Policing the Perimeter

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The Australian Industrial Relation Commission's role in the Hunter Valley Dispute.

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> [T]he process of conciliation, with arbitration in the background, is substituted for the rude and barbarous process of strike and lock-out. Reason is to displace force; the might of the State is to enforce peace between industrial combatants as well as between other combatants; and all in the interest of the public.
>
> Henry Bourne Higgins *A New Province for Law and Order* 1968

The *Workplace Relations Act 1996* (Cth) has reset the scene for industrial conflict in Australia. The province for law and order described in the above quote from the writings of Justice Higgins, who became the second President of the Commonwealth Court of Conciliation and Arbitration in 1907, has been sacked by the decentralised system ushered in by the new laws.

Since federation the legal framework regulating industrial affairs has changed constantly. Legislatures have been active nipping here and tucking there in the interests of satisfying disgruntled constituents. The courts have been kept busy with landmark cases arising from the conflict between capital and labour. The High Court itself has been kept well occupied determining constitutional questions posed by the industrial combatants aptly described by Higgins. The process of compulsory arbitration however, has remained throughout the defining aspect of the Australian industrial relations system.

The *Workplace Relations Act* is a dramatic departure from our industrial relations heritage. The scope for arbitral solutions to industrial conflict is now restricted under the new regime; resolutions will only be imposed on industrial parties as a last resort. There remain as many, if not more, rules but those rules are about how the battles will be fought. The Hunter Valley dispute has put those rules to the test.

The dispute is between the multinational mining company Rio Tinto and its workforce who are members of the Construction Forestry Mining and Energy Union. The company is waging a battle to regain management prerogatives which have been taken away by the industrial regimes of the past. The company's approach is to wind back any involvement of third parties, whether they be workers representatives or regulatory bodies such as the Australian Industrial Relations Commission (AIRC), to allow it to manage its business without interference. The workers are fighting to retain wages and conditions and maintain the role of the union as their representative.

In simple terms the Hunter Valley dispute is over what wages and conditions will apply at the mine and how those wages and conditions will be regulated. Ten years ago there would be no dispute over these issues; wages and conditions were to be found in an industry award and those wages and conditions were regulated by the Coal Industry Tribunal (CIT), a specialist tribunal formed under the *Coal Industry Act 1946* (Cth) and the *Coal Industry Act 1946* (NSW). The normative structures at the workplace were well understood and departure from those structures was by agreement. Efforts to depart from those arrangements unilaterally would inevitably lead to disputation. That disputation

would lead to applications to the tribunal for resolution by way of conciliation or compulsory arbitration.

In 1995 the *Industrial Relations Act 1988* was amended by the *Industrial Relations Amendment Act 1994 (No. 2)* to cater for the abolition of the CIT and allow the transition of industrial regulation in the coal mining industry from the institutions created by the Coal Industry Acts of 1946 to the AIRC.

The *Workplace Relations and Other Legislation Amendment Act 1996* (WROLAA) wrought dramatic changes to industrial regulation in Australia by reducing the role of industry awards, weakening the arbitral powers of the AIRC and strengthening the sanctions available against workers who take industrial action outside of the bargaining process.

The WROLAA also introduced a changed emphasis in the rules applying to enterprise bargaining. The sanctity of protected action remained but the opportunity to seek orders that parties bargain in good faith was gone. Additionally, individual agreements with workers, Australian Workplace Agreements, which override awards and collective agreements were made available to employers.

The Hunter Valley Mine

The Hunter Valley Mine is owned and operated by Coal and Allied Operations Pty Ltd. In 1993 CRA Ltd bought a controlling interest in the company. Through a series of corporate manoeuvres in 1996 and 1997 CRA Ltd became subsumed into the multinational mining giant Rio Tinto. The mine is an open cut coal mine with a coal preparation or processing plant situated on site. The mine produces 6 million tonnes of coal a year which is exported through the port of Newcastle.

At the beginning of 1997, the Hunter Valley Mine had a workforce in the order of 440 blue collar workers. The workforce was 100% unionised; 420 were members of the Construction Forestry Mining and Energy Union (CFMEU), the remainder were members of either the Communications Electrical and Plumbing Union (CEPU) or the Australian Manufacturing Workers Union (AMWU). Wages and conditions at the mine were regulated by the industry award: the Coal Mining Industry (Production and Engineering) Interim Consent Award, September 1990. The mine was unusual in the industry for not having some form of enterprise agreement in place.

The history of the industrial relations environment at the mine has been commented on in both the CIT and the AIRC. In 1992 the CIT said 'the [union's] record at Hunter Valley is in the worst category. Only my inordinate caution prevents my saying it is the worst'.[1] In 1997 the AIRC commented:

> in more recent years there is evidence of improvement in the pattern of conduct... Despite this, the overall level of industrial activity and conflict in the coal industry is high. The incidence of strike activity at Hunter Valley No.1 Mine is markedly higher than for the coal industry generally.[2]

Section 127 test case — setting the groundwork

On 9 January 1997, eight days after the majority of the amendments in the WROLAA came into effect, the company made application under s.127 of the *Workplace Relations Act* for an order stopping the Hunter Valley workers from engaging in industrial action other than protected industrial action. The application was in response to a 24-hour stoppage on 8 January over disciplinary action by supervisors. The case was heard by a Full Bench of the AIRC and was considered a test case.

In support of the order, the company led evidence going to the details of every strike or stoppage at the mine since 1991. Arguments were put by the company and the Commonwealth Government that the AIRC should exercise its powers under s.127 to make orders to stop or prevent industrial action as a matter of course when dealing with actual, threatened, impending or probable industrial action which is not protected action. The Commonwealth Government in particular argued that the *Workplace Relations Act* operated on a premise that industrial action other than protected action should not occur. In its decision the AIRC rejected this construction of the power under s.127 and determined that the power to issue such orders is discretionary and reliant on the circumstances in each individual case.

The AIRC considered there was sufficient evidence to justify an order to prevent industrial action at the site over local issues where those issues had not been taken up with management in a consultative way. However, the AIRC excluded from the order: action authorised by the company; action taken over health and safety issues, where there is imminent risk to health or safety; national and statewide stoppages; action taken in protest at decisions of management that could be considered provocative; and protected industrial action.

The order gave the company direct access to the Federal Court for redress should their workers engage in action contrary to its terms. Whilst the final order in this case provides the workers with some latitude, the result is that the company has the option to bypass the ordinary processes of conciliation in favour of enforcement in the Court. Had the submissions of the Commonwealth been accepted the AIRC's role of conciliation and arbitration would have been supplanted by enforcement type proceedings.

The Hunter Valley Dispute — enterprise bargaining CRA Style

Rio Tinto, and its predecessor CRA, had been actively implementing a human resource strategy in its metalliferous mining and aluminium operations since the mid-1980s.[3] The strategy was to eliminate what was considered unnecessary external influences on the management of their business. Unions were considered to be such an influence.

The 1993 amendments to the *Industrial Relations Act,* by introducing non-union agreements, assisted the company in implementing its corporate strategy. The strategy in a number of operations controlled by CRA was to frustrate negotiations with unions over collective agreements and offer pay rises to employees on the basis that collective negotiations were not achieving outcomes. In a decision in 1994 the AIRC found that the company at its Bell Bay aluminium smelter had ensured little progress was made towards an enterprise agreement as a 'direct result of the attitude of the company to the role of unions at the smelter'.[4] In the Weipa case the company was found to have offended the principle of equal pay for equal work by withholding wage increases from workers who refused to sign individual contracts.[5]

In March 1997 the unions at Hunter Valley No.1 Mine initiated bargaining periods under the bargaining provisions of the Act in an attempt to progress claims for an enterprise agreement. Industrial action followed taking the form initially of bans on certain work and bans on working overtime. In April 1997 the company began talking to individual

workers offering them individual arrangements and by June 1997 seven employees were working under Australian Workplace Agreements. The Australian Workplace Agreements included a 10% wage increase but required the workers to forego union representation in future negotiations over pay and conditions.

The first strike — exercising the right

On 11 June 1997, the Hunter Valley mine workers went on strike in protest at the lack of progress in the negotiations for a collective agreement. The workers were also aggrieved that the company was circumventing the collective negotiations and offering individual contracts. The company's response was to ask the AIRC to intervene and exercise its discretion to terminate the bargaining period on the basis that the union was not genuinely trying to reach agreement with the company pursuant to s.170MW(2). The AIRC found that two years of negotiations was ample indication of the genuineness of the union, and rejected the application.

Had the application been granted, the union would have lost its protection under the Act and, as termination under s.170MW(2) does not activate the conciliation and arbitration powers of the AIRC, the subject matter of the dispute would remain unresolved.

In deciding the matter, the AIRC published a Recommendation the main features of which were: a return to work, a resumption of negotiations, a return to the pre-strike wages and conditions, and an undertaking that no further individual contracts be offered until the negotiations were complete. The Recommendation also suggested that the parties agree to some form of consent arbitration on issues that could not be agreed. The call for consent arbitration was a pointed recognition that the AIRC was powerless to impose a settlement on the industrial combatants to the dispute, and an acknowledgment that these combatants seemed unable to resolve their differences themselves.

The workers accepted the terms of the Recommendation but there was no agreement on a negotiating process. Further proceedings in the AIRC led to a return to the negotiating table and a return to work on 23 July 1997. Over 400 workers had been on strike for six weeks. Pickets had been in place for the duration of the strike. The Hunter Valley workers were joined on the picket line by their families, members of the community and fellow mine workers from the area. At times there were up to 400 people in attendance. The mine had ceased operating for a time and the company announced through the media and newsletters to its workforce that the strike was costing the company $1 million a day. Later in the strike the company recommenced operations using the employees who had taken individual contracts, management employees, and administrative staff all of whom had been crossing the picket line in buses to attend work.

The train drivers' principled stand

On 4 July and 7 July 1997 the company ordered trains to collect coal to be delivered to port. On both occasions the trains stopped at the picket line, refused to cross and left. The employer of the railway workers, Freight Rail Corporation, sought orders against their employees under s.127 of the Act. Freight Rail Corporation argued that the refusal to cross the picket line was industrial action and it should be stopped by order of the AIRC. The AIRC found that the drivers had refused to cross the picket line for safety reasons and in observance of the picket line. Orders were issued allowing drivers the discretion to refuse to pass through the picket line if doing so 'would lead to imminent risk to his health or safety' or 'health or safety of other employees and members of the public'.[6] The order had a life of one month. The AIRC was again called on to exercise its powers in a matter that was peripheral to the central industrial dispute. So the AIRC's role was to police the perimeter rather than resolve the dispute.

The return to work on 23 July was concomitant with a return to negotiations. Those negotiations were chaired by a member of the AIRC. Unwilling to wait for the outcome of negotiations the company commenced implementing changes to day to day work practices. Various disputes arose over attempts by management to extend its prerogatives beyond the existing custom and practice and in some instances beyond understandings of the awards that were in place at the mine. One incident saw a manager drive a truck under a large shovel to have it loaded in circumstances where there had been a general understanding that managers would not operate trucks and that the particular truck was too small to be used in those circumstances for safety reasons.

A number of these disputes related to allocation of work and work practices; matters which were the subject of negotiations. The disputes were referred to the AIRC to be resolved. The AIRC, however, was unable to make binding orders on the company due to the prohibition on arbitration in s.170N of the Act and the existence of the bargaining period. Consequently, the company was able to ignore any Recommendations made in favour of the workers. Again the AIRC was constrained by the legislation from settling the matters that were at the heart of the dispute.

The second strike — jobs on the line

On 8 September 1997 the workers at the Hunter Valley mine had again had enough. The company had put to the union a proposed collective agreement identical in terms to the individual arrangements accepted by the seven employees prior to the strike. The workplace changes that were being forced on the mine workers had led to threats of dismissal where individuals had resisted. The AIRC supported the individuals with more Recommendations. The company refused to follow the Recommendations and continued its threats. Faced with the company's hardline stance the workers walked off the job.

The company's response to the strike was to seek a certificate from the AIRC pursuant to s.166A of the *Workplace Relations Act.* Once issued, the certificate would allow the company to take action in tort against workers and their union. Section 166A certificates must be issued by the AIRC where conduct is occurring which might give rise to an action in tort, the conduct has continued for more than 72 hours and the AIRC has been unable to stop the conduct. On 12 September the company gave notice that it intended to take action in tort against the CFMEU and a number of its workers who were elected local representatives of the workforce. On 16 September the AIRC issued a certificate allowing the company to go ahead with its action.

On issuing the certificate the AIRC notified the parties that it was considering terminating the bargaining periods at the mine of its own motion on the grounds set out in s.170MW(3) of the *Workplace Relations Act:* that the industrial action was threatening '(a) to endanger the life, the personal safety or health, or the welfare, of the population or part of it; or (b) to cause significant damage to the Australian economy or part of it'. If a bargaining period is terminated

under s.170MW(3) the workers lose the right to strike and the dispute is referred to a Full Bench of the AIRC for conciliation and compulsory arbitration.

The AIRC heard from the parties to the dispute on 17–19 September and determined that it would be inappropriate to exercise its discretion to terminate the bargaining period.

On 30 September the company commenced proceedings in the Supreme Court of New South Wales seeking injunctions against picketing conduct. The Supreme Court issued injunctions against the named Respondents on 20 October curtailing some of the conduct on the pickets but not interfering with the ongoing protest by way of picketing action.

Community support

The protected action that commenced in September took a similar path to the June/July stoppage. There was, however, growing support for the Hunter Valley mine workers and their families. Rallies were held in Singleton, Newcastle and Sydney. There was growing support in the union movement at all levels. The financial support from mine workers throughout Australia continued. Meetings of representatives of workers in the coal mining industry passed resolutions of support for the workers. The Newcastle Trades Hall Council at a meeting of 600 delegates pledged support for the plight of the Hunter Valley workers. The ACTU had established a co-ordinating committee to monitor developments in the dispute. On 1 October coalminers throughout northern NSW commenced a 72-hour stoppage in support of the Hunter Valley workers. Again application was made for a s.127 order against those on strike. The AIRC was again asked to police the effect of the dispute rather than resolve the cause. There was a return to work after 24 hours following the intervention of the Premier of NSW who met with the company and the union to discuss the dispute.

The NSW Government had been involved in the earlier proceedings under s.170MW(3). The State of New South Wales had intervened to ask the AIRC to terminate the bargaining period, bring about a resumption of work and send the dispute to a Full Bench to be arbitrated. By the end of September concern existed at local as well as State Government levels. On 22 September the Singleton Shire Council passed resolutions urging the parties to the dispute to find a 'quick and lasting settlement'. On 29 October the Cessnock City Council urged both parties to enter into 'compulsory arbitration'. The NSW Legislative Assembly also unanimously passed an urgent resolution calling on 'Rio Tinto and the CFMEU to seek compulsory arbitration' as a means to ending the dispute.

An arbitrated settlement?

An application by the unions to have the bargaining period terminated pursuant to s.170MW(3) was heard by the AIRC on 4 and 5 November 1997. On 7 November Justice Boulton, a senior member of the AIRC, decided that the dispute satisfied the test in s.170MW(3). He exercised his discretion to terminate the bargaining period and referred the parties to the dispute for conciliation and, if necessary, compulsory arbitration.[7] In deciding to terminate the bargaining periods Justice Boulton described the dispute as 'a battle between titans'. The workers returned to work on 11 November. The second strike had lasted nine weeks.

As was the case in most of the proceedings before the AIRC in the Hunter Valley dispute, the decision of Justice Boulton was appealed. The decision of the Full Bench was handed down on 29 January 1998. Each of the three members of the Full Bench gave a separate decision disagreeing with Justice Boulton. Differing views were expressed on whether the dispute was of a type that allowed the AIRC to terminate the bargaining period but all agreed that in the circumstances of the dispute Justice Boulton should not have exercised the discretion to terminate the bargaining period.

In a decision which deals in detail with the operation of the legislative provisions relating to bargaining periods, the newly appointed President of the AIRC, Justice Giudice, acknowledged that Justice Boulton had acted in a conscientious, public spirited and scholarly way in providing an avenue for resolution to the dispute. Justice Giudice said:

> It is appropriate to acknowledge that the dispute at Hunter Valley No.1 Mine has been a very long-running one and one which has been characterised by a deal of bitterness and public disharmony ... Boulton J is a senior and experienced member of the Commission. His judgment in this case reflects a conscientious, public-spirited and scholarly approach to the matters with which he is dealing. I regret that on this occasion I find myself in disagreement with his Honour's decision.[8]

Justice Boulton's decision was overturned because he had misconstrued the provisions of the new legislation. The Full Bench decided that the Hunter Valley dispute was not severe enough to activate the limited provisions under the *Workplace Relations Act* which provide for compulsory arbitration. The decision means that the Hunter Valley dispute is no closer to resolution than when the bargaining period was commenced in March 1997. There is no prospect of resolution through the process of conciliation and arbitration.

Conclusion

The Hunter Valley dispute shows the fundamental shift away from conciliation and compulsory arbitration to a decentralised system of bargaining. The dispute has seen many of the new legislative provisions tested. Those provisions place constraints on the AIRC and strip it of its previous central role of dispute settlement. During the dispute the AIRC has issued orders under the expanded s.127 to restrict industrial action outside of the bargaining process. During the 'protected' strikes at the mine in 1997 the AIRC granted access to the common law courts for injunctive relief against picketing action occurring during the bargaining process. Orders were also made to force train drivers who had observed the pickets to cross the picket line. When the AIRC was called on to deal with the source of the dispute, the claims by workers to protect wages and conditions, it was prevented by a legislative framework of exclusion.

Contrary to the rhetoric that the *Workplace Relations Act* has deregulated the labour market by confining the role of the AIRC, it is clear that the AIRC does have a regulatory role in the bargaining process under the new laws. That role has little to do with resolving industrial disputes and everything to do with policing the perimeters of those disputes.

References

1. CIT decision 16/192 Dispute No. 379/1991.
2. *Coal and Allied Operations Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and Others* 73 IR 311.
3. See Ludeke, J.T., *Line in the Sand — The Long Road to Staff Employment in Comalco*, Wilkinson Books, 1996.
4. *Re Aluminium Industry Award* 56 IR 403 at 409.

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on the basis that the NT Criminal Code provision is materially different from the Queensland provision considered in *Walden v Hensler*. The Queensland provision excuses 'an act done with respect to any property', while the NT provision excuses 'an act done with respect to property'. It would appear that an extension of the excuse in this way is inconsistent with *Walden v Hensler*, as well as with the common law in *R v Skivington* (1967) 1 All ER 483, where the claim of right defence operated to excuse the defendant from a robbery charge but not from an assault.

The case should best be viewed as a recognition of the right of Aboriginal people to enforce at least some Aboriginal laws on Aboriginal land. Gillies SM notes that the prosecution was unable to point to any law of the Commonwealth or the Territory which prohibits a Yolngu senior elder on Yolngu land from enforcing Yolngu law. Indeed, Gillies SM found that the grant of land under the *Aboriginal Land Rights (NT) Act 1976* conferred a benefit which included an implied right to observe and administer Aboriginal law on that land, at least where any such laws are not specifically over-ridden by the general law. The magistrate, therefore, found that Yunupingu had a defence under s.26(1)(a) of the Code, that his actions were authorised by law.

This decision, if approved by a higher court, has potentially far-reaching implications for the application of Aboriginal law. The application of this law may be limited in some areas, for example, by earlier case law stating that spearing and other traditional punishments are not condoned by the general law. This case is unlikely to have gone to trial had Yunupingu not been in danger of imprisonment. It could be considered, therefore, an unintended consequence of the NT Government's mandatory sentencing legislation.

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Director of Public Prosecutions. Theoretically it would be possible for a court to interpret the relevant provisions of the Western Australian *Criminal Code* in this way, by focusing on the limb of the defence that allows a procedure to be performed 'upon an unborn child for the preservation of its mother's life' and by interpreting the words 'preservation of ... life' literally. Since the important English case of *R v Bourne* was decided in the 1930s, however, this kind of restricted and literal approach to interpreting anti-abortion laws has been progressively abandoned throughout the common law world.[28] It should also be noted that only a small handful of countries today have laws that limit permissible abortions to those needed to save the pregnant woman's life. These countries include Iran, Uganda, the United Arab Emirates, the Philippines and Afghanistan.

The prosecutions of Drs Chan and Lee and subsequent events have made it clear, however, that it is no longer safe or reasonable to make any assumptions about the current — or future — state of Western Australia's abortion laws. The legal and political balls have been thrown in the air. Exactly where they will fall, and whether they will fall by legislative or judicial pronouncement, is anyone's guess.

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Natasha Cica is currently completing a PhD at Cambridge University, UK, on the Australian law on abortion and voluntary euthanasia.

References

1. The relevant laws are discussed in some detail below.
2. 'Police back off after bungled self-abortion,' *Australian*, 13 February 1998.
3. Almost all these parliamentarians were men. They were predominantly members of the Liberal Party or the National Party, but there were also several members of the Australian Labor Party and some Independents.
4. 'WA Says Yes,' *West Australian*, 21 February 1998.
5. A range of 'pro-choice' groups soon co-ordinated their efforts under the organisational banner Coalition for Legal Abortion.
6. All these parliamentarians were women. Most were members of the Australian Labor Party or the Australian Democrats, as well as several Greens and some Independents.
7. *Criminal Code Amendment Bill* 1998 (WA).
8. Second Reading Speech, *Criminal Code Amendment Bill 1998* (WA).
9. At the time of writing, more detailed information about the exact form in which the Foss-Prince Bill was passed by the lower house was unavailable.
10. *Criminal Code Amendment (Abortion Bill) 1998* (WA).
11. Again, at the time of writing, more detailed information about the exact form in which the Davenport Bill was passed by the upper house was unavailable.
12. See 'Doctors warn of backyard abortions,' *West Australian*, 7 February 1998, 'Legal doubt on thousands of abortions,' *Weekend Australian*, 7-8 February 1998.
13. *Criminal Code 1913* (WA).
14. *Crimes Act 1958* (Vic), ss.65 and 66; *Crimes Act 1900* (NSW), ss.82, 82 and 84; *Crimes Act 1900* (ACT), ss.42, 43 and 44; *Criminal Code Act 1899* (Qld), ss.224, 225 and 226; *Criminal Code Act 1924* (Tas), ss.134 and 135; *Criminal Law Consolidation Act 1935* (SA), ss.81 and 82; *Criminal Code Act 1983* (NT), ss.172 and 173.
15. *R v Davidson* [1969] VR 667.
16. *R v Wald* (1972) 3 DCR (NSW) 25, *CES and Another v Superclinics (Australia) Pty Ltd and Others* (1995) 38 NSWLR 47.
17. *R v Bayliss & Cullen* [1986] 9 Qld Lawyers Reports 8.
18. *Criminal Law Consolidation Act 1935* (SA), s.82A. Section introduced 1969.
19. *Criminal Code Act 1983* (NT), s.174. Section introduced in 1974.
20. Nor has there been any judicial or legislative clarification of the anti-abortion laws in Tasmania and the Australian Capital Territory.
21. *Criminal Code 1913* (WA), s.259.
22. *Criminal Code Act 1899* (Qld), s.282.
23. [1969] VR 667 per Menhennitt J (often referred to as 'the Menhennitt ruling'). The applicability of the *R v Davidson* test in Queensland was confirmed in *R v Bayliss & Cullen* [1986] 9 Qld Lawyers Reports 8.
24. Health Department of Western Australia, *Women's Health and Well-Being: Report of the Working Party on Women and Health*, Perth, WA Department of Health, 1986.
25. Health Department of Western Australia, *Report of the Ministerial Task Force to Review Obstetric, Neonatal and Gynaecological Services in Western Australia*, Perth, WA Department of Health, January 1990
26. Chief Justice of Western Australia, *Report of the Chief Justice's Task Force on Gender Bias*, Perth, 1994.
27. Compare the situation in Canada, where judicial decriminalisation of abortion took place in 1988. In *Morgentaler, Smoling & Scott v the Queen* (1988) 44 DLR (4th) 385, the Supreme Court of Canada struck down the Canadian federal law criminalising abortion on the basis that it violated the rights of Canadian women under Canada's Bill of Rights (the *Canadian Charter of Rights and Freedoms*).
28. See *R v Bourne* [1938] 3 All ER 615 and [1939] 1 KB 687; *R v Bergman and Ferguson*, unreported, Central Criminal Court, May 1948; *R v Newton and Stungo* [1958] Crim LR 469; *R v Davidson* [1969] VR 667; *R v Wald* (1972) 3 DCR (NSW) 25; *R v Woolnough* [1977] 2 NZLR 508; *R v Bayliss & Cullen* [1986] 9 Qld Lawyers Reports 8.

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5. Print M8600 *Re Comalco Aluminium Limited,* President O'Connor, Senior Deputy President Macbean, Senior Deputy President Polites, Deputy President Harrison, Commissioner Merriman, Sydney, 23 January 1996.
6. *Re Freight Rail Corporation* Print P3097 Senior Deputy President Harrison, Sydney, 17 July 1997.
7. *Coal and Allied Operations Pty Ltd v CFMEU* 74 IR 110.
8. *Re Coal and Allied Pty Limited,* Print P8382 Justice Giudice, Justice Munro, Commissioner Larkin, Sydney, 29 January 1998.