

CONCILIATION AND ARBITRATION IN AUSTRALIA — WHERE THE EMPHASIS?

BY THE HONOURABLE SIR RICHARD KIRBY*

I give personal and not official opinions in this article but as the first, and so far only, President of the Commonwealth Conciliation and Arbitration Commission the conciliation and arbitration I discuss shall be those in the national area.

The Commission's work comes under fire from many directions. Those who see it as a predominantly legal institution are very critical. Curiously enough they divide into two opposing sections, the one pointing to the Commission's failure to adhere strictly to a predictable judicial process and the other condemning it for being too legalistic. On the other hand, there are those who look on the Commission as an economic legislative body and criticise its alleged inability to gauge the impact of its decision making policy on the level of economic activity in Australia. Indeed, all criticisms, if one adopts the exclusively particular view of the Commission which each set of critics has, may have some justification. The truth of the matter, and indeed the answer to each of these and most other critics, is not in attempting to deny the point which they are seeking to advocate but simply to say that the Commission must be looked at from a broader perspective. This broader perspective is to be found in the framework of the industrial relationship in the Australian economy and the role of the Commission in maintaining a viable relationship between employers and employees. The constitutional role of the Commission is the prevention and settlement of interstate industrial disputes which one would expect to be restrictive rather than otherwise. However in the process of preventing and settling these disputes, questions relating to matters of economic policy arise and force the Commission into other spheres. Also the processes of conciliation and arbitration involve, in our system, the need for the use of legal forms and procedures as well as a knowledge of constitutional law. However, our problem is not, as I see it, one of creating a consistent cradle of case-made law or even of lore, nor is it the objective of the Commission, as presently constituted, to pursue and implement specific targets regarding economic policy. It has not the power, nor should it have the ambition to aim at these targets.

On the *stare decisis* question the High Court of Australia, whilst acknowledging the rule, rejects any notion of the immutability of its

*President, Commonwealth Conciliation and Arbitration Commission.

Conciliation Arbitration In Australia

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