

Laying the foundations of industrial justice

The presidents of the Industrial Relations Commission of NSW 1902-1998

By Greg Patmore (ed)
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The Industrial Relations Commission of NSW, which celebrated its centenary last year, is the oldest industrial tribunal in the world.

It was established as a result of a decision to implement a 'radical liberal collectivist approach'¹, namely compulsory arbitration of industrial disputes conducted by a specialist tribunal.

It has played an important role in ensuring the stability and economic success of NSW. Yet very little has been published about those who made up the commission over the last 100 years.

That has been remedied by a great publication which contains a series of pen-portraits of the nine men who held the position of president of the Industrial Relations Commission of NSW prior to the incumbent, Justice Lance Wright.

The publication is a credit to Justice Wright, who conceived the book to mark the centenary of the commission and Greg Patmore, who wrote the introduction and conclusion and edited chapters written by four other leading labour relations historians: Andrew Frazer, Andrew Moore, Lucy Taksa and John Shields.

In launching the book on 25 August 2003, Professor Ron McCallum, Dean of the Sydney University Law School, described the book as a series of readable vignettes which allows the commission's important work over the last century to become better known. He noted that the book records the commission's path-breaking work in areas such as annual leave, long service leave, equal pay and redundancy pay.

As well as providing for the first time a concise history of the commission, the pen-portraits provide an entertaining insight into the lives of these nine men.

The first president, Justice Henry Emanuel Cohen (1902-1905), was the first Jew to be appointed to a permanent position on a supreme court in the British Dominions, becoming a judge of the Supreme Court in 1886.

Cohen had to deal with an entirely new concept, namely compulsory arbitration which had been introduced against a background of the major industrial disputes of the late nineteenth century, which had brought great disharmony and economic harm to the country.

The principle of a 'living wage' is usually traced back to HB Higgins' *Harvester* decision. But, as recounted by Andrew Frazer, the principle was in fact first expounded two years earlier by the second president of the NSW Commission, Justice Charles Gilbert Heydon² (1905-1918), in the *Saumiller's* case³.

During Justice Heydon's time he had to deal with the consequences of a series of Supreme Court decisions which

restricted the tribunal's power, including decisions that the tribunal did not have power to vary its awards and did not have power to regulate 'labour only' contracts with tradesmen. The book quotes Justice Heydon in a decision⁴ stating in frustration:

In consequence of the recent discoveries of the true meaning of the Act, access to the court is blocked, the area of its operations narrowed almost to vanishing point, its freedom of movement checked with bonds, and all its actions paralysed...The barque of the Industrial Arbitration Act made a brave show with sails and bunting at its launching . . . but since I took the helm, the Act has been riddled, shelled, broken fore and aft, and reduced to a sinking hulk. No pilot could navigate such a craft.

Lucy Taksa's essay on the fourth president, Justice George Stephenson Beeby (1920-1926) reveals his many and varied political allegiances prior to his appointment. As a young man he expounded socialist ideas and was attracted to William Lane's utopian 'New Australia' in Paraguay. He later became a leading light of the Labor Party, and in 1898 along with Holman and Hughes, successfully advocated the removal of the socialist plank from the party's platform. He was elected to the Legislative Assembly for the Labour Party, and held ministerial positions with the first Labor government, but later resigned and stood as an independent. Upon being elected he formed the National Progressive Party, which expounded the rights of those who worked in agriculture, and which formed the basis of the later Country Party (now the Nationals). While some of Beeby's decisions as president were of great importance (such as the 1938 award for the boot industry which recognised the skilled work of women workers) his greatest influence on industrial relations was probably his time as a parliamentarian, when he sought and obtained important amendments to the *Industrial Disputes Act 1908*. He insisted that the Industrial Relations Court had to be presided over by a judge (with tenure); the tribunal had to have the power to deal with all matters involved in an industrial dispute; and only parties who were registered could appear before the tribunal. These principles continue to be fundamental aspects of the NSW industrial relations system.

Lucy Taksa's chapter on the fifth President, Justice Albert Bathurst Piddington (1926-1932) is a well-written story of a radical and honourable man. Piddington is perhaps best known for his two resignations. Before his appointment to the Commission he had been appointed a High Court Judge, but resigned the appointment without ever having sat. His resignation followed severe criticism from the press and the Sydney and Melbourne Bars regarding the appointments of Powers and Piddington⁵. Powers weathered the storm, but Piddington resigned on principle. He felt compromised because immediately prior to his appointment, while overseas, he had answered a query made at the instigation of the then

Attorney-General WM Hughes as to his attitude to States rights.

His second resignation, many years later, was from the position of President of the Commission. Again he resigned on principle, in that case in protest over the dismissal of the Lang Government.

The seventh President, Justice Stanley Cassin Taylor (1942-1966), comes across as a very colourful and robust character in Andrew Moore's entertaining chapter. Taylor prided himself on having a 'common touch', speaking in the vernacular of the worker. He was very much a 'hands on' Judge, travelling extensively to worksites, conducting regular workplace inspections.

Taylor was 'hands on' in another way too. As Moore recounts, when President Taylor conducted regular wrestling bouts at lunchtime in his Queens Street chambers. Fisher J, speaking at the book's launch, recalled that one of Taylor's opponents in these bouts was a professional wrestler known as Chief Little Wolf.

Taylor's greatest success involved the Snowy Mountains Hydro-Electric scheme. Moore recounts that Taylor was part-heard in proceedings for a first award for the scheme when he got an anonymous tip that the Commonwealth Conciliation and Arbitration Commission was about make a Commonwealth award for the Hydro-Electric scheme which would have ousted NSW from field. Taylor arrived early the next day, drafted a NSW award, and refused to take phone calls from his Commonwealth counterpart until the award was made later that afternoon. The award had the effect of entrenching the NSW industrial system as the regulator of the scheme. Thereafter Taylor worked assiduously to ensure that the mainly immigrant workers on the scheme were properly paid and importantly that the work was done with the minimum of industrial disputation. He has been credited with playing a very important role in the success of the Hydro-Electric scheme.

Justice Alexander Craig Beattie (1966-1981), the eighth president, was a great jurist, who built on the foundations laid by his predecessors a great body of industrial law. Andrew Frazer describes how Beattie also modernised the workings of the commission. Beattie introduced the panel system, whereby judges were allocated to particular industries and callings, allowing them to more closely understand those particular areas. Beattie also abandoned the wearing of wigs and gowns in arbitration hearings (although they were maintained when the commission sat in court session).

It was in Beattie's time that the commission's role was expanded into areas which are now very familiar, namely unfair contracts and reinstatement for unfair dismissal and Beattie, sitting on almost every full bench, helped shape the law that we know today. The ninth, and last of the presidents covered by the book, Justice William (Bill) Kenneth Fisher (1981-1998), steered the commission through major changes in industrial relations. John Shields' essay notes that the commission under Fisher had to deal with the wages explosion of 1981-2, the economic slump of the early 1980s, the wage freeze of 1982, the advent of the Accord system, the advent of productivity bargaining and award restructuring in 1987-8, the return of recession in 1990-92 and the move to enterprise bargaining in the first half of the 1990s. Shields concludes: 'That the NSW Commission survived these immense challenges at all was a remarkable achievement; that it emerged a stronger and more effective judicial body was Bill Fisher's singular triumph'.

Fisher built upon the industrial jurisprudence of Beattie, and advanced the industrial law in many important ways. In the early 80s, in the face of the depression that was causing so many to become unemployed Fisher handed down a series of decisions which established a right to redundancy pay, something which has since become expected as a legal minimum. Professor McCallum, in launching the book, gave this as an example of Fisher's 'great humanity'.

Professor McCallum also noted that it was during the presidency of Fisher that the commission established what is now considered 'the best and most authoritative jurisprudence on occupational health and safety of anywhere in the common law world'.

As is often the case with essay collections, the result is not entirely consistent. However overall the book is an entertaining and informative account of an otherwise little recorded part of our legal history. It should be read by all those with an interest in NSW legal history. Industrial practitioners will find it full of historical insights relevant to current industrial issues.

As the current president, Wright J, said at the book's launch, the book helps to remind us of the important role played by the commission and the arbitration system more generally in the prosperity and social stability that we have inherited. The book in an appropriate way pays tribute to those who played such a major role in making that system work in a way beneficial to all.

Reviewed by Ingmar Taylor

¹ Andrew Frazer, *Law and industrial arbitration in NSW, 1890-1912*, Phd thesis, ANU, 1990, which can be found in the Mitchell Library

² I am told that Justice Heydon was the great uncle of our most recent High Court appointment

³ *New Saw-mill and Timber-yard Employees' Association v Sydney and Suburban Timber Merchants' Association* [1905] AR 300

⁴ *Amalgamated Miners' Association, Wrightville v Great Cobar Ltd* [1907] AR 53 at 58-59

⁵ The *Bulletin* wrote under the heading 'The Ghastly Error of WM Hughes' that the pair were 'not so much mistakes as grim tragedies': See the entry on Powers in the *Oxford Companion to the High Court*, Blackshield, Coper, Williams, 548-549.