the union's rules; that political payments are to be made from a separate fund established for this purpose; that contribution to such a fund is not a condition of admission to membership; and that a member who does not contribute to the political fund is not to be excluded, for this reason, from any union benefits or placed at any disadvantage as compared with other members.

Victoria No provisions.

Q'LD. Any trade union, whether registered or not, is empowered to apply its funds to any lawful objects authorized by its rules, the statutory definition expressly including political matters.

S.A. )
W.A. ) No provisions.
Tasmania)

INDUSTRIAL UNIONS

C'wealth No provisions

N.S.W. As for registered trade unions.
Q'ld As for trade unions in general.

S.A. No provisions.

W.A. No provisions.

3. Admission to Union Membership

TRADE UNIONS

N.S.W. 1. Qualified applicants, unless of general bad character, are entitled to membership and to remain members so long as they comply with union rules.  
2. The Industrial Commission may decide any dispute as to an applicant's character and the reasonableness of any admission fee or of any fine or levy related to admission; and may direct the alteration or cancellation of relevant rules.

Victoria) Q'ld. ) No provisions.
S.A. )

W.A. A registered trade union must set out the terms of admission in its rules.

Tasmania No provisions.

INDUSTRIAL UNIONS

C'wealth 1. Rules must set out the terms of admission.
2. A qualified applicant, unless of 'general bad character' or a member of an unlawful association (Crimes Act, s. 30A), must be admitted subject to the proper payments and retain his membership so long as he complies with the union's rules. The Industrial Court may decide any dispute on this question, regardless of the union's rules.
3. The Court may disallow or direct the alteration of any rule imposing 'unreasonable conditions' on any applicant for membership.
4. The Court may deregister a union the rules or the administration of which do not provide 'reasonable facilities' for the admission of new members or impose 'unreasonable conditions' on the continuation of their membership.

N.S.W. 1. As for registered trade unions.
2. Accompanying the 1953 compulsory union legislation is the requirement that any worker subject to the legislation is entitled to membership, subject only to his applying in accordance with union rules, and any inconsistent union rules are null and void: refusal to admit an applicant within a specified period is subject to a fine of £100 against the union.
Q'LD. 1. Rules must set out the terms of admission.
2. A condition of registration that the rules of an applicant union, and their administration, provide reasonable facilities for the admission of new members and do not impose unreasonable conditions on the continuance of their membership.

S.A. 1. Rules must set out the terms of admission.
2. The Industrial Court may deregister a union if its rules or their administration fail to provide reasonable facilities for the admission of new members.

W.A. 1. Rules must set out the terms of admission.
2. The Arbitration Court may disallow or direct the alteration of a union rule imposing unreasonable conditions on any applicant for membership.
3. Deregistration power as in the case of S.A. (para. 2).

4. Resignation from Union Membership

TRADE UNIONS

No trade union Act makes any provision relating to resignation from the membership of a registered trade union.

INDUSTRIAL UNIONS

Q'wealth 1. Rules must set out the terms of resignation.
2. The Act also prescribes that a member may resign if he accepts employment in an industry not covered by his union, or if he gives 3 months' notice of his resignation and pays all dues owing up to the date of resignation.

N.S.W. No provisions.

Q'LD.) No provisions.

S.A. Rules must set out the terms of resignation.

W.A. 1. Rules must set out the terms of resignation.
2. No member can resign without giving 3 months' notice (or paying 3 months' subscription in lieu), and without paying all fees, fines, levies and other dues payable under the rules.

5. Enforcement of Union Rules: General

TRADE UNIONS

N.S.W. 1. Unregistered trade unions: Nothing in the Trade Union Act
is to be taken as empowering the ordinary courts to enter- 
tain proceedings instituted for the purpose of 'directly 
forcing or recovering damages for' breach of certain agree- 
ments between union members relating to the internal management 
of unions.27

2. Registered trade unions; the Industrial Commission may 
directly enforce, or recover damages for breach of the consti- 
tion and rules of a trade union and certain agreements outside 
the jurisdiction of the ordinary courts; but such rules and 
agreements must have been filed with the Commission.28

Victoria) Nothing in the relevant Act is to be taken as enabling the 
Q'ld. ) ordinary courts to entertain proceedings instituted for the 
S.A. ) purpose of 'directly enforcing or recovering damages for'
W.A. ) breach of certain agreements between union members relating to 
Tasmania) the internal management of both registered and unregistered 
trade unions.29

INDUSTRIAL UNIONS

C'wealth 1. Every dispute between a union and any of its members must 
be decided in accordance with the union's rules.30
2. The Industrial Court may make an order, after hearing the 
parties to the dispute, directing any person under an oblig­ 
aton to do so to perform or observe any of a union's rules.31
3. The Industrial Court may deregister a union if it considers 
that its rules have not bona fide been observed.32

N.S.W. As in relation to registered trade unions.

Q'ld. The only express statutory power relating to the enforcement 
of industrial union's rules is connected with rules dealing 
with fines, fees, dues and levies, which are recoverable in a 
magistrate's court: see section 6 below.

S.A. 1. Every dispute between a registered union and any members 
must be decided in accordance with the union's rules.33
2. The Industrial Court may deregister a union if its rules 
have not been bona fide observed.

W.A. Provisions identical to those operating in the case of the 
Commonwealth.

6. Expulsion from Union Membership

The New South Wales Industrial Arbitration Act is the only 
measure that includes provisions expressly related to the expul- 
sion of union members. These provisions, enacted in 1953 in 
company with the compulsory unionism provisions of the Act, are
applicable only to industrial unions registered under the Act.

No member of an industrial union may be expelled except in accordance with certain conditions. The member must be given 28 days' notice of the intention to expel; if within this period he applies to the Industrial Commission for an order restraining his expulsion, the union is debarred from taking further steps in the matter pending the Commission's decision. After an inquiry into the reasons for the proposed expulsion, the Commission may either grant leave to the union to expel the member or may issue an order restraining such action. An expulsion carried out other than in accordance with these provisions renders the union liable to a fine of up to £100.

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7. Union Elections

TRADE UNIONS

N.S.W. Provisions similar to those set out in relation to Commonwealth industrial unions, in paras. 2 & 3 below, in all important respects except that an application for a conducted election can be made only by the union's committee of management in N.S.W.

Victoria)
Q'LD. ) No provisions.
S.A. )
W.A. )
Tasmania)

INDUSTRIAL UNIONS

C'wealth 1. The rules of all registered unions and their branches must prescribe that elections for union offices are to be by secret ballot and must also make provision for absent voting, the manner in which candidates are nominated, the appointment and duties of returning officers and scrutineers representing candidates, and the conduct and declaration of the ballot; rules may further provide for compulsory voting, and are to be framed so as to ensure, as far as practicable, the elimination of irregularities.

2. Any member, or a person who has been a member within the preceding 12 months, may apply to the Industrial Registrar for an inquiry by the Industrial Court into alleged irregularities in elections held by his union. If the matter is referred to the Court by the Registrar (his rejection of such an application is not subject to appeal) and the Court finds that irregularities have occurred, it may declare the election void, declare a person other than that purporting to be elected as having been elected, direct that a new election be held or that any step connected with the election be taken again (in accordance either
with the union's rules as they stand or with the rules as varied or added to by the Court so far as such action is necessary to rectify procedural defects. In the case of a new election or the retaking of any steps, the Court may, notwithstanding anything in the union's rules, direct the taking of such safeguards as it considers necessary, and may appoint a person to act as a returning officer in conjunction with the union returning officer. 34

3. On the request of the committee of management of a union (or branch of a union) or a specified number of members, the Industrial Registrar may make arrangements to have a union election conducted by a Commonwealth official; and the person conducting such an election is empowered, notwithstanding the union's rules, to take any action and give any directions he considers necessary to ensure that no irregularities occur in connection with the election or to remedy any procedural defects in the union's rules. 35

N.S.W. Provisions similar to those set out in paras. 2 & 3 above, in relation to the Commonwealth, in all important respects except that the application for a conducted election (para. 3) can be made only by the union's committee of management in N.S.W.

Q'ld. No provisions.

S.A. Provisions identical to those set out in relation to the Commonwealth in paras. 1, 2 and 3 above, with the exception that there is a right of appeal to the Arbitration Court from the Industrial Registrar's decision on an application for an inquiry into a disputed election.

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8. Fees, Dues, Fines and Levies

TRADE UNIONS

N.S.W. 1. Unregistered trade unions: The Trade Union Act provides that nothing in it is to be taken as enabling the courts directly to enforce an agreement for the payment by any person of a subscription or penalty to a trade union.

2. Registered trade unions: The Industrial Arbitration Act empowers a registered trade union to enforce at law the payment by any of its members of a fine, levy, penalty, call or subscription owing in accordance with the union's rules. 36

Victoria Nothing in the Trade Unions Act is to be taken as enabling the courts directly to enforce an agreement for the payment by any person of a subscription or penalty to either a registered or unregistered trade union.
Q'LD  The Trade Union Act omits the provision relating to subscriptions and penalties noted above in relation to the Victorian Act; but like all other corresponding measures, the Queensland Act empowers the trustees of a registered trade union to sue for debts owing to the union, and in this case subscriptions, fines and levies, it appears, may be included among such recoverable debts.

S.A.  )
W.A.  ) Provisions as in the case of Victoria.
Tasmania

INDUSTRIAL UNIONS

C'wealth 1. All fines, fees, levies or dues payable under the rules of a registered union by any member in a period subsequent to the union's registration may be sued for and recovered in any court of competent jurisdiction.37

2. The Industrial Court itself (on the application of the officials of a registered union authorized to sue on its behalf) is empowered to order a union member to pay any fine, penalty, or subscription payable under the rules, or to pay any contribution to a penalty incurred by a union under an order or award as long as such contribution does not exceed £10.

N.S.W. Provisions similar to those set out above in relation to the Commonwealth (para. 1 only)38 See also the corresponding provisions relating to registered trade unions.

Q'LD Provisions similar to those applicable in the Commonwealth (para. 1 only).39

S.A. Only subscriptions, or levies for funeral, sick or accident benefits, payable under a registered union's rules may be recovered by officers authorized to sue on behalf of the union.40

W.A. Provisions similar to those set out above in relation to the Commonwealth ( paras. 1 and 2).

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9. Ballots of Union Opinion

TRADE UNIONS

N.S.W. Under the Industrial Arbitration Act, the Minister may at any time or from time to time, either in the course of a strike or whenever he has reason to believe that a strike is contemplated by members of a union, direct that a secret ballot be taken to
determine whether a majority of such members is in favour of strike action: the Minister is entitled to appoint a returning officer and scrutineers, the latter of whom must be officers or members of the union concerned. These provisions are applicable to both registered and unregistered trade unions.

Victoria No provisions

Q'ld. Under the Industrial Conciliation and Arbitration Acts, the Industrial Registrar must conduct a secret ballot of the employees affected before a strike, in a calling where no union registered under the Acts existed, can be considered authorized. These provisions are in effect applicable to both registered and unregistered trade unions.

S.A. )
W.A. ) No provisions.
Tasmania)

INDUSTRIAL UNIONS

C'wealth The Arbitration Commission (composed of at least three members, including a presidential member) may order that a matter be submitted to a vote by secret ballot of the members of a registered union, or any section of them, if the Commission thinks that the views of such members should be ascertained as a means of assisting the prevention or settlement of an industrial dispute, which is within the jurisdiction of any Federal tribunal, even if the dispute is not the subject of proceedings before the Commission or any other tribunal.

N.S.W. As for trade unions, both registered and unregistered.

Q'ld. 1. A strike by a registered union is not to take place until all members in the calling and district affected have had the opportunity of taking part in a secret ballot at a general meeting held under the union's rules, and a majority have voted in favour of strike action: where a general meeting is impracticable, the secret ballot must be taken by post or at a series of meetings held for the purpose. The result of the ballot, together with details of the voting, must be communicated to the Industrial Registrar before the strike can be considered as 'authorized'.
2. If the ballot, specified in para. 1, is not taken within a reasonable time or is improperly or irregularly conducted, the Industrial Court may order a postal ballot on the matter to be taken by the Industrial Registrar.

S.A. No provisions.

W.A. The Arbitration Court is empowered to order that a matter should be submitted to a vote by secret ballot of the members, or a section of the members, of a registered or deregistered union where
the Court considers that the views of those members ought to be ascertained: such ballot to be conducted by a State official.

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10. Returns and Records

TRADE UNIONS

N.S.W. 1. Returns must be made annually to the Industrial Registrar of a registered trade union’s accounts, alterations to rules and new rules, and changes in its officers.
2. Returns must also be furnished of the names and addresses of all the members of a union and of its officers.
3. The appropriate officers must render account to the trustees or members of the union’s financial affairs, as and at such times as required by the union’s rules; and accounts must be properly audited.
4. Registered trade unions must retain, for at least one year, the ballot papers used in connection with union elections.

Victoria Provisions identical to those noted above in paras. 1 and 3 as operating in N.S.W.

Q’ld. Provisions identical to those noted above in paras. 1 and 3 as operating in N.S.W.; in addition, the Registrar may appoint an auditor if the union fails to do so or if he is dissatisfied with the manner in which the audit is carried out, and the Registrar has substantial powers to inquire into the funds and accounts of a registered trade union and to supervise the manner in which its accounts are kept.

S.A. Provisions identical to those noted above in paras. 1 and 3 as operating in N.S.W.

W.A. 1. Annual returns of a registered trade union’s accounts only are required.
2. Provisions identical to those noted above in para. 3 as operating in N.S.W.

Tasmania Provisions identical to those noted above in paras. 1 and 3 as operating in N.S.W.

INDUSTRIAL UNIONS

C’wealth 1. Registered unions are required to keep a register of their members’ names and addresses; a list of the names, addresses and occupations of their officers; a list of the offices of their branches; the duplicate or butt of the latest union ticket issued to each member, showing his name and address; full accounts of their finances and those of their branches; and, for at least
one year, the ballot papers used in union elections.
2. A copy of the register of members must be filed with the
Industrial Registrar, together with quarterly statements of
alterations in the register: provided that the Registrar, if
he is satisfied as to the way its register is kept, may exempt
a union or any of its branches from these requirements and from
the requirement that it retain duplicates or butts of members’
tickets. The Registrar may revoke a certificate of exemption.
In addition all other records which a union is required to keep
must be filed annually with the Registrar, together with all
alterations to rules and changes in the union’s officers.
3. Every union and each of their branches are required to app­
oint annually an auditor and to give him full and complete access
to their books and documents.

N.S.W. As for registered trade unions.

Q’LD. 1. Registered unions are required to keep a register of members,
their addresses and the date they became members; and a duplicate
or butt of each member’s latest union ticket showing his name
and address. There is an implied, but not express, requirement
that lists of officers and accounts should be kept.
2. A copy of the register of members must be filed annually with
the Industrial Registrar and a statement or alterations to the
register must be filed quarterly: the Registrar, in similar
circumstances to those applicable in the Commonwealth, may exempt
any union from these requirements and may revoke such exemption.
Unions are also required to file annual statements of accounts,
lists of officers within a specified time after any change in its
officers occurs, and any alterations to rules within a specified
period after such alterations are made.

S.A. Registered unions are required to file annual returns of their
membership, and half-yearly returns of any changes in membership
occurring during the previous six months; and a copy of each union’s
audited accounts must be filed annually.

W.A. 1. Registered unions are required to keep a register of members,
their addresses and their occupations; a duplicate or butt of each
member’s latest union ticket showing his name and address; and,
for at least one year, the ballot papers used in union elections.
There is an implied, but not express, requirement that lists of
officers and accounts should be kept.
2. A copy of the register of members must be filed annually with
the Industrial Registrar and a statement of alterations to the
register must be filed quarterly: the Registrar, in similar cir-
cumstances to those applicable in the Commonwealth, may exempt a
union from the requirement relating to quarterly returns only,
and may revoke such exemption. Each union must also file annual
returns relating to its officers and its accounts.
Notes:

1. The provisions outlined in the last sentence are, like the power given the Industrial Commission to alter or annul certain rules, contained in the Industrial Arbitration Act.

2. Individual members of the Industrial Commission have interpreted its powers of alteration and annulment as extending to rules other than those directly affecting the right of admission to membership:—see [1940] A.R. (N.S.W.) 59; [1942] A.R. (N.S.W.) 513. But this view has been overruled in later cases by the Full Bench which acted on the proposition that the statutory provisions are restricted to cases of rules relating to admission and not to internal management in general: see [1946] A.R. (N.S.W.) 347; [1948] A.R. (N.S.W.) 877.

3. Under this provision, a trade union's registration is not ipso facto void, but remains good until steps are taken to withdraw or cancel its registration: (1915) 15 S.R. (N.S.W.) 173.

4. The conditions as to rules are equally applicable to the branches of registered unions: (1933) 32 C.A.R. 443.

5. An alteration to these rules, defined as the union's 'constitution', will apparently be accepted only if the union proves the existence of fresh circumstances or facts of sufficient importance to justify the change: (1925) 21 C.A.R. 95. Any constitutional change likely to help in the settlement of industrial disputes will be ratified; (1913) 18 C.A.R. 813.

6. Failure to register alterations, even if union members agree to observe rules subject to such alterations, renders them ineffective: (1951) 73 C.A.R. 3.

7. The High Court has held that this power is outside the jurisdiction of the Industrial Court: (1957) 31 A.L.J. 670. This decision was made on the basis that, as previously decided by the High Court, the power is an arbitral and not judicial one: (1947) 73 C.L.R. 549. It is to be expected, therefore, that legislation to give the Arbitration Commission, or some other body, power in this respect is likely in the near future.

8. This ground has received judicial attention chiefly in relation to the statutory requirements affecting the election of committees of management and officers and their control by members. What is relevant here is not the degree of control by members, which is for the members to determine, but that there should be provisions setting out some form of control which is not 'illusory': (1912) 6 C.A.R. 49. On a number of occasions rules giving the Federal executive body of a union considerable powers over branches and their officials have been disallowed on this ground: e.g., (1933) 32 C.A.R. 19; (1946) 56 C.A.R. 561. On the other hand, such powers may be permissible with certain safeguards: see (1944) 52 C.A.R. 594; (1950) 66 C.A.R. 302.

9. This, as the most general ground available, appears to have been most used. The fact that a rule, quite proper in itself, may be applied harshly or unjustly is no ground for disallowing it: (1938) 39 C.A.R. 323. Nor is the manner in which a rule is made relevant: (1946) 57 C.A.R. 124.
10. This ground has less commonly been relied on. It has been applied in relation to a rule providing for contributions to a political fund without adequate safeguards ((1948) 61 C.A.R. 726), and to a rule requiring candidates to union office to declare they are not connected with a specified political party: (1951) 73 C.A.R. 83.

11. It appears that in view of the High Court's decision of 1957 in relation to the disallowance of rules power (see note 7 above) that deregistration is also ultra vires the Industrial Court, since the High Court previously held that deregistration of a union is not a judicial power: (1925) 36 C.L.R. 442.

12. It appears that the power to direct the alteration of rules under this provision is restricted to cases where deregistration is justified on the ground that rules do not comply with the conditions relating to registration of a union: see (1918) 12 C.A.R. 378; (1920) 14 C.A.R. 324. Though it has been implied that the power may be used in relation to other grounds also: (1921) 15 C.A.R. 1102.


15. Rules prohibiting union members from taking piecework, bonus work and overtime, and restricting numbers and terms of apprentices were held to prejudicially affect the union's members: (1932) 12 S.A.I.R. 255.

16. In S.A., as in other jurisdictions, the Industrial Court may exercise the deregistration power for any reason other than those specified. The Court has ruled that the administration of a rule, though not falling within any of the specified grounds, might be 'sufficiently objectionable' to justify deregistration on the general ground: (1930) 11 S.A.I.R. 96.

17. The term 'tyrannical' is omitted in the W.A. Act, only 'oppressive' being used. The deregistration power has been used by the President of the Arbitration Court to secure the amendment of a rule by providing for the annulment of a deregistration order if the union altered its rules, as directed, within a specified period; (1913) 23 W.A.L.R. (Industrial Cases) 37.

18. These provisions are contained in the Industrial Arbitration Act and not the Trade Union Act. The protection given the individual member under them is strengthened by his statutory right to appeal to the Industrial Commission if he is aggrieved by a breach of a rule relating to any fine, penalty, levy, call or subscription imposed by the union, the Commission having power to remedy the breach as it thinks fit. A union's political fund is immune from attachment in the enforcement of an order for payment of any penalty made against the union.

19. These and the provisions below are in the Industrial Arbitration Act and not the State Trade Union Act.

20. The only questions the trade union's admitting body is entitled to consider are whether the applicant is one of the class of which the union is constituted, and whether he is of general bad character: [1940] A.R. (N.S.W.) 126.
'General bad character' does not mean 'general bad character from the standpoint of the union': [1946] A.R. (N.S.W.) 160.

21. An unduly high entrance fee contravenes the requirement for reasonable facilities: (1928) 27 C.A.R. 43.

22. Entrance fees must not be unduly high if the requirement is to be complied with: (1937) 32 Q.J.P.R. 28.

23. The test of reasonable administration is not whether the method of rejection of an application is regular, but whether the grounds of the rejections are reasonable: (1929) 10 S.A.I.R. 91. Thus 'union bad character' (in the specific case the applicant's failure to apply for membership during the previous 16 years when he was eligible to do so) does not justify a refusal to admit to membership: (1942) 17 S.A.I.R. 217.

24. A union rule that resignation is effective only if 3 months' notice is given is invalid: (1938) 39 C.A.R. 326. As also is a rule prescribing 6 months' notice: (1931) 30 C.A.R. 789.

25. The Industrial Code does, however, include a provision stipulating that no resignation from a registered union can take effect while the union is involved in proceedings before the Industrial Court.

26. In the absence of statutory provisions or rules of this sort it appears, as the Supreme Court of Qld. has held, that a resignation becomes effective on the expiry of the prescribed notice despite liability for contributions, fines and levies payable to the union: [1951] Q.S.R. 84.

27. The agreements specified include, among others, those concerning the conditions on which members shall or shall not be employed, the payment of a subscription or penalty to a trade union, the application of a union's funds to provide benefits for members, and any bond to secure the observance of agreements on these subjects; but it is expressly stated that these provisions are not to be taken as making such agreements unlawful. Under these provisions, for example, the courts cannot enforce a union rule providing strike pay, such a rule constituting an agreement to provide benefits for members: (1893) 14 L.R. (N.S.W.) 261.

28. These provisions, unlike those noted above in note 27, are embodied in the Industrial Arbitration Act and not the Trade Union Act. The Industrial Commission has held that it cannot enforce rules intended for the protection of a union member if the member has, expressly or by his conduct, waived such rules: [1932] A.R. (N.S.W.) 385.

29. The relevant agreements are identical to those detailed in note 27 above in relation to N.S.W., with the exception that the Qld. Trade Union Act omits from its provisions the reference to an agreement for the payment of a subscription or penalty. For a discussion of the applicability of these provisions, derived from the British Trade Union Act, to both registered and unregistered unions (in the absence of other statutory provision as in N.S.W.), see Lloyd The Law of Unincorporated Associations, 147-8.
30. This provision does not operate to exclude a rule allowing elasticity: (1944) 53 C.A.R. 108. And although Isaacs, J., considered the provision to require a 'strict and rigid adherence' to the rules (1916) 23 C.L.R., at 40, it appears that the members of a union, at a general meeting, may waive compliance with a rule: (1937) 38 C.A.R. 605. Moreover, it has been held that the provision does not debar a court from giving relief where the plaintiff has failed to avail himself of a union rule permitting a right of appeal within the union against the decision in question: (1938) Q.S.R. 33.

31. This power is discretionary. It is to be used where the failure to observe or perform a union's rules is of a substantial nature and, if not remedied, might destroy members' confidence in the union: (1944) 53 C.A.R. 482. An order of this character may be refused if the lapse of time between the action complained of and the application for the order is excessive ((1949) 65 C.A.R. 418), but where a deregistered union has been re-registered, an order has been made relating to an action taken before the union's deregistration: (1951) 72 C.A.R. 2.

32. It appears that this provision is limited in application to the rules of a union that have been made in order to comply with the statutory requirements for registration: (1938) 39 C.A.R. 319. Moreover, an agent's act which fails to conform with the union's rules is not a ground for deregistration under this provision if the act has not been adopted or authorized by the union: (1915) 9 C.A.R. 33.

33. The Industrial Court has held that it is not concerned with enforcing matters relating solely to the internal management of a union: (1948) 22 S.A.I.R. 178. Thus it appears that the Court is interested only in the matters for which union rules must make provision as a condition of registration: (1931) 11 S.A.I.R. 350.

34. Where a union returning officer declines to act with a Court-appointed returning officer, the latter may act alone in this capacity: (1950) 81 C.L.R. 27.

35. The Act provides that an election conducted under these provisions may not be the subject of a Court inquiry (para. 2 above). The request to the Registrar to conduct an election must be made, in the case of a union, by 1000 members or one-tenth of the total membership, or, in the case of a branch, by 500 members or one-fifth of the branch's membership. Such members need not be financial; and the fact that the rules may deprive unfinancial members of certain rights (even if these include the right to nominate candidates or to vote) is irrelevant: (1952) 73 C.A.R. 170.

36. In relation to such payments, a trade union member aggrieved by a breach of a relevant union rule may appeal to the Industrial Commission which is empowered to remedy the breach as it considers just. In addition, the Commission is empowered to determine any dispute as to the reasonableness of any subscription, fine or levy.

37. A branch of a union cannot take action under this provision in its own name ((1917) 23 C.L.R. 143), and a branch committee has no power to institute proceedings in the name of the union: (1921) V.L.R. 71.
Nor, it appears, can the union itself use the provision to recover dues owing to one of its branches: (1912) 15 C.L.R. 235.

38. It appears that the Industrial Commission will enforce levies only where the purpose of the levy is expressly stated in union rules ([1916] A.R. (N.S.W.) 65), and only where the purpose is stated with some precision: [1917] A.R. (N.S.W.) 360. It will not enforce levies raised for the assistance of persons outside N.S.W. on the ground that such levies are outside the scope of the Act which deals only with industrial conditions within the State: [1904] A.R. (N.S.W.) 371. Moreover, strike levies are against the spirit of the Act, and a contract to pay such levies is contrary to public policy and void: [1904] A.R. (N.S.W.) 140. Nor will a fine imposed on a member for disobeying a union instruction not authorized by its rules be enforced: [1938] A.R. (N.S.W.) 461.

39. The Qd. Industrial Court has refused to enforce a levy imposed to aid strikers, contending that the levy was illegal because the strike in question was not authorized under the terms of the Act: (1946) 40 Q.J.P. 116. See also, [1941] Q.S.R. 117.

40. There is thus no power under the S.A. Act to enforce fines or general levies imposed by registered unions on their members.

41. A related provision peculiar to W.A. is the requirement that an application for registration under the Industrial Arbitration Act must be authorized by a majority present at a general meeting of the union called specially for this purpose, for which 7 days' notice must be given, specifying time, place and purposes. In addition, rules required by the Act must be approved by a majority at such meeting or at another called for the purpose.

42. The provisions in paras. 2 and 4, unlike those in paras. 1 and 3, are contained in the Industrial Arbitration Act instead of the Trade Union Act.

43. In Victoria returns are to be made to the Government Statist, and in Tasmania, the Statistician.

44. Failure on the part of a registered union to have its accounts audited (or if its accounts or the audit fail to disclose the union's true financial position) is sufficient ground for its deregistration: this statutory specification is found in the Western Australian as well as the South Australian Act.
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1 Owing to a misadventure the Minutes held by the A.C.T.U. go back no
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