

Nolan and Cohen's Federal Industrial Law, by C. P. MILLS, B.E.C., LL.B., Barrister-at-Law, Lecturer in Law in the University of Sydney, 3rd ed. (Butterworth and Company (Australia) Ltd, Sydney, 1963) pp. i-xvi, 1-499. Price £6 10s.

The third edition of *Nolan and Cohen's Federal Industrial Law*, like the two previous editions, is simply a comprehensive annotation of the Conciliation and Arbitration Act 1904-1961 (Cth) together with the Regulations made pursuant to that Act. There are, of course, other Commonwealth laws of an industrial nature but the Conciliation and Arbitration Act is the core of federal industrial legislation and, in a sense, of the whole system of industrial regulation in Australia. The author has, however, included some brief notes on portions of other Acts, for example, the Stevedoring Industry Act 1956-1963 (Cth) and the Snowy Mountains Hydro-electric Power Act 1949-1958 (Cth), where they relate to the main purpose of the book.

This is the second edition of this book written by C. P. Mills. Its publication history is, however, somewhat puzzling. The first edition, published in 1948, was by J. R. Nolan, the second edition, which appeared in 1957, was by C. P. Mills, but the title had undergone a slight change to become '*Nolan and Cohen's Industrial Laws, Annotated Book I, Federal Law*.' None of the three editions explains the reason for the change.

Before embarking on his annotations the author adopts the device of including both a 'Preface' and an 'Introduction' in order to comment upon what, to him, are some important problems which arise under the present legislation. In the preface he explains that this edition has been prepared because 'while the framework of the arbitration system has not changed' since the last edition which 'was published just after the extensive revision of the Conciliation and Arbitration Act which resulted from the decision in the *Boilermakers' Case*, there have been some developments in the manner of its operation that are deserving of some comment and give rise to the possibility of some modifications

being called for' (page vii). Amongst the most interesting of these developments which the author has mentioned, are the principal features of the *Basic Wage* and *Margins* decisions which have come down since the last edition. These developments are also discussed, though from a different viewpoint, in an article by R. E. McGarvie elsewhere in this issue.¹ The author has included in this edition the history, in summary form, of particular provisions of the Act. This innovation enhances the value of the work as a source book and makes clear the reasons underlying the enactment of particular provisions.

In addition to explaining why a new edition has been offered, the author also uses the preface to comment on and make suggestions about three matters arising from the operation of the Act. Firstly, he criticizes 'the assessment in separate proceedings of the basic wage and the margin' (page vii) in awards as 'artificial unnecessarily time-consuming and complex, and likely to attract the application of inconsistent and irreconcilable principles' (page vii). Insofar as the determination of the total wage in awards depends on general economic considerations he suggests there are grounds 'for providing an opportunity for consideration of the basic wage, and the general level of margins in one hearing' (page x). The way would thus be opened 'to consideration of the effects of economic factors, common to all employment, on both portions of the wage at one time' (page x) and 'it would remain for single Commissioners to deal with claims affecting only individual awards or individual classifications, claims which are based on the consideration of relative work values or the relative economics of separate industries' (page x). Whilst there is merit in this suggestion it is difficult, at present, to see how it could be implemented in the light of the factors relied on by the Conciliation and Arbitration Commission in the determination of the basic wage and individual margins. Furthermore, the rejection by the Unions of the plan recently proposed by several key employers' organisations for a single hearing indicates the practical difficulties which confront such an innovation. Secondly, he asserts that 'the Commonwealth arbitration machinery is singularly inappropriate' (page x) in the case of a claim that an employee has been wrongful dismissed. He makes two suggestions to improve the existing machinery in this respect. It is not proposed to discuss such a complex problem within the confines of this review other than to remark that the issues frequently posed by claims for reinstatement after dismissal are so complex that it is doubtful whether any formal procedures provided in the Act would prove satisfactory. Thirdly, he comments on the operation of penal sanctions against Unions under the present legislation. However, he devotes only three short paragraphs to this issue which barely touch the surface of what is, after all, one of the most complex and contentious matters arising from the federal scheme.

The author uses the introduction to sketch, in outline form, the constitutional power of the Commonwealth in respect of industrial relations, the major amendments which have been made to the Act since its enactment in 1904, the reasons underlying those amendments and the present

¹ *Supra* p. 47

structure of the tribunals operating under the Act. Although useful in a general way, the reader who wants more than the barest outline of these matters will have to turn elsewhere.

Inevitably, it is difficult to review a work which annotates a major piece of legislation. The Act and the decisions made under the Act have created what is, in effect, a Commonwealth industrial code and if the author fulfils his task of annotation well, as Mr Mills has done, there is little room for the expression of his own views.

In sum this is a very useful book to those interested in this field. By drawing together a very large number of decisions on the Act and the Regulations made under the Act it sets out the ' Commonwealth industrial code ' and also serves as a reference point for those who wish to explore certain aspects in more depth.

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