OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

REGULATION OF INDUSTRIAL RELATIONS IN AUSTRALIA

By
Carroll B. Spencer

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LEGAL ENFORCEMENT SECTION
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FOREWORD

This report on Regulation of Industrial Relations in Australia was prepared by Mr. Carroll B. Spencer, as one of the studies of the Legal Enforcement Studies Section, Mr. Robert S. Denvir, in charge.

The Acts of the Australian Commonwealth and of the State Parliaments, decisions of courts, official and unofficial articles and studies and the Commonwealth and State Constitutions constitute the basis of this report. An effort has been made to avoid too much detail, although sufficient facts and explanations have been incorporated, it is thought, from which the background of action and the manner of procedure may be understood.

There is condensed herein a sufficient outline of the laws and decisions of the courts with reference to jurisdiction and procedure in the regulation and settlement of industrial matters, without including details which would not be valuable, from which may be determined the manner of dealing with the problems which arise in industrial relations in Australia, and from which it may be determined whether or not there may be profitably adopted in the United States any of the remedies existing in Australia.

This study covers the method of dealing with industrial matters, but excludes the causes and nature of disputes. The issues investigated deal almost entirely with the methods of preventing and settling disputes and regulating industrial relations.

The problem of nation-wide regulation under the Commonwealth Constitution of Australia is the central theme of the study and such facts as bring regulation of industries in Australia within the circle of federal jurisdiction and the coordination of Commonwealth and State tribunals, have been discussed with the view of showing the problems existing in Australia as compared with the recognized problems in the United States, especially with reference to the limited powers of the law-making authorities of each country as far as interstate commerce is concerned.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall,
Director, Division of Review
March 7,1936.

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REGULATION OF INDUSTRIAL RELATIONS IN AUSTRALIA

The scarcity of material renders a discussion of this subject, other than in a general way, practically impossible from the viewpoint of gleaning information which may prove of value in its application to the industrial problems with which the United States is confronted. Certain similarities in the organic laws of Australia and of the United States indicate that the results of legislative enactments and of judicial decisions in Australia, should be of value in determining the course that may be pursued in the United States in its efforts to solve some of its industrial problems. However, on account of complexities arising from the much larger population, the number of states and the training, education and temperament of the people, it is apparent that, although the fundamental laws of the two countries bear some similarity, the interpretation and application of the laws in each country depend upon the facts presented in each case.

It is to be noted that the Courts of Australia are vested with wider functions than are the Courts of the United States, especially with respect to wages and hours, due to the provisions in the Constitution of Australia, specifically authorizing the Parliament to make laws with respect to conciliation and arbitration. On the whole, however, it appears that the United States has authority to enact laws containing practically all the favorable features of the Laws of Australia, and that the law-making powers, as well as administration of the laws, in the United States,are now as comprehensive and effective as they are in Australia, as far as regulation of industries by the Australian Commonwealth is concerned.

CHAPTER I

REGULATIONS SINCE 1900

Prior to the year 1900, regulation of industrial relations was of little importance in comparison to the regulations that became necessary under the increase in population and in domestic and foreign relations and commerce. It was not until 1900 that Australia adopted a form of government which may be compared with that of the United States, and only from that date can information as to the manner in which Australia has dealt with the question now under consideration, be gathered which will be of benefit. As early as 1890 the doctrine of a basic wage was propounded, but it was not until 1907 that a Court in Australia established the first basic wage, although wage-fixing tribunals had been in operation as early as 1896. And, too, prior to 1900, provisions were made for the regulation of other industrial relations, but they were all local in nature and application. After the federation of the colonies and the adoption of a constitution, however, these questions were dealt with from a broader viewpoint and it is after this date that we find that industrial growth made it necessary for the States and the Commonwealth of Australia to attempt certain regulations.

A. FEDERATION OF THE COLONIES OF AUSTRALIA AND THE COMMONWEALTH CONSTITUTION

The six colonies of Australia were federated under the name of the "Commonwealth of Australia" in 1901, the Commonwealth Constitution Act having received Royal Assent on the 9th day of July, 1900, and the Proclamation of Commonwealth having been signed September 17, 1900.

The Constitution of Australia is modeled after the Constitution of the United States and contains certain provisions which are couched in language similar to the language used in the United States Constitution relating to the same subject matter. Like the Constitution of the United States, the Constitution of Australia vests in the Federal law-making power, the Parliament, the power to regulate trade and commerce among the several States and with other countries, and judicial decisions have followed the decisions of the United States Supreme Court in construing and interpreting this provision of the Constitution.

It is interesting to note in connection with the powers of the governments of the United States and Australia to regulate industrial relations, that under the Australian Constitution the Parliament is vested with the power to make laws with respect to "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State", thus limiting the powers of the Parliament to the regulation of interstate commerce. Due to the fact, however, that there are only a few states in Australia as compared with the forty-eight in the United States, it is comparatively simple and possible of accomplishment for the several states to enact and enforce uniform laws pertaining to the regulation of industry, so that the obstacles encountered in the United States in all efforts to regulate industry may be avoided to a very great extent. The varied interests of the large number of states in the United States make it impossible, apparently, to have uniform state laws enacted.

The relationship between capital and labor in the United States is unlike that in Australia where labor has controlled politics and, therefore, has built up protections which, under the industrial and political conditions in the United States can not be enjoyed. Capital in the United States, heretofore, has exercised at least an equal control with labor in political matters and has directed to some extent economical policies which have affected the whole nation. On the whole it appears that regulation of industrial relations should be more easily accomplished in Australia than in the United States.

Notwithstanding the apparent simplicity of regulating industries in Australia as compared with the apparent complications and difficulties in the United States, the fact remains that as far as constitutional powers and judicial decisions are concerned, it is difficult, if not impossible, to avoid the obstacles which arise by reason of the provisions of the constitution limiting the Parliament to the power of making laws affecting "Trade and commerce between other countries, and among the States".

Politics and economics are closely connected in Australia and the governments play a significant part in the economic life of the community. In his article on "The Constitution and Economic Policy", Vol. 158, The Annals (November, 1931) K. H. Bailey, Professor of Public Laws, University of Melbourne, states:

> "The Australian people have been very sensitive to the argument that a protective tariff enables a community to build up 'fair and reasonable' working conditions, free from the 'unfair' competition of goods produced by underpaid labour. A tariff is in fact a counterpart of immigration restrictions".

The Commonwealth, through its power of levying duties of excise, attempted to control industrial conditions and to this end, through the Excise Tariff 1906, imposed excise duties on agricultural machinery manufactured in Australia, but exempted machinery produced under approved labor conditions. Had not this Act been declared invalid (The King v. Barger, 6 Commonwealth Law Reports 4) on the ground that the apparently unlimited power of the Commonwealth must be restricted by reference to an implied prohibition, derived from the federal nature of the constitution, against trespassing upon the reserved powers of the states over intrastate industrial regulation, the Commonwealth would have been enabled to control conditions throughout the whole country.

In 1909 the state governments attempted to surrender to the Commonwealth a portion of the purely intrastate industrial field, but the attempt proved abortive, and when in 1911, 1913, 1919 and 1926, the Commonwealth governments sought additional powers from the people, each referendum upon proposed alterations of the constitution failed. Through judicial interpretation the effects of the decision in the case of The King v. Barger, supra, have been counteracted, to a large degree, so that there have been vested in the Commonwealth certain powers which give it limited control over industries, one of which is

"with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State". This power, however, does not meet the necessities arising in disputes, because the High Court has emphasized limitations of the nature and scope of the expedients which may be adopted for securing industrial peace. Under the decision in The Bookmakers' case, 11 Commonwealth Law Reports 311, no rule can be made which will apply to industries as a whole, the award of an arbitrator binding only the actual disputants themselves. In the State Railway Servants' case, 4 Commonwealth Law Reports 488, it was held that the Court of Arbitration has "no jurisdiction to make an award binding state railways - the greatest and most important of the state instrumentalities". However, in 1920, the earlier decisions were reviewed, (see The Engineers' case, 28 Commonwealth Law Reports 129,) and the "true method of ascertaining state powers was declared to be, first, to give to the relevant grant of Commonwealth powers its full, natural, ordinary meaning, and then to attribute the residue to the state. If the Commonwealth abused its powers to the injury of the states, the remedy was political and lay in the hands of the electors. There was nothing in the express words of the conciliation and arbitration power to exclude state instrumentalities from its scope, and the Railway Servants' case was definitely overruled". (See Australian Railways Union vs. Victorian Commissioners, Argus Law Reports, 37 at page 56.

As illustrative of the jurisdiction of the Commonwealth Court of Arbitration, it is interesting to note that its awards override state laws. (Clyde Engineering Works v. Cowburn, 37 Commonwealth Law Reports 466.) An outline of the manner in which the Courts of Arbitration and Conciliation were organized, their jurisdiction, etc., will be hereinafter discussed.

CHAPTER II.

TRADE AND COMMERCE

Under the Australian Constitution trade and commerce are divided between Commonwealth and states. Although the sections of the Commonwealth Constitution follow closely the American model in respect to trade and commerce, there are some specific grants of power which enable the Commonwealth to legislate even intrastate. The Royal Commission on the Commonwealth Constitution remarked in 1929 that:

> "as the states of the Commonwealth are, on the average, larger than those of the United States and have their own coastlines, and as much of the trade and commerce of Australia in manufactured goods is in the capital cities of the states, which are large centres of population, and between the capital city and the rest of a state, the powers of the Commonwealth Parliament are in fact more restricted in this respect than those of Congress. In the United States it has proved in some instances so difficult to draw a distinction between interstate and intrastate commerce that Federal legislation has superseded that of the states. This condition is not so likely to prevail in Australia, and has become less likely as the concentration of the population in the great cities of New South Wales, Victoria and South Australia has increased."

Section 92 of the Commonwealth Constitution provides that "trade and commerce and intercourse among the states shall be absolutely free", which has been interpreted by the High Court to mean that trade and commerce shall be "free from direct regulation or interference by state legislatures, hence this provision does not affect the control over interstate trade and commerce vested in the Commonwealth." The existence of this section was considered as a ground for excluding the doctrines of "police power" by which in the limited states the right of the states to safeguard the order and the health of their own communities has been preserved. The powers of the states in Australia were considered so doubtful that before the war some states preferred, for example, to rely on Commonwealth action to prevent the importation of diseased plants from other states. However, in the case of Nelson v. Couch 4 Commonwealth Law Reports, the High Court sustained legislation enacted to prevent the importation of diseased stock from Queensland into New South Wales. In discussing the subject of Freedom of Interstate Commerce, K. H. Bailey in his article entitled "The Constitution and Economic Policy", supra, states:

> "The test has been (as in the United States): 'Is this law in substance and in fact a law with respect to interstate trade and commerce, or a law with respect to health or order as quarantine?'

> The present judicial trend seems, in fact, to be to enlarge what may be called the police powers of the states. There is, of course, some danger that under pretext of police power, states will seek to undermine the freedom of interstate trade."

The Commonwealth's power over interstate trade appears to be absolute, so long as it does not discriminate as between states.

CHAPTER III.

POLITICAL PARTIES AND THEIR ECONOMIC POLICIES

As hereinbefore stated politics and economics are closely connected in Australia and this connection bears so strongly upon industrial relations that no discussion of this subject would be complete without a brief statement relating to political parties.

Prior to federation in 1901 there was a conservative party which was the exponent of free trade, and there were liberal parties that followed radical social ideals and had been induced to make protection the main plank of their policy. The Labour Party first elected representatives in the eighties, but after the failure of the great shipping strike in 1891 it started to grow rapidly. The union element, as distinguished from the intellectuals, of the Labour Party, attended to the industrial requirements of large bodies of men and developed considerable economic power. On account of the fact that the Party was weak and rarely in a position to dominate Parliament, it was forced to support the more liberal policies being carried out at the time.

With federation, the field of political action was widened to cover the continent, and interests which had a scope as wide as the continent, fought for control of Federal politics. The three interests thus involved are manufacturing, trade unions and agrarians. The manufacturing interest had a varying interest in the several political policies and although there was a difference of opinion in the protective states, the protectionist policy in the Commonwealth became completely victorious. Trade unions which were formed in all parts of Australia and which were merged into a Federal party exerted great influence. Agrarians do not have the same capacity to organize as do trade unions and they do not have the political sense in which the Labour Party excelled, and, therefore, they have never been able to establish any predominant influence in politics. Prior to federation they were unable to cope with the protectionists. After federation the protectionists became supreme in the Commonwealth and the Agrarians in the states. Eventually the Labour Party, by an opportunist policy and by modifying its practical policy, secured the vote of Agrarians.

Residents of cities and towns, professional classes, business men, traders and financial organizations, who had no common interest which could be served by political action, were "forced into what may be called a residual party which has been called by various names, such as 'liberals', and, later, 'nationalists'". In discussing the unorganized voters in his article entitled "Political Parties and their Economic Policies", Hon. F. W. Eggleston, says:

> "The aggressive affirmative power of a vested interest is far greater than the power of a majority advocating general principles for the good of all. The residual parties have always been on the defensive *****. In the circumstances, it has been impossible for their members to refrain from competing

with other parties for the votes of interested sections. In our view, therefore, there is in Australia a series of powerful interests on the one side and on the other the mass, - the general public-consumers, imperfectly organized. In the cases of Labour Party and the Agrarians, the material 'interest' is the 'party'. The manufacturing interest has a relation to all parties."

A. PROTECTION

As the Labour Party began to adopt a more strenous wage policy and to use political means to secure higher wages, the manufacturers, as employers of labor, had a divided interest. They could not, however, resist the wage policy of the Labour Party and at the same time advocate higher duties than those advocated by the Liberal protectionists. The protectionist manufacturers were willing to put the interest of the trade as a recipient of assistance from the tariff, above wage policy. Small businesses were dependent on the tariff and, being strong in all manufacturers' organizations, everything was sacrificed by the manufacturers to the necessity of getting higher duties. Manufacturers have, therefore, supported both the Liberal and Labour Parties.

In the struggle for control the Labour Party, with its policy of modified socialism, has become dominant as against Agrarian policies involving protection for the farmer to compensate for the protection for the manufacturer by the tariff and protection for the worker by the wage policy and the Nationalist policy of national development.

Thus it appears that in the consideration of any policy which has been or may be adopted to aid economic recovery, as well as the established methods of dealing with industrial relations, politics play an important part in Australia. This is true irrespective of the provisions of the Commonwealth Constitution and is worthy of serious study in connection with plans for economic recovery that may be adopted in the United States, the Constitution of which is similar in many respects to the Australian Constitution, where political parties do not play the same important part that they do in Australia.

CHAPTER IV

COURTS OF CONCILIATION AND ARBITRATION

Among the powers delegated to the Parliament under the Australian Constitution is that of making laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state". Pursuant to this power the Commonwealth Court of Conciliation and Arbitration was established under an Act of Parliament passed in 1904. Each of the six states of Australia has its own industrial laws and tribunals and the functioning of the Commonwealth Court of Conciliation and Arbitration has complicated the settlement of industrial disputes and the regulation of industrial relations, for the reason that the Commonwealth operates in the same industrial field, in the same industries, as do the courts of the several states. The matter of jurisdiction of the Commonwealth Court is well defined, and, as a matter of fact it is limited by the Constitution, but as is hereinafter shown, serious obstacles, nevertheless, arise to defeat the accomplishment sought. Lack of coordination between the Commonwealth Courts and the State Courts has resulted in a considerable amount of overlapping and duplication of awards. Wages have been awarded on different basis rates; hours of work and conditions of work have varied even in the same industry.

It is obvious that the provisions of the Constitution giving the Parliament power to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state" were incorporated for the reason that no state had the power to deal with industrial disputes extending beyond the limits of its own boundaries. Disputes arising in one state might easily spread to other states and thus become an Australian dispute which could not be settled as such because there was no authority with the necessary power to do so. Hence, it was necessary to give the Commonwealrh Parliament jurisdiction over interstate industrial disputes.

It was originally considered that only a few industries of a national character would come with the jurisdiction of the Court. However, State trade unions federated and registered in the Court and prepared a log of claims in regard to wages and working conditions for its members, and served it together with a letter of demand, on employers engaged in the industry which employed their members in two or more states. If the employer refused to grant the claims, or ignored them, an interstate dispute was created, or was threatened or impending or probable, and thus came within the jurisdiction of the Court. Under such procedure, then, the jurisdiction of the Court was extended to cover many industries and, although its jurisdiction was well defined and limited by the Constitution, as hereinbefore stated, it was not possible to follow a line of demarcation because, by such procedure as above outlined, the facts in particular cases would change the question presented from one of an intrastate to one of interstate nature. On account of the fact that the Commonwealth Court, as a rule, awarded higher rates of wages and better conditions of work than state tribunals, it soon became very popular with the unions, so that within

twenty-five years from the establishment of the Court, one hundred thirty-seven trade unions, with a membership of approximately seven hundred seventy-one thousand members representing 85.6 per cent of the total membership of all trade unions in Australia, had registered in the Court and thus brought themselves within its jurisdiction. It is not to be understood, however, that all Commonwealth awards apply to all the six states in Australia or that there are seven hundred seventy-one thousand unionists working under Commonwealth awards. It is estimated that four hundred twenty thousand unionists work under Commonwealth awards and that about one hundred fifty-eight have their wages and working conditions determined by the industrial tribunals of the states in which they live. The fact that the Commonwealth Court does not have the power to declare a common rule, that is, it can not extend the whole or a part of its award which has been made in settlement of a dispute between actual parties, to all persons engaged in the industry covered by the award within a defined area, prevents its awards from covering as many as it otherwise would. Its jurisdiction being limited by Section 51 (XXXV) of the Constitution to conciliation and arbitration for the prevention and settlement of interstate industrial disputes, it can prevent or settle disputes between actual parties only. On the other hand, all State industrial tribunals have the power to declare an award, or any provision of an award, a common rule of an industry.

Much confusion arises from this dual control of the States and of the Commonwealth. An award of the Commonwealth Court usually binds the union involved in the particular question, and, also, the members of the union and a number of employers, all who are parties to the dispute; but all of an employer's workmen are not, as a rule, members of the union concerned. The wages and the conditions of work of the non-unionists are regulated by the State award or determination. In a given case, one of the non-unionists may join the union and thus bring himself under the Commonwealth Court's award. On the other hand, a unionist may leave the union and he then comes under State control. An employer may not have been a party to the dispute, and would not, therefore, be bound by the Commonwealth Court's award. It may thus be seen that the system tends to conflicting jurisdiction. Although an award made by the Commonwealth Court prevails over any State law or State award or determination which is inconsistent with it, inconsistency arises where the State law or award, if effective, would destroy or vary adjustment of industrial relations established by the Commonwealth award. In an article by George Anderson, Barrister and Solicitor, entitled "Regulation of Industrial Relations", Vol. 158, The Annals, at page 158, on the question of the results of the control of the Commonwealth and of the States over industrial disputes, it is stated:

> "Nothing but complications, conflict and overlapping could result from the activities of two entirely independent authorities operating in the same industrial field".

There seems to be no remedy for this unsatisfactory method because the jurisdiction of the Commonwealth is limited by the Constitution and four attempts to have the Constitution so amended as to enable the Commonwealth to extend its industrial powers have failed. The Common-

wealth can not vacate the industrial field and leave the control of industries to the States because labor is opposed to this policy and is strong enough to prevent its adoption.

The Commonwealth Court of Conciliation and Arbitration, usually referred to as the "Arbitration Court" consists of a Chief Judge and such other judges as are appointed by the Governor-General in Council. Appointments are for life. As a prerequisite to appointment one must have been a barrister or solicitor for at least five years. The number of judges may vary, but there must be at least three. In most instances the jurisdiction of the Court may be exercised by the Chief Judge or another Judge. The Court has full arbitral and judicial powers, including, among others, the following: the power to hear and determine all industrial disputes within its jurisdiction; to make orders and awards; to fix maximum penalties for breaches or non-observance of any term of an order or award; to impose penalties; to set aside an award or any of its terms; to vary orders and awards; and to give an interpretation of any term of an award altering the standard hours of work in an industry or altering the basic wage or the principles on which it is computed, or to vary or give an interpretation of an award where the variation or interpretation would result in any such alteration, unless the question is heard by the Chief Judge and not less than two other Judges, and approved by a majority.

Commissioners, known as Conciliation Commissioners, with all the arbitral powers of a Judge of the Court but with no judicial powers may be appointed by the Governor-General. A Commissioner is in the position of a Judge in regard to the basic wage and standard hours. From orders or awards of a Commissioner affecting wages, hours, or conditions of employment which, in the opinion of the Court, are likely to affect the public interest, an appeal lies to the Court itself.

CHAPTER V

APPEALS FROM COURTS OF CONCILIATION AND ARBITRATION

The High Court of Australia (which is the equivalent of the Supreme Court of the United States) exercises jurisdiction in cases which involve the question as to whether an "interstate dispute exists, or is threatened, or impending, or probable", when alleged industrial disputes are submitted to the Commonwealth Conciliation and Arbitration Court. The decision of the High Court on the question, when it is presented by any party concerned, is final. The jurisdiction of the High Court in such cases is similar to the jurisdiction of the United States Supreme Court upon similar questions when they come up from the lower Federal Courts. Furthermore, the Court of Conciliation and Arbitration may, itself, state a case in writing for the opinion of the High Court upon any question of law arising in a proceeding. The judgment of the High Court is conclusive and is binding on the Court and on the parties. The High Court has original jurisdiction under the Constitution to issue prohibition to the Court, if it acts without or in excess of its jurisdiction.

Industrial agreements which are filed in the Court have the force of awards of the Court and encouragement is given by the Court to employers and organizations of employees to file such agreements. It is advantageous to have such agreements filed because there is an arbitration authority to settle disputes and make awards thereunder when the parties in dispute fail to reach an agreement.

CHAPTER VI

INDUSTRIAL TRIBUNALS OF THE SIX STATES OF AUSTRALIA

A. New South Wales

Without reference to previous Acts it is considered sufficient for the purposes of this report to briefly outline the provisions of the Act which is now in force, which, as a matter of fact is the original Act passed in 1908, as finally amended in 1926. This Act is known as Industrial Arbitration Act and provides for an Industrial Commission to exercise the powers of the Court of Industrial Arbitration and for conciliation committees in industries. The Industrial Commission is the chief industrial tribunal. There are three members of the Commission, the senior being called the President. A Judge of the Commission must at the time of his appointment be qualified to be a Judge of the Supreme Court.

One of the functions of the Commission is to determine, not more frequently than once in every six months, after public inquiry, a standard of living, and to declare what shall be the basic wage based upon such standard for adult male and female employees.

The Act provides for the establishment of conciliation committees by the Minister for Labor and Industry, for the different industries or callings to which it applies. Each committee consists of an equal number of representatives of employers and employees, and a Chairman. A committee has cognizance of and power to enquire into any industrial matters in the industry for which it is established, and in respect thereof may make an order or award binding on any or all employers and employees in the industry. In cases in which the committee fails to make an order or award upon an application, or deals only partially with it, the Chairman, who takes no part in the decisions of the committee and has no vote, refers the application or part to the Industrial Commission, which then proceeds to hear and determine the matters in dispute between the parties. Only upon the failure of the committee to which a matter has been referred, to make an order or award can the Commission assume jurisdiction of that particular matter. There is an appeal to the Commission from any order, determination, or award of a committee, or of any refusal of a committee to make an order or award. The Act provides for the making and the filing of industrial agreements, preference to unionists in certain cases, strikes and lockouts, breaches of awards and other offenses, trade unions, state labor exchanges and private employment agencies.

B. Queensland

Under the Industrial Conciliation and Arbitration Act of 1930 (by which the Act of 1916 and Amending Acts and the Basic Wage Act of 1925 were repealed), an "Industrial Court" was established with authority to declare general rulings relating to any industrial matter, such as the cost of living, the standard of living, the basic wage, or standard hours. The Judge and two conciliation commissioners consti-

tute the Court for the purpose of making such declarations. Conciliation Boards are constituted by the Court for different industries or trades and provision is made in the Act for the appointment of two conciliation commissioners. Each Conciliation Board consists of a chairman and either two or four other members, employers and employees having equal representation among the members of the Board except the chairman. Disputes must be referred to a board or commissioner before they are referred to the Court. In the event a settlement of the dispute is reached by the parties, the terms are set forth in an agreement which is filed in the office of the registrar and has the force of an award of the Court. If no settlement is reached, the dispute is referred to the Court for settlement. Conciliation commissioners have authority to make awards when acting as conciliation boards under authority of the Court, but neither the commissioner nor a board can make an award or enter into industrial agreements for wages lower than the declared basic wage, or for a number of weekly hours more than the Court's standard hours.

The Act provides for the making of industrial agreements, payment for certain holidays, the cancellation of an award or agreement in the case of a depressed industry, the registration of industrial unions of Government employees, breaches of awards and other offenses such as striking and locking out.

C. South Australia

In South Australia the Industrial Court has jurisdiction to deal with all industrial matters and is a court of appeal. The President of the Court has power as a mediator to deal with all industrial matters in all cases in which it appears to him that his mediation is desirable in the public interest, and such matters would, if submitted to the court, be within its jurisdiction.

There is a Board of Industry consisting of the President of the Court and four commissioners, two of whom represent the employer, and two the employees, the chief function of which is to declare the basic wage. This Board is empowered to hold an enquiry for the purpose of declaring the basic wage whenever it thinks that circumstances render it just and expedient that the question of the basic wage should be reopened and renewed; but it can not make a new declaration until the expiration of at least six months from the date of its previous declaration. The Board also exercises the function of grouping the industries or callings for the purpose of the appointment of industrial boards and the making of recommendations for new boards and for the dissolution of old boards, etc. The Minister of Industry on the recommendation of the Board of Industry has power to constitute an industrial board for any industry or calling, half of the members of which, except the chairman, consisting of four or six or eight, represent employers and one-half represent employees.

With respect to the industry for which it has been constituted, the Board may determine any industrial matters, but it has no power, as regards adult employees, to fix wages below the basic wage. Proceedings before a board are usually commenced by reference to the

board or the Court, or by application to the board by employers or employees in the industry or calling for which the board has been constituted. An appeal to the Court lies from the determination of a board. In the event a board is unable to exercise and discharge its powers and duties, the Court has power to exercise its functions; otherwise the Court has no jurisdiction over any industrial matter concerning any industry for which a board has been appointed and as to which matter the board has jurisdiction.

The Industrial Acts also deal with registered associations, industrial agreements, strikes and lockouts, breaches of awards and other offenses, apprenticeship, and factories and shops.

D. Western Australia

The Industrial Conciliation and Arbitration Act 1902 - 1909 was repealed by the Industrial Arbitration Act of 1912. The Act of 1912 has been amended several times and under it, as amended, tribunals have been created to deal with industrial matters, the chief of which is the Court of Arbitration. This Court consists of three members, one of whom is designated as President, all appointed by the Governor. One member is appointed on the recommendation of the industrial unions of employers, and one is appointed upon the recommendation of the industrial unions of workers.

The Court has jurisdiction on its own motion to deal with and determine all industrial matters, and to prevent, settle and determine all industrial disputes if the dispute has caused a cessation of work. It has also jurisdiction to settle and determine all industrial matters and disputes referred to it by any party or parties under the Act. The Court's decision that a matter referred to it is, or is not, an industrial dispute is final and conclusive. One of the chief functions of the Court is to determine and declare a basic wage to be paid to adult male and female employees.

On the recommendation of the Court, industrial Boards may be constituted by the Governor for any industry, calling or undertaking. Each board must consist of a Chairman and two or four other members, as recommended by the Court. One-half of such members represent the employers and one-half the employees. All the powers of a board may be exercised by a majority thereof. The Court may remit to an industrial board for inquiry and report any industrial matter or dispute upon which the Court desires information for the purpose of making an award; or the Court may remit to a board any industrial dispute for determination and award, the awards having the same force as awards made by the Court.

The existing Industrial Arbitration Act also deals with industrial unions and associations, industrial agreements, apprentices, breaches of awards and other offenses, and strikes and lockouts.

E. Victoria

Unlike the States of New South Wales, Queensland, South Australia and Western Australia, Victoria has no central industrial tribunal and no tribunal to fix a basic wage for the state. In 1898 the wages board system of small independent industrial tribunals was introduced in Victoria and this system has been retained. The Act governing the appointment of wages boards and their powers and functions is the Factories and Shops Act, 1928. Under this Act the law relating to the supervision and regulation of factories, wages boards, and other industrial matters. A wages board is appointed for a trade ("trade" includes a process or business or occupation or a branch of a trade or a group of trade), by the Governor in Council, and consists of not less than four and not more than ten members and a chairman. One-half of the members represent the employers and one-half the employees, the appointments being made, usually on the recommendations of organizations of

employees and employers, by the Minister of Labor. All the powers of a board may be exercised by a majority of the members thereof.

A wages board is empowered under the Act to determine weekly hours of work, to fix time and casual rates of wages, overtime rates, piecework rates, and special rates for work done on Sunday or on a public holiday. In addition to exercising the powers conferred upon it by the Factories and Shops Act, a wages board dealing with any question not covered by such powers may, by a unanimous decision, determine any matter whatsoever with respect to conditions of employment in any trade for which such board has been appointed. The validity of the action of wages boards may be challenged before the Supreme Court. There is a Court of Industrial Appeals, consisting of a president and two other members, one representing employers and one the employees, which decides all appeals against a determination of a wages board, and deals with any determination referred to the Court by the Minister of Labor. In dealing with appeals and references, the Court has and may exercise all or any of the powers conferred on a wages board by the Act, and may amend the whole or any part of a determination.

F. Tasmania.

Like Victoria, Tasmania has no central industrial court and no tribunal for declaring a basic wage for the state. The Wages Boards Acts 1920 - 1928, govern the powers and functions of the wages boards. Under authority of the Parliament, the Governor establishes wages boards for a particular trade or calling or group of trades or callings. Each board consists of a chairman and as many representative members as the Minister of Labor determines. One-half of the representative members are appointed for the employers and one-half for employees. The powers of a board may be exercised by a majority of the members thereof. Half of the members who represent the employers and half who represent the employees, together with the chairman, constitute a quorum.

A board has full power to determine time rates of wages, casual wages, piecework, overtime rates, and special rates for work done on Sundays and holidays; to determine weekly hours of work; to deal with apprenticeship and all matters relating to apprentices; to determine that wages and piecework rates shall be automatically adjusted at stated periods to accord with variations in the cost of living as indicated by the Statistician's retail price index numbers; and, by a unanimous decision of the board, but not otherwise, to allow holidays on full pay, not exceeding fourteen during each year. A determination of a board may be challenged before the Supreme Court on the ground of illegality.

The Wages Boards Acts also deal with agreements, strikes and lockouts, penalties for offenses against the Acts, inspection of factories and other matters.

CHAPTER VII

RATES OF WAGES AND HOURS OF LABOR

Both the Commonwealth and State tribunals give much time to the questions of wages and hours of labor, especially the former, as may be understood from the provisions of Acts under which such tribunals are created, as well as from a study of reports and of court decisions. The wage rate question is outstanding and the problem is far from solved. There are no uniform principles upon which wage rates are based and there remains certain difficulties to be dealt with, including the question of the standard of living.

In 1920 a Royal Commission appointed by the Commonwealth Government held an inquiry into the basic wage, and kindred matters, for the purpose of finding the cost of living, according to reasonable standards of comfort, of a family of five, in order that the amount so ascertained might be made the basic wage. This commission found an amount of £ 5.16s.- an amount considerably in excess of basic wages then being paid. At the time the report of the Commission was made, the Commonwealth Arbitration Court's basic wage for Sydney and Melbourne was £ 4.13s. The difference between the two rates was due to the fact that the Commission had determined reasonable standards of comfort by the needs which were common to all employees, and the Court, by the needs of the unskilled employee. The recommendations of the Commission were disregarded.

A basic wage provides for the average worker who is unskilled and who has a wife and children. However, there is no agreement among the different basic wage-fixing authorities in regard to the size of the family unit. The Commonwealth Arbitration Court's basic wage provides for man, wife, and three children; the wages boards of Victoria and Tasmania usually adopt the Commonwealth Court's basic wages; the Queensland Industrial Court and the South Australian Board of Industry also declare a basic wage for the five-unit family; the Western Australian Court of Arbitration's basic wage provides for man, wife and two children; the New South Wales Industrial Commission determines a basic wage for man, wife and one child; but in New South Wales there is also a Family Endowment Scheme which endows dependent children over one.

The most important wage-fixing tribunal in Australia is the Commonwealth Court of Conciliation and Arbitration. Although, as hereinbefore stated, a basic wage was propounded in Australia in 1890 and the same principle that was then announced was enunciated in 1905, it was not until 1907 that the first basic wage, as such was declared by a Court in Australia. In that year in a case popularly known as the "Harvester Judgment" on account of its having been determined in connection with H. V. McKay's Sunshine Harvester Works, the rate of wage declared was 7s. per diem or £ 2.2.s. per week for Melbourne, the amount considered reasonable for "a family of about five". The "Harvester" basic rates for all other towns throughout Australia were fixed at practically the same rates until 1913. Thereafter the basic rates for towns were fixed on their respective index-numbers. It is noted that the judgment delivered in the "Harvester" case was the outcome of an application by an Australian employer for a declaration that the conditions as to the remuneration of labor in his factory were "fair and reasonable."

The application was made by the employer so that he might get exemption from the payment of excise duties on certain classes of agricultrual implements which had been imposed by the Commonwealth Excise Tariff Act. The duties did not apply to goods which were manufactured under conditions, as to the remuneration of labor, which were "fair and reasonable". The question to be decided was what the Act meant by "fair and reasonable". After much consideration it was decided that the only appropriate standard of a living wage was "the normal needs of the average employee, regarded as a human being living in a civilized community". By this test it was decided that no wage less than 42/ - per week for an unskilled worker would be fair and reasonable. The average unskilled wage at the time the "Harvester Judgment" was rendered was about 33/ - per week. It is apparent, therefore, that the Harvester wage represented a marked increase in the standard of living or real wages of the workers who later came under the Court's awards, or under state awards or determinations which had been influenced by the Harvester judgment. Since 1907 the general policy of the Court in regard to wages has been the maintenance of the Harvester standard, but there was added to this wage certain increased to meet the increased cost of living so that the true equivalent of the Harvester wage would at all times be paid to employees. However, in 1922 the Court added 3/ - per week to the basic wage and this continued in force until 1934, although from the period 1922 to 1934 there were times when the need for it had passed.

There has always been doubt as to the adequacy of the "Harvester" standard, as supplemented by the method of increasing the rate, upon occasions for the purpose of maintaining the standard, and a review thereof was deemed necessary, but no action was taken until 1934, this method of fixation and adjustment of the basic wage remaining in force. It was superseded in 1934 by a judgment of the Full Arbitration Court after the Economic depression, which made itself felt severely in Australia in 1930, had forced employers to seek relief from the Court of a part of the burden of wages on industrial recovery. Pursuant to hearings and determinations by the Court upon applications of employers all wages under the jurisdiction of the Court were reduced by ten percent from February, 1931. In June, 1932 and May, 1933 the Court refused to rescind this order on application made by the unions. By a judgment of the Full Court in 1934, however, the ten percent reduction of wages ceased to operate in a majority of awards as from the 1st of May, 1934. At the same time the Court indicated that although restoration generally to the standard rate existing prior to the ten percent reduction had been refused, it was possible that certain industries were in a condition to justify the restoration and that it would be prepared to hear applications upon that ground. A number of full and partial restorations were made by the Court, and also voluntarily by employers.

After the pronouncement by the Court that it would hear applications for rescission of the order putting into effect the ten percent reduction upon the ground that certain industries might be in a condition to justify the restoration, applications by organizations generally renewing the request for rescission were made. The case submitted by the unions was mainly directed to prove that "the national finances had improved substantially; that commerce and industry had revived, and that balance sheets, enchanced prices of stocks and shares, increased productivity and other ready means of measuring prosperity had proved the ability of industry to bear complete restoration of former wage standards; that the continuation of the reduction

was hampering progress towards complete recovery; and that had the conditions prevailing in 1930 been similar to those of 1934, the Court would not have made the reduction. The employers denied generally the position as stated by the unions....., that although Commonwealth finances had apparently improved, the condition of State finances was still parlous; that the position of the railways and tramways was desperate, and that State deficits were largely due to the losses in those services."

Under the judgment of a divided Court the ten percent reduction was rescinded, new basic rates were awarded for various capital cities and country towns, and provision was made for adjustment of wages on account of cost of living in cases in which such amount reached 2s. per week.

At the present the basic wage rates fixed by arbitration tribunals differ from those obtaining in the Federal sphere not only as regards amount, but also in respect of constitution of the family unit whose needs it purports to supply. In the majority of cases, however, the practice of the Commonwealth Arbitration Court of adjusting wages in accordance with the variations in the "Cost of Living" index-numbers has been followed by the state arbitration tribunals, so that the "Harvester Judgment" award is not now effective, either directly as governing the Commonwealth method or as influencing the state methods.

With respect to one of the most important problems in industrial relations - that of establishing basic wages, - it is to be understood, therefore, that no satisfactory solution has been found for either the Commonwealth or the States and that this problem, as are all others which arise between labor and industry, is subject to dual control and that although there are established and well functioning tribunals to deal with them, practically the same obstacles are encountered in Australia as those which must be overcome in the United States.

CHAPTER VIII

CONCLUSIONS

1. Australia does not have the extensive territory nor the large number of units, - states, - that the United States has, nor are its industries as varied or as large; furthermore, its political situation admits of greater flexibility with respect to legislative enactment and judicial constructions for the reason that one Party practically controls.

2. The constitutions of Australia and of the United States both limit the law-making powers to making laws in respect of interstate commerce only, but the Parliament of Australia has constitutional authority, also, to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state". This authority does not make it possible for the Parliament to regulate intrastate commerce, of course, but by exercising its power under this provision of the constitutions by establishing Commonwealth Courts of Conciliation and Arbitration it sets an example for the six States and they likewise have established such courts. The adoption of procedure and standards of the Commonwealth tribunal by the state tribunals almost inevitably followed with the result that in Australia there are at least constituted authorities with more or less uniform standards which may deal with industrial disputes and although conflicts arise on account of the Commonwealth and state control, nevertheless both the employer and employee have an authority to which they may appeal which is constituted for the sole purpose of rendering awards in their particular fields, thus avoiding the delays, speculations and doubts incident to ordinary judicial hearings.

3. The Courts of Conciliation and Arbitration and other tribunals which deal with industrial relations, are set up under the Commonwealth and state constitutions and laws in a definite manner with well defined functions and jurisdiction, but in spite of this fact, conflicts arise and, so far, no method of satisfactorily adjusting industrial disputes and putting in force a common rule, has been evolved. Although the Courts of Australia in construing Acts of Parliament relating to the Commerce clause of the Constitution, closely followed the decisions of the United States Supreme Court in case involving the interstate commerce clause of our constitution, the effects have not been quite so disastrous for the reason that it has been possible in Australia, through the Courts of Arbitration to adjust disputes as they arose, especially in view of the fact that the state tribunals have adopted the methods of the Commonwealth Court. Furthermore, it seems that the High Court of Australia no longer feels impelled to follow quite so closely the United States Supreme Court decisions and a more liberal construction in later decisions has been given the commerce clause of the Australian Constitution.

4. The Australian tribunals seek to adjust industrial relations with a view to giving employees an opportunity to live comfortably, without doing injustice to employers, as is indicated in efforts made to establish reasonable basic rates.

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OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION
THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the code, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, these materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Trade Practice Studies

Labor Studies

Administrative Studies

Legal Studies

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of these studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
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Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

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