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THE LAW AGAINST WOMEN: QUEENSLAND INDUSTRIAL LEGISLATION FROM THE *FACTORIES AND SHOPS ACT* 1896 TO THE *INDUSTRIAL ARBITRATION ACT* 1916

SINCE the pioneering work of Edna Ryan and Anne Conlon in *Gentle Invaders*, which looked at the impact of arbitration on the status of women workers,[1] there has developed a small body of literature devoted to understanding the history of gender and industrial law in Australia.[2] Much of this literature deals with the Commonwealth arbitration system.[3] There are only a few studies of state

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1 Ryan & Conlon, *Gentle Invaders: Australian Women at Work, 1788-1974* (Nelson, Melbourne 1975). Of course, prior to this work, there were some analyses of the legal position of women workers. See for example, Heagney, *Are Women Taking Men's Jobs?* (Hilton & Veitch, Melbourne 1935) and Heagney, *Arbitration at the Crossroads: Digest of Opinion on Legal Wage Fixation* (National Press, Melbourne 1954). See also *The Law and Womens' Work: A Contribution to the Study of the Status of Women* (International Labour Office, Geneva 1939) which summarises the legal limits on women's employment world wide; and Hunter, "Industrial Courts and Women's Wages in Australia" (1962) 38 *Economic Record* 438. Also see Portus, *Australian Compulsory Arbitration, 1900-1970* (Hicks Smith, Sydney 1971) for statistics on 20th century female wages in Australia.

2 See Kirkby, "Arbitration and the Fight for Economic Justice" in Macintyre & Mitchell (eds), *Foundations of Arbitration: The Origins & Effects of State Compulsory Arbitration, 1890-1914* (Oxford University Press, Melbourne 1989) pp334-351 for a good survey of the literature.

3 See for example, Bennett, "Legal Intervention and the Female Workforce: The Australian Conciliation and Arbitration Court 1907-1921" (1984) 12 *International Journal of the Sociology of Law* 23; Bennett, "Job Classification and Women Workers: Institutional Practices, Technological Change and the Conciliation and Arbitration System, 1907-72" (1986) 51 *Labour History* 11; Frances, "'No More Amazons': Gender and Work Process in the Victorian Clothing Trades, 1890-1939" (1986) 50 *Labour History* 95; Frances, "The Clothing and Boot Industries, 1880-1939" in Willis (ed), *Technology and the Labour Process: Australasian Case Studies* (Allen & Unwin, Sydney 1988) p96; Frances, *The Politics of Work: Case Studies of Three Victorian Industries, 1880-*

systems.[4] This gap in the literature is not limited to 'gender-explicit' accounts. The deficiency exists whatever the approach. A survey of the

1939 (unpublished PhD thesis, Monash University 1988); Frances, "Marginal Matters: Gender, Skill, Unions and the Commonwealth Arbitration Court - A Case Study of the Australian Printing Industry, 1925-1937" in Frances & Scates (eds), *Women, Work and the Labour Movement in Australia and Aotearoa/New Zealand*, (Australian Society for the Study of Labour History, Sydney, Issue 61 of *Labour History* 1991) pp17-29; Frances, *The Politics of Work: Gender and Labour in Victoria, 1880-1939* (CUP, Cambridge 1993); Hunter, "Women Workers and Federal Industrial Law: From Harvester to Comparable Worth" (1988) 1 *Australian Journal of Labour Law* 147; Kirkby, "Arbitration and the Fight for Economic Justice" in Macintyre & Mitchell (eds), *Foundations of Arbitration;* Kirkby, "Oh, What a Tangled Web!" in Burgmann & Lee (eds), *Making a Life: A People's History of Australia since 1788* (McPhee Gribble, Melbourne 1988) pp253-266; Markey, "Women and Labour, 1880-1900" in Windschuttle (ed), *Women, Class and History: Feminist Perspectives on Australia 1788-1978* (Fontana Collins, Melbourne 1980) pp83-111; Ryan & Conlon, *Gentle Invaders: Australian Women at Work, 1788-1974* (Thomas Nelson (Aust), Melbourne 1975); Ryan & Rowse, "Women, Arbitration and the Family" in Curthoys, Eade & Spearritt (eds), *Women at Work*, (Australian Society for the Study of Labour History, Canberra, Issue 29 of *Labour History* 1975) pp15-30; Schofield, *Freezing History: Women under the Accord, 1983-1988* (University of NSW Industrial Monograph No 20, [1989]) gives an historical survey of women workers and arbitration; Scutt, "Inequality before the Law: Gender, Arbitration and Wages" in Saunders & Evans (eds), *Gender Relations in Australia: Domination and Negotiation* (Harcourt Brace Jovanovich, Sydney 1992) pp266-286; Whelan, "Women and the Arbitration System" (1979) 4 *Journal of Australian Political Economy* 54; Williams, *Beyond Industrial Sociology: The Work of Men and Women* (Allen & Unwin, Sydney 1992) pp226-232.

4 Bosworth, "Protection or Abuse?: An Introductory List of Statutes relating to Discrimination against Women in Australia, 1824-1978" in Mackinolty & Radi (eds), *In Pursuit of Justice: Australian Women and the Law, 1788-1979* (Hale & Iremonger, Sydney 1979) pp250-251; Ryan, *Two Thirds of a Man: Women and Arbitration in New South Wales, 1902-08* (Hale & Iremonger, Marrickville, NSW 1984) describes women workers' experiences of the New South Wales Industrial Arbitration Court through four cases between 1902 and 1908. Reekie, "The Shop Assistants Case of 1907 and Labour Relations in Sydney's Retail Industry" in Macintyre & Mitchell (eds), *Foundations of Arbitration* pp269-290 examines the impact of arbitration on NSW shop assistants, especially women, in her study of the 1907 Shop Assistants case. Lee, "A Redivision of Labour: Victoria's Wages Boards in Action, 1896-1903" (1987) 22 *Historical Studies* 352 analyses the impact of the Wages Board system on Victorian workers between 1896 and 1903. Lynzaat, "Respectability and the Outworker: Victorian Factory Acts 1885-1903" in Mackinolty & Radi (eds), *In Pursuit of Justice* pp85-95 outlines the impact of early Victorian legislation on outwork. See also an early analysis of arbitration in Victoria which refers briefly to women workers: Rankin, *Arbitration and Conciliation in Australasia* (Allen & Unwin,

contents of *Labour History* over the 32 years of that journal's life revealed only a handful of articles devoted to the state arbitration systems.[5] In the literature of the Australian industrial relations discipline, there are few accounts of the origins of the state systems.[6] It seems that there are still gaps in the legal literature too.[7] Sketchy accounts appear in general works

London 1916). The relationships between women workers, their unions and the Western Australian arbitration system are examined by Thiele, "Women Workers in Western Australia: Their Unions, Industrial Awards, and Arbitration" in Bevege et al (eds), *Worth Her Salt: Women at Work in Australia* (Hale & Iremonger, Sydney 1982) pp358-366 for the period 1979 and 1980. Work is currently underway on a history of the Queensland Arbitration Court. This is being undertaken by a former Commissioner, Mr Ron Howatson who generously shared with me his draft section on women as well as material on Thomas McCawley, the first President of the Court. Otherwise, Queensland and South Australian records have been barely touched upon - with the exception of four works. Ryan & Rowse , "Women, Arbitration and the Family" in Curthoys et al (eds), *Women at Work* pp19-20 briefly mention an early equal pay case in Queensland. Hamley, *The Limits of Choice: White Women, their Work and Labour Activism in Queensland Factories and Shops, 1880s to 1920* (unpublished MQuals thesis, University of Queensland 1992) (hereafter, "Hamley, *The Limits of Choice*") outlines some of the effects of early Queensland industrial legislation on the status of women workers. (For scattered references to women workers and the law in Queensland see fn13). Whelan, "Women and the Arbitration System" (1979) 4 *Journal of Australian Political Economy* 54 draws on the records of the South Australian Industrial Court to illustrate judicial attitudes to women workers. Dabschek, "'The Typical Mother of the White Race' and the Origins of Female Wage Determination"(1986) 12 *Hecate* 147, following the work of Whelan, underscores the racist elements explicit in the judgements of the President of the South Australian court regarding women workers. Tasmania apparently has been ignored.

5 See Ryan, "Proving a Dispute: Laundry Workers in Sydney in 1906" (1981) 40 *Labour History* 98; Blackmur "Arbitration, Legislation and Industrial Peace: Queensland in the Reconstruction Years" (1992) 63 *Labour History* 115.

6 One exception is the work of Dufty, "The Genesis of Arbitration in Western Australia" (1986) 28 *Journal of Industrial Relations* 545 and *Industrial Relations and Politics - the Western Australian Arbitration Act, 1912-1920* Discussion Paper 8, (Department of Industrial Relations, University of WA, Nedlands 1986).

7 Weeks in a review of Hall & Watson, *Industrial Laws of Queensland* (Department of Industrial Relations, Brisbane, 2nd ed 1988) complains that of the seven different legal systems which regulated industrial relations in Australia, only four were the subject of up-to-date publications - see (1989) 31 *Journal of Industrial Relations* 271. However, for early industrial laws see Mitchell & Stern who in a chapter of Macintyre & Mitchell (eds), *Foundations of Arbitration*, compare the provisions of various arbitration statutes of Australia (Commonwealth and States) and New Zealand from 1890 to 1914, pp104-131. See also Binns (comp), *Select Bibliography on Industrial Conciliation and Arbitration with Special Reference to Australia and New Zealand* (Government

on the Australian labour movement.[8] Similarly, in the wealth of literature on the early Queensland labour movement, there is little attention to the details of the arbitration system/legislation.[9] There are a few studies of the history of Queensland industrial law, but only one which could be described as 'recent'.[10]

In short, both 'gender-aware' and 'gender-blind' writers have neglected the history of the state arbitration systems. It might be assumed that unremarkable homogeneity was the reason for this lack of interest. Certainly there has been considerable 'cross-pollination' of ideas amongst the various legislatures, but the structures/institutions, statutes and worker coverage of the state systems are far from uniform. Furthermore, this diversity is not just a recent phenomenon. As will be shown later, the most cursory examination of one early Queensland Act reveals significant differences between it and contemporary legislation in other states, particularly with respect to women workers. Nor could the oversight reflect insignificant jurisdictional coverage of the state institutions. In Queensland, as recently as 1990 for example, 57% of employees were

Printer, Canberra 1929) for a useful bibliography of early works on arbitration in Australia, including a state by state listing and some brief historical notes.

8 See, for example, Gollan, *Radical and Working Class Politics: A Study of Eastern Australia, 1850-1910*, (Melbourne University Press, Melbourne 1960) pp155-189 and Spence, *Australia's Awakening: 30 years in the Life of an Australian Agitator* (The Worker Trustees, Sydney 1909) pp305-310.

9 See Murphy, *TJ Ryan: A Political Biography* (University of Queensland Press, St Lucia, Qld 1975) pp121-123; Murphy, Joyce & Hughes (eds), *Labor in Power: The Labor Party and Governments in Queensland, 1915-57* (University of Queensland Press, St Lucia, Qld 1980) pp246-249; Fitzgerald, *'Red Ted': The Life of EG Theodore* (University of Queensland Press, St Lucia, Qld 1994). For a detailed discussion of the 'labour legislation' of the Ryan & Theodore Governments (a discussion which despite its detail, does not cover the implications for women of the *Industrial Arbitration Act* 1916) see Cope, *A Study of Labour Government and the Law in Queensland, 1915-1922*, (unpublished BA(Hons) thesis, University of Queensland 1972).

10 Delaney, "The Development and Progress of Industrial Arbitration in Queensland" (1953) 109 *NSW Industrial Gazette* 834-844; Johnston, *Government Attitudes to Industrial Relations in Queensland, 1886-1912* (unpublished MQuals thesis, University of Queensland 1979); *The Labour Laws of Queensland* (Government Printer, Brisbane 1922); *Legislative Record of the Labour Government of Queensland from the Session of 1915 to the Session of 1925* (Government Printer, Brisbane 1926); Matthews, "A History of Industrial Law in Queensland with a Summary of the Provisions of the Various Statutes" (1949) 4 *Royal Historical Society of Queensland Journal* 150-181. See also McPherson, *The Supreme Court of Queensland 1859-1960: History, Jurisdiction, Procedure* (Butterworths, Sydney 1989) for various references to the Industrial Court.

covered by state awards and, with the exception of Victoria and the territories, the situation in the other states was similar. Moreover, the 'lop-sidedness' of 'feminist' interest in the Commonwealth Court is obvious when it is considered that in the same year only 23.2% of female employees were covered by federal awards.[11] Studies of Australian *State* arbitration systems then are long overdue.

It might be argued that a study of industrial laws and arbitration with particular reference to women workers is even more overdue in Queensland where, in the labour history literature, the image of the 'worker' as a masculine entity has survived much longer than in the other states. When, from the 1970s, historians in other Australian states were devoting attention to working-class women's activism,[12] the Queensland record emerged more slowly. Whilst studies of women's involvement in white collar unions appeared in the 1980s,[13] contributions to the study of

11 The figures in 1990 for the percentage of employees covered by state awards were: NSW 48.8%, Vic 39.6%, SA 47.8%, WA 57.3%, Tas 45.6%, NT 1.3%, ACT 1.4%: *Award Coverage, Australia, May 1990* (Australian Bureau of Statistics, Catalogue No 6315.0) p5.

12 See for example: Australia: Ryan & Conlon, *Gentle Invaders*; Damousi, "Socialist Women in Australia: 1890-1918" (1988) 5 *Lilith* 26 (limited to women in Sydney and Melbourne); New South Wales: Mitchell, "Wives of the Radical Labour Movement" in Curthoys et al (eds), *Women at Work* pp1-14; Spearritt, "Women in Sydney Factories, c1920-50" in Curthoys *et al* (eds), *Women at Work* pp31-46; Nicol, "Women and the Trade Union Movement in New South Wales: 1890-1900" (1979) 36 *Labour History* 18; Ryan, "Proving a Dispute" (1981) 40 *Labour History* 98; Ryan, *Two-thirds of a Man*; Reekie, "The Shop Assistants Case of 1907" in Mackinolty & Mitchell, *Foundations of Arbitration* pp269-290; Victoria: Brooks, "The Melbourne Tailoresses' Strike, 1882-1883: An Assessment" (1983) 44 *Labour History* 27; Feeney, "Matchgirls: Strikers at Bryant & May" in Lake & Kelly (eds), *Double Time: Women in Victoria - 150 Years* (Penguin, Ringwood, Vic 1985) pp261-267; Feeney & Smart, "Jean Daley and May Brodney: Perspectives on Labour" in Lake & Kelly (eds), *Double Time* pp276-87; Frances, "'No More Amazons'" (1986) 50 *Labour History* 95; Frances, "The Clothing and Boot Industries, 1880-1939" in Wills (ed), *Technology and the Labour Process* pp96-112; Frances, *The Politics of Work*; Raymond, "Sara Lewis: Trade Union Activist, 1909-1918" (1986) 3 *Lilith* 45; Raymond, "Labour Pains: Women in Unions and the Labor Party in Victoria, 1903-1918" (1988) 5 *Lilith* 41.

13 See Law, "'I Have Never Liked Trade Unionism': The Development of the Royal Australian Nursing Federation, Queensland Branch, 1904-45" in Windschuttle (ed), *Women, Class and History* (Fontana/Collins, Melbourne 1980) pp192-215; Thomas, "Queensland Public Service Women" in *All Her Labours, One: Working It Out* (Hale & Iremonger, Sydney 1984) pp85-92; Clarke, *Female Teachers in Queensland State Schools: A History, 1860-1983* (Department of Education, Brisbane 1985); Bonnin (ed), *Dazzling Prospects: Women in the*

women in industrial unions have been fewer in number and generally more recent phenonema.[14]

This paper is an attempt to address these deficiencies by drawing attention to the participation of women in factory work in Queensland around the turn of the century: assessing their success or failure in securing new opportunities or more jobs over the period; identifying characteristic features of the female factory workforce; and investigating the legal atmosphere for women workers from the earliest factory Acts to the *Industrial Arbitration Act* 1916 (Qld). The focus is on factory work because factories and shops were the targets of the new labour legislation of the late nineteenth century. Also there is a large body of hitherto untapped data related to factories in the annual reports of Queensland's Chief Inspector of Factories and Shops. More importantly though, factories were the sites where the new labour legislation of the period had most impact on narrowing opportunities for women workers. This was in contrast to the situation in shops.

QUEENSLAND FACTORIES AND SHOPS: TRENDS IN THE EMPLOYMENT OF WOMEN

During the period under review, women made no significant or lasting inroads into factory employment in Queensland. Figure 1 (see end of article) shows women as a proportion of factory workers in seven Queensland centres from 1900 to 1921.[15] The apparent leap between 1900

Queensland Teachers' Union Since 1945 (Queensland Teachers' Union, Spring Hill 1988); Hughey, "Equal Pay and the Queensland Teachers' Union: The Seventy Year Struggle by Women Teachers" in Taylor & Henry (eds), *Battlers and Bluestockings: Women's Place in Australian Education* (Australian College of Education, Curtin 1989) pp51-64; and Strachan (Law), *The History of the Australasian Trained Nurses' Association, Queensland Branch, 1904 to 1950* (unpublished PhD thesis, University of Queensland 1992).

14 See Thomas, "Queensland Women at Work in the 1890s" in *Second Women and Labour Conference Papers 1980* (The Convener's, Dept of History, La Trobe University, melbourne 1980) pp32-40; Young, "The Hatpin - A Weapon: Women and the 1912 Brisbane General Strike" (1988) 14 *Hecate* 6 and *Proud to be a Rebel: The Life and Times of Emma Miller* (University of Queensland Press, St Lucia, Qld 1991); Hamley, *The Limits of Choice*.

15 The seven centres covered are Brisbane, Bundaberg, Ipswich, Maryborough, Rockhampton, Toowoomba and Townsville. The data used here are the most reliable statistics available. Before 1920 at least, numbers of female factory workers were not as available in Queensland year books as they were in, say, New South Wales and Victoria. There is a further problem. The *Victorian Year Book 1914-15* (Government Printer, Melbourne 1915) p801 gives 1914 female

and 1908 does not represent an 'invasion' of women into factory work. As the employment statistics in Figure 2 show, what happened was that male factory employment fell in real terms between 1900 and 1905 largely due to the effects of a massive drought and uncertainty about the impact of federation.[16] Female employment was steadily growing in the meantime. After 1912, however, the number of women factory workers stagnated so that by 1921 the female proportion of the factory workforce was 25.9% - only slightly above the 1900 figure of 24.2%. Even the advent of war produced only a short-term relative increase in the presence of women in Queensland factories. In fact, actual numbers of female employees declined between 1915 and 1919.

Such mediocre employment trends were not reflected in the commercial sector however. In shops for instance, women's employment relative to males increased significantly. In Brisbane, for example, women comprised 24% of the shop workforce in 1898 - this figure rose to 34% by 1921.[17] However, overall participation rates of Queensland women in paid work were tending to decline from 1901.[18]

A key feature of the factory workforce, and one which had a direct bearing on the employment of women, was extreme occupational segregation by sex. In 1902, for example, 95% of Brisbane factory women worked in "disproportionately female" occupations[19] ie, jobs in which females formed a greater proportion of workers than they did in the workforce as a

factory employee numbers for Queensland which show that women formed 17.48% of the factory workforce. This is a much lower proportion than that indicated in Figure 1, ie 28.5%. The explanation for this discrepancy probably lies in the definition of "factory". The source for the *Victorian Year Book* figures presumably did not include the smaller "factories" (two or more employees) counted by the Queensland Inspectors of Factories & Shops. These smaller establishments were overwhelmingly "female" which accounts for the higher figure in the Factories & Shops data. See Hamley, *The Limits of Choice* pp13, 19, 20 for further details on the Factory & Shops statistics.

16 Lewis, *A History of the Ports of Queensland: A Study in Economic Nationalism* (University of Queensland Press, St Lucia, Qld 1973) p130.

17 Statistics in Appendix A of Annual Reports of the Chief Inspector of Factories & Shops (hereafter F & S Reports), see Qld, Parl, *Votes & Proceedings* (hereafter *QVP*) and Qld, Parl, *Papers* [1897-1921] (hereafter "*QPP*").

18 See Hamley, *The Limits of Choice* pp2-3.

19 This method of analysing sex-segregation of the labour market was developed by Oppenheimer, *The Female Labour Force in the United States*, Population Monograph No 5 (University of California, Berkeley 1970) ch3; and followed, for Australia, by Power, "The Making of a Woman's Occupation" (1975) 1 *Hecate* 25. Data for 1902 was calculated from F & S Report, *QPP*, [1903] Vol II at 146-151.

whole. By contrast only 86% of factory men worked in "disproportionately male" occupations. Men and women, then, operated in essentially different labour markets. Moreover, women were more confined to 'female' jobs than men were to 'male' jobs. In 1902, 9% of men worked in disproportionately female occupations while only 4% of women worked in disproportionately male occupations. Figures for Brisbane factories in 1913 suggest that segregation was *intensified* over the period (in that year 97% of women worked in 'female' jobs and 90% of men worked in 'male' jobs) and that women were even more rigidly confined to 'female' jobs.[20]

The opposite effect is seen in shop employment where women's presence increased in 'mostly male' shops and 'male only' shops almost disappeared.[21]

What seems to have happened is this: economic conditions around the turn of the century hit male jobs hardest, leading to a perception that women were 'invading' men's jobs. This was a widely-held view shared by none other than the Chief Inspector of Factories and Shops who in his 1903 Report noted that male shop employees had decreased 9.9% from the previous year while female employees had increased by 12.9%. He added that this

> affords further confirmation of what must be obvious to anyone interested in the subject, namely, that women are steadily being employed in increasing proportions both in factories and shops.[22]

The fear of 'invasion' prompted male workers to protect what they considered their prior right to work. The Wages Board system introduced in 1908 enabled them to limit opportunities for women, especially in factories. Women were more confined to 'women's' work. After 1911 Queensland manufacturing did not grow as quickly as it had in the previous decade whilst the commercial sector expanded. Women were faced with more closed doors in manufacturing but greater opportunities in shops where expansion, plus less effective male closure, gave them more scope for choice. Many who once would have been expected to work in a factory, found a job in a shop. From 1912 there was a shortage of female factory workers, a phenomenon that persisted throughout the rest of the

20 F & S Report, *QPP* [1913] Vol III at 192-215.
21 Hamley, *The Limits of Choice*, pp22-24.
22 F & S Report, *QPP* [1904] at 719.

period and reflected a turning away from the contracting and more rigidly defined roles in factories to the expanding and more diverse positions accessible in shops. In addition, after 1915 the clothing industry (the most feminised manufacturing sector) stagnated because of wartime disruptions, further affecting the employment of women relative to men.

In short, it is not suggested that legal constraints on female workers were the sole cause of the stagnancy of the female factory workforce. No doubt if the economy had not 'colluded' in the process, that is, if manufacturing had expanded instead of stagnating after 1910, the pressure of demand would have led to the limits on female labour being challenged and probably, in many cases, defeated. The following analysis of the development of legal restrictions on women workers in Queensland should be read with this caution in mind.

THE DEVELOPMENT OF LEGISLATIVE RESTRICTIONS ON WOMEN WORKERS: *THE FACTORIES AND SHOPS ACT* 1896 (QLD)

Towards the end of the nineteenth century, Queensland legislators, like those in many other Australian colonies, began to show an interest in the condition of the colony's workplaces. In 1891 a Shops, Factories and Workshops Commission of Enquiry was established. Twenty-one commissioners, eleven nominated by the government, five by the Federated Employers Union and five by the Australian Labour Federation (ALF), were asked to inquire into "the conditions under which work is done in Shops, Factories, and Workshops, in Our Colony of Queensland, to the end that better provision may be made for the welfare of the persons employed therein".[23] The commissioners were asked to look especially at working hours, sanitary conditions, the employment of children and the dangers of machinery used in production. Although the employment of women was not explicitly indicated as an area of concern, there were six female commissioners, (two of whom had been nominated by the ALF) and a good deal of the commissioners' attention was directed to the perceived moral, social and physiological damage associated with women's employment. Fourteen of the seventy-three witnesses who appeared before the Commission were women and many dozens more were interviewed during visits of inspection to fifty-seven workplaces in Brisbane and Ipswich. There was ample opportunity to examine women's employment in a variety of establishments and the prognosis was not

23 Report of the Shops, Factories and Workshops Commission (hereafter "S, F & W Comm"), *QVP* [1891] Vol II at 928.

good. Low (or no) pay, long hours and insanitary surroundings characterised the working conditions of many female employees.[24] They were paid much less than their male co-workers - a fact noted by most witnesses and dwelt upon by some of the female commissioners,[25] and their working conditions were considered to be a threat to their reproductive capacities.[26] Whilst many men worked under conditions that were considered appalling even by the standards of the day (butchers for example) images of feminine vulnerability and calls to protect motherhood almost invariably accompanied demands for legislative intervention.[27] The Commission of Enquiry proved a fruitful source of such images. In fact the experience of sitting on the Commission was so profound for Commissioner Dr James Booth that his original repugnance of legislative "interference" was converted to a passionate plea for it - a plea given extra force by citing the case of one of the women visited by the Commission:

> a great alteration is needed in a condition of things under which, to cite one instance, a woman, who has two young children to support, is obliged to sit alongside a foul-smelling urinal from morning till night, washing trays, for 12 shillings a week, and is afraid to complain of the offensive surroundings for fear of losing her miserable pittance.[28]

Such images were probably crucial in securing legislative "interference" in the workplace. Although it took several years for any successful legislation to come from the Commission's report,[29] the Factories and Shops Bill of 1896 was greeted by Frank McDonnell, one of the most tenacious advocates of such legislation, as primarily a device for

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24 In several "female" jobs, young women were not paid any wages at all for periods of time ranging from three to twelve months. This was usually in those areas of female employment which were in greatest demand, for example dressmaking, shop assisting etc. See for example, S, F & W Comm, *QVP*, [1891] Vol II at 980, 1008, 1022-1023, 1125-1126.

25 See for example S, F & W Comm, *QVP*, [1891] Vol II at 1106-1107, 1192, 1216.

26 See for example S, F & W Comm, *QVP* [1891] Vol II at 961, 1236, 1262.

27 See for example the thrust of Commissioner Leontine Cooper's questioning of Dr JH Little: as above at p1260.

28 As above at p972.

29 See Whitfield, *Early Factories and Shops Legislation of Queensland* (unpublished BA(Hons) Thesis, University of Queensland 1968) pp76-88 for a detailed study of the events between 1891 and 1896 re factory and shops bills.

protecting women and children.[30] The *Factories and Shops Act* 1896 (Qld) came into force on 1 January 1897 and initially covered six urban centres. In those centres it was necessary to register all workplaces in which four or more people were employed, powered machinery was used or "Asiatics" were employed.[31]

Back in 1891 the Commission was in no doubt as to the particularly vulnerable position of women workers, but the majority report made only one recommendation for gender discrimination of employees - the provision of seats for female shop assistants. In fact, there was an awareness amongst the Commissioners that discriminatory legislation could have the effect of reducing the employment of women. Commissioner Thomas Glassey, prominent Labor MLA made this point clearly while questioning Thomas Edwards, a major Brisbane draper:

> [Glassey] Do you think if a law was passed insisting upon females only ceasing to work at 6pm, it would have a tendency to throw female labour out of establishments?
>
> [Edwards] I think undoubtedly it would.
>
> [Glassey] You think any law that is passed should apply to males and females alike?
>
> [Edwards] Yes: in the interests of the assistants generally, and more particularly of females.[32]

This view did not prevail however. The 1896 Act included another level of differentiation - overtime regulated for women and children - not men. The fact that male workers were not treated equally drew protests from at least one Factory Inspector.[33] For women workers the effects of overtime regulation were mixed. In those industries which were already feminised, clothing for instance, the regulation of overtime sometimes resulted in

30 When the Bill was introduced McDonnell stated that "The object of all factory legislation is the protection of the health of women and children": Qld, Parl, *Debates* (hereafter "*QPD*"), [1896] Vol LXXV at 1554.

31 The definition of "factory" was changed in 1900 to include workplaces in which *two* or more people were employed. See F & S Report *QVP*, [1902] Vol I at 840.

32 S, F & W Comm, *QVP*, [1891] Vol II at 1033.

33 See the comments of Mr Crowther, F & S Report, *QVP*, [1900] Vol V at 1051.

greater numbers of women obtaining employment, at least temporarily.[34] However, the administrative nightmare of detailing overtime and making applications for permission would have operated as a strong disincentive to employers entertaining the idea of *introducing* women into their factories.

Legislative requirements related to provision of completely separate sanitary facilities for males and females would also have served to discourage the introduction of women into hitherto 'masculine' factories and shops.

The Wages Board Act 1908 (Qld)

The restrictions imposed by the *Factories and Shops Acts*, however, were minimal compared with the impact of later legislation. Under the *Wages Boards Act* 1908 (Qld), elected representatives of both employees and employers met on various Boards to determine what working conditions (minimum wages, working hours, apprentice proportions) were to be observed in their various trades. Wages Boards had operated in Victoria from 1896; their impact on the gender division of labour and on the containment of women in the most poorly-paid and vulnerable positions in the labour process, has been discussed by Jenny Lee.[35] Similar effects prevailed in Queensland. Unlike the earliest Victorian Wages Boards legislation, however, the first Queensland Act charged the Boards to take into consideration when fixing minimum wages not only the "nature, kind, and class of the work, and the mode and manner in which the work is to be done", but also "the age and the *sex* of the workers".[36] Some of the earliest determinations under the 1908 Act embodied the principle of unequal wages, limited the training to be provided to females, actively discouraged the apprenticing of women and allowed greater numbers of "cheap workers" into female sections of industry than to male areas.[37] For

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34 In her 1909 report Miss Smith, a Factory Inspector, cited one large Brisbane factory which increased its staff and used no overtime, probably because of increased overtime payment provided for in the 1908 Act, F & S Report, *QVP*, [1909] Vol II at 89.

35 Lee, "A Redivision of Labour" (1987) 22 *Historical Studies* 352.

36 *Wages Boards Act* 1908 (Qld), s3(2), s21(2) (emphasis added); Lynzaat, "Respectability and the Outworker" in Mackinolty & Radi (eds), *In Pursuit of Justice*, p89.

37 The cheapest of workers were often known as 'improvers'. They were more 'disposable' than apprentices whose employment was usually guaranteed for a fixed period. An improver was defined in the 1908 Act as a person other than an apprentice, usually under 21, whose wage rate might be different from that of

example, the Boot Trade Determination operating from May 1909, set minimum wages for workers "employed in wholly or partly making or manufacturing boots, shoes, or uppers of any description" at £2 per week for males and £1 for females.[38] Only one male apprentice/improver was allowed to be employed for each male on £2 per week, but ten female apprentices/improvers were allowed for each female on £1.[39] In the Furniture Board Determination operating from January 1910 the most "skilled" - and highly-paid - workers were specifically denoted "adult males" and females were mentioned only in the bedding section of the trade. Employers were required to have greater numbers of "full wage" males before they could put on an "improver" as opposed to an apprentice - thereby encouraging apprenticeship amongst males. However, this process was *reversed* with females. An employer could not put on a female apprentice until s/he had ten "full wage" females, but could employ one "improver" for every two "full wage" women. This differentiation ensured that males were protected from large numbers of cheap workers while female areas were flooded with them.[40] The apprenticing of females in the saddlery trade was discouraged by the awarding of higher wages to female apprentices than to "girls" - there were no "boys", only apprentices and improvers whose rates were differentiated so as to encourage apprenticeship.[41] In the Bag and Portmanteau section, two "cheap" female workers were allowed for every "full wage" female, but an employer had to have two "full wage" men before putting on one "cheap" male.[42]

Male bootworkers were probably the most successful group at using the Wages Board system to combat female labour. Not only did they firm up the boundaries between "men's" jobs and "women's" jobs and confine women to poorly paid positions, but they also succeeded in ejecting women from one branch of the industry. A statement passed by the union

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other workers. See *Wages Boards Act* 1908 (Qld), s2. The definition was changed in 1912 to specify an improver as a person who receives a *lower* wage, and to include in the definition of 'improver' an apprentice whose indentured period is less than 3 years. See *Wages Boards Acts* 1908-1912 (Qld), s2.

38 Determination of the Boot Trade Board, *Queensland Government Gazette* (hereafter *QGG*), Vol XCII, No 78, 28 April 1909 at 989. The word "slippers" was substituted for "uppers" in the section related to female workers.

39 As above at 989-990.

40 Determination of the Brisbane Furniture Makers' Trade Board, *QGG*, Vol XCII, No 140, 20 December 1909 at 1486-1487.

41 Improvers were paid more than apprentices from the third year. See Determination of the Brisbane Saddle etc Trade Board, *QGG*, Vol XCIII, No 142, 24 December 1909 at 1491-1492.

42 At 1492.

in May 1909 included the following clause: "Clause 19 - No females shall be employed in clicking, making, finishing or stuff cutting departments".[43] In Brisbane, women had been employed in finishing for a number of years. In 1902 for example there were seven female finishers compared with 145 males.[44] By 1907 there were 17 females and 121 males.[45] This trend was reversed following the Union's decision to exclude women - by 1913 there were no females amongst the 111 finishers employed in Brisbane.[46]

The Industrial Arbitration Act 1916 (Qld)

The election of a Labor Government in June 1915 led to a significant change in direction for labour legislation in Queensland. The new Ryan Government embarked on a program of industrial reform described by Queensland labour historian DJ Murphy as providing "the farthest reaching reforms of benefit to the working *man* that any Australian government was to attempt until World War II".[47] Authorship of the Industrial Arbitration Bill, the linchpin of the legislative program, is generally attributed - probably correctly - to Edward Theodore, the new Minister for Public Works, and/or Thomas McCawley, the Crown Solicitor.[48] The surviving records do not provide direct evidence of their intentions regarding the Bill but some of their influences are clear. Theodore was a new type of labour man, "the beau ideal of a labour leader. Strong, simple, plain and intensely ready for a fight."[49] His industrial and political training ground was that most masculine of industries - mining. His tough, dictatorial approach (along with that of his colleague, William McCormack) had fostered the spectacular growth of a tiny North Queensland union from obscurity to dominance of the state's labour movement, all within a few short years. The secret of the

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43 Queensland Boot Trade Union Minutes, 31 May 1909, T49/1/5, p181, Noel Butlin Archives (formerly Archives of Business & Labour), Australian National University.

44 F & S Report, *QPP* [1903] Vol II at 146.

45 F & S Report, *QPP* [1907] Vol II at 333.

46 F & S Report, *QPP* [1913] Vol III at 196-197.

47 Murphy, "Labour Relations - Issues" in Murphy, Joyce & Hughes (eds), *Labor in Power* p246. Emphasis added.

48 For example, Cope, *Labour Government and Law* p48 says Theodore and McCawley; Bernays, *Queensland Politics During Sixty Years, 1859-1919* (Government Printer, Brisbane [1919]) p487 says Theodore; Murphy, *TJ Ryan* p122 says Theodore and McCawley; Fitzgerald, *'Red Ted'* p66 says McCawley.

49 A description by Brian Penton, *Sydney Morning Herald*, 8 December 1927, cited in Fitzgerald, *'Red Ted'*, following p201.

Australian Workers Union's (AWU - formerly the Amalgamated Workers' Association) success was an extraordinary concentration of power in a central body and a 'leanness' that saw the abandonment of 'individual' benefits like health and medical cover for the sake of a better-funded fighting machine.[50] The obvious implication of this new labour paradigm was the abandonment of individuals who did not fit the 'majority' mould and a more proscriptive definition of the term 'worker'. This was a far cry from the liberal humanism of old style labour leaders like Thomas Glassey who found space within their dedication to the labour cause for marginalised workers like women.

Like Theodore, Thomas McCawleys background would have inclined him to a belief in the 'rightness' of highly differentiated gender roles. As a Catholic and an upwardly mobile son of a drover, the notion of the dependent woman would have carried both the force of religious conviction and the symbolism of 'social betterment'. McCawley was also a close student of the work of Mr Justice HB Higgins whose judicial recognition and entrenchment of the male breadwinner/female dependent model of the family is best known in the so-called "Harvester decision".[51] McCawley himself became President of the Queensland Court of Industrial Arbitration when it was instituted by the 1916 Act.[52]

Theodore and McCawley were familiar with the development of arbitration legislation in the other Australian states and in New Zealand. From the beginning of the Ryan government's administration, Theodore's department was in touch with its counterparts interstate, maintaining an exchange of current bills.[53] During the debates on the Bill, references

50 See Fitzgerald, *'Red Ted'* p21 for an example of "stripping" health benefits; and Kennedy, "Theodore, McCormack and the Australian Amalgamated Workers' Association" (1977) 33 *Labour History* 14 for an account of the rise of the AWA.

51 *McKay, ex parte HV* (1908) 2 CAR 4.

52 His promotion provoked great controversy. Moreover, his subsequent appointment to the Supreme Court bench was challenged by the legal profession. See Cope, "McCawley, Thomas William (1881-1925)" in Nairn & Serle (eds), *Australian Dictionary of Biography* (Melbourne Uni Press, Melbourne 1986) Vol 10, pp221-222; Cope, *A Study of Labour Government and the Law in Queensland, 1915-1922*, (unpublished BA(Hons) thesis, University of Queensland 1972) pp65-69 & ch3 for biographical details of McCawley and a detailed analysis of the 'McCawley Case'.

53 See, for example, letter 9106 of 1915, 28 July 1915, Under Secretary (US) Department of Labour & Industry (NSW) to US Department of Public Works Brisbane, forwarding Eight Hour Bill soon to be presented to the NSW Parliament - WOR/A841, Queensland State Archives.

were made to legislation elsewhere in Australia and New Zealand as well as to the recent (1913) Royal Commission on Arbitration in New South Wales.[54]

The Industrial Arbitration Bill was introduced into Parliament in August 1915 - less than three months after the election of the Ryan Government. Its passage through the lower house was marked by long discussions of the clause related to preference to unionists, to the supposed inability of the agricultural industry to withstand a statutory eight-hour day, and to the wisdom of allowing police officers to form a union. There were remarkably few references to women workers, even from non-government members, some of whom would have been concerned to secure to employers a readily available source of cheap labour. Clearly, 'workers' were men. The only women workers recognised by Theodore were domestic servants who were originally to be exempted from the benefits of the Act. The only initiative from the labour movement regarding women workers came from the Brisbane Industrial Council, a body centred on Trades Hall. In September 1915 Council members met with Theodore to press for the inclusion of domestic servants under the proposed Act.[55] He complied with their request.[56] It should be noted at this point that this issue caused considerable agitation. Two public meetings of women were held protesting against the inclusion of domestic servants. The participants were employers of domestic servants and 'society' women - no domestic servants spoke at either meeting. The 'ladies' formed a large deputation to Theodore who assured them that he intended to exclude domestic servants from the mandatory eight-hour clause and that the Bill would not change any employment conditions unless and until servants themselves requested a Board which then would consider all the relevant details of the calling. Apparently, the ladies went away satisfied - at least there was no further agitation reported in the local press.[57] When the Bill

54 See for example Theodore's comments on the NSW Royal Commission, *QPD* [1915-16] Vol CXX at 570 and those of HC McPhail, another government member, on the subject of arbitration in Australia, New Zealand and America at 819.

55 *Daily Standard*, 23 September 1915, p3; Minutes of Industrial Committees Combined Unions, 1914-16, pp56-78 (18 July to 30 September 1915) - Coll 118/70, Fryer Memorial Library, University of Queensland.

56 *QPD* [1915-16] Vol CXXI at 1205.

57 See *Brisbane Courier*, 28 October 1915, p11; 30 October 1915, p15; 2 November 1915, p9 and *Daily Standard*, 27 October 1915, p5; 28 October 1915, p5; 30 October 1915 (2nd ed), p6; 2 November, p4 for details of the meetings and the deputation.

was lost at the end of the session because of disagreement between the two houses, domestic servants were to be included in the proposed legislation.

In the 1916-17 session, the Bill was presented again and was passed with the help of the 'guillotine', all-night sittings and some concessions from the Labor government. These concessions included the dropping of the controversial "preference" clause and the exemption of domestic servants and agricultural workers from the Act.

The *Industrial Arbitration Act* 1916 (Qld) was hailed by the AWU-controlled *Worker* newspaper as: "the most comprehensive and far-reaching bill ... [on arbitration] ... yet evolved in an Australian, or any other, legislature"; as "the boldest piece of industrial legislation yet to go on to an Australian Statute Book"; and as representing "the last word in industrial legislation". Furthermore, the paper contended, "the report of Commissioner Piddington [1913 NSW Royal Commission into arbitration] has been turned to the fullest advantage in framing the Queensland measure".[58] It will be made clear here that the Queensland Act was indeed comprehensive, far-reaching, bold and up-to-date - in declaring war against female labour. It will also be shown how full an advantage the drafters of the Act gained from Piddington's findings - especially on the ousting of women. A brief survey of contemporary legislation will serve to illustrate this point.

INDUSTRIAL LEGISLATION AROUND AUSTRALIA

In Tasmania, the *Wages Boards Act* 1910 merely charged the Boards to take "the age and sex of the workers" into account when determining wages.[59] The Commonwealth *Conciliation and Arbitration Act* 1904-1911 included in the definition of "industrial matters" the question of "the employment, preferential employment, dismissal, or non-employment of any particular persons, or of persons of any particular sex or age" but softened the power by enjoining the court to have regard to "the interests of *the persons immediately concerned* and of society as a whole"[60] - a provision which it will be revealed later was much more compassionate than a similar section in the Queensland Act. Both Western Australia and New South Wales passed *Industrial Arbitration Acts* in 1912 in which the "sex, age, qualification or status of workers" were issues included under

58 *Worker*, 7 December 1916, p8.
59 *Wages Boards Act* 1910 (Tas) s22(iii)(c).
60 *Commonwealth Conciliation and Arbitration Act* 1904-1911 (Cth) s4. Emphasis added.

the definition of "industrial matters". Another issue defined as an "industrial matter" was, in the WA Act "the dismissal or refusal to employ any person or class of persons", and in the NSW Act "the right to dismiss or to refuse to employ or reinstate in employment any particular persons or class of persons".[61] The *Industrial Arbitration Act* 1912 (SA) included as an "industrial matter" the sex of employees "including the question of whether persons of either sex shall be disqualified for employment in an industry".[62] Other provisions under the *Factories Act* 1907 (SA) gave power to boards to "fix a different proportion of male and female improvers" and required boards, when determining wages, to take into account the "age and sex of the workers".[63] Similarly the *Factories and Shops Consolidation Act* 1915 (Vic) allowed Boards to fix different wages according to "the age and sex of the workers".[64] Sex was also an allowable category for consideration in determining the wages of apprentices or improvers and the Boards were further empowered to fix different proportions of male and female apprentices or improvers.[65] Other sex-differentiated provisions related to the definition of child, the securing of females' hair, limits on weights to be carried by girls, no overtime for females, the outlawing of females paying a "premium" for apprenticeships in the clothing industry, and in the case of female outworkers, the restriction of some inspection powers to female inspectors only.[66]

On the face of it then, Tasmania's was the least restrictive legislation. There the issue of sex related only to wages. Then followed the Acts of Western Australia and New South Wales in which the sex of workers was potentially relevant to a broader range of issues and in which, although not explicitly stated, sex might be used to identify a "class of persons" in questions of the right to employment. Then there was the Commonwealth Act in which sex and age were explicitly noted as potential classificatory criteria in determining the right to employment. The South Australian and Victorian Acts went slightly further - by allowing Boards to set improver/apprentice proportions on a sex-differentiated basis. On the question of disqualification from employment by reason of sex, the South Australian legislation appears more restrictive by seeming to point to the

61 *Industrial Arbitration Act* 1912 (WA) s4(b) & (c); *Industrial Arbitration Act* 1912 (NSW) s5(b) & (c).
62 *Industrial Arbitration Act* 1912 (SA) s3.
63 *Factories Act* 1907 (SA) s93(v); s95(iii)(c).
64 *Factories and Shops Consolidation Act* 1915 (Vic) s141(b)(iii).
65 Section 182(2).
66 Sections 3, 63, 200 and 114.

exclusion of one or the other sex from a whole industry. All these Acts declared the sex of workers to be a fit matter for industrial courts to consider, some had the potential to be used to restrict female labour, but none comes anywhere near the Queensland Act for explicit and multiple references to female labour.

The Queensland Act defined as an "industrial matter" the question of "the sex, age, qualification, or status of employees ... including the question whether any persons shall be disqualified for employment" (s4). As if that were not explicit enough a later section added as an "industrial matter" the "disqualification of any persons for employment by reason of sex or age, or disease" (s4). Females reached maturity later than males according to this Act - young workers were defined as persons under 18 years "or, with the approval of the Minister, a female under twenty-one years" (s4). As mentioned earlier, domestic servants were excluded from the provisions of the Act (s5). In Queensland this meant *most* women in paid work were unable by law to claim the benefits which were available to their male counterparts. In a novel provision amongst Australian legislation, the Queensland court was given the power to fix not only the number or proportionate number of *women to men* but also the *amount of work* women could do (s8(iv)).[67] There were also two apparently conflicting provisions related to women's wages. In Section 8(i)(a) the court was instructed to fix the "same wage for persons of either sex performing the same work or producing the same return or profit to their employer", whereas in section 9(3)(i) & (ii) the court was required, whilst fixing minimum wages, to award to a man a wage sufficient to keep himself, his wife and three children - to a woman enough to keep herself alone. But where the Queensland Act really attempted a quantum leap was on the issue of "disqualification" from employment. Commissioner Piddington in his report on the 1913 NSW Royal Commission on Arbitration devoted some attention to the question of "ousting" women. He noted Justice Heydon's comments in a 1911 case in which male boot workers, by their own admission, sought to prevent women working a certain machine.

67 These same provisions were later advanced by W Jethro Brown, President of the South Australian Industrial Court, as preferred methods of combating cheap female labour than the principle established by Higgins J whereby females would be paid male rates in 'male' occupations. See Brown, "Judicial regulation of rates of wage for women" (1919) 28 *Yale LJ* 236. Ryan & Rowse, "Women, Arbitration and the Family" in Curthoys et al (eds), *Women at Work*, refer to Brown's options for protecting male wages: p19. For an interesting analysis of Brown's personal and professional life, see Roe, *Nine Australian Progressives: Vitalism in Bourgeois Social Thought, 1890-1960*, (University of Queensland Press, St Lucia, Qld 1984) pp22-56.

Heydon refused the application on the basis that "women had a common law right to earn their living in any honest way they could", declaring he could find nothing in the relevant legislation that suggested an intention to take away this right.[68] It is hardly surprising to find that *very* intention clearly stated in a clause peculiar to the Queensland Act. In the section which defines as an "industrial matter" the "disqualification of persons for employment by reason of sex or age or disease" the following phrase is appended: "having regard to public interests" [note the omission of the softening qualification "*the interests of the persons immediately concerned* and of society as a whole"] "and *notwithstanding the common law rights* of employers and employees" (s4, emphasis added). The fact that such an audacious provision attracted only one comment during the debates is testimony to a lack of arbitration expertise in the ranks of the opposition rather than any supposed harmlessness of the clause.[69] Indeed, the passage would have answered the prayers of the bootmakers turned away from Heydon's court.[70]

THE QUEENSLAND ACT IN CONTEXT

Whilst there is only circumstantial evidence as to the intentions of the drafters of the Act in relation to women workers, its overall effect was complete control. This was clearly enunciated by none other than Justice McCawley himself within months of the implementation of the Act. On 16 March 1917, he delivered his opinion on a case referred to the Full Bench regarding the relative rates of pay of male and female employees. After listing all the powers of the Court over female employees, McCawley summarised the situation thus: "This tribunal therefore has ample powers to make *any* award as to the industrial position of female employees which, in the interests of the community, it may consider

68 *Final Report of the Royal Commission of Inquiry on Industrial Arbitration in the State of New South Wales*, (Piddington, Commissioner) (Government Printer, Sydney 1914) ppXXXVII-XXXVIII.

69 The member for Dalby, William Vowles, apparently a lawyer, said he could not understand the intention behind these words and proposed an amendment deleting them. Theodore responded making reference to the need to exclude certain workers from underground mines. Vowles' amendment was lost: *QPD* [1915-16] Vol CXXI at 1191.

70 The reference to age and disease is probably an obfuscation, as old age and illness are generally automatic limitations on employment in a way that sex is not. In any case, there were ample provisions via public health regulations that would have allowed for the exclusion of workers suffering from infectious diseases.

desirable to make".[71] It may be noted that the interests of the (female) employees immediately concerned, were again not identified as worthy of judicial consideration. McCawley's reading of the Act also led to the conclusion that it was in the power of the court to award equal wages (*even where equal work was not proved*) in cases where the court considered it was in the interests of the community to force women out of employment. The sense that the community might need to be protected from female employees is echoed in the opinion of McCawley's colleague McNaughton J who described as a "flood" the (purported) tendency for "many avocations formerly the exclusive province of men [to be] entered upon by women".[72]

Where McNaughton found evidence of this "flood" is hard to say, unless it was interstate, for in Queensland at least the statistics do not support his view. As was shown previously, in Queensland, the female factory workforce declined relative to males from about 1908, and although the same could not be said of shop workers, overall women's participation in paid work was stagnating if not declining. This raises a most perplexing question. Why did labour politicians like Theodore fight a war they had already won? Put simply, the answer is three-fold: first, they did not *know* they had won; second, they wanted, in any case, for reasons that were not related to local conditions, to lead the field in industrial legislation; and third, they did it because they could.

On the first count, there were probably few members of Ryan's government who studied Queensland employment statistics closely enough to notice the trends in female employment. Even if some of them had, they probably would have expected that feminisation trends seen elsewhere would eventually develop in Queensland.[73] The sense that it would not be a bad idea to have some legislative weapons on hand against some future need was probably foremost in the minds of the drafters. Memories of the recent defeat in the 1912 general strike would have added crucial weight to this impulse to build up (male) labour's weaponry. Moreover, it cannot be overemphasised how many fears were raised by the war, especially the expectation that the working class would end up bearing more than its share of the burden. The cost of living had risen sharply since the beginning of the war while wages were pegged. In

71 *QGG*, Vol CVIII, No 118, 29 March 1917 at 1068.

72 As above.

73 See *Victorian Year Book 1914-15* p801 which shows the Queensland factory workforce as less 'feminised' than those in Victoria, New South Wales and South Australia. See fn15 for comments on these statistics.

addition, the fear that women would usurp enlistees' jobs (at lower wages) and thus displace them indefinitely was being fuelled by events in Britain. Although this fear intensified with the conscription debates of 1916 and 1917 (that is, *after* the original drafting of the Bill) it was being expressed much earlier. The *Worker* and the *Daily Standard* frequently carried stories of female substitution. A headline in the latter in October 1915 announced that "War Brings Cheap Labour".[74] In the previous month, under the heading "'Patriotism' Exposed", the *Worker* referred to a letter from London which predicted that "after the war, the employers of England would refuse to employ returned soldiers, as women and children will have taken their jobs at lower wages".[75] Local events would also have encouraged the fear of substitution. In early September 1915 *Daily Standard* readers were informed of the establishment of a Registration Office at the Brisbane Town Hall with the purpose of determining "what reserve force of women's labor ... can be made available ... if required".[76]

In addition to these pragmatic concerns, there was a sense of wanting Queensland to lead the way in promoting the labour cause. Amongst labour ranks generally, there was an expectation that *this* Labor government would create legislation that would surpass that of the other states. In the second reading debate on the Bill, Theodore explicitly stated his determination to take notice "of the weaknesses of other Acts in order to improve this measure as far as possible"[77]. Even the Brisbane Industrial Council which held some members of the Ryan Government at arm's length, could not resist joining in the parochial swaggering. When the Council received a request for communication with the New South Wales Boot Trade Union so that the latter could recommend some of the New South Wales regulations for inclusion in the Queensland arbitration legislation, the rather scornful view of the members was that "the Queensland Government would enact a Bill that would be a big advance on the New South Wales one".[78]

Finally, the government introduced the measure because it could. Not only was there a lack of arbitration expertise in the much reduced ranks of the Opposition, and therefore little awareness of how powerful some of the Bill's provisions might prove, but what energies they had to spare were almost wholly exhausted on issues other than the control of female labour.

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74 *Daily Standard*, 30 October 1915, p9.
75 *Worker*, 9 September 1915, p20.
76 *Daily Standard*, 9 September 1915, p3.
77 *QPD* [1915-16] Vol CXX at 570.
78 *Worker*. 26 August 1915, p16.

The major ones were the question of preference, whether agricultural workers should come under the Act, and whether police should be able to form a union. On these issues, the Opposition may have felt well satisfied by the time the Bill was passed. The preference clause was dropped (but, as Theodore predicted, without denying the Court power to grant preference) and agricultural labourers were exempted - considerable victories it seemed.

While that accounts for one source of opposition to the Bill, what about women workers themselves? Elsewhere in Australia, female commentators had been outspoken in their views on arbitration. For example, when the Western Australian government was considering its 1912 arbitration legislation, one female union leader, Mamie Swanton actively opposed the measure.[79] There was no such feminist commentary in Queensland. Labour women were silent on this issue - a silence which was something of a break with their activist tradition. Their role during the Brisbane general strike is well documented.[80] Even before that time, Queensland women had been actively involved in pushing for their rights as workers. In two waves of organising, in the late 1880s and again from 1907, many women flocked to join or form unions, loudly proclaiming not only their right to work, but also their right to decent wages and conditions.[81] Moreover, feminists within the labour movement pushed for women's rights generally, provided a critique of what they saw as labour men's sexism, organised women's unions, and attended meetings and protests. However, at the time Labor came to power, many of the women who had previously had a voice in women workers' issues were either absent, compromised by close relationships with members of the Ryan Government, or were busy campaigning on other issues. The most outspoken of the former group were May McConnel (née Jordan) and "Comrade Mary". McConnel organised the first Brisbane Women's Union in 1890, speaking forcefully on a range of issues relevant to women workers. In the following year she was nominated by the Australian Labour Federation to become a member of the Shops & Factories Commission in which position she pursued lines of inquiry vital to women workers. She moved to America cica 1910, a move regarded as a "severe

79 Dufty, *Industrial Relations and Politics* p6.

80 See Young, "The Hatpin - A Weapon" (1988) 14 *Hecate* 6; Young, *Proud to be a Rebel* pp173-96; and Strachan, *The Brisbane General Strike of 1912* (unpublished BA (Hons) thesis, University of Queensland 1972) pp24-8.

81 See Hamley, *The Limits of Choice*, pp51-71 for an outline of women's industrial activism in Queensland from the 1890s to 1920.

loss" by fellow activist, Emma Miller.[82] "Comrade Mary" was probably a more vigorous critic of sexism in the labour movement. As the women's columnist for the *Worker* she often attacked the "one-sexed" nature of worker representation, calling for greater participation by women in the labour movement as well as the creation of *paid* positions for women organisers. About 1910 she went to live in Herberton, North Queensland, from where her voice was seldom heard.[83]

Of the female activists left in Brisbane, Helen Huxham was probably the most notable around the time the arbitration bill was introduced. Huxham had been particularly energetic in 1912 when she travelled all over the state urging women to form unions and push for an improvement in their working conditions. Back in Brisbane her unpaid services were devoted to the Boot Trade Union as an organiser through 1913 and 1914. If she had any criticisms of Theodore's Bill, she was unlikely to air them. Her husband John was a Cabinet colleague of Theodore's. Other women like Mabel Lane, Isabel Skirving and Emma Miller, while not as close to the government as Huxham, may have failed to comment because of a desire to promote labour solidarity, or through sheer lack of time. Lane and Miller were involved in the Womens' Peace Army that was formed in Queensland at the end of 1915. During 1916 they were also active in the state's anti-conscription movement. Skirving was possibly involved as well, for when the Women's Anti-Conscription Committee became the Women Worker's Political Organisation after the first conscription referendum, she became Vice-President.[84] In any case, some of these women might well have approved of the controls on female labour made possible in the Act. Feminists had never maintained anything like unanimity on the question of "special" legislation for women, and certainly labour feminists in wartime, post General Strike Queensland, would have been predisposed to regard any curb on the power of employers as an advance.

Thus it was that in Queensland the only equivalent to Mamie Swanton was the lone voice of a woman cook who wrote in November 1916 to the

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82 *Daily Standard*, 5 April 1913, 'For Women' page (page number unclear); *Worker* 7 August 1909 p11, 25 December 1909, p11

83 Hamley, *The Limits of Choice* pp51-52. 'Comrade Mary' is mentioned by Pam Young as Comrade Mary (Lloyd) but there is no source noted for this surname - see Young, *Proud to be a Rebel* p120. For Mary's move to Herberton, see *Worker*, 5 December 1912, p18 where she reports having been in Herberton for "some years".

84 See Young, *Proud to be a Rebel* pp204-205, 214-215, 224.

Worker protesting against the fact that women workers had been left off the agenda of the government's labour reform program.

> Permit me [she began] through the columns of your paper, to bring under the notice of Labor members the very bad conditions awarded to the woman worker of the State of Queensland. We hear and read all about higher wages and better hours for men, but not a word about the unfortunate woman who toils from 5.30 am until 7.30 pm and supports a family on £2 5s a week.[85]

Her protest was a case of too little, too late.

A review of some awards drawn up under the *Industrial Arbitration Act* 1916 gives some sense of the constraints made possible. For example, female employees in aerated water factories could do only the work prescribed for male juniors, minus "washing bottles with a hand brush".[86] Women in the Government Printing Office were proscribed from performing a variety of tasks and no female was permitted to work overtime without another female being present in the same room.[87] No female under fifteen years was to be employed in a Brisbane broom factory.[88] The Brisbane Tent & Tarpaulin Makers & Canvas Workers' Award declared "[n]o female shall be required to lift or carry any article over twenty pounds (20lb) in weight" and women were not to use a "palm and needle" except on light work.[89] The skill-gender nexus promoted within the labour market was legitimised in awards.[90] For example, apprenticeships in bootmaking were limited to "male persons".[91] In the biscuit making and confectionery industry, a "journeyman confectioner"

85 *Worker*, 2 November 1916, p15.

86 Aerated Water Factory Agreement, Brisbane, Wynnum, Manly & Sandgate, *Queensland Industrial Gazette* (hereafter "*QIG*") Vol 3, No 10, 10 October 1918, p649.

87 Printing Industry Employees' Agreement re Government Printing Employees, *QIG*, Vol 3, No 910 September 1918, pp574-576.

88 Millet Broom & Brush Makers' Award, Brisbane, *QIG*, Vol 3, No 5, 10 May 1918, p280.

89 Tent & Tarpaulin & Canvas Workers' Award, Brisbane, *QIG*, Vol 3, No 10, 10 October 1918, p668. A palm is a wood and leather implement which fits over the hand and against which a needle is pushed when stitching heavy material. Thanks to Geo Pickers Pty Ltd for this information.

90 See Phillips & Taylor, "Sex and Skill: Notes Towards a Feminist Economics" (1980) 6 *Feminist Review* 79, for a discussion of the function of a gendered concept of skill in capitalism.

91 Bootmakers' Brisbane Agreement, *QIG*, Vol 5, No 4, 10 April 1920, p323.

was defined as a "male person" - there were no journeywomen; all women were designated "females".[92] Women working in broom making were permitted only to draw the fibre into the head of the broom. Boring, knife work, screwing and the making of brushes/brooms not involving "drawn" work were the sole preserves of males.[93] These limits served to marginalise women as inferior workers by restricting the work they could do, excluding them from training/apprenticeship programs and confining them to already overcrowded sections of various industries (thus undermining their bargaining power).

A full study of cases and awards has not been undertaken beyond 1920, so it is not clear how often the most powerful provisions of the Act were invoked. However, in the period up to 1920 the Court did seem to take a conservative approach to its very considerable powers. An example of this concept of reserving its powers can be seen in the judgement of McNaughton J in a 1918 case where his Honour refused to award equal pay because "substitution" of female for male employees *had occurred only on a small scale*. The implication was that if the substitution had been more widespread, he would have granted equal pay to prevent it.[94] Of course where male workers and employers could reach common ground with respect to female labour, there would not have been a case brought to the court - the exclusion could have been implemented, quite legally, through an agreement (which could later gain the status of an award) or through informal "arrangements" at the workplace such as was seen in the case of female finishers in the boot industry.

Finally it is interesting to note how long some of these provisions have remained in force. For example, the term "sex" was not removed from the clauses governing the disqualification of persons from employment until

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92 Biscuit Makers and Confectioners South-Eastern & Central Award, *QIG*, Vol 5, No 4, 10 April 1920, pp336-338.

93 Millet Broom & Brush Makers' Award, Brisbane, *QIG*, Vol 3, No 5, 10 May 1918, pp278-280; Thanks to Yeronga TAFE for information on the broom/brush making process.

94 This was a case brought by the Milling, Baking, Cooking and Allied Trades of Queensland Union of Employees who argued for equal pay for male and female cooks, tendering as evidence the fact that in five or six cases in Brisbane, female cooks had been substituted for me. The case was registered as *An Application for the Recission of the South-East Cooks Award* (Unreported, No 284 of 1918): *QIG*, Vol 4, No 1, 10 January 1919, p66. Apparently the power to grant equal pay even where equal work is not proved was not used until 1968 - See Hall & Watson, *Industrial Laws of Queensland*, (Government Printer, Brisbane, 2nd ed 1988) p62.

1983. As recently as 1987, the Industrial Commission could still fix the proportion of women to men in a calling and fix the amount of work to be done by women.[95] Without a study of relevant cases from 1920, it is not possible to say whether, how often, or in what way these powers were used. Such a study could be most interesting.

CONCLUSION

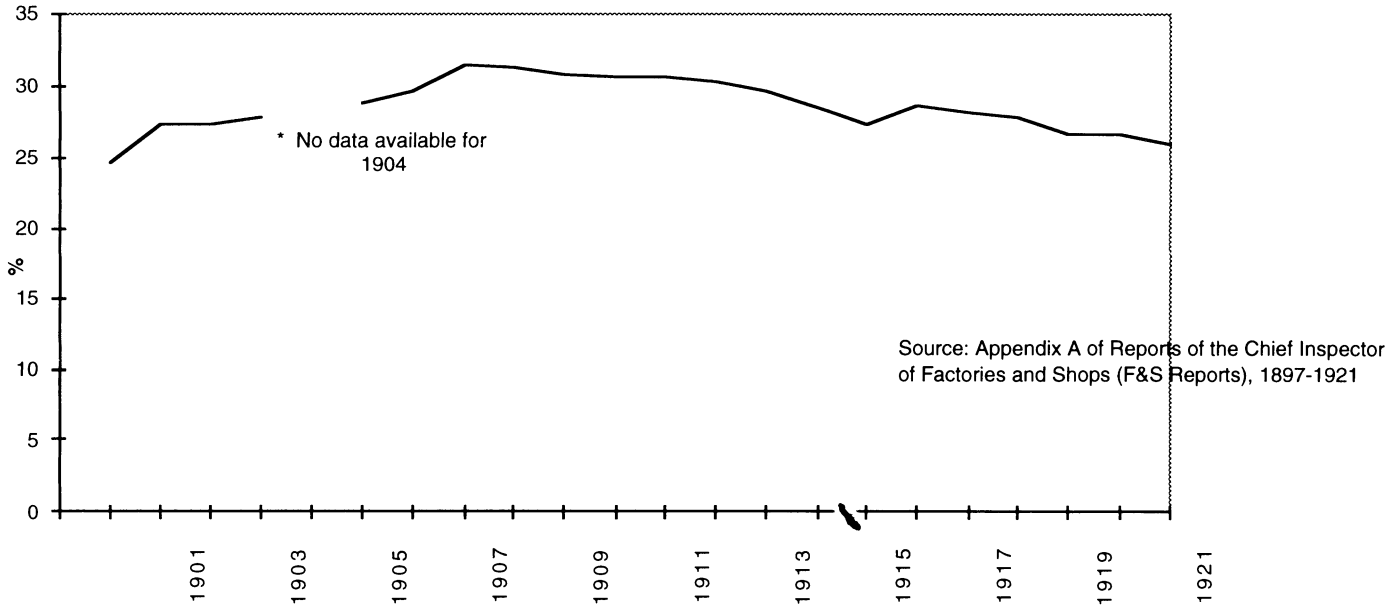
It is clear then that feminisation trends seen in factory workforces elsewhere in Australia did not occur in Queensland before 1920. After some *apparent* feminisation in the first years of the twentieth century, and despite some wartime perturbations in male employee numbers, women did not "invade" men's jobs. The female proportion of factory workers was 25.9% in 1920, only slightly above the 1900 figure of 24.2%. This was so for several reasons. One was that, in a sex-segregated workforce, female dominated industries failed to expand during the period under review. Added to this was an apparent drift of available women into an expanding commercial sector. Another cause, and one which constitutes the major focus of this study, was a 'hardening' of sex-segregation of the factory workforce via changes in legislation which became increasingly restrictive vis-a-vis women workers, reaching a peak in 1916 with an Act drafted by a newly elected Labor Government. The *Industrial Arbitration Act* 1916 (Qld) represented a peak not only in terms of Queensland legislation, but it went further than any other Australian act in placing limits on female labour. This was despite the absence of any real threat to Queensland men's jobs. However, it is clear that the Act reflected the preoccupations of its drafters, EG Theodore and TW McCawley, and accorded with a more general desire within the Queensland labour movement to "lead the field" in Australian arbitration legislation. Also at issue was a sense of labour being in an embattled position. This insecurity, to some extent a hangover from the 1912 strike, had been revived by the war with its potential to erode male workers' positions. In addition to these factors, the legislators succeeded in passing such powerful clauses because no-one tried to stop them. The Opposition was "distracted" with other parts of the Bill that they found offensive and female labour activists were uncharacteristically silent, being either unaware of, or unable/unwilling to oppose the anti-female clauses. The Act allowed for full control of female labour, even to the extent of over-riding the common law rights of women workers. In the "war" that was waged against women workers via Australian arbitration legislation early

95 Hall & Watson, *Industrial Laws of Queensland* pp64, 55.

this century, Queensland was in the front line - even if now, with the benefit of hindsight, its role seems oddly quixotic.

FIGURE 1

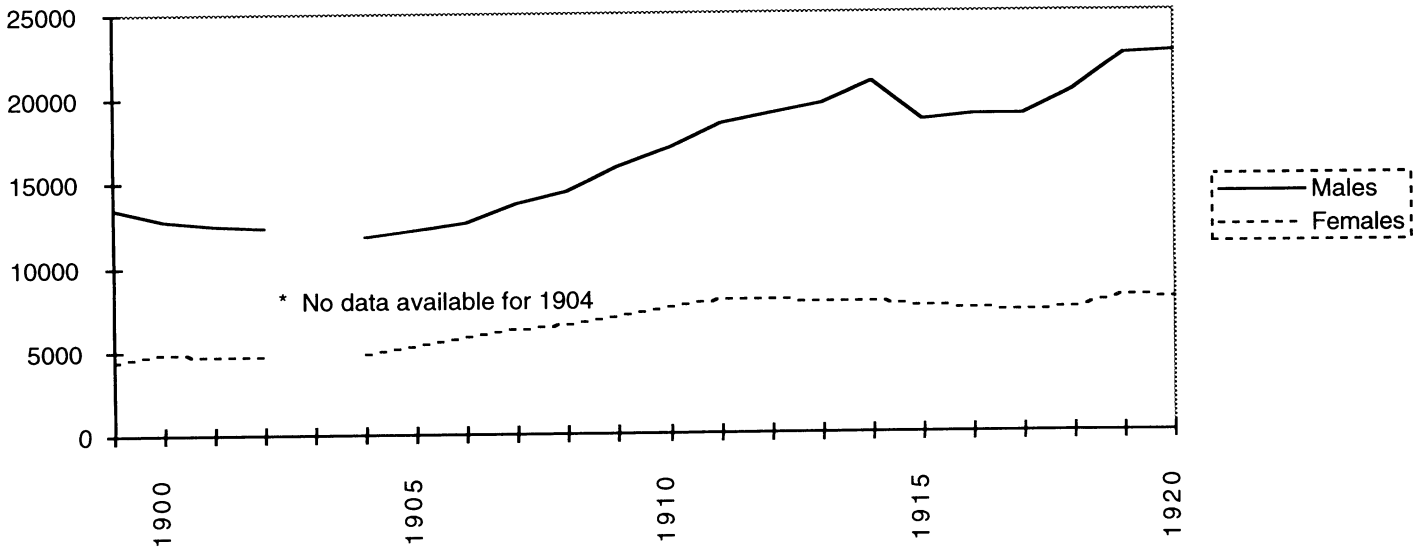
Females as a Proportion of all Factory Workers 7 Queensland Centres, 1900-1921



Source: Appendix A of Reports of the Chief Inspector of Factories and Shops (F&S Reports), 1897-1921

FIGURE 2

Factory Employees
7 Queensland Centres, 1900-1921



Source: Appendix A, F&S Reports, 1897-1921