Cases and Materials on Industrial Law in Australia, by H. J. GLASBEEK and E. M. EGGLESTON (Butterworths, Australia, 1973), pp. v-xxiv, 1-590. Australian price $16.00. ISBN 0 409 435 791.

Cases and Materials on Industrial Law in Australia was written jointly by Dr Harry J. Glasbeek of Melbourne University and Dr Elizabeth M. Eggleston of Monash University. The book is divided into 2 parts. Part 1 (approximately two-thirds of the text) deals with the collective aspects of employer-employee relationships whilst Part 2 (200 pages) confines itself to the subject of the employer's liability for injury suffered by the employee.

Part 1 concentrates on the Federal system of conciliation and arbitration, including the registration of and the controls over trade unions within the system. The single chapter dealing with the State systems (chapter 10) is very short (15 pages only) but contains a quite surprising amount of information, as well as a helpful diagram in respect of each State system.

This reviewer prefers the method of approach adopted by the authors (*i.e.* of dealing with the Federal system at considerable length) rather than the alternative of endeavouring to cover all the States in detail—a course likely to result in too thin a treatment of the whole area. In any event, a considerable amount of the material cited in dealing with the Federal system has a good deal of relevance to the State systems, *e.g.* the meaning of 'industrial matter', the National Wage Case, Equal Pay, Long Service Leave and the enforcement of awards with particular reference to strikes. Certainly for a Victorian practitioner Part 1 is more valuable by reason of its concentration upon the Federal system. Similarly, it is suggested that Part 2 will be found more valuable by reason of its concentration upon Victoria and New South Wales.

Part 2 deals with remedies available to injured employees at common law (approximately 50 pages) and under Workers' Compensation Acts (approximately 110 pages) and also (briefly) with the inter-relationship between the two methods of compensating injured employees. Part 2 concludes with an evaluation by the authors of workers' compensation legislation in general as an instrument of social policy. In this chapter they consider the national insurance scheme which replaced workers' compensation in England, the rather different type of workers' compensation operating in Ontario and the Report of the Royal Commission in New Zealand which recommended compensation for personal injuries in general—not only those arising out of or in the course of employment. The latter is, of course, the well-known Woodhouse Report—currently of great interest in Australia. The publishers have included as an Appendix a short comment by Professor Sykes on the New Zealand Accident Compensation Act 1972 which stemmed from the Woodhouse Report.

The authors state their primary aims as having been—

(i) to ensure that there is sufficient basic information for every reader to understand how the various systems, mechanisms and schemes work,
(ii) to raise questions about doubtful areas of operation of these systems, mechanisms and schemes, and (iii) to raise 'ought' questions about the policies on which these systems, mechanisms and schemes rest.

The authors have chosen exceptionally well in their selections of extracts from decided cases and other materials. In this reviewer's opinion the authors have achieved their stated aims to such an extent that the volume will not only fulfil the authors' expressed hope 'that both teachers and students will find these materials useful and stimulating' but will also be of very considerable use and value to practitioners in the fields under consideration.

Different practitioners may use the volume in different ways, but this reviewer sees value in its use for initial research, for ready comparison in the one volume of statements of principle and—because of the quality and quantity of the extracts it

contains—as a volume to take to court in an attempt to reduce the element of surprise resulting from opposing counsel's citation of authorities. In addition, when the practitioner can find time to do so, he should 'dip into' this volume at random in order to refresh his knowledge and/or renew his acquaintanceship with the learning enshrined between its covers, and he should endeavour to find the additional time necessary to consider the ' "ought" questions about the policies on which these systems rest' raised by the authors.

Not surprisingly, there are in the text some passages with which the reviewer does not agree. The first is the criticism of the High Court implicit in the question 'But is it not a sad situation to find the High Court so much at odds with the participants in the industrial world?'.[1] A similarly critical view of the High Court emerges elsewhere.[2] As it is the role of the High Court to interpret from time to time both the constitutional power and the Arbitration Act, the reviewer considers that the authors should have paid greater heed to the words spoken by Sir Owen Dixon on the occasion of his being sworn in as Chief Justice in 1952—

> Federalism means a demarcation of powers and this casts upon the court a responsibility of deciding whether legislation is within the boundaries of allotted powers. Unfortunately that responsibility is very widely misunderstood, misunderstood largely by the popular use and misuse of terms which are not applicable, and it is not sufficiently recognised that the court's sole function is to interpret a constitutional description of power or restraint upon power and say whether a given measure falls on one side of a line consequently drawn or on the other, and that it has nothing whatever to do with the merits or demerits of the measure.
>
> Such a function has led us all I think to believe that close adherence to legal reasoning is the only way to maintain the confidence of all parties in Federal conflicts. It may be that the court is thought to be excessively legalistic. I should be sorry to think that it is anything else. There is no other safe guide to judicial decisions in great conflicts than a strict and complete legalism.[3]

However, the authors appear to be on much stronger ground when, after dealing in some detail with the decision of the High Court in the *Flight Crew Officers Industrial Tribunal* case, they criticize the action of 'the judges of the High Court (who) castigated the Tribunal and the advocates'[4] who were all non-lawyers.

The second matter of some importance concerns the nature of National Wage Cases. The authors ask a question[5] which they describe as 'not just a theoretical one'. The question is 'how can the whole of the nation be said to be involved in the one industrial dispute?' The reviewer suggests the short answer is that it cannot be said that 'the whole nation is involved in the one industrial dispute'. The National Wage Case Decision only operates to settle the disputes being heard by the Bench—generally those in the Metal Trades industry. That decision is then normally applied —or 'flowed on'—to all other industries. The legal justification for this procedure was explained by Dixon C.J. in *R. v. Kelly ex parte A.R.U.*[6] (in a passage cited earlier by the authors)[7] as follows—

> In neither case were the formulation of a principle and its consistent application to the cases falling within it incompatible with the lawful use of the authority to arbitrate for the prevention and settlement of industrial disputes, . . .

It is suggested also that the authors overstate the 'conceptual battles' within the Commission when they go on to say—

> The Commission itself has had great conceptual battles about whether it is merely a dispute settlor, or whether it ought to take account of the national economic consequences of its decisions.[8]

1 Glasbeek and Eggleston, *Cases and Materials on Industrial Law in Australia* (Butterworths, Australia, 1973) 64.
2 *E.g., ibid.* 39, 57, 75, 87, 97, 123-4.
3 85 C.L.R. XIII-XIV.
4 Glasbeek and Eggleston *op. cit.* 43.
5 *Ibid.* 159.
6 (1953) 89 C.L.R. 461, 475.
7 Glasbeek and Eggleston *op. cit.* 95.
8 *Ibid.* 159.

The difference of approach between the members of the Commission was not as to 'whether it ought to take account of the national economic consequences of its decisions' but as to whether the Commission should treat the industrial relations aspect as being its primary function and the consideration of economic consequences as its secondary function rather than the latter being its primary function and the former its secondary function. This was made clear by Moore J. both in the 1965 *National Wage Case*[9] and again in the 1966 *National Wage Case*[10]. Further, the need to 'have regard to the economic consequences' was expressly acknowledged in the 1967 *National Wage Case* Decision by Kirby C.J., Gallagher and Moore JJ., and Mr Commissioner Winter who, in a unanimous pronouncement, said—

> We agree that when settling interstate industrial disputes involving general economic reviews we must consider the economic state of Australia and have regard to the economic consequences of our decisions.
>
> The various matters we have considered and discussed are those which inevitably arise in national wage cases and are predominantly economic in character. These include the question of adjustment for price movements (which we all think has a particular significance in wage fixation), the question of price stability, the question of productivity movements and above all the question of economic capacity to pay.[11]

(This passage is in fact included later in the volume,[12] but as part of the authors' reproduction of the full text of the 1967 *National Wage Case* decision.) In the light of the decisions cited it is somewhat surprising to read the authors' reference to the Commission's 'attempts to act as an incomes tribunal'.[13]

Other matters of disagreement with the authors can be dealt with more briefly—

The statement that 'the aim of the section (s. 142 of the Arbitration Act) is clearly to avoid overlap'[14] seems to require qualification.

It is an over-simplification to assert that deregistration of a federally registered organization is 'obviously self-defeating'.[15] It should not be overlooked that the AEU, BWIU, Tramways Employees Union and FEDFA are strong unions which, after being deregistered, all evinced their desire for registration by applying for and obtaining renewed registration.

It is confusing to refer (particularly in a sub-heading) to the 'Discretion of the Commission to increase and limit its own power'.[16] The Commission can neither increase nor limit its own power—it can only decide to exercise or not exercise the power granted to it by the statute.

The authors more than once describe a 'Presidential Member' of the Arbitration Commission as a Presidential Commissioner[17]—a phrase which (although it has been used by the High Court) is not accurate and may tend to 'blur' the distinction between a Commissioner and a Presidential Member established by the Act.

Errors by the proof reader were exceedingly hard to find. However, the estimated annual revenue of the Amalgamated Metal Workers' Union would seem more likely to be $5,000,000 than the $500,000 stated.[18] The reference for the decision of Beeby J.[19] given as 1928 C.L.R. at 886 should be to (1928) 26 C.A.R. and the statement[20] that 'the onus is on the employer' should read 'on the employee'.

Notwithstanding these comments this volume is a very valuable and very necessary addition to the text books on industrial law in Australia. The selections included are excellent, there are very few omissions of any significance and the authors' 'Questions and notes' throughout the volume are extremely stimulating.

J. A. KEELY*

9 110 C.A.R. 189, 267.
10 115 C.A.R. 93, 183.
11 118 C.A.R. 655, 657.
12 Glasbeek and Eggleston *op. cit.* 185-90.
13 *Ibid.* 233.
14 *Ibid.* 316.
15 *Ibid.* 121, 335.
16 *Ibid.* 129.
17 *Ibid.* 108-9.
18 *Ibid.* 335.
19 *Ibid.* 342.
20 *Ibid.* 370.

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