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Industrial Unionism:
Some Documents

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**INDUSTRIAL UNIONISM:
SOME DOCUMENTS**

Chris Fisher

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Introduction

Industrial Unionism

Industrial unionism has been an important idea in the history of the labour movement. During and after the First World War, schemes for restructuring unionism and the whole of capitalist society drew upon the principle of organising the power of the workers in industrial departments of the One Big Union. This idea provided a stimulus to the formation of the ACTU and provided one of the ACTU's objectives. In 1982, however, proposals by the Federal Government to encourage industrial unionism through amendments to the Conciliation and Arbitration Act met widespread opposition within the labour movement. Much of the material on this recent debate is relatively inaccessible. The purpose of this Industrial Relations Paper is to bring together a number of the recent statements about industrial unionism and to place the debate in historical perspective. The longer perspective helps to make clear the way in which the meanings and implications of proposals for industrial unionism have altered.

Talk of the restructuring of Australian unionism often seems to assume that unions are in some way analogous to Government Departments: that they can be shaped by administrative fiat of some kind. Perhaps, since unionism in Australia became firmly institutionalized under the authority of the Conciliation and Arbitration Act of 1904, and has grown and continued to have security of organisational life under the Act,

an assumption might be made of strong state power which could be used in such a way. The fact is, of course, whatever benefits many unions have derived and continue to derive from the Act, unionism as a form of collective action in the working class, long predated state support. The forms, the purposes and the rhetoric of unionism assumed their principal character long before Mr Justice Higgins wrote of the 'new province for law and order'. The growth of Australian unionism may well have been encouraged by the Act but the language of unionism came from older traditions rather than from clauses in statutes. Many unionists, indeed, refused to accept any of the purposes implicit in the idea of state based compulsory arbitration. This is as much true of union structure as of union ideology. The Act provided for the creation of entities through a process of registration but did not prescribe an actual form of organisation and in particular did not prescribe what the constituency of organisations should be: beyond stipulating that a union should not be registered to cover a group of workers if there were already registered a union to which they might conveniently belong.

The forms of union organization which antedated the Act have conventionally been distinguished according to their degree of exclusiveness. Some unions intend to cover only a specific group of workers; some, all the workers in an industry; some, all workers regardless of occupation or industry. Which of these groups a union belongs to is likely to have been determined by a variety of circumstances: ability to control entry to a trade; the organisation of an industry; the nature

of the labour process; and the influence of particular ideologies. There has, in many unions, been a process of evolution according to the ways in which these kinds of circumstances have altered.

Usually, the forms of union organisation are understood by reference to the model of the craft union established in Britain around the middle of the nineteenth century. The possession by their members of a craft or skill which was difficult to learn except under close instruction from a master shaped these unions. Knowledge of the art or mystery of the craft gave the craftsmen control of the teaching of new craftsmen, through apprenticeship, and, therefore, over the supply of labour. Able to control entry to the trade and irreplaceable by the unskilled, the craftsmen could sustain union organisation and maintain strike action if they chose to do so. Craft union tended to be exclusive in form, open only to those who had completed indentures. Later in the century a second form of union became important: the mass or general union which aimed explicitly at the organisation of the unskilled. These unions made no requirement of skill for entry and sought coverage of all workers in an industry or of all workers regardless of industry. Somewhere between the craft union and the general union lay another type which wished to recruit all workers in an industry but in which there was a strong element of control by a number of relatively skilled men.

Differences in the form of union went with other kinds of differences in behaviour and ideology. Craft unions were often 'aristocratic', in distancing themselves from the 'lumpenproletariat', the 'residuum', or the great mass of the unskilled. Often having the functions of friendly societies as much as of unions, the craftsmen tended to be less than militant in their attitudes. Many refused to establish strike funds or to use the strike weapon except as a means of last resort. In the classical period of the formation and development of craft unions, there often went with the exclusive disdain of the craftsmen for the unskilled, a rhetoric built around the notion that the interests of masters and men were identical: that reason and fair play might rule in the relations of capital and labour. This model of craft conservatism and exclusiveness needs to be modified in all sorts of ways. The craft unions did often use the strike weapon and many, in the building industry in particular, did show a concern for the organisation of the unskilled. The contingencies of the twentieth century also imposed differences of ideology and strategy on the older craft model. Nonetheless the craft model stands as the base or benchmark notion of union form and action against which other kinds of workers defined their own needs and purposes and articulated their own organising strategy.

The classical period of organisation of the mass unions was the end of the eighteen eighties and the early eighteen nineties. The impulse to organisation was, as in the case of the craft unions, the need to act collectively in winning wages and conditions from employers. but the unskilled needed an

Note: constant in ideology -
a) being craft - UK
1910-1918
IWW - A.C.N.

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alternative to the craft model. The unskilled had no control over entry to industry in the short term. A labourer having withdrawn his labour in the course of a dispute might find himself replaced rapidly by another labourer. In order to win their way the unskilled had to be prepared to organise all those liable to be competitors in the labour market or to act as strike breakers. The unskilled could have no use for the rhetoric of the identity of interests of labour and capital. To make gains the unskilled had to be prepared to seize the opportunities of the moment and use the strike weapon as effectively as possible. The spread of unionism to the unskilled entailed the use of the language of class conflict. Masters and men were understood as belonging to opposing camps on all questions of the conduct of work, society and economy. The demand for the comprehensive organisation of all working men sustained a further demand for the separate political representation of labour and for the capture and use of the state by labour in order to reconstruct society on the lines of the working men's programme.

These broad distinctions between the main forms of union mattered less after the eighteen nineties. The formation of parliamentary Labor Parties by the unions and the development of State and Commonwealth arbitration provided the means of 'reformist' action, security for the unskilled union organisations and the hope of bettering the lot of the unskilled through legislation. Some unions of the unskilled became wedded, along with many of the craft unions, to the use of arbitration and the parliament. A number of the non-craft

unionists, however, objected to parliamentarianism and arbitration. These, they thought, were merely the means by which the employers brought the organised strength of labour to the service of capital.

In the years before World War One the idea of industrial unionism emerged strongly as part of the intellectual equipment of those unionists opposed to parliamentarianism and arbitration. Industrial unionism was not advocated for its own sake entirely but as part of a general political understanding of how and why the whole of economy and society could be remodelled. In particular, industrial unionism formed part of the strategies advocated by the syndicalists, the Industrial Workers of the World and groups similar to them. For many unionists, the requirements of adherence to parliament and the arbitration courts were too great. Renunciation of the strike weapon and acceptance of the need for slow change within the bounds of the existing order seemed merely a device for allowing the State to act on behalf of the bosses. A series of strikes and attempts to make use of arbitration before World War One seemed to confirm this view for coal miners, seamen and waterside workers.(1)

The alternative strategies which they adopted had a diverse inspiration. In his account of the development of the IWW in the United States, Dubofsky wrote:

The IWW, it is true, produced no intellectual giants. It did not spawn a Karl Marx or a Georges Sorel, a Lenin or a Jean Jaures, or even an Edward Bellamy or a Henry George. It offered no genuinely original ideas, no sweeping explanations of social change, no fundamental theories of revolution. Wobblies instead took their basic

concepts from others: from Marx the concepts of labour value, commodity value, surplus value, and class struggle; from Darwin the idea of organic evolution and the struggle for survival as a paradigm for social evolution and the survival of the fittest class; from Bakunin and the anarchists the 'propaganda of the deed' and the idea of 'direct action'; and from Sorel the notion of the 'militant minority.' Hence, IWW beliefs became a peculiar amalgam of Marxism and Darwinism, anarchism and syndicalism - all overlaid with a singularly American patina.

True, they did read books - IWW libraries included works by Marx, Engels, Kautsky, Sorel, Jaures, Belamy, George, and others; IWW publications advertised complete bibliographies of socialist literature - but they read to understand better what they already knew from life. For above all else, Wobblies derived their beliefs from their own experiences in America. The Coeur d'Alenes, Leadville, and Cripple Creek taught them that society was divided into contending classes; that American business had evolved from small-scale endeavors to giant corporations; that labor was divided, not united; and that a 'militant minority' could surmount the resistance of a complacent majority. In other words, European theoreticians explained in coherent, analytical, and learned terms what most Wobblies grasped instinctively.(2)

Turner, similarly, drew attention to the populist character of syndicalist opinion:

Anarchism has many points of origin, but a single source: impatience with the slowness of political action and moral revulsion against the corruption and compromise of political life.

Men must live their own lives, and not those decreed for them by a ruling elite, an owning class, or an impersonal market: this they can only do when they join together as producers and themselves freely determine the organization of their labour and the disposal of its product, meanwhile, as citizens, living freely without the restraints imposed by a conventional morality or a property-based law.

...mechanization and the development of the large-scale enterprise made obsolescent the simple anarchism of the First International, the instinctive revolt of peasants and petty craftsmen ... syndicalism was a reaction of anarchism to large-scale industry, to the

formation of an industrial proletariat and the growth of economic organizations of the working class, and it clung to many of the features of anarchism - to a contempt for parliamentarianism, a reliance on spontaneous action, an image of an atomized society based on the free association of producers, a moral conviction that property was theft.(3)

Syndicalism appeared in many countries and took a number of forms depending on the specific circumstances of industrial labour and political organisation within which it grew. In Australia, syndicalism inspired a movement for closer unionism among trade unionists and was the base of the programme of the industrial workers of the World, a group which Turner described as '... the most significant revolutionary movement the Australian working class had yet known'.(4)

Following the establishment of the IWW in America a number of IWW clubs started in Australia in 1907. The Australian syndicalists shared a number of strands of thought with syndicalists overseas. The IWW Preamble, firstly, made a statement of uncompromising class hostility:

Between the working class and the capitalist class a struggle must go on until the workers of the world organise as a class, take possession of the earth and the machinery of production, and abolish the wage system ... The army of production must be organised, not only for the everyday struggle with capitalism, but also to carry on production when capitalism shall have been overthrown. By organising industrially we are forming the structure of the new society within the old.(5)

The new society was to be organized in the workplace rather than in the parliament or the arbitration courts. Direct action in the workplace and the struggle for workers' control of industry were to be based on the organization of the workers into One Big Union based on six Departments and thirty sub Departments each

representing one major branch of production. The achievement of the organisation of the whole of the productive work force would then lead to the confrontation of the capitalist class in a General Strike.

Turner's assessment of the importance of IWW ideas rests perhaps on the practical consequences for the trade union movement of the idea of the One Big Union of industrial unions rather than on the numerical strength of the IWW organization. The idea of wider amalgamation of unions had currency in the first few years of the century but the idea of practical achievement of the OBU became important around the time of the 'General Strike' of 1916. An informal meeting of union delegates in 1916, in New South Wales, decided to form a union of unions. Conferences which followed began a movement for the OBU, which found support in a number of states. A further conference in 1918 adopted the IWW preamble and launched the OBU, the Workers' Industrial Union of Australia.(6)

The WIU of A never really got off the ground. The only Department to be formally established was the Mining Department, comprised of the Miners' Federation and the Barrier Miners. A subsequent attempt based on the combination of the Australian Workers' Union, the miners and the waterside workers came to nothing when an attempt to register the new union in the Arbitration Court was unsuccessful.(7) There were a number of reasons for the fading of the OBU strategy. Firstly, there was the resistance of the established unions, and, in particular, of the AWU to what seemed to be an alternative general union.(8)

Neither were the craft unions on the whole willing to submerge themselves in organisations in which their craft traditions and methods of craft control might have had less than sympathetic treatment from the semi-skilled and unskilled. The existing structure of unionism, moreover, stood tightly bound to control of the institutions of the labour movement: to the Labor Councils, the Parliamentary Labor Party and all the possibilities for power and position they offered. To suggest altering the structure was possibly to suggest another distribution of power than the one which favoured the entrenched men. So far as industrial unionism and the OBU movement drew inspiration from the IWW there was an explicit intention to deny the importance of the parliamentarians. The explicit, revolutionary purpose of the IWW propaganda undoubtedly also was unpalatable for religious or other reasons in an heterogeneous movement. Perhaps finally decisive in the matter: many of those who had so vigorously advocated the OBU became pre-occupied with the strategies of the newly formed Communist Party of Australia.(9) The Leninist impulses of the new Party led its members to enter and attempt to persuade to revolutionary aspirations the existing institutions of the labour movement.

The impulse to industrial unionism and the influence of the OBU men continued to be strong in the labour movement, though indirectly and in ways negotiated by circumstance. The OBU idea formed part of the inspiration for the creation of the ACTU.(10) For some, the ACTU would make the parliamentary-arbitration strategy more successful. For others, the ACTU would be the

means of building the OBU. Thus, Clause 3 of the ACTU's 1927 Constitution included as an objective:

The closer organisation of the workers by:

- (a) The development of the Trade Union Movement towards an industrial basis.
- (b) Groupings of related unions for the purpose of co-ordination with the ACTU on matters of common interest.
- (c) Amalgamations of unions where practicable to establish one union in each industry or sector.(11)

For one reason and another, to do with the strength of the craft and conservative unions and involvement in the business of arbitration, the labourist or reformist tradition rather than the syndicalist, has tended to dominate the ACTU's policies and activities. The industrial unionism objective is less clearly able to be interpreted as having revolutionary or even radical purpose.(12)

Since the Second World War the idea of industrial unionism has gradually become part of the body of ideas which comprise 'industrial relations' rather than revolutionary or even trade union reformist thought.(13) Where the labourist tradition sprang from among working people, from their own experience of and attempts to develop, collective action, 'industrial relations' as a way of thinking about employers and employees came from outside the labour movement and often from people specifically committed to promoting 'harmony' in industry. The underlying ethos of - some - industrial relations is that of 'social engineering', a mode of thought which tends to assume

that the existing economic and social arrangements are more or less right except for various 'problems' which are there to be solved in the same way as an engineer might solve a problem in the design of a bridge or a piece of machinery. Industrial relations 'problems' are often thought of in managerial terms concerning the efficiencies and inefficiencies of different ways of handling people as factors of production in order to achieve particular results in production. 'Personnel practice', 'personnel administration', 'human relations', 'industrial psychology' and some of the practice of 'industrial relations', have all had this managerial and engineering quality. The development of a similarly inspired profession of macro-economics, together with increased participation by the state in the running of the economy, has created the capacity for a managed economy or, at least, a managed workforce and wages sector. The behaviours, policies and forms of trade unionism then are assessed according to whether they promote 'good' industrial relations or represent 'problems' for the social engineer to solve. This kind of approach has mingled with the initial impulses to social and industrial control in the State and the law so completely represented in the doings of Mr Justice Higgins and his successors in the legislation for and administration of the 'new province for law and order'.

This is the kind of context in which the recent debate about industrial unionism has taken place. The altered context gives different meaning to industrial unionism for the unions. The idea is no longer part of their strategy for the reordering of society but is part of the box of tricks available to the

social engineers, the industrial relations specialists and others for whom the solution of 'problems' in the immediately existent social and economic order is the primary purpose. The unions must decide whether the 'problem' truly exists; is a problem for the workers as well as the bosses; is a real problem or a political stunt; or is a problem the solution of which may have wide implications for the ability of the unions to do the job their members expect of them. To be for or against industrial unionism is no longer necessarily a test of zeal in the cause of the movement.

What is the 'problem' which industrial unionism is meant to solve? That there is a problem is clearly the view of the present coalition Government, the Department of Employment and Industrial Relations, some employers and a number of official reports. (Documents A, B). There are thought to be 'too many' trade unions in Australia: 'too many' by comparison to an implicit ideal structure or with the West German system. At the end of 1981, according to the Australian Bureau of Statistics, there were 324 trade unions in Australia. West Germany, a country notorious for 'good' industrial relations, had 17 large, 'industry' unions. The main consequences of having a relatively large number of unions were set out in the Myers Report on Technological Change, in much the same terms as those offered by the Department of Employment and Industrial Relations. The number of unions makes consultation about technological change less effective than might otherwise be so; the financial and material resources of unions are spread more thinly and used less efficiently than they might be; union boundaries affect

labour mobility and redeployment; negotiation and consultation are unnecessarily complex and time consuming because of the number of unions; demarcation disputes are more frequent than could be the case; unions operating across the boundaries of a number of industries have no special care or regard for any one of them; the presence of workers covered by the same award in a number of industries, working alongside people covered by other awards, allows the mechanisms of flow-on, comparative wage justice and the leap-frogging technique of wage gain to operate freely. In this kind of view industrial relations is comprised in a system which can be tinkered with or made to work more efficiently by administrative or legislative action.

By contrast with the pre-war period unions recently have generally opposed attempts to encourage industrial unionism by amendment of the Conciliation and Arbitration Act. The documents in this collection offer a sample of the kinds of responses which the recent debate has provoked. The Amalgamated Society of Carpenters and Joiners have responded in the way the pure craft unions have always responded: straight forward opposition to any alteration of existing union arrangements. (Document G) The Federal Conference of the Carpenters in 1981 resolved: 'We are totally opposed to being part of an industrial union covering different trades and occupations'. The Carpenters reiterated two important and long-established principles. The first maintained the sense of distinction between the skilled and the unskilled: 'The formation of an industry based union would detrimentally submerge the craft identity of a carpenter and joiner, into a morass of

classifications.' The second maintained the established association between craft separateness and compulsory arbitration. The Carpenters believe their union 'is more than satisfactorily able to uphold, maintain and apply the principles of conciliation and arbitration in the settlement of industrial disputes for its members, wherever they may be employed'. This sort of reference to the 'principles' of conciliation and arbitration is now less common than in the years before 1939. The question of industrial unionism no longer automatically entails any commitment to or against arbitration as such. Nonetheless, as the Carpenters' response makes clear, the question of industrial unionism may be implicitly understood as a question about the effectiveness of the whole system of arbitration and the alternatives which might become available during any large scale restructuring of the unions. Proposals for restructuring touch upon traditions, concepts and values, in parts of the union movement, which have had almost eighty years of elaboration and development. 'Efficiency' may not be understood apart from the longer term circumstances of labour's culture and history.

The response of the ACTU and the SDAEA has been a good deal more complex. The ACTU has opposed what appears to be fairly mild legislation designed to 'facilitate' the formation of industrial unions. (Document C) The reasons for this opposition may be divided into specific objections of detail and objections to do with the general political implications of the proposals. Firstly, the ACTU thought the making of industry unions would require the slicing off of sections of existing unions: 'Such

actions would be strongly resisted by unions and their members and would be impossible to achieve without massive co-ercion'. Secondly, the ACTU thought the notion of 'industry' too vague. Except in a limited number of industries the setting of boundaries on industries could cause serious industrial disruption. The SDAEA took a similarly strong line of opposition:

...[National] Council declares that it is fundamental to the democratic control of trade unions that before an existing trade union can cease to exist and before its assets and flow of income is transferred to a completely new organisation, a majority of the members of that trade union must have participated in a secret rank and file ballot to determine the union's future.

Accordingly, Council declares its opposition to any attempts to alter the present provisions of Section 158N of the Conciliation and Arbitration Act. (Document H)

What difference, the SDAEA asked, would fewer unions make to the level of disputes? According to the Australian Bureau of Statistics less than five per cent of working days lost because of disputes could be attributed to 'trade unionism'. 'Trade unionism', moreover, included a number of issues only one of which was 'demarcation disputes'. The effect of restructuring the unions on the overall level of disputes would, therefore, be insignificant. In any case, by far the great majority of employees are members of a relatively few unions. About 77 per cent of the total unionised workforce belonged to 43 unions, each of which had 20,000 or more members. And was there a relationship between size and number of unions and the frequency of disputes? Japan had a lower level of industrial disputes per

worker than Australia but also had 72,000 unions organized on an enterprise, company, craft or industry basis: 'This apparent paradox that Japan has more unions but less disputation illustrates that the real reasons for industrial disruption is more related to political, social, cultural and economic factors at work in society and is not related to the structure of the union movement.'

The Broken Hill Proprietary Limited tended also to be sceptical of some of the supposed benefits of industrial unionism. (Document D) The number of trade unions representing BHP's employees in various industries ranged from five in Queensland coal mining to sixteen in the New South Wales steel industry. In the coal, stevedoring and maritime industries, thirteen unions represented the employees in 'a structure which broadly parallels the structure of an industry as seen from the point of view of management'. 'This does not present as unmanageable a prospect as might be anticipated on the basis of the statistician's figures'. The BHP also doubted the argument from union efficiency. Some of the most effectively managed unions were relatively small: '...the advantages in management efficiency which proponents of amalgamation tend to associate with sheer size can be realised at relatively low levels of membership and that it may not be possible to justify amalgamation on the ground of improving management efficiency beyond a relatively low membership level.' Moreover, though there were cases in which fewer unions might have simplified or improved negotiations, there were other cases in which the multiplicity of unions had contributed 'to a more satisfactory

resolution of issues'. BHP also raised the question of whether industry unions could be matched by industry groupings of employers. Experience suggested that employers' associations would be unable to exercise a sufficient degree of influence and control over their members to produce uniformity. And, once again, how was 'industry' to be defined? On the other hand there might be scope for reduction in demarcation disputes, discouragement of the flow of disputes, wages and conditions across industry borders and perhaps an improvement in the industrial relations 'climate'. Improvement in the 'climate' would, of course, have to be a long term matter since an attempt to restructure would produce industrial disruption in the short term.

All these were responses to the detail of argument in favour of industrial unionism on 'efficiency' and 'engineering' grounds. Other issues involved the relationship between unions and the state and whether industrial unionism could be an alternative to 'amalgamation'. The ACTU saw the industrial unionism proposals of 1982 as an attempt by the Government to avoid implementing proposals on union amalgamation which had been worked out in the National Labour Consultative Council by the ACTU, the Federal Government and the Confederation of Australian Industry over three years of discussion. In February 1980 the NLCC made a unanimous and detailed proposal to deal with restructuring through amalgamations. (Document J) The Government decided instead to take up legislation encouraging industrial unionism.

This action by the Government raised two problems. The first had to do with amalgamation as a procedure. From time to time in the history of the labour movement there has been considerable enthusiasm for amalgamation. There are no industrial unions as such but there have been a good many successful 'amalgamation' or 'federation' movements. The Amalgamated Metal Workers and Shipwrights' Union, springing from the Metal Trades Federation, the Australian Workers' Union, the Federated Ironworkers' Association, the Australian Coal and Shale Employees' Federation, the Federated Miscellaneous Workers' Union and a number of other unions in their present form are the result of successful federation or amalgamation of a number of unions. These developments have come from within the union movement. They have been able, therefore, to take account of the multitudes of circumstances which might otherwise inhibit the dissolution of two bodies and their reconstitution as one. The NLCC proposals drew on the amalgamation tradition and were the result of a long process of consultation and negotiation with the ACTU.

The distinction between proposals which come from the movement and those which stem from outside and 'above' is important. The ACTU commented:

...for progress to be made, proposals for reform must identify and be directed towards generally accepted goals and must be based upon an understanding of the industrial relations system and existing trade union structures. Further, and perhaps most importantly, such proposals must be devised in consultation with and have the support of the Trade Union Movement.

In the one case the unions undertake restructuring for their own purposes and in ways which allow them to respond properly to the forces and circumstances which give unions their shape in the first place; in the other, the unions are the passive recipients of central direction from the state in interests which do not clearly seem to be those of the unions or their members. The legislation of 1982 reinforced the notion that industrial unionism had become a means of government direction and control of unions through the handling of the question of defining 'industry'. The proposed new section 132(1)(d) of the Act provided for the registration of an industrial union where:

- (i) the membership of the association consists of not less than 100 employees; and
- (ii) the Registrar is satisfied that
 - . all of those employees are employed in a single industry;
 - . that they constitute a substantial majority of the employees in that industry; and
 - . that the association is capable of satisfactorily representing the interests of all the persons employed in that industry.

Definition of 'industry' was to be left to the Conciliation and Arbitration Regulations and formulated, according to the Minister, in discussions with the ACTU and the employers or, according to the ACTU, to discussions 'with parties which were never consulted about the shape of the legislation or their future role in relation to it'. This question of the definition of 'industry' mattered the more in that the Act would also be amended to prevent amalgamations which would result in the creation of other than an industry union. Altogether these

proposals seemed to place great power in the hands of the central state to directly control the shape of unions.

In the space of five and one half decades the attitude of the union movement at large about industrial unionism has undergone transformation. In 1927 the adoption of an industrial unionism clause by the ACTU followed from many years of syndicalist action and influence in favour of the OBU. Industrial unionism offered increased strength to the organized working class and the means of hastening the end of capitalist economy and society. By 1982 industrial unionism had apparently become part of the social engineering remedy to 'problems' in industrial relations efficiency. In 1982, moreover, the creation of industrial unions by legislation seemed to be part of a legislative strategy which would at once exclude the possibility of self-motivated and organised amalgamations in the older tradition and place a great power to determine the shape and coverage of unions in the hands of Governments and administrators. The most important questions of union autonomy arose by implication from the legislative proposals.

The proposals for industrial unionism went by the board, in other words, because the government demanded too high a price in terms of union self-direction and autonomy. Precisely why such a price was demanded is unclear. The NLCC proposals followed from a number of years of discussion. The industrial unionism proposals followed from a most abrupt about face in the stated intentions of the Government. Could we reasonably speculate that the legislative strategy was designed to continue existing

obstructions to union amalgamations and to offer a superficially attractive alternative, but one which was bound to meet opposition? Was this, then, simply a means of forestalling any of the possible increase in union power and effectiveness which might follow from the concentration of numbers and leadership involved in either scheme? If this is so, what can be made then of the argument from industrial relations efficiency and of government intentions to promote efficiency? Are questions of efficiency in fact only to be understood in relation to the larger question of the relationship between the unions and the state?

The NLCC proposals are still available and may still be the basis of legislative reform. Those proposals, moreover, are perfectly compatible with further action in industries such as coal, maritime and the waterfront where the achievement of industrial unionism by use of amalgamation procedures is both economically desirable and far more feasible of accomplishment than in many other industries. Broad agreement between employers and unions, of the kind established in the NLCC's proposals, does allow the opportunity for a genuine initiative in reform.

Footnotes

1. I. Turner, Industrial Labour and Politics, Australian National University Press, 1965, Ch 2; R. Gollan, Radical and Working Class Politics, Australian National University Press, 1967 edition, Chs 10 and 11.
2. M. Dubofsky, We Shall Be All, Quadrangle, Chicago, 1969, p.147.
3. Turner, Industrial labour..., p.62.
4. *ibid*, p.64.
5. *ibid*; and J.S. Hagan, The History of the ACTU, Longman Cheshire, 1981, pp.18-21.
6. Turner, Industrial Labour..., Ch 8; V.G. Childe, How Labour Governs, Melbourne University Press, 2nd ed. 1964, Chs 11 and 12.
7. Turner, Industrial Labour..., p.212, p.230; Childe, How Labour Governs..., pp.180-181.
8. Childe, How Labour Governs..., Ch 12.
9. Turner, Industrial Labour..., pp.206-210.
10. Hagan, ACTU..., Ch 1.
11. Report of the Committee of Inquiry Into Technological Change in Australia, AGPS, Canberra, 1980, vol. 1, p.140.
12. Hagan, ACTU..., pp.441-454.
13. There continue to be a number of specific exceptions. In coal and on the waterfront, for example, the persistent movement for industrial unionism has taken strength from within the workforce and the unions as a means of dealing with their own problems.

AReport of the Committee of Inquiry into TechnologicalChange in AustraliaUnion organisations

5.291 In the preceding sections, the Committee has emphasised the importance of involving employees and their representatives in changes within enterprises and has addressed problems of retrenchment and wages. The role of unions as the usual representatives of employees is clearly of major importance.

5.292 Much has been written about the union organisation in Australia and overseas and the advantages and disadvantages of various systems have been canvassed. While overseas, the Committee paid considerable attention to this aspect and especially to the facility with which different union systems coped with technological change. The success of the arrangements in the Federal Republic of Germany was very evident; the particular aspects that the Committee saw as relevant were highlighted in an address given in early 1979, on the subject of 'The Labour Market and Technology', by the Chancellor of the Federal Republic, Herr Helmut Schmidt. He said in part:

'I shall repeat what I have said at many congresses or discussions. It is essentially this approach taken by the unified German trade unions, which is oriented towards progress and clearly differs from the approach taken by many other European trade unions, which has actually made it

possible to have these high wages and extensive social benefits. It is not that the Germans are more industrious than the Turks. It is not that we work harder than other nations. It is not that our engineers are more capable than French engineers. Nor do I believe that German bankers are better than those in Milan, in Rotterdam or in Amsterdam. I don't believe that our management is significantly better, although our management is good. The decisive difference here is that there are not 3 trade unions vying for a position in the same factory, acting under the pretence that they are engaged in a labour dispute for the workers, when in reality they are fighting amongst themselves for the most members. This does not happen here. We do not have 3 trade unions or 400 or 600 trades unions. And the knowledge that they have a strong position, this organisational strength, makes it possible for the trade unions to make demands calmly and to achieve a good part of their goals ...'

5.293 The relative importance of different causes of industrial disputes at the enterprise level in Australia is different from that in parts of Europe. The economic and industrial advantages of having single unions within enterprises and few unions all told do not appear, however, to be confined to the German situation. Despite important differences between the German and Australian industrial institutions and the economic, political and social environments in which they operate, the Committee is of the view that many of the benefits identified in Germany would also apply in Australia.

5.294 Some of the problems that unions encounter with the introduction of technological change are illustrated by the following extract from a submission by the Department of Industrial Relations:

'The introduction of a new technology can have the effect of, on the one hand, altering the numerical strength (but not necessarily the strategic importance) of unions in an industry or

enterprise, and, on the other hand, creating uncertainty as to whether new jobs fall within their constitutional coverage. Where this is so it is likely to be a source of industrial disputation in the form of demarcation disputes and long-term industrial and legal battles to secure coverage of new jobs or wider constitutional coverage. This is particularly so when it is remembered that the multiplicity of unions is an important complicating factor of the Australian industrial relations scene.' (DIR 1979)

5.295 The organisation of unions in Australia differs from that in many other countries that have achieved a high level of technological development. There are 144 organisations representing employees currently registered under the Commonwealth Conciliation and Arbitration Act - many representing a craft or occupational area (Boulton 1980). In addition there are many unions representing employees registered under State industrial legislation. As at December 1978, 279 trade unions were operating in several jurisdictions for a work force of more than six million (Boulton 1980).

5.296 It would not be unusual in Australia for more than 20 unions to have members in a large enterprise. In contrast, the Federal Republic of Germany, for example, with a work force nearly three times that of Australia, would normally have only one union in each industry and in total has only 18 unions. Each of these would usually represent all crafts and occupations in a particular industry.

5.297 In a situation where, within an enterprise, various occupational groups are affected by technological change and many, if not all, of these occupational groups are organised

into separate union bodies, consultation is likely to be less effective than it could otherwise be.

5.298 Some of the problems that occur during consultation under the current organisation arrangements are listed below.

5.299 The multiplicity of unions ensures that the financial and material resources of most unions are meagre and are spread over a relatively small number of members in a large number of establishments. As a result, the ability of full-time officials to meet the requests of members for assistance is limited. Thus issues that require a degree of experience and specialist knowledge - such as, for example, occupational health and safety - may not be dealt with adequately.

5.300 Multiple unions in an industry inhibit the movement of employees from one job to another in that particular industry. A situation can exist in an industry where no retrenchment is to take place but opposition to the proposed change can occur because some jobs are to be abolished and new ones created, with the result that employees would pass out of the coverage of one union into another.

5.301 Management must deal with a number of different organisations, each representing a particular occupational area. Consultation can be both complicated and time-consuming.

5.302 The grouping of employees into different organisations based on craft or on functional boundaries means that demarcation disputes are more likely.

5.303 Because craft unions usually operate in more than one industry, there is often lower regard for the future welfare of any one industry or enterprise than would otherwise be the case.

5.304 The Committee is convinced that if the Australian union movement is to be able to participate effectively in the process of change then it will need additional financial and material resources and it should preferably be organised in such a way that a much smaller number of organisations can represent the interests of a broader range of employees in an industry and therefore in an enterprise.

5.305 Most commentators on Australian industrial relations agree that there is a need for a reduction in the number of unions. This reduction can only be achieved by the amalgamation of existing organisations.

5.306 Clause 3 of the ACTU Constitution, adopted in 1927, indicates an early concern for the formation of industry unions. The clause states in part:

'The closer organisation of the workers by:

(a) The development of the Trade Union Movement towards an industrial basis.

(b) Groupings of related unions for the purpose of co-ordination with the ACTU on matters of common interest.

(c) Amalgamation of unions where practicable to establish one union in each industry or sector'.

5.307 In the Report by the Committee to Advise on Policies for Manufacturing Industry (Jackson et al. 1975 Vol. 1, p. 111) it was stated that:

'Because unions are numerous, their membership fragmented, and their structure does not parallel industry structure, they may tend to be unaware of, or insensitive to, the impact of their actions on industries and firms. Moreover, the number of unions over-stretches available resources ... A more consolidated union structure would allow relatively limited resources to be used more efficiently ... And third and more obvious implication of union fragmentation is that it dilutes their industrial power ... The occupational structure of some unions, taken with fragmentation of membership, is a fertile field for demarcation and jurisdictional disputes.'

5.308 The Confederation of Australian Industry (CAI) has expressed qualified support for the need to achieve fewer unions in Australia. Its representative gave 'support to the concept of reducing the number of unions ... to reduce the competitiveness of coverage so as to get a common approach to the problems ... It is not only a Federal problem it is a State problem as well. In this area we have the trouble of competition within the union between one Branch of the union and its Federal body. I just make the point it is not easy.' (CAI 1979a)

5.309 The Conciliation and Arbitration Act provides for amalgamation of unions, but several submissions were critical of the requirements to be met before an amalgamation proposal can be approved by the Industrial Registrar.

5.310 Under the existing legislation, amalgamation applications are dealt with by the Industrial Registrar. For an amalgamation to be approved, one of the requirements is that in each organisation in which a ballot is conducted at least 50% of those on the roll must vote and, of those voting formally, at

least 50% must vote in favour of amalgamation. If, in an amalgamation involving, say, three organisations, one of the organisations fails to achieve the required ballot result, the amalgamation cannot proceed between those two organisations in which the required result was achieved. The consequence is that in respect of these latter two organisations it would be necessary to go through the entire amalgamation process once more.

5.311 The Peak Union Councils take the view that the existing legislation regarding union amalgamations presents difficulties. In a submission to the National Labour Consultative Council in April 1978, included in the submission to the Committee, it was stated that:

'... The Peak Union Councils are of the view that some of the requirements in Part VIIIA constitute a substantial and unreasonable obstacle to the amalgamation of unions and are in need of reform. Indeed, in respect of many unions, the practical effect of the requirements (and in particular those requirements dealing with obtaining membership approval of a proposed amalgamation) is simply to make amalgamation impossible.' (Peak Union Councils 1979)

5.312 In addition to the legislative requirements regarding union amalgamations, a large effort is required from individual unions proposing to amalgamate. In many cases extra resources are not available to undertake this effort.

5.313 It is the Committee's view that union organisation arrangements should be industry-based. It is recognised, however, that the heavy craft and occupational bias present in

current arrangements make it likely that in the absence of positive measures designed to facilitate a voluntary move to industry unions, the best that could be hoped for is a significant reduction in the number of unions operating in particular industries.

5.314 The Committee believes that the activity employing the largest number of employees in an enterprise should be the main criterion for determining which industry union would be appropriate for all members of the enterprise. In some cases, it may be difficult to avoid using an establishment or division of the enterprise as the basic unit for deciding which industry union is appropriate.

5.315 The Committee recognises that in many cases small unions are active in essentially the same enterprises and industries as other unions. Amalgamations based on the community of interest involved in such cases, while not actually moving towards industry unions, would be conducive in the long run to industry unionism and would have the benefits of reducing the number of unions in any one enterprise and of reducing the total number of unions. The Committee sees benefits in fostering such amalgamations.

5.316 The necessary changes will not occur in a short period of time and almost certainly will be made up of a number of small changes. The Committee believes, however, that the initiation of amalgamations is of fundamental importance to the industrial system in Australia and requires immediate action.

5.317 The Committee recognises that a concomitant of industry unionism would be a tendency to register industry awards or collective agreements. It sees this as generally desirable, not least because it may facilitate rationalisation of the wage structure, perhaps by broadbanding.

5.318 The Committee's recommendations on mechanisms to facilitate the rationalisation of the union structure in Australia are set out in Chapter 7.

Source: Australia, Report of the Committee of Inquiry into Technological Change in Australia, AGPS, Canberra, 1980, vol. I, pp. 138-142.

AII

RecommendationsRecommendation 1

7.46 The Committee recommends that the government sponsor a test case before the Commonwealth Conciliation and Arbitration Commission with a view to the setting by that Commission of minimum standards to be observed by enterprises on notification, provision of information, and consultation when technological change is to occur. The Committee recommends that the government support the prescription of standards similar to those set out in the NLAC guidelines (these are quoted in Chapter 5 of this volume), taking due account of more recent awards and agreements.

Union organisation

7.47 It is the opinion of the Committee, as outlined in Chapter 5, that it would be highly desirable to achieve a reduction in the number of unions in Australia through a process of union amalgamations. Ideally this would result in union organisation arrangements that would be industry-based. Given the heavy craft and occupational bias present in current arrangements, however, it is likely that, in the absence of positive measures designed to facilitate the move to industry unions, the best that could be hoped for in the short term is a significant reduction in the number of unions operating in particular industries.

7.48 At present, proposals for union amalgamations at the national level are governed by provisions that were said to have been introduced with the intention of protecting the interests of individual union members. These provisions place significant barriers in the way of amalgamations. The Committee believes that, in the interests of the community as a whole, the barriers should be lowered at least in cases that are not contrary to the formation of industry unions.

Recommendation 2

7.49 The Committee recommends that legislation relating to the organisation of unions be amended to facilitate the formation of larger industry-based unions. In particular it is recommended that the following changes be made to the Commonwealth Conciliation and Arbitration Act.

7.50 Section 158N should be amended so that, where the Industrial Registrar is of the view that a proposed amalgamation is not contrary to the formation of industry unions as described in Chapter 5 of Volume I of the Committee's Report, the proposal will be taken to have been approved by the members if, in a ballot, a majority of the formal votes cast are in favour of the amalgamation.

7.51 To assist the process of amalgamations: section 158K should be amended so that eligibility to vote in amalgamation ballots is determined by the rules of the relevant union dealing with eligibility to vote in ordinary union elections (in the

case of most unions this would mean that only financial members would be entitled to vote in amalgamation ballots); provision should be made in section 158N or elsewhere to allow a multi-union amalgamation to proceed even though in the ballot one or more of the unions concerned failed to secure the necessary support for the amalgamation, so that those unions securing the support might still amalgamate provided an opportunity existed for voting on alternative amalgamation arrangements.

7.52 To assist in reducing the number of very small unions, section 132 should be amended to allow organisations to apply to be registered only when they represent 2000 or more members, and a provision be included to require unions to show cause why they should not be deregistered when their numbers fall below 1500.

Recommendation 3

7.53 The Committee recommends that the Public Service Arbitration Act be amended as necessary to ensure that the conditions specified in Recommendation 2 apply in its area of coverage.

Recommendation 4

7.54 The Committee recommends that a Union Amalgamation Assistance Unit be established within the Department of Industrial Relations. The functions of the Unit should be to encourage unions registered under the Conciliation and

Arbitration Act to amalgamate in a manner not inconsistent with the long-term goal of industry unionism and to offer assistance during the process of amalgamation.

Recommendation 5

7.55 The Committee recommends that funds be made available through the Union Amalgamation Assistance Unit to meet reasonable costs incurred by unions seeking to amalgamate in a manner not inconsistent with the long-term goal of industry unionism; such costs may cover materials, legal advice and temporary administrative staff necessary to handle the amalgamation.

Recommendation 6

7.56 The Committee recommends that, further to Recommendations 2 to 5, the government sponsor through the National Labour Consultative Council a study of the ways and means by which registered industrial organisations in Australia could be actively encouraged to regroup on an industry basis.

Source: Australia, Report of the Committee of Inquiry into Technological Change in Australia, AGPS, Canberra, 1980, vol. I, pp. 173-4.

BDepartment of Employment and Industrial RelationsIndustry Based UnionsPolicy

- 2.1 The Government's policy on the formation of industry based unions is expressed in the Liberal Party and the National Country Party 1975 Employment and Industrial Relations Policy in the following terms:

'The Liberal and National Country Parties believe that industry-based unions would reduce the frequency and likelihood of industrial disputes. The multiplicity of unions in some industry fields made (sic) the task of negotiation and consultation more difficult. Industry unions would be better placed to communicate with employer organizations and Government departments and we would seek to discuss this matter with the union movement.'

The Confederation of Australian Industry and the ACTU also support the concept of industry unions.

- 2.2 The Government's policy in respect of industry unions has been developed against the background of the multiplicity of craft and occupationally based trade unions in Australia which exist within and across Australian industries.

By way of background, Australian Bureau of Statistics figures (December 1981) - see Attachment A - show that at the end of 1981 there were 324 trade unions in Australia. As at June 1982, there were 151 trade unions registered under the Conciliation and Arbitration Act.

The considerable number of trade unions within the federal jurisdiction and their lack of organization along industry lines contributes to a number of difficulties in Australian industrial relations. These problems have been considered and commented upon by:

- . the Committee to Advise on Policies for Manufacturing Industry in its Green Paper on Policies for Development of Manufacturing Industry (AGPS 1975, at pages 111, 112); and
- . the Committee of Inquiry into Technological Change in Australia in its Report on that subject (AGPS 1980, at pages 138-142).

Difficulties arising within Australian industries as a result of the present Australian trade union structure, some of which were specifically canvassed in the Reports mentioned above, include:

- . demarcation disputes between unions with overlapping eligibility for membership rules;
- . inefficient use of the finite resources available to Australian trade unions from what are presently often small and fragmented memberships;
- . problems in negotiations between employers and trade unions as to terms and conditions of employment arising from the multiplicity of

trade unions not only within an industry but often a particular enterprise;

- . lack of identification by trade unions which have a membership in several industries with the interests of a given industry;
- . rigidity in the structure of an industry's workforce arising from the understandable reluctance of unions to accept workers moving from their area of coverage to that of other unions within the industry;
- . the possibility of flow on of wage levels appropriate to one industry to another industry without proper consideration of their appropriateness in the context of the second industry; and
- . the possibility of wage leap frogging within an industry resulting from the multiplicity of trade unions.

Reasons for Legislation

2.3 The Government considered it necessary to provide a legislative basis for achieving industry unionism for a number of reasons:

- . there is no existing provision in the Conciliation and Arbitration Act that would

encourage the establishment of industry based trade unions by reference to the industry engaged in by relevant employers;

- . apart from the legal framework, the Australian trade union movement is not structured in a way that is likely to lead to re-organization on an industry basis without some Government initiative;
- . the Government recognizes that there is no real possibility of the establishment of industry unions without broad agreement between Government, employers and the union movement, on the industries concerned and the membership of the proposed unions. With this in mind, the Government regards legislating for alternative paths to the creation of industry unions under the Conciliation and Arbitration Act as a first step towards the provision of an appropriate legal framework to implement such agreement.

Main Features of Proposed Legislation

2.4 There are several important aspects of the proposed industry union provisions of the Conciliation and Arbitration Amendment Bill 1982 that have to be borne in mind if the operation of the Bill in this area is to be properly understood. These are:

. the underlying principle in the establishment of industry based unions under the legislation is tripartite consultation between peak employer and union bodies and the Government to identify what should be regarded as an industry for the purposes of registering any proposed industry based union;

. such consultation is envisaged as taking place within the framework of the National Labour Consultative Council. At the same time the Government envisages consultation taking place between the proposers of such a union and particular employers likely to be affected, the outcome of which can be taken into account when determining the ultimate parameters of the industry concerned;

. against this background, clause 10 of the Bill refers to the term 'industry' in the context of industry unions as a 'prescribed class of business trade, manufacture, undertaking of calling of employers' (sic) (emphasis added) in proposed amendments to the registration provision of the Conciliation and Arbitration Act, section 132;

. this is done so that an industry may be prescribed by regulation under the Act's regulation making power, section 198, after full

consultation of the kind described above. It will still be for the Industrial Registrar to determine whether a union of this type seeking registration falls within the industry as prescribed and meets the other statutory requirements for registration.

- . the Bill provides for three paths to the registration of an industry union to allow for the greatest flexibility in accommodating the establishment of industry unions. Briefly the alternatives are:

- a new association of employees may be registered in an industry as an industry union where its membership constitutes a substantial majority of the total number of persons in the industry and it is capable of satisfactorily representing the interests of all those persons - clause 10 of the Bill;

- an existing registered organization may alter its rules so as to become an industry union - clause 14 of the Bill. The process of conversion to an industry union in this way is facilitated by excluding objections that there are already unions registered with coverage in the relevant area - clause 16 of the Bill;

- existing registered organisations may amalgamate to become an industry union - clause 23 of the Bill. Such amalgamations are made easier by a reduction in the minimum number of valid votes required to be cast by members of the relevant unions in a ballot on the proposed election for the amalgamation to succeed - clause 26 of the Bill;

as a matter of industrial reality few industry unions, if any, are likely to be formed by the registration of an entirely new association. Nevertheless the Bill provides for the making of regulations for the holding of a plebiscite by secret ballot to determine whether a substantial majority of industry employees wish to form or join an industry union.

the industry union provisions of the Bill are seen by the Government as being a first step in the process of encouraging the establishment of industry based unions. The Government has also indicated that it will scrutinise the application and development of these provisions with a view to making necessary legislative changes in the light of experience - see House of Representatives Hansard, 25 March 1982, page 1474.

- . there is no compulsion on existing or proposed registered organizations to become industry unions. Except in so far as it is necessary to meet the objective of encouraging the establishment of industry unions, the provisions of the Act relating to the registration and activities of trade unions are unaffected by the proposed amendments.

Distinction between industry union proposals and 'community of interest' amalgamation proposals

- 2.5 There has been some comment about the variance between the industry union proposals in the Bill and certain proposals to facilitate union amalgamations under the Conciliation and Arbitration Act where there was a 'community of interest' between unions contemplating amalgamation. These proposals were contained in a Private Member's Bill (Conciliation and Arbitration Amendment Bill [No 2] 1981), introduced in the Senate on 25 November 1981 - Senate Hansard p.2562 - see Attachment B.
- 2.6 The Government decided not to take up the 'community of interest' proposals for amalgamation in the context of the Government's policy of encouraging the formation of industry based unions.
- 2.7 The Government's view was outlined in Parliament in 1981 - see Senate Hansard of 25 November 1981 at p.2584.

Basically, the Government has indicated that its view is that:

- . the criterion of 'community of interest' as a basis for easier union amalgamations under the Conciliation and Arbitration Act is not directed towards the creation of industry based unions;
- . it is more likely to reinforce existing union structures and allow their aggregation without achieving the establishment of industry based unions;
- . in short, the 'community of interest' approach is seen by the Government as simply providing a simpler path to amalgamations without seriously addressing the fundamental problems of the multiplicity of unions that are found in most Australian industries and which represent members in a large number of industries.

2.8 Apart from the deficiencies which the Government perceives in the operation of the 'community of interest' proposals, two further observations might be made:

- . the Government's proposals in this area deal directly with the question of establishing industry unions, and, in so doing, are not simply confined to the area of amalgamations;

- . the Government will continue to keep under review the question of difficulties in the processes of amalgamation under the Conciliation and Arbitration Act and envisages consultation with members of the NLCC on the issue.

Source: Conciliation and Arbitration Amendment Bill 1982, Commonwealth Employees (Voluntary Membership of Unions) Bill 1982, Submission By Department of Employment and Industrial Relations To Senate Select Committee, July 1982.

CCONFEDERATION OF AUSTRALIAN INDUSTRYINDUSTRY UNIONISM

The structure of trade unions in Australia has led to a number of difficulties which tend to impede the prevention and settlement of disputes and these have an undesirable effect on industrial relations.

In particular, trade unions are generally based along craft and occupational lines and this has encouraged a proliferation of unions at both the Federal and State levels. In 1981, for instance, there were 324 trade unions in Australia and of these organisations 151 were registered under the Conciliation and Arbitration Act.

When, as is commonly the case, a large number of trade unions operate within a single industry, great difficulty is often encountered in the negotiation of awards or agreements to apply in that industry.

The varying aspirations of the unions involved, together with the competition between them to secure better wages and conditions for members has encouraged leap frogging in the determination of wages and conditions.

The development of unions along craft and occupational lines, coupled with the registration processes, has also led to the

formation of unions which have overlapping rights to enrol members.

This has led to demarcation disputes as to membership in a number of areas.

In recent years, the demarcation disputes on the waterfront and in the building and construction industry have brought this problem into sharp relief. Considerable disruption to industry has occurred as a result of strikes caused by the competition between unions for membership.

It seems fair to say that the development of unions along industry lines would make a contribution to the elimination of such disputes. It would be proper to expect a reduction in the number of unions, which of itself should make a contribution to improved industrial relationships by reducing the opportunity for disputation.

It also seems reasonable to assume that a more cohesive approach to industry problems would come from a single union in an industry rather than from a number of craft or occupational unions operating in that industry.

Owing to the extensive coverage of trade unions throughout industry in general and the pre-eminence afforded to the principle of comparative wage justice in the Australian system of wage fixation, it is extremely common for wage increases granted in one industry to 'flow' to similar classifications in other industries. This 'flow' of wage increases across industries also leads to a leap frogging of wage demands as a

result of the distortion of relativities between classifications within those industries which receive the 'flow'.

The pre-eminence given to the principle of comparative wage justice in the fixation of wages gives rise to claims for wages based on nothing other than the fact that some members of a union have somewhere secured a wage increase which is then sought by all other members. This problem becomes more difficult where another union tries to secure those benefits for its members.

Current legislation also plays a part in promoting disputation in these circumstances.

Section 51 of the Conciliation & Arbitration Act, for instance, states that 'in determining an industrial dispute, the Commission shall provide, so far as possible, and so far as the Commission thinks proper, for uniformity throughout an industry carried on by employers in relation to hours of work, holidays and general conditions in that industry'.

It is thus the view of CAI, that any progress that can be made towards the development of union structures along industry lines, can be expected to assist in promoting better industrial relations.

As we see it, there would be merit in promoting over the longer term the formation of unions with wider coverage. The merger of unions now having overlapping coverage into one organization would, in our view, be an appropriate step in this direction.

In taking this position, CAI is not unmindful of the very many practical problems and obstacles in the way of achieving this objective. The conservatism which arises from the long history of trade unions being organised on a craft and occupational basis will be difficult to overcome.

Again, the high percentage of the workforce in unions has led to a large number of financial and powerful organisations which can be expected to resist change if it means a diffusion of their power.

Further difficulties can be expected when one considers the vested interests of both employers and unions in some current working relationships and the structure of awards and agreements. All this makes changes to union structures in the short-term seem remote.

For any change to take place, however, some change in the law is necessary. This arises from the fact that unions are given a privileged position by virtue of the registration under the Conciliation & Arbitration Act, and before change can take place some changes to the Act are necessary.

The Bill now before the Parliament is one approach to change.

In essence, the provisions of the Conciliation & Arbitration Bill 1982 seek to provide the means whereby change may take place. An important feature of the Bill in this respect is that while it makes provision for the registration of industry based unions, no such registration can take place until regulations have been prescribed specifying an industry in which an industry

union can be registered. That prescription will not occur until there has been consultation within the National Labour Consultative Council, and with employers and unions affected.

This appears to CAI to be an acceptable means of dealing with what is undoubtedly a difficult problem, because, as a matter of practical reality, different views will be expressed (even amongst employers) about proposals for creation of industry unions in particular industries. The consultations referred to above, if properly implemented, could assist in the identification and resolution of such differences, and thus lead to acceptable change.

An alternative method which has been canvassed for developing restructuring, involves the promotion of the amalgamation of unions with a 'community of interest'. Agreement on this approach has been reached within the National Labour Consultative Council. This provides the introduction of measures to facilitate the amalgamation of unions where there is a 'community of interest', and thus reduce some of the over-lapping union membership now existing.

In conclusion, CAI supports the concept of the restructuring of trade unions on an industry basis, but acknowledges that a number of practical difficulties will be encountered in its practical implementation.

Source: This document has been supplied by the CAI for this collection.

DThe Broken Hill Proprietary Company LimitedIndustrial Unionism -Restructuring of Australian Trade Unions

The aspects of the structures of Australian trade unions which most commonly attract critical comment are, firstly, the predominance of unions structured on a craft or occupational basis and, secondly, the related question of the multiplicity of unions. Debate has tended to centre around forms of restructuring directed towards changing the structure of unions from a craft or occupational basis to an 'industry' basis and/or towards reducing the number of unions.

Experience in Other Countries

A good deal of the discussion involves reference to observed experience in other countries where it is said that comparatively good industrial relations performance co-exists with trade union structures different from those found in Australia. What is sometimes overlooked is that the structures of trade unions in other industrialised countries are complex. They cannot fairly be described as generally characterised by small numbers of 'industry' unions. Nor is it possible to identify a clear relationship in other countries between a particular form of structure of trade unions and industrial relations performance.

Three countries to which reference is frequently made are the Federal Republic of Germany, the U.S.A. and Japan. However, trade union structures are quite different between these three countries and none fairly may be described as generally characterised by an 'industry' basis of union organisation.

- Federal Republic of Germany

Frequently West Germany is cited with approval as a country which has a good industrial relations record and a relatively small number of big unions which it is claimed are 'industry' unions.

It is generally acknowledged that since the end of World War II West Germany has enjoyed exceptionally good industrial relations by comparison with the Australian experience, for example, in the years 1970/79 average working days lost annually per 1,000 employees in the 'non agricultural' labour force are recorded by the ILO Bulletin of Labour Statistics as 49 for the Federal Republic of Germany compared with 583 for Australia, 508 for the U.S.A. and 99 for Japan. However, it is far from clear that this difference in experience is related to the number and size of unions, or to the basis of their organisation, i.e. 'industry', 'occupation' or 'craft'.

Schedule 'A' sets out some information in relation to the 17 unions affiliated with the West German Trade Union Federation (D.G.B.). It will be seen that the industries represented by the unions are very broadly defined and in

many respects would be unlikely to coincide with the limits of particular industries as seen through managements' eyes.

For example, I.G. Metall has 2.5 million members in industries as diverse as iron and steel, car manufacturing and electrical engineering and from this point of view its structure appears to be similar in some ways to that of the Australian AMW & SU.

The Jackson Committee Report (Report of the Committee to Advise on Policies for Manufacturing Industry, 1975) suggested that where the structure of a union does not parallel that of an industry, the Union may tend to be unaware of and insensitive to the impact of its actions on a particular industry or firm. It would be reasonable to expect that I.G. Metall could be affected in this way as much as could the AMW & SU.

It is also to be noted that in the 17 'industries' in respect to which there are unions affiliated with the D.G.B. there are also white collar unions which are not affiliated with D.G.B. Further, the 17 D.G.B. affiliates do not cover union members in every industry and unlike Australia where approximately 55% of wage and salary earners are members of a trade union, only one in three West German employees is a union member.

Unlike the ACTU, the D.G.B. appears to exercise considerable control over the actions of its affiliates.

This degree of control may be related to the relatively small number of unions. On the other hand, both the degree of control and the general industrial relations experience in West Germany may be related to quite different factors.

- U.S.A.

Trade union structures in the U.S.A. are also complex. Conflict between industry unions and craft unions resulted in the splitting of the Congress of Industrial Organisations (C.I.O.) from the American Federation of Labour (A.F.L.) in 1935. Although a reconciliation was effected in 1955 both industry and craft unions continue to operate at State and Federal levels. Federal legislation which permits workers in an establishment to choose the union to cover them, or that no union should cover them, tends to militate against development of industry unionism.

The U.S. Bureau of Census, Statistical Abstract of the U.S.A., 1980 indicates that union membership in the U.S.A. constitutes approximately 23% of the non agricultural labour force compared with more than 55% in Australia. As in Australia, union membership in the U.S.A. is unevenly distributed among industries and geographically. U.S.A. union membership of approximately twenty one million is distributed among some 174 national unions with a total of about 46,000 associated 'locals'.

The A.F.L. and C.I.O. basis of allocation of unions' jurisdictions between craft and industry type unions within industries is further complicated by non affiliation to A.F.L. and C.I.O. of more than one third of Federal unions. Of the national unions, 104 accounting for 17 million members are affiliated with the A.F.L. - C.I.O. 'Locals' independent of affiliation with any national union are said to account for a further one million members.

Also, as in the case of West Germany, 'industries' may be very broadly defined. For example, membership of the United Steelworkers of America extends to employees in the iron and steel, aluminium, base and precious metals mining, chemicals, cement and other industries.

- Japan

Japanese trade union structures are also complex. Prominent are Enterprise unions which Japan's Ministry of Labour statistics suggest account for more than 90% of all unionised employees. Unionised employees in turn represent about 30% of the labour force.

Some 34,000 enterprise based unions cover about 12 million unionised employees. A further one million employees are represented by an assortment of 5,000 unions organised on a craft, industrial or other basis. This group includes unions such as the All Japan Seamens Union.

The Company unions are linked through affiliation with various confederations of unions. The four principal confederations are the General Council of Trade Unions (Sohyo), Japanese Confederation of Labour (Domei), National Federation of Industrial Organisations (Shinsanbetsu) and Federation of Independent Unions (Churitsuronen). Interposed between the Company unions and the four principal confederations are industry based federations such as the Federation of Iron & Steel Industry Workers Unions (Tekkororen).

Reduction in Multiplicity of Unions

In addition to drawing on comparisons with other countries, pleas for restructuring of Australian unions on an 'industry' basis are supported by reference to other considerations. A good deal of what is said proceeds on the assumption that in the Australian context an 'industry' basis of union structures would necessarily mean fewer unions.

Such an assumption is not necessarily justified. Unless there is added to the requirement for an 'industry' basis the additional condition of a single or minimal number of unions per industry, industry based structures may give rise to as much effective 'multiplicity' as other forms of structure. Some comment on the matter of 'multiplicity' of Australian unions is justified as there may be a tendency to over-emphasise its significance.

The Bureau of Statistics survey, 'Trade Union Statistics, Australia' as at December 1981 identifies 324 trade unions of which 150 are unions registered under the Federal Conciliation and Arbitration Act. However, the survey reveals that of the total of 316 unions, 85 each with membership of more than 5,000 persons account for 91% of all members of unions and seven unions each with 80,000 or more members account for 28% of total membership.

An indication of the probable practical result of this degree of multiplicity may be had from the operations of The Broken Hill Proprietary Company Limited as a major employer in the seven industries referred to in Schedule 'B'.

The schedule lists the unions representing employees in each industry and Schedule 'C' indicates approximate membership numbers.

It may be noted from Schedules 'B' and 'C' that:-

- (1) The number of trade unions representing the Company's employees engaged in operations of the various industries varies from a minimum of five in the case of the Queensland coal mining industry to a maximum of 16 in the case of the NSW steel industry.
- (2) Of the total of 30 unions involved in seven industries, 21 are believed to have a membership of more than 5,000 persons.

- (3) 13 unions in three industries have a structure which broadly parallels the structure of an industry as seen from the point of view of management. These unions are to be found in the coal mining industry (Australian Coal & Shale Employees Union, Australian Collieries Staff Association, Federated Mining Mechanics Association of Australia, Newcastle Deputies & Shotfirers Association, NSW Colliery Officials Association, Illawarra District), stevedoring industry (Australian Foremen Stevedores Association, Waterside Workers Federation, Wharf Superintendents & Supervisors Association) and maritime industry (Australian Institute of Marine & Power Engineers, Federated Marine Stewards & Pantrymens Association of Australasia, Marine Cooks, Bakers & Butchers Association of Australasia, Merchant Service Guild of Australia, Seamens Union of Australia).

This does not present as unmanageable a prospect as might be anticipated on the basis of the statistician's figures.

Among benefits often attributed to reduced multiplicity of unions, irrespective of whether the reduction is related to an 'industry' based form of restructuring, are two which deserve comment. They are:-

- Management efficiency of unions

It is claimed that because amalgamation necessarily involves substitution of a larger union for a number of smaller unions which have joined to amalgamate, amalgamation means a bigger membership and greater financial strength. It is said that this is desirable because:-

- (a) the population from which leaders of the new union are drawn is an enlarged one thus increasing the probability of competent persons attaining office.
- (b) attractive salaries can be offered to encourage persons of ability to take up a career as a union official.
- (c) more effective use of resources is possible and improved management can be maintained in the form of such services as research staff, libraries and legal and other advice.

Considerations of this nature evidently were taken into account when there were framed the 1972 amendments to the Conciliation and Arbitration Act which incorporated Part VIIIA dealing with amalgamation of organisations. In his Second Reading speech the Minister said:-

'The Government recognises that amalgamation of employer organisations and of unions is a characteristic of industrialised societies in the Western World and that there are benefits for the members of organisations in combining

together their resources to undertake more effectively their responsibilities in the field of industrial relations.'

In the attached schedules of unions there is reference to several unions which are relatively small in terms of numbers of members, however, in the Company's experience some most effectively managed unions are to be found in this group. For example, both the Waterside Workers Federation and the Seamens Union of Australia over a considerable period of years appear to have proved capable of maintaining competent and efficient management and services to members at a Federal office level, at the level of Branch offices in each State and at the further level of offices in a number of major ports within States. Membership of the Waterside Workers Federation is about 10,000 and that of the Seamens Union of Australia 1,600. This experience suggests that some of the advantages in management efficiency which proponents of amalgamation tend to associate with sheer size can be realised at relatively low levels of membership and that it may not be possible to justify amalgamation on the ground of improving management efficiency beyond a relatively low membership level.

- Negotiations with employers

An Australian employer may be required to deal with a relatively large number of unions. It is said that this creates difficulties for employers, is wasteful of unions' resources and makes resolution of issues more difficult.

It is true that negotiations between employers and unions can be complicated by a large number of parties on one or both sides. On the other hand a multiplicity of parties may be conducive to avoiding adherence to extreme positions which may be taken up by a single party which is not under pressure to accommodate different and perhaps less extreme points of view.

In the Company's experience there have been occasions on which fewer unions would have contributed to quicker and more satisfactory resolution of issues. Equally there have been occasions where the multiplicity of unions has been seen to contribute to a more satisfactory resolution of issues than would have occurred had there been only one union with a strong commitment to a course seen to be obstructing settlement.

In this connection it is to be noted that it is possible to define relatively few industries on a single employer or even a single employer association basis and that multiplicity of employers in an industry is common. For example, the number of employers operating in the NSW and Queensland coal mining industry substantially exceeds the number of unions in the industry and it is not to be assumed that these employers are easily able to speak with one voice or follow a single policy in connection with all industrial relations issues arising in the industry. Whilst it is true that most of these employers are members of either the NSW or Queensland Coal Owners Associations,

experience does not suggest that the Associations are able to exercise a degree of influence and control over members actions and policies sufficient to produce a uniform approach by employers in all cases.

Other Considerations

Although it may not be possible to make out a convincing case for 'industry' unions by reference to overseas experience or some of the benefits claimed to be associated with reduction in multiplicity of unions should this be associated with restructuring on an industry basis, there are other considerations. Most commonly mentioned as benefits associated with industry based unionism are:-

- Reduced scope for demarcation and jurisdictional disputes

If the amalgamation which produced the AMW & SU is taken as an example there is little to suggest that amalgamations of unions necessarily contributes to a reduction in demarcation issues between crafts. Certainly the AMW & SU amalgamation does not appear to have changed demarcation lines between crafts such as fitters and boilermakers, previously members of separate organisations, i.e., the Australasian Society of Engineers & the Boilermakers & Blacksmiths Society.

However, multiplicity of unions with overlapping rules of eligibility for membership and with members having classifications or occupations common to more than one

industry also gives rise to jurisdictional disputes and competition between unions for membership.

Recent instances of this occurring have been noted in the construction industry and the stevedoring industry. Clearly, any reduction in the number of unions eligible to have members in these and other industries must reduce scope for jurisdictional disputes, irrespective of whether the reduction is achieved through restructuring on an 'industry' or 'craft' and/or 'occupational' basis.

- Flow of wages and conditions of employment

It is a matter for concern that some wages and conditions of employment settlements tend to flow across 'industry' borders primarily for the reason that members of the same union are involved in more than one industry.

Industry based unions' structures may assist in avoiding the spread of disputes and inappropriate standards across industry borders for no reason other than that a union's membership is not confined within the limits of one industry.

For example, the Transport Workers Union finds the greater part of its membership in the general road vehicle cargo carrying industry, however, the Union has also enrolled a substantial number of members in other industries. In recent years wage rates in the general road vehicle cargo carrying industry have increased from time to time for reasons largely domestic to that industry and in advance.

of wage rates in some other industries in which T.W.U. members are employed.

On occasions this has tended to lead, firstly, to increases in wage rates of the T.W.U. members in the other industries, despite absence of considerations said to have been relevant to the original increases, and then to problems arising out of disturbed wages relativities in those industries.

Having regard to the history of determination of wages and conditions of employment of transport classifications, it is unlikely that mere change in union structures would eliminate the flow of transport industry wages and conditions of employment across industry borders, however, such a change could reasonably be expected to reduce the pressure for flow in some circumstances.

- Improved industrial relations climate

As suggested by the Jackson Committee, large unions structured on a 'craft' and/or 'occupational' basis with membership straddling many industries may be less sensitive to the need for viability of any particular industry in which its members are employed than is a 'single industry' based union.

In periods of high demand for labour it may be relatively easy for such an organisation to conduct a campaign of direct action to the point of seriously and permanently damaging the viability of one or more enterprises in a

particular industry. It is reasonable to expect that a single industry union would be less likely to be unaware of or to ignore these effects.

For this reason, whilst amalgamation of unions on a non-industry basis may contribute to a reduction in scope for jurisdictional disputes, it may do so at the cost of reduced sensitivity of unions to the impact of their actions on the industries and firms in which members are employed.

Conclusion

The reduction in scope for jurisdictional disputes between unions, discouragement of unjustifiable flow of disputes and wages and conditions of employment standards across industry borders and improvement in industrial relations climate are important. Restructuring of unions on an 'industry' basis would tend to contribute to attainment of these objectives. If such restructuring is accompanied by a reduction in the number of unions, additional benefit is possible in some cases.

However, there are difficulties. Advocates of 'industry' unions do not always make clear what they mean by 'industry'. Problems associated with defining an industry have been highlighted recently in proceedings in relation to conflicts between the BLF, FIA and AWU in construction work and between the WWF and other unions over stevedoring work.

.....

How is the 'transport industry' to be defined? Is the driver of a motor vehicle regularly engaged in transporting coal partly on mining lease and partly on public roads from mine to ship loading stockpile engaged in the 'transport industry', the 'coal mining industry', or the 'stevedoring industry'? In which industry is engaged the tradesman maintaining the vehicle? Do the categorisations change if the employer is not the mine owner?

Definitions appropriate and unambiguous today may prove to be at a later date both inappropriate and ambiguous because of changes in methods, materials or technology.

One thing is clear, any general movement towards industry based union structures would require substantial re-distribution of membership between existing unions. Fragmenting of unions would be as significant as amalgamating them. For this reason resistance to such a general movement is inevitable and at least in the short term, would be likely to prove insurmountable.

For example, jurisdictional disputation in the construction industry between the BLF, AWU and FIA is in part a result of a system of union structures which permits existence of multiplicity of occupational based unions with overlapping rules of eligibility for membership. Assuming that definition of the industry is possible, formation of a 'construction' industry union through combination of fragmentation and amalgamation of the three unions and perhaps others may be thought to offer benefits. Such changes are not likely to be quickly or easily achieved.

Fragmentation of the TWU or AMW & SU and coincidental amalgamation of severed sections of membership with other 'industry' unions would present similar difficulties.

Existing Federal legislation confers on the Conciliation and Arbitration Commission power to make orders excluding a union from representing a class or group of employees eligible for membership of the union and to grant the privilege to another union. In theory these processes would be adequate, for example, to permit a measure of fragmentation of a union and amalgamation of severed sections of membership with other unions. However, in practice there has been little recourse to these provisions. Unusual circumstances would be required to encourage a constitutionally competent union to be associated with proceedings designed to increase membership through involuntary fragmentation of another union.

Development of 'industry' based union structures in Australia will be achieved, if at all, only very gradually. It is one thing to facilitate and encourage such a development. It is another matter to attempt to impose a programme which must involve fragmentation of existing unions.

In this context the Conciliation and Arbitration Amendment Bill 1982 offers a useful contribution by making specific provision for registration of unions formed on an industry basis and facilitating amalgamation of unions on that basis. The extent to which the Bill, if it becomes law, will contribute to development of industry based unions remains to be seen. Certainly, in the absence of such legislation it is reasonable

to anticipate that development of unions structures may be in the other direction. In this connection it is of interest to note that in 1968 the Donovan Royal Commission reported that in the U.K. reduction in number of unions and increase in average size had benefited multi- occupational unions which had extended their activities into new industries and processes. There had not been observed associated progress towards industry unionism.

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SCHEDULE "A"WEST GERMAN UNIONS

Listed below are the seventeen unions affiliated with the German Trade Union Federation (Deutscher Gewerkschaftsbund - D.G.B.)

1. Building Workers
(I.G. Bau, Steine, Erden)
2. Mining Workers
(I.G. Bergbau und Energie)
3. Printing and Paper Workers
(I.G. Druck und Papier)
4. Railway Workers
(Gewerkschaft der Eisenbahner Deutschlands)
5. Education and Scientific Workers
(Gewerkschaft Erziehung und Wissenschaft)
6. Agricultural Workers
(Gewerkschaft Gartenbau, Land und Forstwirtschaft)
7. Bank, Insurance and Commercial Workers
(Gewerkschaft Handel, Banken und Versicherungen)
8. Woodworkers
(Gewerkschaft Holz und Kunststoff)
9. Leather Workers
(Gewerkschaft Leder)
10. Metal Workers
(I.G. Metall)

- all types of metalworkers are included in the union and no distinction is made between craft and non-craft workers, or between

members operating in different sectors such as iron and steel, car manufacturing or electrical engineering.

- at the end of 1974, the union numbered over 2.5 million members, including 238,000 white collar workers, making it the largest union in the western world.)

11. Food, Tobacco and Catering Workers

(Gewerkschaft Nahrung, Genuss, Gaststätten)

12. Public Services, Transport and Communication Workers

(Gewerkschaft Öffentliche, Dienste, Transport und Verkehr)

13. Postal Workers

(Deutsche Postgewerkschaft)

14. Textile and Clothing Workers

(Gewerkschaft Textil-Bekleidung)

15. Musicians and Artists

(Gewerkschaft Kunst)

16. Chemical Workers

(I.G. Chemie, Papier, Keramik)

17. Police

(Gewerkschaft der Polizei)

In addition to the abovementioned unions, there are a number of unaffiliated unions, the principal of which is the German Salaried Employees Union (DAG: Deutscher Angestellten Gewerkschaft), of which membership is open to all salaried employees.

SCHEDULE "B"UNIONS INVOLVED IN BHP OPERATIONS1. Steel Industry(a) New South Wales

Amalgamated Metal Workers' and Shipwrights' Union

Association of Draughtsmen, Supervisory and Technical Employees

Association of Professional Engineers, Australia

Association of Professional Scientists of Australia

Australasian Society of Engineers

Building Workers' Industrial Union of Australia

Electrical Trades Union of Australia

Federated Clerks' Union of Australia

Federated Ironworkers' Association of Australia

Federated Moulders' (Metals) Union of Australia

Federated Ship Painters and Dockers' Union of Australia

Operative Painters and Decorators' Union of Australia

Plumbers' and Gasfitters' Employees Union

Transport Workers' Union of Australia

Vehicle Builders' Employees Federation of Australia

Federated Liquor Allied Industries Employees' Union

TOTAL - 16 Unions

(b) South Australia (Whyalla)

Amalgamated Metal Workers' and Shipwrights' Union

Amalgamated Society of Carpenters and Joiners

Australasian Society of Engineers

Australian Timber Workers' Union

Building Workers' Industrial Union of Australia

Electrical Trades Union of Australia

Federated Engine Drivers' and Firemen's Association of Australia

Federated Ironworkers' Association of Australia

Federated Moulders' (Metals) Union of Australia

Plumbers' and Gasfitters' Employees Union

Transport Workers' Union of Australia

TOTAL - 11 Unions

(c) Western Australia (Kwinana)

Amalgamated Metal Workers' and Shipwrights' Union

Association of Draughtsmen, Supervisory and Technical Employees

Australasian Society of Engineers

Australian Workers' Union

Building Trades Association of Unions of Western Australia

Electrical Trades Union of Australia

Federated Engine Drivers' and Firemen's Union

Transport Workers' Union of Australia

TOTAL - 8 Unions

(d) Victoria

Amalgamated Metal Workers' and Shipwrights' Union

Association of Professional Engineers, Australia

Association of Professional Scientists of Australia

Electrical Trades Union of Australia

Federated Clerks' Union of Australia

Federated Ironworkers' Association of Australia

TOTAL - 6 Unions

2. Iron Ore Mining Industry(a) Western Australia

Amalgamated Metal Workers' and Shipwrights' Union

Australian Workers' Union

Building Workers' Industrial Union of Australia

Building Trades Association of Unions of Western Australia (Koolyanobbing and Yampi)

Electrical Trades Union of Australia

Federated Engine Drivers' and Firemen's Union

Transport Workers' Union of Australia

Australian Institute of	)	
Marine and Power Engineers	)	Yampi only -
	)	under <u>Tugboat</u>
Merchant Service Guild	)	<u>Industry</u>
	)	<u>Award</u>
Seamen's Union of	)	
Australia	)	

TOTAL - 10 Unions

(b) South Australia

Amalgamated Metal Workers' and Shipwrights' Union

Australian Workers' Union

Amalgamated Society of Carpenters and Joiners

Electrical Trades Union of Australia

Federated Engine Drivers' and Firemen's Association of Australasia

Federated Liquor and Allied Industries Employees' Union

Transport Workers' Union of Australia

TOTAL - 7 Unions

3. Coal Mining Industry(a) New South Wales

Amalgamated Metal Workers' and Shipwrights' Union

Australian Coal and Shale Employees' Federation (Miners' Federation)

Australian Collieries' Staff Association

Electrical Trades Union of Australia

Federated Engine Drivers' and Firemen's Association of Australasia

Federated Mining Mechanics' Association of Australasia

Newcastle Deputies and Shotfirers' Association

New South Wales Colliery Officials' Association, Illawarra District

TOTAL - 8 Unions

(b) Queensland

Amalgamated Metal Workers' and Shipwrights' Union

Australian Coal and Shale Employees' Federation

Australian Collieries' Staff Association

Electrical Trades Union of Australia

Federated Engine Drivers' and Firemen's Association of Australasia

TOTAL - 5 Unions

4. Manganese Ore Mining Industry (Northern Territory)

Amalgamated Metal Workers' and Shipwrights' Union

Electrical Trades Union of Australia

Federated Clerks' Union of Australia

Federated Engine Drivers' and Firemen's Association of Australasia

Federated Miscellaneous Workers' Union of Australia

Transport Workers' Union of Australia

TOTAL - 6 Unions

5. Ferro-Alloys Manufacturing Industry (Tasmania)

Amalgamated Metal Workers' and Shipwrights' Union

Building Workers' Industrial Union of Australia

Electrical Trades Union of Australia

Federated Ironworkers' Association of Australia

Transport Workers' Union of Australia

Federated Engine Drivers' and Firemen's Association of Australia

TOTAL - 6 Unions

(6) Stevedoring Industry

Australian Foremen Stevedores' Association

Federated Engine Drivers' and Firemen's Association
of Australasia

Federated Clerks' Union of Australia

Federated Ironworkers' Association of Australia

Waterside Workers' Federation of Australia

Wharf Superintendents and Supervisors Association

TOTAL - 6 Unions (maintenance employees excluded)

7. Maritime Industry

Australian Institute of Marine and Power Engineers

Federated Marine Stewards and Pantrymen's
Association of Australasia

Marine Cooks, Bakers and Butchers' Association of
Australasia

Merchant Service Guild of Australia

Professional Radio and Electronics Institute of
Australasia

Seamen's Union of Australia

TOTAL - 6 Unions (non seagoing employees excluded)

SCHEDULE "C"APPROXIMATE MEMBERSHIP OF TRADE UNIONS INVOLVEDIN COMPANY OPERATIONS

<u>Union</u>	<u>Membership(1)</u>
Amalgamated Metal Workers' and Shipwrights' Union	160,482
Amalgamated Society of Carpenters and Joiners	12,000
Association of Draughtsmen, Supervisors, and Technical Employees	20,523
Association of Professional Engineers	15,171
Association of Professional Scientists of Australia	6,000
Australasian Society of Engineers	26,100 (financial) 80,000 (book)
Australian Foremen Stevedores Association	1,300
Australian Coal & Shale Employees Union (Miners' Federation)	11,500 (2)
Australian Institute of Marine and Power Engineers	4,192 (2)
Australian Timber Workers' Union	13,000
Australian Workers' Union	130,000
Building Workers' Industrial Union	41,000 (financial) 50,000 (book)
Electrical Trades Union	67,133 (2)
Federated Clerks' Union	98,000
Federated Engine Drivers' and Firemen's Association	18,000

Federated Ironworkers' Association	56,000 (financial)(2) 66,000 (book) (2)
Federated Liquor & Allied Industries Employees Union	82,000 (2)
Federated Marine Stewards and Pantrymen's Association	1,040 (2)
Federated Mining Mechanics' Association	1,300 (2)
Federated Miscellaneous Workers Union	83,000 (financial)
Federated Moulders' (Metals) Union	4,500
Federated Ship Painters & Dockers Union	2,000
Merchant Service Guild	2,500
Marine Cooks Bakers & Butchers' Association	540
N.S.W. Colliery Officials Association, Illawarra District	700
Newcastle Deputies & Shotfirers' Association	500
Operative Painters and Decorators Union	12,418 (2)
Plumbers and Gasfitters Employees' Union	13,700
Seamen's Union of Australia	4,625
Transport Workers' Union	101,000
Vehicle Builders Employees Federation	49,000
Waterside Workers' Federation	10,000

NOTES:

- (1) Figures are for 1979 unless otherwise indicated.
 (2) 1978 Figures.

EACTUIndustry Based Unions

56. There are several provisions in the Conciliation and Arbitration Amendment Bill 1982 designed to encourage the formation or growth of industry based unions. In general terms, the amendments will change the present laws relating to the registration, alteration of rules and amalgamation of unions registered under the Conciliation and Arbitration Act as follows.

- (a) Registration. Section 132 of the Act will be amended so as to provide for the registration of an association of employees formed on an industry basis (see clauses 10 and 16 of the Amendment Bill).

New paragraph 132(1)(d) will enable the registration of an industry based union provided

- (i) the membership of the association consists of not less than 100 employees;
and

- (ii) the Registrar is satisfied that

. all of those employees are
employed in a single industry;

- . that they constitute a substantial majority of the employees in that industry; and
- . that the association is capable of satisfactorily representing the interests of all the persons employed in that industry.

In paragraph 132(1)(d) the only definition of 'industry' for the purpose of registration of an industry based union is that the industry must consist of 'a prescribed class of business, trade, manufacture, undertaking or calling of employers'. In other words, the crucial definition determining the operation of the entire new scheme in relation to industry based unions is left for prescription in the Conciliation and Arbitration Regulations.

New sub-section 142(2) exempts industry based associations from the operation of s.142 of the Act. Section 142 provides that the Registrar shall, unless in all the circumstances he thinks it undesirable to do so, refuse to register an association if an organisation to which the members of the association 'might conveniently belong' has already been registered.

- (b) Alteration of Rules. A new section (s.139A) will be added to the Act dealing with the alteration of rules of industry based unions or of other unions so as to become industry based unions (see clause 14 of the Amendment Bill).

New sub-section 139A(1) precludes a union registered under new paragraph 132(1)(d) from amending its rules to enable it to become an organisation of a type other than an industry based union.

New sub-sections 139A(2)-(5) provide for the procedures to be followed where an existing union seeks to change its rules so as to become an industry based union.

- (c) Amalgamation. The amalgamation provisions of the Act will be amended so as to facilitate union amalgamations that will result in an industry based union (see clauses 22-27 of the Amendment Bill).

In particular, new s.158CA prohibits an amalgamation of an existing organisation with an industry based organisation which would result in the amalgamated organisation being other than an industry based union. Existing sections 158K and 158N will be amended so as to ease the present restrictions on amalgamations where an

amalgamation would result in the formation of an industry based union. The description of the 'roll of voters' for amalgamation ballots in s.158K is amended and the requirements in s.158N as to when an amalgamation will be taken to have been approved in a ballot are relaxed.

57. The ACTU considers that there are a number of basic problems with the new provisions relating to industry based unions. Firstly, the provisions are unrealistic given the present structure of trade union organisation in Australia and will therefore have little practical effect. Secondly, as the National Labour Consultative Council has recognised, the encouragement of industry based unions is not the most appropriate (or even a workable) way of bringing about a rationalisation of union structures in Australia. Reform of the present laws based on the NLCC Report on Amalgamations is the most appropriate way to bring about such a rationalisation. Thirdly, there are serious deficiencies in and implications of the new provisions which suggest that the provisions should be withdrawn.

PRESENT POSITION

58. Trade Union Organisation. In December 1981, there were 324 trade unions in Australia. The seven largest unions accounted for over 28% of total union membership and 63 unions accounted for just over 86% of total membership. The remaining membership was spread over a large number of

small unions, 156 of which had fewer than 1,000 members (Source: ABS Trade Union Statistics: Australia, December 1981, Cat. No.6323.0). The number of employee organisations registered under the Commonwealth Conciliation and Arbitration Act 1904 was 150, these organisations representing 82% of total union membership in Australia.

59. Trade union organisation in Australia reflects the historical development of trade unionism in this country. For over 100 years union organisation in Australia has developed along similar lines to the British trade union movement, reflecting the strong ties between Australia and Britain especially in the formative years of trade union development in Australia in the late nineteenth century. Union organisation in Australia may be contrasted with that in West Germany (where, with approximately 33% of workers in unions, there are 17 big unions often said to be 'industry unions') and Japan (where, with 35% of workers in unions, there are thousands of enterprise-based unions as well as unions with a more general base). In both West Germany and Japan there was a massive re-organisation of industry and trade unions following World War Two (under the supervision of U.S. Occupation Administrations).

60. In some respects, Australian trade union structure is extremely complex. Description is hampered by the inadequacy of the terms traditionally employed for classifying trade unions - craft, industrial, occupational,

enterprise and general. Many major Australian trade unions fit none of these classifications. However a general outline of union structures in Australia may be attempted.

- (a) In most industries and services it is possible to divide the labour force into groups such as white-collar workers, maintenance workers and process workers. It is common in Australia for each group to have its own union or unions. Further sub-division can separate white-collar employees into clerical workers, supervisors, technicians and administrators; or maintenance workers into members of separate crafts. Each of these sub-groups may have its separate union. Further it may be that there are unions competing for members in the groups and sub-groups. Thus a typical example of union coverage in an industry or enterprise may be as follows:

White-Collar Employees

- | | | |
|-------------|---|--|
| Clerical | - | Federated Clerks' Union |
| Supervisory | - | Association of Draughting,
Supervisory and Technical
Employees |

Maintenance Employees

- | | | |
|--------|---|---|
| Trades | - | Amalgamated Metal Workers' &
Shipwrights Union |
| | - | Electrical Trades Union of
Australia |
| | - | Building Workers Industrial
Union of Australia |
| | - | Federated Engine Drivers and
Firemen's Association of
Australia |

Production Employees

Process - Amalgamated Metal Workers' & Shipwrights' Union or Federated Ironworkers Association of Australia or Federated Storemen & Packers Union of Australia or Printing and Kindred Industries Union or Federated Tobacco Workers' Union of Australia etc.

Service Employees

Transport & Storage - Transport Workers Union of Australia
 - Federated Storemen & Packers Union of Australia

Guards, cleaners - Federated Miscellaneous Workers Union of Australia.

If this was the total picture, the Australian trade union movement would consist of a large number of small unions and in fact 235 out of Australia's 324 unions have less than 5,000 members. However, at the other extreme, 23 unions account for almost 60% of union members in the country. Some of the largest of these unions have achieved their position by linking together groups and sub-groups of workers from different industries and enterprises (e.g. the AMWSU, the Australian Workers' Union, the Federated Miscellaneous Workers Union, the Electrical Trades Union, the Federated Storemen and Packers Union, and the Federated Ironworkers Association).

- (b) Some unions are organised on an industry basis - in which case they may cover most employees in the industry (e.g. the Australian Insurance Employees Union which covers clerical staff but not cleaners etc. in the insurance industry) or, in the main, only the 'production' workers in the industry (e.g. the Vehicle Builders Employees Federation and the Clothing and Allied Trades Union). Other unions may be organised on an enterprise basis (e.g. the Commonwealth Bank Officers Association which covers clerical staff in the Commonwealth Bank and the Reserve Bank but not cleaners etc.) or mainly on an occupational basis (e.g. the Australian Teachers Federation; the Royal Australian Nursing Federation; the Transport Workers Union; and the Builders Labourers Federation).

This brief description points to the complexity of union coverage that has developed in Australia.

61. It is sometimes claimed that the present structure of trade union organisation in Australia contributes to a number of problems including

- . problems in negotiations where an employer has to deal with several or many different unions representing employees;

- . the limited resources of small unions restricts the range of services offered to members and, in some cases, hinders the effective representation of workers in the conciliation and arbitration system; and
- . competition between unions for membership leading to demarcation and jurisdictional disputes.

Where these problems exist, it is in the interest of all involved that constructive steps be taken towards alleviating the problems. In the view of the ACTU, those steps should include the encouragement of more mergers between unions as well as other measures to promote co-operation between unions in their industrial work and in relation to membership coverage.

62. Need for Reform. There is general recognition among industrial relations practitioners and in the wider community of the need for a reduction in the number of unions in Australia through amalgamations. Indeed various Committees of Inquiry established by the Federal Government have recognised the advantages, for the community and for industrial relations, of a reduction in the number of unions.

63. For example, the Jackson Committee was critical of the large number and the fragmentation of membership of Australian unions:

'Because unions are numerous, their membership fragmented, and their structure does not parallel industry structure, they may tend to be unaware of, or insensitive to, the impact of their actions on industries and firms. Moreover, the number of unions over-stretches available resources ... A more consolidated union structure would allow relatively limited resources to be used more efficiently ... A third and more obvious implication of union fragmentation is that it dilutes their industrial power ... The occupational structure of some unions, taken with fragmentation of membership, is a fertile field for demarcation and jurisdictional disputes (Report by the Committee to Advise on Policies for Manufacturing Industry, A.G.P.S., 1975, Vol. 1, p.111.)

The Coombs Royal Commission on Australian Government Administration expressed concern about the large number of unions in the Government employment area and the effectiveness of some of the smaller staff organisations which owed their existence to legislative provisions which permit the registration of unions of less than 100 employees. The Commission concluded

'In the interest of more efficient administration of industrial relations, the Commission believes it would be desirable for fewer associations to operate within the Public Service and Commonwealth government employment generally.' (Report of the Royal Commission on Australian Government Administration, Commonwealth Government Printer, Canberra, 1977, p.291.)

64. There is also widespread recognition that the present provisions of the Conciliation and Arbitration Act dealing with union amalgamations (Part VIIIA) constitute a substantial and unreasonable obstacle to the amalgamation of unions and are in need of reform. For example, the Coombs Royal Commission noted that 'current legislation relating to the amalgamation of registered organisations

contains procedural provisions which may have the effect of discouraging amalgamation'. (Report, p.292). Academic commentators have also criticised the provisions as constituting an unreasonable obstacle to amalgamations. Thus Daniel Khoury concluded that:

'... the weight of evidence tends to suggest that Part VIIIA of the Conciliation and Arbitration Act 1904, and in particular s.158N, hinders rather than facilitates union amalgamation.' ('The Federal Law Relating to Union Amalgamation in Australia: Help or Hindrance?' Journal of Industrial Relations, vol. 20, March 1978, p.65).

G.H. Sorrell has referred to the present requirement in s.158N as a 'stumbling block' to amalgamations and has suggested that federal legislation places 'an obstacle in the way of rationalisation of union structure' (Law in Labour Relations - An Australian Essay, Law Book Co., pp.145, 146).

65. However, the best testimony to the fact that the present legislation discourages union amalgamations is that since the legislation was enacted in 1972, only three amalgamations of employee organizations have taken place under it. These were the amalgamations between the Federated Ironworkers' Association and the Federated Artificial Fertilisers and Chemical Workers Union of Australia, between the Australian Workers Union and the Wool and Basil Workers Union of Australia, and between the Amalgamated Metal Workers Union and the Federated Shipwrights and Ship Constructor's Association of Australia... It is interesting to note that in each of these

amalgamations the large union involved was exempted under sub-sections 158K(7) and (8) from having to hold a ballot of its members on the question of amalgamation. Other amalgamations, where a way around the s.158N requirement was not available, simply have been prevented from taking place. The most recent example of an amalgamation being stymied by the present provisions of the Act is the proposed amalgamation between the Australian Textile Workers' Union and the Australian Boot Trade Employees' Federation. Despite the fact that there is a clear 'community of interest' between the two unions and that over ninety per cent of those members who voted in the ballots conducted in each union supported the amalgamation, the amalgamation cannot proceed because the s.158N requirement (that at least 50 per cent of the members must vote in the amalgamation ballots) was not met. The return rate of ballots from the members of the Textile Workers' Union was 34.7 per cent and the return rate in the Boot Trade Employees' Federation was 44.5 per cent.

66. The present Federal Government, the Confederation of Australian Industry (CAI) and the ACTU have, by their participation through the National Labour Consultative Council in the formulation of proposals for reform, also recognised the need for a reduction in the number of unions in Australia through amalgamations and the restrictions placed on union amalgamations by the present provisions of the Act.

PROPOSALS FOR REFORM

67. Given the widespread recognition of the need for reform, there is an appropriate basis upon which progress can be made towards improving the structure of trade union organisation in Australia. However, for progress to be made, proposals for reform must identify and be directed towards generally accepted goals and must be based upon an understanding of the industrial relations system and existing trade union structures. Further, and perhaps most importantly, such proposals must be devised in consultation with and have the support of the Trade Union Movement.

68. At the present time, there are two major proposals for reform in relation to trade union structures. The first proposal was developed by the Federal Government over 3 years in consultation with unions and employers and has the support of the ACTU and the Confederation of Australian Industry. The second proposal was developed by the former Minister for Industrial Relations (Mr. Viner) in less than eight months without consultation with unions or employers and does not have the support of the ACTU. The two proposals are considered below.

69. (a) NLCC Proposal. In April 1978, the ACTU approached the Federal Government through the National Labour Consultative Council about the restrictions in the Conciliation and Arbitration Act which virtually prevented amalgamations by federal unions (see Appendix D for the ACTU Submission on Union Amalgamations). After considerable discussion at the

NLCC, during which the possibility of establishing industry based unions was considered and rejected, the Council agreed to proceed with an examination of how union amalgamations might be facilitated where there was a 'community of interest' between unions proposing amalgamation. The changes were the subject of almost three years' consideration by a specialist committee of the NLCC which comprised senior representatives of the Department of Industrial Relations, the CAI and the Union Movement. In February 1980 a unanimous and detailed proposal for changes to the amalgamation laws was presented to and endorsed by all the participants in the NLCC - the representatives of the Federal Government, the CAI and the ACTU. The NLCC Report was then forwarded to the Federal Government (see Appendix E for a copy of the NLCC Report on Amalgamations).

On 18 September 1980, the Minister for Industrial Relations (Mr. Street) announced in Federal Parliament that the Liberal-National Country Party Government, if re-elected, would introduce legislation relating to union amalgamations based on the NLCC Report. In announcing the Government's intention to introduce the legislation, the Minister stated that

'It is now widely agreed that the current amalgamation provisions impose considerable constraints, and can operate to delay or prevent what might otherwise be desirable amalgamations.'

The Prime Minister (Mr. Fraser), in his Policy Speech for the 1980 Federal Election, referred to the Government's intention to introduce this legislation if re-elected.

After the election, the Minister for Industrial Relations (Mr. Peacock) on 18 November 1980 announced that the Government had decided to introduce the legislation during the Autumn Session 1981 in order to 'meet the Government's commitment to introduce this legislation as indicated by the Prime Minister in his policy speech'. However, despite all the assurances and the Federal Government's alleged commitment to consultation, the legislation relating to union amalgamations was not introduced by the Government. In May 1981, the Minister for Industrial Relations (Mr. Viner) announced that the Government wished to consider further the amalgamation amendments. In fact, legislation drafted for the Government on the basis of the NLCC Report on Amalgamations was introduced into the Senate by Senator John Button on 16 November 1981 but did not receive Government support.

70. The NLCC Report recommended amendments to the existing laws relating to union amalgamation which would facilitate a reduction in the number of unions in Australia through voluntary amalgamations. Further, because of their involvement in the formulation of the recommendations, the amendments would have enjoyed the support of the ACTU and CAI and therefore the co-operation of those bodies in relation to the operation of the new provisions. In the view of the ACTU, the NLCC Report provides a workable solution to some of the problems with respect to union structures in Australia and that Report should be implemented.

71. (b) Proposed Legislation. Instead of introducing legislation which had the support of employers and unions and which would provide a workable solution to some of the problems with respect to union structures, the Federal Government has introduced legislation to encourage industry based unions. The ACTU has serious reservations of a fundamental as well as of a general nature about the proposed legislation. In addition, there are a range of practical problems with the specific provisions in the Amendment Bill.

72. The major matters of a general nature of concern to the ACTU are

- . the total denial of the results of extensive consultation with the ACTU and the CAI in the formulation of the proposed legislation;
- . the legislation does not provide a workable or practical solution to the problems relating to trade union structures in Australia;
- . the legislation will have little practical effect and distracts attention away from the need for reforms relating to the present restrictive amalgamation laws.

73. The Government proposals for industry based unions and enterprise unions were developed without consultation with the Trade Union Movement or with employer groups. One consequence of this failure to consult was the proposal

with respect to the encouragement of enterprise unions (see the statement of the Minister for Industrial Relations (Mr. Viner) to the House of Representatives, Hansard, 16 February 1982, pp.35-41). The enterprise union proposal was strongly condemned by employers and unions alike and was ultimately abandoned by the Government. However, the importance of prior consultation with unions and employers about legislative proposals is not merely demonstrated by the fate of the enterprise union proposal. If effective and workable measures are to be taken to bring about improvements in the structure of union organisation in Australia, it is essential that such measures be formulated in consultation with and have the support of the Union Movement. Otherwise little real progress will be made in this area.

74. Although there is some support in Australia for the concept of 'industry unions', there are enormous definitional problems as well as practical problems in the way of any general re-organisation of trade union structures in this country along industry lines. Indeed the main objection to the proposed legislation designed to encourage the creation of industry based unions in Australia is a practical one. A move towards industrial unionism (that is, one union for all employees in the same industry regardless of occupation) would involve a drastic change in trade union organisation given the present craft or occupational basis of most unions. To achieve genuine industry unions it would be necessary to slice off sections of existing unions

and to put them into new unions. Such actions would be strongly resisted by unions and their members and would be impossible to achieve without massive coercion. Therefore, to limit reform of the present laws relating to amalgamations as proposed would be simply to continue the restrictive and unreasonable legislative approach to union amalgamations which has effectively prevented a rationalisation of union structures in Australia.

75. In essence, the Donovan Royal Commission in Britain, where union structures are similar to those in Australia, took a similar view, namely that there are substantial practical problems in moving towards industrial unionism (Report of the Royal Commission on Trade Unions and Employer Associations, 1965-1968, June 1968, H.M.S.O., London). The Commission listed a number of serious reservations about industrial unionism including: (i) the fact that 'many workers such as craftsmen, clerks or technicians have an obvious interest in combining on an occupational rather than an industrial basis, so that they are free to take their transferable skills from job to job while remaining in the same union'; (ii) the possibility of sectional claims within industrial unions leading to demarcation problems; (iii) the experience that white collar workers are more readily organised on an occupational rather than an industrial basis; and (iv) the fact that a more widely based union has more chance to survive than an industrial union (especially where the industry is declining) and 'for this reason may be more willing to agree to changes

involving reductions in its membership in particular industries' (see Report, paras.674-676). However, the 'really decisive objection to industrial unionism' for the Donovan Commission was the drastic upheaval in the structure of British unions that would be involved in a move towards industry unions. For this reason, the Commission concluded that there should not be a move towards 'the attainment of industrial unionism as it exists in the Federal Republic of Germany' and that the problems caused by a multiplicity of unions could be considerably eased by encouraging (1) mergers between unions; (2) agreements between unions on matters such as recruiting rights and negotiating rights; and (3) inter-union co-operation on the shop floor (see Report, paras.679-695).

76. Apart from the difficulties identified by the Donovan Commission, there is a serious problem for those who wish to promote industry unions in defining the concept of 'industry', except as it relates to a limited number of industries.

77. It is not suggested that some movement towards industry based unions is not possible or desirable in Australia. Indeed some ACTU affiliated unions believe that a limited approach to genuine industrial unionism in areas where it could be achieved without dislocation could be considered by the Union Movement. However, the abovementioned difficulties suggest that any general movement towards industrial unionism in Australia, except in limited areas,

is neither likely nor desirable. Indeed any major change to union structures, as might be the objective of the proposed legislation, is unrealistic in the Australian context. This was recognised in a recent submission by a major Australian employer:

'One thing which is clear is that in the Australian context any programme to achieve in the short term substantial and general change in the basis of trade union structures, such as would be involved in an move to industry or enterprise based unions, would produce strong trade union resistance. If any progress resulted, it would be likely to be marginal in extent and relatively long term in achievement.'
(BHP Submission in Relation to Restructuring of Australian Trade Unions, 1981.)

Further, it may be added that proposed legislation on industry based unions which does not have the support of the Union Movement is even less likely to have any practical and positive effect in improving trade union structures.

DEFICIENCIES IN THE NEW PROVISIONS

78. Apart from the serious and fundamental reservations of a conceptual and practical nature mentioned above, the ACTU considers that there are a number of difficulties with the specific provisions in the Amendment Bill in relation to industry based unions. In particular, the ACTU is concerned that the new provisions

. do not indicate what is meant by 'industry'
 for the purpose of encouraging industry based
 unions;

- . will in practice have no positive effect in relation to the registration of new unions;
- . will lead to overlapping coverage between unions and thus to more demarcation disputes;
- . will do nothing to encourage a reduction in the number of unions in Australia through voluntary amalgamations.

These deficiencies in the legislative proposals are explained below.

79. No definition. It is difficult to determine what effect the new ground for the registration of industry based unions will have as there is no indication in the Bill as to what constitutes an 'industry' for that purpose. Although the Minister for Industrial Relations said in his Second Reading Speech that the prescription of classes of industry for which a union can be formed was left to the Regulations 'to enable discussions to be held with the ACTU and employers as the process of change is initiated', it is not clear when the consultation with the ACTU and employers will take place on the prescription of classes of industry for the purposes of new para.131(1)(d) and whether this will be continuing consultation. Until the classes of industry are prescribed, this part of the Government's encouragement of industry unionism will have no operation. In fact, the absence of a definition of industry points to two serious deficiencies in the proposed legislation.

(a) One of the formidable problems in the way of encouraging industry unions is the definition of what constitutes an 'industry' union. The Bill does not come to grips with this problem. It purports to leave the difficult task of definition to unspecified 'discussions' with parties which were never consulted about the shape of the legislation or their future role in relation to it.

(b) The key feature of legislation encouraging 'industry' unions must be the definition of what constitutes an 'industry'. This definition will determine the operation of the legislation. In the proposed legislation, this important matter is left to be spelt out in the Regulations. In effect, this means that Parliament has been presented with legislation which it is impossible to judge the effect or operation of because the crucial aspect of the legislation is omitted. In fact, the most important aspect of the legislation is left for determination by the Governor-General in Council. In this way, the Government may determine in which areas and even which unions are to be assisted in applications for registration or in amalgamations through the 'industry union' provisions. This approach may have serious implications for an improvement in trade union structures in Australia on a rational

basis. In fact it denies the fundamental right of unions and their members to determine the type of union structures that are most appropriate.

80. No Positive Effect. There must be serious reservations about whether the new provisions encouraging the registration of industry based unions will in practice have any positive effect.

(a) It may be asked, which are the new or existing industries in respect of which new industry unions may be formed and seek registration? It is difficult to identify many industries in Australia where there is scope (given the existing patterns of union organisation) for the development of new industry unions. In those few industries where it is possible, there are already unions in the nature of 'industry' unions for which the legislation would provide little encouragement. It is doubtful therefore that the new provisions will have any practical effect in encouraging industry unions in existing industries.

(b) Where the new provisions do have a practical effect, they are likely to lead to an increase in the number of unions in Australia by encouraging the formation of relatively small unions in relation to new or developing industries (e.g. the 'microchip industry'). This will have a

detrimental effect on industrial relations given the widespread view that there is a need to reduce the number of unions in this country.

- (c) The relatively vague requirements in the new provisions for registration as an industry based union will further limit the number of unions or associations which may take advantage of the new ground for registration. Thus under new para.132(1)(d) the union or association will need to establish that its members constitute a 'substantial majority' of the employees in the industry and that it is capable of 'satisfactorily representing' the interests of all employees in the industry.

81. More Demarcation Disputes. The new provisions may give rise to a duplication of coverage between existing unions and industry based unions leading to more demarcation disputes. This duplication of coverage may result from the amendments proposed to s.142 of the Act (see clause 12 of the Amendment Bill). The effect of these amendments is to exempt industry based associations applying for registration under the Act from the operation of s.142. Section 142 provides a valuable safeguard against overlapping coverage of unions by giving the Industrial Registrar power to refuse to register a new union where there is an existing registered union to which the members of the new union might 'conveniently belong'. With the

safeguard in s.142 removed, one consequence of the new industry union provisions may be to create more demarcation disputes between unions.

82. Not Encourage Union Mergers. The proposed legislation does not deal with the pressing need for changes to the present union amalgamation laws. The new provisions are based on a notion that was rejected by the NLCC in 1978. The representatives of the Federal Government, the ACTU and the CAI agreed that a relaxation of the unreasonable restrictions on union amalgamations in the Conciliation and Arbitration Act on the basis of encouraging industry unions was not a workable or practical solution to the problem. Instead the NLCC decided to pursue a suggestion of the CAI representatives that a workable basis for easing the restrictions could be found through encouraging the amalgamation of unions having a 'community of interest'. The major problem with the new provisions which facilitate (by easing some of the present restrictions in the Act) amalgamations that will result in industry based unions, is that very few unions will be able to take advantage of the relaxations based on industrial unionism (see para. 80 above). The result will be that the present legislation will continue to prevent a rationalisation of union organisation in Australia through a reduction in the number of unions by voluntary amalgamations.

SUMMARY

83. The ACTU does not consider that the proposed legislation on industry based unions will make any positive contribution to dealing with the problems arising out of the structure of trade union organisation in Australia. There are serious problems of a conceptual and practical nature with the new provisions. These problems suggest that it is not desirable or possible for there to be any general movement towards industrial unionism in this country given the present structure of union organisation and the massive dislocation that any such movement is likely to cause. In particular the ACTU considers that the proposed legislation (formulated without proper consultation with the Union Movement and not containing a basic definition of what it seeks to promote) will have little practical effect in encouraging industry based unions. Where the proposed legislation will have an effect, that effect will be counter productive and will lead to a further proliferation of unions. Indeed the proposed legislation is more an exercise in showmanship than a serious attempt to come to grips in a rational way with the real problems of multi-unionism in Australia.

84. The ACTU considers that an important step towards dealing with the problems of union organisation (and thus towards improving industrial relations in Australia) would be to encourage more mergers between unions. The most

appropriate way of encouraging such mergers would be for the NLCC Report on Amalgamations to be implemented.

Source: ACTU, Submission To The Senate Select Committee on Industrial Relations Legislation, June 19~~7~~2, pp. 35-50.

F

The Amalgamated Metal Workers and
Shipwrights' Union

The Amalgamated Metal Workers and Shipwrights' Union desires to make the following submissions to the Senate Select Committee on that aspect of the terms of reference dealing with industry unions.

'The desirability or otherwise of encouraging the development of industry-based unions in Australia and the best methods of providing changes in the structure of Australian trade union organisation.'

On the other matters dealt with in the Bill, we rely upon the submissions placed before the committee by the A.C.T.U.

The Amalgamated Metal Workers and Shipwrights' Union is Australia's largest trade union and was formed as a result of a number of amalgamations of unions in the metal industry.

Successive National Conferences of the Union have carried policy decisions generally supportive of the rationalisation of trade union structures in Australia away from a craft or occupational basis to an industrial basis.

These policy decisions in part, state -

1973 Conference determines that the A.M.W.S.U. will continue to work for unity within the metal unions based on the active involvement of metal workers around their demands, and the strengthening of the Metal Trades Federation with a view to achieving

the eventual amalgamation of unions within the metal industry.

1974 Unionism in Australian circumstances would be served by 15 or 16 industry unions having adequate official coverage, research, publicity, education facilities with rationalisation of union administration and industrial coverage capable of adequately serving workers full industrial and social needs.

1976 We call for the most determined campaign throughout every section of our organisation involving rank-and-file members, Shop Stewards, workshop organisations, State and National Officials, around the aim and objective of one union in the metal industry.

Conference records with a measure of encouragement the developments and discussions with kindred unions on the question of amalgamation and closer working relationships.

We note and commend the representation to the F.E.D. & F.A. and their positive response for re-opening negotiations aimed at amalgamation. We call for follow-up representations to the F.I.A. and the Moulders' Union with the view to preparing the way to achieving amalgamation. We further call for discussions with the V.B.E.F. (V.B.U.) and note that such an amalgamation has already taken place in Western Australia.

Conference notes that approaches have been made to the A.S.E. in 1957 and in 1959 and again in 1969, and that further approaches have been made in 1976. We sincerely hope that the latest moves will lead to some discussion that will ultimately bring about amalgamation.

The campaign to bring about the formation of one metal industry union will not be an easy task and will require the fullest attention of all sections of our organisation.

A number of practical steps and tasks must be adopted, in particular:-

- * The strengthening of the Metal Trades Federation and the participation in it of all the principal unions.
- * The achievement of de facto amalgamation in the factories and workshops on the basis of work committees which will represent all workers employed regardless of which union they belong to.
- * The establishment of section committees at State and National Level which are multi-union in character.

1978

Conference notes the greatly increased tempo of discussions on amalgamation by many organisations over the past two years, some of these discussions have resulted in a form of de facto amalgamation or federation such as the position with the F.I.A. and A.S.E. We note that a number of these relationships have been 'arranged' by union officials apparently without reference or consultation with rank and file members.

Conference draws attention to the 1976 National Conference decision on amalgamation and in particular:

- * The strengthening of the Metal Trades Federation and participation in it of all the principal unions;
- * The achievement of de facto amalgamation in the factories and workshops on the basis of work committees which will represent all workers employed regardless of which union they belong to;
- * The establishment of section committees at State and National level which are multi-union in character.

We believe that the development of closer ties at workshop level will provide the best basis of amalgamation that will be in the best interests of the workers in the various industries.

We call on the State and National Council to follow up approaches already made to kindred unions with a view to securing amalgamation and to study and report on all the various forms of amalgamation necessary that can facilitate bringing all metal workers into one single united metal workers trade union.

1980 Conference draws attention to the 1976 National Conference decision on amalgamation and in particular -

- * The strengthening of the Metal Trades Federation and participation in it of all the principal unions;
- * The achievement of de facto amalgamation in the factories and workshops on the basis of work committees which will represent all workers employed regardless of which union they belong to;
- * The establishment of section committees at State and National level which are multi-union in character.

We believe that the development of closer ties at workshop level will provide the best basis of amalgamation that will be in the best interest of the workers in the various industries.

We call on the State and National Council to follow up approaches already made to kindred unions with a view to securing amalgamation.

In viewing the changing character of industry, the rapid introduction of technology, Conference calls upon National Council to investigate various forms of amalgamation that may be available to trade unionists and a report be prepared for consideration of Conference.

The general policy of the A.M.W.S.U. has been aimed at achieving a single metal industry union and to that end the union has actively pursued its policy by endeavouring to seek and encourage amalgamation with unions having a majority of members employed in what can loosely be defined as the metal industry.

This policy has been singularly successful in creating the A.M.W.S.U. and currently an amalgamation ballot will be held in September of members of the Moulders' Union. Proposals for amalgamation with the Federated Engine Drivers and Firemen's Association have also been agreed to. However, these have not

proceeded to ballot because of the restrictive nature of the provisions of the Act relating to union amalgamations, particularly the requirement that 50% plus one of the union's members must vote in order for any result to be obtained.

It is through this process of union amalgamations that the A.M.W.S.U. believes rationalisation of existing structures can best be achieved, and to facilitate such rationalisation, the existing provisions of the Conciliation and Arbitration Act on union amalgamations should be substantially amended.

Currently in Australia there are 324 trade unions; 23 of which account for almost 60% of trade union members, while 235 have a membership of less than 5,000.

The A.M.W.S.U. believes that existing unions have eligibility and industry provisions broad enough to cover all classes of employees in either a craft, occupational or industry basis and that no further registration of unions should be facilitated except where it is as a result of an amalgamation of existing organisations.

It is argued that the current amendments sought to the Conciliation and Arbitration Act are purportedly to facilitate the creation of industry unions. It is the view of the A.M.W.S.U. that the approach taken in the Bill will in fact, prove counter productive, will lead to a proliferation of small ineffective and inefficient unions and an escalation of disputes over areas of coverage of union membership. It is the view of the A.M.W.S.U. that the eventual creation of industry unions can

only be achieved by negotiations between unions following upon a rationalisation of existing union structures by the process of amalgamations and cannot be achieved on a piece-meal basis.

Process of Change

As previously stated the A.M.W.S.U. supports the rationalisation of existing trade union structures in Australia. We agree that a substantial reduction in the number of trade unions is both necessary and desirable.

As a first step we propose that the Conciliation and Arbitration Act be amended to prohibit further union registrations except where they arise out of an amalgamation of existing registered trade union organisations.

Secondly, we propose that unions should be actively encouraged to seek amalgamation and to that end a minimum requirement of continued registration should be a membership of not less than 10,000 members. Unions with less than 10,000 members should be given a period of say three years in which to seek amalgamation with another trade union. Failure to comply within the specified period would result in automatic deregistration.

Thirdly, the provisions of the Conciliation and Arbitration Act relating to amalgamation be amended to enable union amalgamations to be approved by a simple majority of members voting in an amalgamation ballot. The role of voters to be financial members of the union, and that amalgamations be restricted to unions within broadly defined industry sectors for

example; Metal Industry' which would include heavy engineering, ship building, ship repair, vehicle manufacturing, white goods, steel rolling stock etc. 'Transport' which would include rail, sea and air etc. 'Mining' which would include all forms of mining, coal, iron ore, nickel, copper etc. Provided that unions seeking to amalgamate have a majority of members employed within the industry sector as defined, proposals to amalgamate would be automatically approved for ballot.

Fourthly, the Conciliation and Arbitration Act be amended to enable unions by agreement and resolution of a 2/3rds majority of their rule-making bodies to exchange sections of their eligibility provisions, provided that such exchange is for the purpose of rationalising union coverage on an industry basis.

The A.M.W.S.U. puts forward these proposals believing that their adoption would be a constructive approach towards achieving an orderly rationalisation of trade union structure in Australia.

• Source: AMWSU Submission to the Senate Select Committee on Industrial Relations Legislation, July 1982.

GAdministrative and Clerical Officers' AssociationThe Development of Industry-based Unions and
Changing the Structure of Australian Trade
Union Organisation

4.1 Independent observers have long remarked that the Australian Government sector industrial relations arena is over populated by unions. The problem and some possible solutions are documented in the Report of the Royal Commission on Australian Government Administration at pages 289 to 293.

4.2 ACOA policy favours a greater integration of unions in the fields in which we operate. Positive promotions of amalgamation, restructuring or even of reconstitution have been approved at various levels of authority within ACCA in respect of a number of kindred organisations. The frustration of these policies up to the present time is not due as much to the obstacles to integration embedded in the Conciliation and Arbitration Act as it is to a lack of consensus or of a strong motivation to integration on the part of smaller organisations. In other areas, for instance, Telecom, differences exist as to definition of 'industry' which are characteristic of the union community generally. ACOA would probably deem Telecom and Australia Post as constituent parts of an overall Commonwealth

services and administration industry. A specialist Telecom union would categorise the industry as 'communications'. The failure to merge the Public Service Arbitrator's jurisdiction with Conciliation and Arbitration Commission and some associated anomalies of interpretation does little to assist in resolution of such matters.

4.3 ACOA sees no reason why a Minister's, or a class of employers, categorisation of 'industry' for purposes of formation of employee organisations should be preferred to approaches developed by employees themselves. Certainly we doubt whether political or employer categorisations would result in any greater consistency, or in any less fragmentation. The record of Public Service Board contributions, as a management authority, to the establishment of new unions in the public sector suggests that the result of such management/political intervention would be more rather than fewer unions.

4.4 Any process of restructuring must in our view be predominantly consensual between interested unions. We believe the NLCC proposals covering amalgamations represented a worthwhile compromise. We suggest the real issue for the Committee is whether it will recommend the implementation of the NLCC proposals.

Source: ACOA, Submission to the Senate Select Committee on Industrial Relations Legislation, pp. 5-7.

H

The Amalgamated Society of Carpenters
& Joiners of Australia

Proposed Federal Industrial Legislation

The Amalgamated Society of Carpenters and Joiners of Australia is deeply concerned about the proposed proposals for amendments to the Australian Conciliation and Arbitration Act by the Federal Government, in relation to the formation of industry unions, the abolition of preference to union members and stand-downs.

Principally we adopt and support the submission of the Australian Council of Trade Unions to the Senate Committee, in their opposition to the proposed amendments.

However, we would further draw to the attention of the Senate Committee, that our Society, the Amalgamated Society of Carpenters and Joiners of Australia, is totally opposed to an industry based union in the Building and Construction Industry and beg to submit the following:-

1. Our Society is a craft organisation, comprising carpenters, joiners, shopfitters and maintenance carpenters, formed in connection with the Carpentry and Joinery industry.
2. These carpenters and joiners resolved to remain members of their craft union, the A.S.C. & J. of A., and not belong to an industrial union. This was re-inforced by an unanimous resolution by Federal Conference delegates of the Society during April 1981.

"This 1981 Federal Conference held in Adelaide, further reaffirms the decisions of past conferences and of rank and file members of the Society, to work for the improvement of wages and conditions of carpenters and joiners throughout Australia as a Craft Union; we further believe that the progress, wages and conditions of carpenters and joiners, can be best protected and advanced by carpenters and joiners combining together in their own Union.

We are totally opposed to being part of an industrial union covering different trades and occupations --".

3. The members of the A.S.C & J. of A. are engaged and employed across a wide spectrum of industry, i.e. Housing Industry, Construction Industry, Civil Engineering, Manufacturing Industry (joinery shops) and Shopfitting Industry, and in maintenance areas of numerous industries.
4. The nature of the carpenter and joiner is that he frequently moves from one area of industry to another, due to various circumstances, and in a number of cases, from region to region or State to State. In this he is adequately serviced by the A.S.C. & J. of A. in the protection of his or her interests, and the maintaining of the wages and conditions of his employment.
5. The formation of an industry based union would detrimentally submerge the craft identity of a carpenter and joiner, into a morass of classifications.
6. Further, the proposed formation of an industry union in the Building and Construction Industry, in our submission, would not solve industrial problems, but would possibly cause one gigantic industrial upheaval.

In this brief submission, we believe that this proposed amendment in relation to industry based unions, is totally unrealistic, and that the Amalgamated Society of Carpenters and Joiners of Australia is more than satisfactorily able to uphold, maintain and apply the principles of conciliation and arbitration in the settlement of industrial disputes for its members, wherever they may be employed.

Source: ASCJA, Submission to the Senate Select Committee on
Industrial Relations Legislation, June 1982.

I

Shop, Distributive and Allied

Employees' Association

Industry Unions

The supreme policy-making body of the S.D.A., the National Council, carried the following policy resolution on union amalgamations at its meeting in October, 1980:-

'That National Council express its concern at the misguided efforts by employers and Governments to seek a change in the present laws governing the conditions under which federally registered unions may amalgamate.

'In particular, Council declares that it is fundamental to the democratic control of trade unions that before an existing trade union can cease to exist and before its assets and flow of income is transferred to a completely new organisation, a majority of the members of that trade union must have participated in a secret rank and file ballot to determine the union's future.

'Accordingly, Council declares its opposition to any attempts to alter the present provisions of Section 158N of the Conciliation and Arbitration Act.'

This resolution was carried at a time when certain other proposals designed to relax the provisions governing union amalgamations were under Government consideration.

On this occasion, the Government is seeking to amend the Act in two respects to provide for industry unionism:-

1. The Bill amends Section 132 of the Act so as to provide for the registration as an organisation of an association formed on an industry basis.

2. The Bill amends the provisions of the Act in relation to union amalgamations so as to facilitate amalgamations that will result in an industry based union.

These proposals are designed to give effect to the Government's view that industry unions should be fostered in order to effect a fundamental change under Government direction of the structure of the Australian trade union movement. This view that the structure of the trade union movement needs to be altered derives from a number of myths which commonly find expression in political circles.

For example, it is often said that Australia has 'too many' unions. Because of this, we suffer unnecessarily from demarcation disputes. If we had fewer unions, there would be less industrial disputation.

This line of reasoning is false for several reasons:-

- (a) Figures issued by the Australian Bureau of Statistics prove that demarcation disputes constitute only a very small part of total disputation.

The Bureau's figures on the causes of disputes are grouped into several categories as follows:-

- Wages;
- Hours of Work;
- Leave, pensions, compensation provisions;
- Managerial policy;
- Physical working conditions;
- Trade unionism; and
- Other.

The classification 'Trade Unionism' includes disputes concerning employment of non-unionists; inter-union and intra-union disputes sympathy stoppages in support of employees in another industry; and recognition of union activities.

Thus demarcation disputes contribute only part of the disputes recorded under this heading.

In the table below, the contribution of 'Trade Unionism' disputes to total disputes, expressed as a proportion of total working days lost, is shown for the period 1970 to 1980:-

<u>Proportion of Working Days</u> <u>Lost Caused by Disputes from</u>	
<u>Year</u>	<u>'Trade Unionism'</u>
1970	3.81%
1971	4.76%
1972	3.85%
1973	4.75%
1974	2.62%
1975	6.03%
1976	3.10%
1977	4.60%
1978	4.40%
1979	2.50%
1980	3.40%

Clearly, disputes classified under the heading of 'Trade Unionism' caused less than 5% of working days lost in every year except one over the period.

Because demarcation disputes are only one of the factors grouped under the heading of 'Trade Unionism' in the statistics, it is clear that only a very small proportion of total working days lost is due to demarcation disputes between unions.

Therefore even if a restructuring of the trade union movement led to fewer demarcation disputes, the effect on total disputation would still be insignificant.

- (b) Although Australia has a large number of trade unions, most employees are grouped into unions which are already large in size.

For example, in 1981, there were 324 trade unions. However, a mere 43 of these unions (each with a membership of 20,000 or more) contained 77% of the total unionised workforce in the country.

This shows that while there are many unions with a small membership, most of the workforce is already concentrated in large unions.

Moreover, it is the larger unions rather than the small ones which tend to become involved in demarcation disputes. Therefore, the notion that larger unions means fewer demarcation problems does not necessarily follow.

(c) There are countries overseas with more unions than Australia but with less industrial disputation.

For example, Japan has 72,000 unions organised on an enterprise, company, craft and/or industry basis. However, it has a much lower level of industrial disputation per worker than Australia. This apparent paradox that Japan has more unions but less disputation illustrates that the real reasons for industrial disruption is more related to political, social, cultural and economic factors at work in society and is not related to the structure of the union movement.

For Australia, this means that the level of disputation is caused, not by the structuring of unions on a craft rather than industry basis, but by the behaviour of the unions within the conciliation and arbitration system.

There is, of course, good sense in a policy which permits the amalgamation of unions (under democratic procedures) if they are not viable in their present position. On the other hand, the promotion of union amalgamations or the promotion of industry unions at the expense of craft unions as a means of restructuring the union movement, will not lead to industrial peace because it has no effect on the real causes of disputation. On the contrary, efforts to enforce a restructuring of the trade union movement

will be resisted by the unions and will therefore cause more disputes than before.

Registration of Industry Unions

The Bill amends Section 132 of the Act so as to provide for the registration as an organisation of employees of an association formed on an industry basis.

In paragraph 132(1)(d), the only definition of 'industry' for the purpose of registration of an industry union is that the industry must consist of 'a prescribed class of business, trade, manufacture, undertaking or calling of employers'. As the Minister noted in his Second Reading Speech, the prescription of classes of industry for which a union can be formed will be left to the Regulations 'to enable discussions to be held with the ACTU and employers as the process of change is initiated'.

This means the definition of an 'industry' will be left to the Minister to determine. Irrespective of any 'consultations', the decision is ultimately made by a Minister of the Government of the day.

Such political control of the structure of the trade union movement is undemocratic. It is contrary to the principle of the freedom of employees to form organisations for their welfare and protection. It is unacceptable to any free trade union movement. It smacks of the type of legislation to control trade unions which is freely used in totalitarian countries across the globe.

The restructuring of the union movement is the prerogative of the union not the right of the Government of the day.

In the United Kingdom, the Royal Commission on Trade Unions and Employers' Associations (known as the Donovan Commission) considered the structure of the country's unions and said:-

'It is certain therefore that the trade unions will not voluntarily adopt the attainment of industrial unionism ... Nobody has seriously suggested to us that this reform can be imposed compulsorily by means of legislation, which would mean an end of free trade unions. It is necessary to seek the benefits which are claimed for industrial unionism in other ways.'

Clearly, the Government is seeking to dismantle unionism and to refashion it to its own liking. It is one thing for the Government to legislate to provide for democratic procedures to be observed within trade unions, but it is quite another thing for a Government to give itself the power to determine what unions may or may not exist. This is made even worse because the legislation leaves no right to an affected union to seek redress if the Minister's ruling on 'industry' operates to its disadvantage.

There is an enormous practical difficulty in defining an industry. For example, should there be one transport industry, or should there be four industries - air, road, rail and shipping?

Even if this major difficulty were overcome, there would still be demarcation disputes between industry unions as existing industries changed and new ones grew.

Multiple Unions in One Industry

The prospect that the legislation will increase disputation is strengthened even further by the proposed amendment to Section 142 of the Act. Clause 16 of the Bill exempts industry based associations from the operation of Section 142. This Section provides that the Registrar shall, unless in all the circumstances he thinks it undesirable to do so, refuse to register an association if an organisation to which the members of the association 'might conveniently belong' has already been registered.

This provision is nothing more than a recipe for more demarcation disputes. It means that if an industry based association is formed successfully, it will be registered even if there is already a union in existence to which the members of the industry based association can conveniently belong. Even if the existing union has represented employees successfully and properly for many years, it will not be able to prevent the new association seeking registration. It will then have a competitor for the loyalty of the employees in the industry and demarcation fights will occur continuously for as long as the two unions exist. In fact, it is likely that such disputation will commence long before registration of the industry based association - it will start as soon as it is formed! And so we will have more demarcation disputes!

The amendment opens up the prospect that employers will sponsor 'industry unions' in competition with existing organisations. It also opens up the possibility that sections of existing

unions will try to split off from the main body and seek separate registration as an 'industry union'. Both these developments would be certain to cause increased disputation and turmoil. It would also lead to increased legal battles from which no one but the legal profession will gain reward.

Source:: SDA, Submission to the Senate Select Committee on Industrial Relations Legislation, pp. 32-39.

JNational Labour Consultative CouncilFOURTEENTH MEETINGAGENDA ITEM 313 FEBRUARY 1980NLCC COMMITTEE ON AMALGAMATION PROVISIONS
IN THE CONCILIATION AND ARBITRATION ACT

In April 1978 the ACTU submitted for consideration by the NLCC a paper proposing amendments to the amalgamation provisions of the Conciliation and Arbitration Act.

- 2 The ACTU proposed that the Act be amended to provide:
 - a that a proposed amalgamation will be taken to have been approved by the members if in a ballot the majority of the formal votes cast are in favour of the amalgamation;
 - b that eligibility to vote in amalgamation ballots be determined by the rules of the relevant union dealing with eligibility to vote in ordinary union elections;
 - c that a multi-union amalgamation be allowed to proceed despite the fact that in a ballot one or more of the unions concerned fails to secure the necessary support for the amalgamation.
- 3 Council agreed to the establishment of a tripartite committee to examine proposals (b) and (c), as well as proposal

(a) insofar as it could be justified on public interest grounds including a 'community of interest' between the unions involved.

4 At the initial meeting of the Committee in September 1978 the ACTU was asked to provide its views on the question of the 'community of interest' criteria to be applied in relation to proposed amalgamations. The ACTU submitted its views in May 1979..

5 (On 19 December 1979 the Committee met to consider a discussion paper prepared by the Department of Industrial Relations on the ACTU's proposals. A copy of that paper is attached.

6 The Committee comprised:

W Kelly	ACTU
A Boulton	"
G Polites	CAI
B Noakes	"
R Gradwell	CAGEO
J McAuliffe	"
M Keogh	DIR
B Watchorn	"

Test of 'community of interest'

7 The ACTU's proposal was that the test of community of interest be met, for the purposes of an amalgamation, where the members, or a significant or substantial number of the members, of the unions are engaged

i in the same industry, industrial pursuit or callings or in related industries, industrial pursuits or callings; or

ii in the same production or distribution process or in related production or distribution processes.

8 The Departmental paper expressed the view that this proposal had problems of definition because of its wide terms. The ACTU representatives explained that in their view the test of 'community of interest' had to be in broad terms because of the difficulty in having specific tests and that it was preferable to confer a wide discretion on the tribunal by not setting out a specific definition. The Committee agreed that it was extremely difficult to arrive at a precise definition of 'community of interest', but decided that a 'community of interest' basis for amalgamation of organizations should be pursued legislatively.

9 The Committee believes that a workable solution would be to have a provision which would express the 'community of interest' test in general terms but which would be supplemented by guidelines indicating the sorts of things to which the tribunal should have regard in determining whether the test had been met.

10 After examining the guidelines suggested in the Departmental discussion paper, the Committee concluded that the following guidelines might provide an appropriate basis for consideration:

a In relation to employee organizations -

- .. where a substantial number of members of one union are eligible to become members of another;
- .. where a substantial number of the members of each union are engaged on the same or similar work or aspects of the same or similar work;
- .. where a substantial number of the members of each union are employed under the same awards;*

* Note: The ACTU has suggested that consideration might be given to including 'associated awards' in this guideline.

- .. where a substantial number of members of each union are employed in the same or related work by employers engaged in the same industry.

b In relation to employer organizations -

- .. where a substantial number of members of one employer organization are eligible to become members of another;
- .. where a substantial number of members of each organization are engaged in the same industry;
- .. where a substantial number of members of each organization are respondents to the same awards.

11 The Committee also agreed that, for the purposes of meeting the public interest criterion, the tribunal should also consider whether a proposed amalgamation would contribute to the attainment of the objects of the Act. This could be either a guideline or a principle contained in the general description of 'community of interest'.

Nature of Tribunal to Determine 'Community of Interest' Test

12 Under the existing legislation, amalgamation applications are dealt with by the Industrial Registrar. The Committee agreed that the threshold question of whether the 'community of interest' test had been met should be determined by a Full Bench of the Commission. However, the ACTU representatives indicated that several of their affiliates have expressed the view that the matter should in the first instance be heard by the Registrar with recourse to a Full Bench on appeal.

13 The Committee also agreed that organizations which fail to satisfy the Full Bench that a community of interest exists, or which do not choose to go through the 'threshold' procedure, should remain entitled to pursue an amalgamation application before the Registrar under the existing requirements of the Act.

14 The peak union and employer council representatives did not accept the Departmental proposal that the exemption provision in sub-section 158K(7) should apply only to amalgamations that meet the 'community of interest' test. That sub-section provides that where, in a proposed amalgamation the total number of members of the 'deregistering' organization is

not more than 5% of the number of members of the 'host' organization, the Registrar may grant to the 'host' organization an exemption from a ballot in respect of its members.

15 The Committee also gave consideration to a proposal by the Minister that, in relation to amalgamations to which a community of interest did not apply, the exemption provision should be amended to read '5% or 5,000, whichever is the less'. The Departmental representatives explained that the Minister was concerned to limit the situation arising of large unions being able to utilize the existing provision merely to increase their size by amalgamating with larger and larger unions without a community of interest. Under the existing exemption provision the larger a union becomes by virtue of taking in small unions one at a time, the larger can become the union with which it may amalgamate in the future while still being exempt from having a ballot of its own members.

16 The union representatives consider that the proposal is unnecessary and does not have any real practical meaning. They pointed out that such an amendment could only have effect upon unions who have a membership of 100,000 or more and there are only 5 of these. The largest union, with a membership of 150,000 would be affected only in respect of amalgamating with unions with a membership of between 5,000 and 7,500.

Voting Requirements where 'Community of Interest' Test is Met

17 Under the existing provisions, for an amalgamation to be approved, in each organization in which a ballot is conducted at least 50% of those on the roll must vote and, of those voting formally, at least 50% + 1 must vote in favour of the amalgamation.

18 The ACTU had proposed that where the community of interest test has been met, the amalgamation shall be taken to have been approved where a majority of the members voting in the amalgamation ballot vote in favour of the amalgamation.

19 The Department indicated that the Government was prepared to consider a lesser requirement than the existing 50% voting return, but with a higher majority of those voting at the ballot than the existing 50% + 1.

20 The Committee agreed to a proposal for a requirement of a minimum return of 25%. However, the Committee recommends the retention of the existing requirement of a simple majority.

Eligibility to Vote in Amalgamation Ballots

21 The Act presently provides that the roll of voters for the purposes of an amalgamation ballot is determined at the date the Registrar approves the submission of the amalgamation to ballot, and it consists of members who have been financial at any time within the previous 12 months. In other words, a member need not be financial in accordance with the rules of the organization to be entitled to vote in the ballot but need only

to have been financial at some stage during the 12 monthly period..

22 Recognizing that this presents a number of substantial difficulties in achieving an amalgamation, the Committee decided that it would be acceptable to provide that the roll of voters consist of persons who were financial in accordance with the rules of the organization as at 1 month before the opening date of the amalgamation ballot.

23 The Committee also agreed that, in order to provide adequate opportunity to unfinancial members to make themselves financial for the purposes of voting in the ballot, it would be appropriate to provide for the notification of the opening and closing dates of the ballot in relevant newspapers.

Multi-Union Amalgamations

24 Under the existing provisions of the Act if, in an amalgamation involving more than two organizations, one of the organizations fails to achieve the required ballot result, the amalgamation cannot proceed between those organizations in which the required result was achieved. The consequence is that in respect of those latter organizations it would be necessary to go through the entire amalgamation process once more.

25 The Committee recommends that the Act be amended to allow a multi-organization amalgamation to proceed despite the fact that in a ballot one or more of the organizations concerned fails to secure the necessary support for the amalgamation,

provided that members have the opportunity to vote on the alternative forms of amalgamation.

ADDENDUM TO REPORT OF NLCC COMMITTEE ON AMALGAMATION PROVISIONS
IN THE CONCILIATION AND ARBITRATION ACT

The Committee considers that a provision along the following lines might provide an appropriate mechanism for implementing the matters agreed upon by the Committee in relation to the community of interest test -

'Where a Full Bench of the Commission is of the opinion that a proposed amalgamation would contribute to the attainment of the objects of the Act and that there exists a community of interest between the parties to the proposed amalgamation it shall make a declaration to that effect.

For the purposes of determining whether a community of interest exists, the Full Bench shall have regard to one or more of the following factors. (Here insert the guidelines agreed upon by the Committee.)'

ATTACHMENT

NATIONAL LABOUR CONSULTATIVE COUNCIL

COMMITTEE ON AMALGAMATION PROVISIONS IN THE CONCILIATION AND
ARBITRATION ACTDISCUSSION PAPER ON PROPOSALS OF THE AUSTRALIAN COUNCIL OF TRADE
UNIONS

This paper raises for discussion a number of issues in connection with the ACTU's proposals concerning amalgamations of organizations under the Conciliation and Arbitration Act. Those proposals concern:

- . the test of 'community of interest';
- . eligibility to vote in amalgamation ballots;
- . multi-union amalgamations.

Test of "community of interest"

The ACTU's proposal is that the test of community of interest be met, for the purposes of an amalgamation, where the members, or a significant or substantial number of the members, of the unions are engaged:

- (ii) in the same industry, industrial pursuit or callings or in related industries, industrial pursuits or callings; or

- (ii) in the same production or distribution process or in related production or distribution processes.

The first query concerns the words 'significant or substantial number'. This does not allow for a comparative test. The same number may be significant or substantial whether the union concerned has a thousand members or fifty thousand members. It might be preferable to substitute 'substantial proportion' for that phrase.

This proposal in the terms set out has problems of definition. For example, in relation to (i) what is meant by the same or related industries? Is it to be determined by reference to the industry of the employer? If so, taking the 'transport' industry as an example, it could mean that unions whose members are involved in transport by rail, road, sea or air could all be said to have a 'community of interest'. Could it mean that unions whose members are engaged in some aspect of the retail industry would meet the 'community of interest' test? For example, could it be argued that unions covering salesmen, clerks, shop assistants, storemen and packers, and delivery truck drivers whose employers were engaged in the retail industry would meet the criteria for amalgamation?

The problems are compounded when one considers what is meant by 'related industries'. If an employer is engaged in the retailing of vehicle spare parts, is that an industry related to the vehicle industry? If so, could it be argued that those unions with members involved in the retail of vehicle spare

parts meet the 'community of interest' test with unions involved in the vehicle manufacturing industry?

The examples could be multiplied many times. It is possible therefore that (i) would not prevent amalgamations of disparate occupational groups. However, perhaps most of the problems would be overcome if (i) were to refer only to the occupations of employees, for example, if it were to be provided that the test would be met where a substantial proportion of members of one union are employed on aspects of the same work carried out by members of another union, for example where tradesmen's assistants (such as boilermaker assistants) in one union worked closely with tradesmen (such as boilermakers) in another.

Similar difficulties arise in relation to (ii). It is difficult to come to grips with what is meant by 'production or distribution process' especially in relation to production. It seems to refer to the means by which production is carried out rather than production itself. Does 'same production or distribution process' refer to the employer's activity or that of the employee. It would seem more appropriate to take it as referring to the former. On that basis the 'community of interest' criteria would have the same problems as mentioned in relation to (i). Unions with disparate interests could amalgamate. On the other hand, if (ii) is intended to refer to the same industry carried on by employers, whether engaged in production or distribution, it would seem to be consistent with a concept of 'community of interest', for example if it were to mean that the test was met where a significant proportion of

members of each union are employed in the same or related work by employers engaged in the same industry (eg the building industry). The further difficulty with the term 'production or distribution process' is that it would have no application to unions whose members were not engaged in production or distribution in the accepted sense of those words, for example, public service unions.

The problems referred to above illustrate the difficulties in arriving at any acceptable definition. A workable solution might be to have a provision which would express the test of 'community of interest' in general terms but which would be supplemented by 'guidelines' indicating the sorts of things to which the tribunal should have regard in determining whether the list had been met.

Possible 'guidelines' are as follows:

- . where a substantial proportion of members of one union are eligible to become members of another;
- . where a substantial proportion of members of one union are employed on aspects of the same work carried out by members of the other union, eg where tradesmen's assistants (such as boilermakers' assistants) in one union work closely with tradesmen (such as boilermakers) in another;
- . where a substantial proportion of the members of each union are employed under the same award;

- . where a substantial proportion of members of each union are employed in the same or related work by employers engaged in the same industry (eg the building industry).

A further point is that the ACTU's proposal does not take into account employer organizations. Possible tests that might be applied are:

- . where a substantial proportion of members of one employer organization are eligible to become members of the other;
- . where a substantial proportion of members of each organization are engaged in the same industry; and
- . where a substantial proportion of members of each organization are respondents to the same award.

It is not suggested that these guidelines are exhaustive. It may be that the ACTU and CAI could suggest additional and/or alternative practical tests which would provide a basis from which a general description of 'community interest' can be drawn which would more fully reflect their intentions and at the same time overcome the difficulties of interpretation which appear to be involved in the existing proposal.

Nature of Tribunal to Determine Community of Interest Test

Under the existing legislation, amalgamation applications are dealt with by the Industrial Registrar. However, it might be appropriate that the threshold question of whether the 'community of interest' test had been met should be determined

by a Full Bench of the Commission. This would have the advantage of enabling the President to include on the Full Bench members of the Commission with particular knowledge of and expertise on the unions and industries involved in the proposed amalgamation.

Should the organizations concerned fail to satisfy the Full Bench that a community of interest exists, they would still be entitled to pursue an amalgamation application before the Registrar, provided, of course, that they meet the existing requirements of the Act. The existing requirements would also continue to apply in relation to those organizations which do not choose to go through the 'threshold' procedure.

If a 'community of interest' test were to be adopted it would appear appropriate that the exemption provision in sub-section 158K(7) should apply only to amalgamations that meet the 'community of interest' test.

Voting Requirements Where Community of Interest Test is Met

The ACTU has proposed that where the community of interest test has been met, the amalgamation shall be taken to have been approved where a majority of the members voting in the amalgamation ballot vote in favour of the amalgamation.

Implicit in this proposal is that there should be no requirement under such circumstances for a minimum return of ballot papers and that the result of the ballot should be determined by a simple majority of those voting in the ballot. It would be a

significant departure from the existing provision under which, for an amalgamation to be approved, in each organization in which a ballot is conducted at least 50% of those on the roll must vote and, of those voting formally, at least 50% + 1 must vote in favour of the amalgamation. Therefore, it might be desirable to consider an alternative eg a lesser requirement than the existing 50% voting return but with a higher majority of those voting at the ballot than the existing 50% + 1.

With regard to the question of lowering the existing voting return requirement, statistics taken out in relation to officially conducted elections in which the whole of the membership of the organization is involved (as would be the case in an amalgamation ballot) indicate that, of elections in 22 organizations in which the voting return was less than 50%, 9 had a voting return of less than 33-1/3% but only 1 received a return lower than 25%. Therefore, a requirement of a minimum return of 25% might be appropriate.

On the question of a higher majority a majority of two-thirds is the majority which seems to be most commonly provided for in the rules of organizations dealing with dissolution. Furthermore, if the 50% voting return is lowered, a requirement of a two-thirds majority of those voting would not appear to place too high a restriction on the achievement of more amalgamations. The element of apathy would be eliminated and, except in circumstances where there is organized opposition to an amalgamation, members who vote in the ballot could be expected to be those who support the amalgamation with the consequence

that the majority in favour could be expected to be reasonably high.

This conclusion seems to be borne out by the figures from the three union amalgamation ballots so far conducted. They indicate majorities of 90%, 89% and 63% respectively. The only one which did not achieve a two-thirds majority was that involving the Shipwrights Union, in which there was a certain amount of opposition to the amalgamation generated in the NSW Branch.

Eligibility to vote in amalgamation ballots

The ACTU has proposed that eligibility to vote in amalgamation ballots be determined by the rules of the relevant union dealing with eligibility to vote in ordinary union elections.

The Act presently provides that the roll of voters for the purposes of an amalgamation ballot is determined at the date the Registrar approves the submission of the amalgamation to ballot, and it consists of members who have been financial at any time within the previous 12 months. In other words, a member need not be financial in accordance with the rules of the union to be entitled to vote in the ballot but need only to have been financial at some stage during the 12 monthly period. This presents a number of difficulties in achieving an amalgamation.

Firstly, the fact that unfinancial members are less likely to exercise a vote in a ballot, coupled with the fact that they are included for the purposes of the voting return requirement, increases the difficulty in obtaining the required result.

A second factor is that the roll of voters is determined at the date the Registrar approves the submission of the amalgamation proposal to ballot. Therefore, any persons who are members of the organization on that date and who subsequently leave the industry or resign from the organization before the ballot takes place are still counted as being on the roll for the purposes of attaining the required voting return. Bearing in mind that the Registrar, after giving his approval, must make arrangements for the conduct of the ballot and 3 months' notice of the opening and closing dates of the ballot must be given by publication in the Government Gazette, it could be expected that a minimum period of 5 to 6 months would elapse between the date on which the roll of voters is determined and the commencement of the ballot. This factor would be particularly crucial to a union whose membership consists mostly of semi-skilled and unskilled workers where the turnover would be expected to be considerable. The problems would be further compounded if such an organization is unable to maintain its membership records with sufficient precision to enable it to determine which of its members are no longer working in the industry. There is again a danger that the roll of voters will contain a number of 'lost' voters which will militate against the attainment of the required return.

The longer the delay between the date the Registrar gives his approval and the date of the conduct of the ballot, the greater the possibility of persons on the roll no longer being members and therefore not exercising their right to vote in a ballot.

The ACTU's proposal is based on the argument that only members who are financial at the time should be entitled to vote in an amalgamation ballot.

While the basic concept in the ACTU's proposal appears acceptable, there are some difficulties with it in the form expressed, ie that eligibility to vote in amalgamation ballots be determined by the rules of the relevant union dealing with eligibility to vote in union elections.

Firstly, there are wide discrepancies between different organizations on the eligibility to vote in elections.. The effect of the proposal that eligibility to vote in amalgamation ballots be the same as in elections would be to allow different criteria to apply in different unions. This would seem to be moving too far from the existing provision which provides a uniform criteria for eligibility to vote in amalgamation ballots.

Secondly, under the rules of most organizations eligibility to vote in elections, which occur on a regular basis at a set time, is determined by financial status at a particular date, eg the opening or closing date of nominations, this date is in turn determinable by reference to the rules. Therefore members have the opportunity to make themselves financial for the purposes of voting in elections. However, as amalgamation ballots do not occur on a regular basis or at a particular time, there would be no point of reference in the rules for determining eligibility to vote in an amalgamation ballot, with the consequence that members who for one reason or another may not be financial in

accordance with the rules at the time the amalgamation ballot takes place may not be able to make themselves financial. Such a result would seem to be contrary to the Government's stated belief that every opportunity should be given to members to exercise their democratic right to say whether they approve or disapprove the amalgamation.

An acceptable response to the ACTU's proposal might be to amend the Act to provide that the roll of voters consist of persons who were financial in accordance with the rules of the organization as to one month before the opening date of the amalgamation ballot.

This would give the Returning Officer sufficient time to prepare the roll before the opening date. Furthermore, although the Act presently provides that 3 months' notice of the opening and closing dates of the ballot must be given in the Gazette, in light of the above considerations, it might be appropriate to provide for such notification to be published in newspapers along similar lines to the present regulation relating to notification of election particulars. This would provide adequate opportunity to unfinancial members to make themselves financial for the purposes of voting in the ballot.

Multi-union amalgamations

The ACTU has proposed that the Act be amended to allow a multi-union amalgamation to proceed despite the fact that in a ballot one or more of the unions concerned fails to secure the necessary support for the amalgamation.

Under the existing provisions of the Act, if, in an amalgamation involving more than two organizations, one of the organizations fails to achieve the required ballot result, the amalgamation cannot proceed between those organizations in which the required result was achieved. The consequence is that in respect of those latter organizations it would be necessary to go through the entire amalgamation process once more.

The ACTU's proposal seems acceptable subject to certain qualifications.

Under the present legislation members vote on the question of accepting the amalgamation scheme as a whole. However, the ACTU's proposal would introduce another element. It is possible that, in a multi-union amalgamation scheme involving, for example, unions 'A', 'B' and 'C', members in union 'A' might be prepared to amalgamate with 'B' and 'C' together, but not with 'B' alone or 'C' alone. Members of the respective unions should also have the opportunity to vote on the alternative questions. For example, members of 'A' should be able to vote on the question whether, in the event of 'B' not getting the required majority they approve an amalgamation with 'C'.

Source: Department of Industrial Relations, National Labour Consultative Council, February 1980.

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