# LABOUR RELATIONS IN AUSTRALIA

AUSTRALIA is a federation of six Sovereign States, each of which has its own laws governing labour relations. Since Federation in 1901, Federal Industrial Laws have been established, and as a consequence, there are, as a minimum, seven different sets of labour relations laws in Australia today.

This legislation requires the solution of industrial disputes by compulsory arbitration.

Because of the complexity of the overall legislation, this article will concentrate on the Federal Industrial Laws and show how some of the main features of those laws operate in practice.

### The Constitution

The Commonwealth Parliament may legislate to regulate employer-employee relationships in the private sector of industry under sections 51 and 52 of the Constitution.

Section 51 states that the Parliament shall, subject to the Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to.

- Trade and commerce with other countries, and among the States (para i);
- The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth (para vi);
- External affairs (para xxix);
- Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State (para xxxv);
- Matters incidental to the execution of any power vested by the Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature or in any department or officer of the Commonwealth (para xxxix).

It may legislate in relation to its own public service under Section 52, which reads:

"The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;
- Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth;
- Other matters declared by this Constitution to be within the exclusive power of the Parliament.

Leaving aside the Commonwealth Public Service, the source of labour law for private sector employees is contained in the Conciliation and Arbitration paragraph in section 51.

### Labour Organisation

Before a labour organisation has the right to represent its members in Federal Tribunals, the organisation must become registered in accordance with the laws which are enacted under the power provided by paragraph (xxxix) in section 51. This is called the incidental power of the Parliament, because it is vested by the Constitution. The requirement by labour organisations to register in accordance with these laws is the striking feature of compulsory arbitration in Australia.

As at December 1984, there were 329 labour organisations in the country, collectively representing 3,285,000 workers. This is equivalent to a 55 per cent membership rate among the workforce. Throughout the years 1979 to 1984, the membership rate remained constant and did not fluctuate by more than 1 per cent above or below the current level.

There is no law in Australia which makes membership of a labour organisation compulsory.

Because of the existence of State labour relations systems, not all of the 329 labour organisations are registered under Federal Laws. It is difficult from the statistics to determine exactly how many are registered federally, but 100 of the 329 labour organisations operate in every State, and these organisations represent 2,128,400 workers.

Under the Federal laws, labour organisations may be registered according to the industry of an employer or according to the occupation or craft of the employees they represent. Industry unions are rare in Australia.

### Labour Relations

Federal Labour laws are restricted in their operation by the nature of the constitutional power referred to at the beginning of this section. Many High Court decisions over the period since 1904 have made the division between the power of the Federal tribunal and the power of State tribunals a very complex legal area.

A strike is not a prerequisite for the existence of an industrial dispute. A mere disagreement between labour and management is sufficient. However, this disagreement usually has to be about matters of an industrial character. Although the range of issues which now fall within the scope of this description has been widening in recent years, there still remains a number of areas where, legally, industrial tribunals have no power to intervene. These issues are particularly prevalent in the area of the so-called right of management to manage. Other areas include occupational health and safety, and the reinstatement of dismissed employees.

The distinctive characteristic which gives the Federal tribunal power to settle 'industrial disputes' is that such disputes must extend beyond the limits of any one State. There are other technical criteria, but these depend on the variety of High Court decisions referred to earlier and are too complex to describe in this article.

Despite the apparent restriction, approximately 35 per cent of the workforce comes within the jurisdiction of the Federal tribunal. Furthermore, the major cases of significance in the country usually emanate from the Federal Tribunal.

The rights and obligations of labour and management are determined by awards which specify the wage rates and conditions under which the employees work for their respective employers.

There are approximately 1700 different Federal Awards within Australia at present. These awards originate usually as a result of labour organisations serving a set of demands on management. Before the Federal tribunal can assume control, it must 'find' that an industrial dispute truly exists within the meaning of the Constitution. Once this finding has been made, the tribunal has the power to settle or to partially settle the demands made through the creation of an award. Once the award is made, the parties (i.e. labour and management) are legally obliged to observe its terms.

The situation applying in the AFP reflects the above, although in some important aspects it is different. It is likely that before the end of this year the Government will legislate to include the AFP directly in the above system.


IF JUST ONE MORE OF THESE CLOWNS CALLS ME PIG, I'M GOING TO EXERCISE MY RIGHT TO STRIKE!