BEFORE THE WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION

FULL BENCH CENTENARY SITTING

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON THE 2ND DAY OF APRIL 2002

BEFORE THE FULL BENCH OF THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION

HIS HONOUR THE PRESIDENT P.J. SHARKEY
CHIEF COMMISSIONER W.S. COLEMAN
SENIOR COMMISSIONER A.R. BEECH
COMMISSIONER J.F. GREGOR
COMMISSIONER P.E. SCOTT
COMMISSIONER S.J. KENNER
COMMISSIONER J.H. SMITH
COMMISSIONER S. WOOD
COMMISSIONER J. HARRISON

THE HONOURABLE MINISTER MR J. KOBELKE

MR B. WILLIAMS represented the CCIWA.

MR J. FLOOD represented the AMMA.

MR I. VINER, QC represented the West Australian Bar Association.

MS C. THOMPSON represented the West Australian Law Society.

PRESIDENT: The Full Bench of the Western Australian Industrial Relations Commission sits today in a special sitting to celebrate the 100th anniversary of the first sitting of the Arbitration Court of Western Australia, the predecessor to this Commission. That occurred on the 2nd of April 1902 pursuant to the Industrial Conciliation and Arbitration Act of 1902.

I note by way of parentheses that this is the first sitting of the Full Bench at which former Commissioner Tony Beech has sat in his new office of Senior Commissioner and I mark that occasion.

On our behalf I wish to welcome a number of people. I wish in particular to recognise the presence of, welcome, and thank for their attendance at the bar table, the Minister for Employment and Consumer Protection, the Honourable John Kobelke; the President of the Law Society of Western Australia, Ms Clare Thompson; the President of the Bar Association of Western Australia, Mr Ian Viner QC; in anticipation, Ms Stephanie Mayman on behalf of Unions WA; Mr John Flood on behalf of Australian Mines and Metals and Mr Bruce Williams on behalf of the Chamber of Commerce and Industry of Western Australia.

I also recognise in the court and welcome the Honourable Justice Robert Anderson, President of the Industrial Appeal Court; the Honourable Justice Kevin Parker of the Industrial Appeal Court; the Honourable Geoffrey Kennedy QC, a former President of the Industrial Appeal Court and Sir John Lavan, a former member of the Industrial Appeal Court. I also welcome the Honourable Justice Robert Nicholson, a judge of the Federal Court of Australia and a former member of the Industrial Appeal Court. I note that the Honourable Terry Franklyn, also a former member of the Industrial Appeal Court apologises for his inability to attend.

I also welcome, and you'll forgive me for saying with some special pleasure, a number of former members of this Commission; a former President, the Honourable Gresley Clarkson QC; my immediate predecessor as President of this Commission, the Honourable Daniel O'Day; and other former members of this Commission including the former Chief Commissioners, Eric Kelly and Bruce Collier; the former Senior Commissioners, Gary Halliwell, Gavin Fielding and Don Cort and the former Commissioners Rodney Gifford, Grant Johnson, John Negus and Owen Salmon. Former Commissioner Sally Cawley apologises for her inability to attend.

I welcome the Honourable Clive Brown MLA, Minister for State Development, Tourism and Small Business, and a former secretary of the TLC. I welcome his Worship, the Mayor of Fremantle, Mr Peter Tagliaferri, one of whose predecessors is part of this story.

I also welcome several former Ministers for Industrial Relations or Labour, as the case may be, namely the Honourable Peter Dowding, also a former Premier of this state; the Honourable Yvonne Henderson; the Honourable Raymond O'Connor, and the Honourable Gavan Troy.

I welcome the Anglican Archbishop of Perth and Primate of Australia, Archbishop Peter Carnley; Bishop Donald Sproxton representing the Catholic Archbishop of Perth, the Most Reverend Barry Hickey; and Ms Rosemary Miller representing the Uniting Church in Australia which encompasses the Methodist, Presbyterian and Congregational Churches. Clergy of their churches were significant in the origins of industrial conciliation and arbitration in this state.

I welcome His Worship, the Chief Stipendiary Magistrate, Mr Stephen Heath and Their Worships, Mr Joe Cicchini and Mr Wayne Tarr, the present industrial magistrates, and a former public service arbitrator and industrial magistrate, Mr Norman Malley.

I welcome former registrars, I welcome former directors, secretaries, and officers of Australian Mines and Metals, of the Chamber of Commerce and Industry and its predecessors and of Unions WA and its predecessors, and I extend a particular welcome to Mrs Molly Walsh and Mrs Pauline Seaward, the daughters of Sir Walter Dwyer who was the first full-time president of the Arbitration Court, serving from 1926 to 1945. He was a giant in industrial conciliation and arbitration in this state.

I welcome officers of the Commission, and all here present on behalf of the Commission, and I thank you all for coming.

I now want to turn briefly to some history. The first matter reported as having heard by the Court of Arbitration on 2nd April 1902 is reported in volume 1 of the Arbitration Reports at page 12 as Fremantle Tailoresses' Industrial Union of Workers WA v Oliver.

The report is of the decision upon an application made by a union, the Fremantle Tailoresses' Industrial Union of Workers for the enforcement of an industrial agreement dated 12th January 1901 entered into between the Fremantle Tailoresses' Industrial Union of Workers and the Fremantle Tailors Industrial Union of Workers of the one part, and the Master Tailors and Foremen's Association of WA of Fremantle of the other part.

The court held that a breach of the industrial agreement referred to in that application was established, and ordered that Mr George Oliver, the person found to have committed the

breach pay a penalty of 20 shillings, 5 guineas, the costs of the application to the union, guineas I note being recently translated by a child of the decimal age as "guinness", and 4 pounds, 19 shillings and sixpence witnesses expenses.

The then and first president of the Industrial Arbitration Court was the Chief Justice, Sir Edward Albert Stone. A system of compulsory conciliation and arbitration first came into being in this state as a result of failed strikes affecting the building industry in the Fremantle port in the late 1890s. The resultant dispute on the waterfront concerning a decision by shipowners, principally the Adelaide Steamship Company Limited, to no longer recognise a "closed shop on the waterfront" and to contract individually with the employees independent of their union, the Lumpers' Union, was settled by an ad hoc tribunal sitting at the Fremantle town hall consisting of as Chair, the Anglican Bishop of Perth, Bishop Riley, the Catholic Bishop, Bishop Matthew Gibney who had some years before achieved immortality by giving the last rites to the dead members of the Kelly gang in the burning in at Glenrowan, and the Reverend G.E. Rowe.

It delivered its decision on 4th April 1899 and the tribunal, I should observe, met by the convening initiative of the Mayor of Fremantle, Mr J. McHenry-Clark, a predecessor, of course, to the present Mayor.

As a result of these events the Forrest government introduced legislation based on the arbitration system developed in New Zealand in 1894 and accordingly the Act of 1902 came into operation on the 5th of December in that year. There were sittings of Boards of Conciliation under that Act, too. However, as the learned author of the preface to volume 1 of the Arbitration Reports observed:

"It was some little time before the provisions of the Act were availed of in this state."

And he goes on to observe:

"Very few matters were dealt with, either by the Court or boards under this Act, as it was found somewhat defective in several details."

And in February 1902 it was repealed and replaced by the Act of 1902. The full title of the Act was "An Act to amend the law relating to the settlement of industrial disputes by conciliation and arbitration." By the Act of 1902 was created the Court of Arbitration, the first sitting of which we celebrate today and it was created for the whole of the state as a court of record.

The court consisted of three members appointed by the Governor. One member was to be a judge of the Supreme Court who would be the president. The other two members were to be one appointed on the recommendation of industrial unions employers, and one on the recommendation of industrial unions of workers. The previously existing court, needless to say, ceased to exist.

The court was given the jurisdiction for the settlement and determination of any industrial dispute referred to it under the Act, and there were also created for the resolution of industrial disputes throughout the state, boards of conciliation consisting of three, five, or seven persons elected apart from the chairman, by unions of employers and workers in each industrial district of the state, in order to deal with industrial disputes.

The Arbitration Court continued until 1963 when the Commission was created in its stead, and a Commission it has been ever since. The first President of the court was the Chief Justice Sir Edward Albert Stone, as I have mentioned. He returned to full-time duties on the Supreme Court on 14th May 1902 and was replaced by a puisne judge on 20th June 1902. That seems to have remained the practice until 1926 when Sir Walter Dwyer, to whom I have already referred, was appointed as president. He was succeeded by Mr E.A. Dunphy, the Crown Solicitor, and later Mr Justice Dunphy of the Commonwealth Industrial Court and the Supreme Courts of Norfolk Island and the Cocos and Keeling Islands.

There followed Sir Lawrence Jackson, as he later became until 1955, and after that Mr Justice Roy Neville from 1955 to 1963. A number of puisne judges of the Supreme Court acted as President also from time to time.

In 1979 the office of President was reinstituted and has been occupied by the Honourable P.L. Sharp, the Honourable G.D. Clarkson and the Honourable D.J. O'Day. The Chief Commissioners since 1963 have been E.F. Schnaars, Esquire, B.M. O'Sullivan, Esquire, E.R. Kelly, Esquire, B.J. Collier, Esquire, and currently W.S. Coleman, Esquire.

In his second reading speech in relation to the bill in the Legislative Assembly on 17th September 1901, the then Minister for Labour, the Honourable W.H. James, later Sir Walter James, expressed the raison d'être of the Arbitration Court as follows, and I quote:

"Now, the law which establishes the Supreme Court or any other court of justice does not establish those courts for the purpose of guarding particular rights or limiting particular wrongs of individuals. The

court is established in the interests of justice to secure that these private disputes shall not be settled by might, but that there should be some tribunal to which reference can be made to settle disputes according to the law and legal method."

And I quote that, because the origin, history, purpose and nature of the predecessor to this Commission and indeed of this Commission, are too often forgotten.

I draw your attention to some of the objects expressed in section 6 of the current Act and in particular, the following: to promote goodwill in industry; to encourage and provide means for conciliation with a view to amicable settlement thereby preventing and settling industrial disputes, and to provide means for preventing and settling industrial disputes not resolved by amicable agreement.

Those objects, together with the structure, jurisdiction and powers of the Commission evidence the fact that although the mechanics of the system might have changed in some respects, it is fundamentally the same system of conciliation and arbitration which is still at the heart of the jurisdiction of the Commission as the successor to the court.

Those matters are details, I think, of the history and structure of the Commission which a number of you might wish to memorise so that you can win industrial relations trivia competitions.

There are some general comments which I wish to make on my own account, and I hope that you will forgive me because it is not often we, as members of the Commission, get the chance to talk. We are usually listening, and that is as it should be.

The Commission is a court of record and exercises the judicial power of this state. The Commission also exercises powers in conciliation as well as arbitral and legislative powers. The Commission carries out important functions of government in the broader sense, these being the public purposes served by the Commission. It is not, therefore, a provider of services, nor does it have consumers or customers; neither is the Commission merely a public funded disputes resolution centre.

Litigants - and I use the word broadly - in this Commission are and should be treated as citizens and not consumers. As citizens they exercise rights and remedies which the parliament of this state makes available to them in this Commission either individually or through organisations, but under the law as citizens. In all cases in the Commission, the community of citizens is a party because the interests of

the community are required to be taken into account by the express provisions of the Act itself.

Like other courts and tribunals, the Commission exists and carries out its functions because this state is subject to the rule of law and not the law of the rulers. It is important to celebrate the history of the Arbitration Court and of the Commission, because history, and indeed, this history is immensely relevant to the present, and because institutions such as the Commission reduce uncertainty by providing a structure to everyday life.

The legitimacy of the Commission depends in large measure on the delivery of justice understood as a system by which fair outcomes are arrived at by fair processes. That is not to suggest that considerations of efficiency are not important. They are. However, their application must be tempered by the acknowledgement that there are other values to be served, and I refer to those values in this address.

The Commission has, for many years, provided efficient, expeditious, relatively informal and cheap access to its remedies for thousands of people. With access to increasingly effective technology and by adjusting its processes to public need as it has always done, the Commission looks forward to the future with confidence.

The Commission cannot have legitimacy unless it is, and is seen to be, independent, something which the legislature prescribed by creating the Arbitration Court a century ago. If it is not, it will not be, and will not be seen to be, impartial. If it is not independent and impartial, and not patently seen to be independent and impartial, the Commission will not be true to its origins and its prescribed purpose.

The Commission deals with matters concerning powerful litigants on a daily basis, including the government of the day and various organisations as well as, of course, individual citizens. It will not and cannot be seen to be independent or impartial unless, in accordance with well known and internationally accepted standards, it has a number of characteristics and these include the following: that its members have security of tenure and conditions of appointment and the Commission as a whole body has full control of its practices and proceedings, premises and staff and its own adequate budgets, and it is accountable for the exercise of its jurisdiction only through the prescribed appeal process.

Might I take the liberty of suggesting that it is time to consider the necessity to enact the prescription and preservation of these and other indispensable underpinnings of independence and impartiality for courts and tribunals including this Commission.

These should also be enshrined in the Constitution of this state, there being already substantial protective provisions in the Constitution of Australia and in the New South Wales Constitution. There would then be unequivocally prescribed by the law of this state that the independence and impartiality of courts and tribunals is preserved and irreducible. Enough from me.

We celebrate today 100 years of two institutions of this state. The continuity which this Commission represents is at the heart of the legal system of which the Commission is part. It is yet another example of the great significance of longevity in governmental and legal institutions in this state and in this country. The acceptance of the legitimacy of those institutions based to a significant extent on their longevity, is one of this nation's and this state's principal assets.

The Commission represents, too, a deeply imbedded form of institutionalised civic capital. In particular, we, as members of this Commission and our officers are the inheritors of those great achievements and custodians of that capital. For all of those reasons there is great reason for the celebration in and by this Commission and by the citizens of this state today of 100 years of industrial conciliation and arbitration history.

The Chief Commissioner.

COLEMAN CC: Thank you, your Honour. After climbing the 100 steps to the vantage point of the year 2002, the view of where we've been is relatively clear. There is a level playing field built behind a wall of tariff? protection. Housed in the pavilion dedicated to comparative wage justice, and renamed in the honour of structural efficiency, are exhibits commemorating the identity of the uniquely Australian system of conciliation and arbitration.

On display is a replica of the 1907 sunshine harvester, a portrait of a worker, his wife and three children living in frugal comfort. Also, there are instruments by which the basic wage, minimum margins for skill, quarterly costs of living adjustments, by which all these were determined. More recent models of the centralised wage fixing system and the living wage are also on display. But a closer look from our vantage point reveals that the bulldozers of deregulation, powered by globalisation, have demolished the tariff protection wall and are rearranging the level playing field.

The proponents of enterprise bargaining and productivity outcomes now perform on the high wire above a safety net that may or may not be strong enough to catch them. The queues of

union officials and employers' representatives that formed behind the gates at the main entrance to have award matters dealt with are not as long as they used to be. Instead, the crowd gathers at the side entrance, the Kelly gate, erected in 1980, to have their individual claims for unfair dismissal and contractual entitlements dealt with.

But in response to the global economy, social policy and technology, change is underway. Will the system of conciliation and arbitration survive, and if so, what modifications may be imposed? Here the view from the year 2002 becomes a little hazy, but like Woody Allen said, "The future is difficult to predict because it usually happened yesterday."

Already we have the ongoing tension between the federal and state systems of industrial relations in which the spectre of the corporations' power looms large. There is the integration of the elements of a collective bargaining model into a system of compulsory conciliation and arbitration. The separate stream of individual contracts is well entrenched, and along with this, the proportion of employees who are members of unions have fallen. Also, the focus on industrial law has moved from industrial awards to enterprise agreements. These are but a few of the shifts that are taking place which will impact upon the future arrangements for dealing with labour relations.

In a recent series of articles titled "Towards Opportunity and Prosperity" the Australian newspaper sets out an economic and social policy programme to re-establish broad political and community support for making Australia a more vibrant and productive nation in a globalised economy.

According to the editorial commentary, there is the unfinished business of competition policy: freeing up the labour market; finding a better balance between work and the family; the aging population; retirement savings; health; education; the brain drain; immigration; privatisation; tax reform; and protecting the environment.

In some significant respects, today's issues mirror matters which were the subject of community concerns when the system of conciliation and arbitration was born in Western Australia at the turn of the 20th century. Immigration; economic survival in a hostile world; the egalitarian ethos of our community; the right to organise; and the right to contract, just to mention a few.

The issues we face as a community and as a nation present formidable challenges. Directly or indirectly, they impinge upon relationships within the workplace. Improving the

standards of living through increasing productivity; sharing the wealth; creating more jobs than economic growth alone can provide; creating the wealth to invest in schools, science, software and health; all these at a time of declining birth rates which will mean fewer wage earners and tax payers supporting more retirees.

And while the system of conciliation and arbitration will undergo some dramatic changes in future, this uniquely Australian approach which brought a new province of law and justice to relations between employees and employers in Western Australia in 1902 will continue to fulfil an important role in our state's future.

But it is not the uniqueness of the system alone that will ensure its enduring presence. It has also been the integrity, independence and dedication of those members of the courts and tribunals that have gone before us. It has also been the passion and commitment of those who have represented the interests of their members and organisations in this forum and the legislature whose foresight and commitment have reflected and preserved the values of our society.

We are honoured so many of you could be here today to celebrate the centenary of arbitration in Western Australia. Thank you.

PRESIDENT: The Minister.

MR KOBELKE: Your Honour, Mr President, Chief Commissioner, Commissioners. I am honoured to appear before the Full Bench today at such an esteemed gathering. I appreciate the opportunity to speak at the significant milestone for the Western Australian Industrial Relations Commission, 100 years today since the first sitting of the Arbitration Court of West Australia, the predecessor to this Commission.

I have with me a copy of the first decision of the Court of Arbitration, 100 years ago today. And as Mr President has already said, it was regarding a breach of an industrial agreement by the Fremantle Tailoresses' Industrial Union of Workers of WA against the employer, George Oliver. The employer had failed to pay the full 5 shillings, and 7 pence, ha'penny for the making of a pair of trousers.

The court found that the breach of the agreement had been established and ordered the employer to pay a penalty of 20 shillings. There was 5 guineas for the cost of the union's application, and 4 pounds, 19 shillings and sixpence for the witnesses' expenses.

It is interesting to see that the original concepts of

industrial agreements, the enforcement of agreements through a court of arbitration, and the imposition of penalties against employers who breach these agreements has stood the test of time and are as applicable today as it was 100 years ago.

The introduction of compulsory conciliation and arbitration in Western Australia had its origins in the strikes in the early days of the colony and the need to find a better way of dealing with disputes.

We have come a long way since the days of the landmark Lumpers' dispute in 1899 which clearly was a watershed in industrial relations in this state. I am pleased to see representatives of the clergy here today, reflecting the involvement of a variety of bishops in the conciliation process that led to the successful resolution of the Lumpers' dispute.

A strong institution of arbitration developed and evolved through the 1900s after the establishment of the first Industrial Conciliation and Arbitration Act in 1900. Industrial magistrates were introduced in 1925 and in 1963 the West Australian Industrial Relations Commission was established to replace the court of arbitration.

Throughout the last 100 years there have been many amendments to the industrial legislation. However, the amendments of 1993, 1995 and 1997 have been, in our view, the most contentious in the recent history of industrial relations, with the creation of an alternative stream of employment regulation outside the scope of the Industrial Relations Commission.

The last government's experiment in individualism has impacted on the employment relationships so essential to our society's well-being, and I believe, left deep divisions within our community. The present government is committed to the repeal of this divisive legislation in the interests of developing an efficient and balanced industrial relations system.

It is fitting that this century year also marks the proposed development of the powers of this Commission, improving fairness to employees with the planned repeal of the controversial workplace agreements and third wave legislation and other improvements which are currently before the parliament with changes to the Industrial Relations Act.

The late Dr Norman Dufty of the University of Western Australia noted in his paper on the development of industrial relations in Western Australia that, and I quote:

"Like any social sub-system, the industrial relations

system of Western Australia has evolved in response to social pressures. These have operated fundamentally in two interacting dimensions, the industrial and the political, which have reflected changes in the balance of power between labour and management. The checks and balances inherent in the social system have inhibited radical change or the complete domination of one side over the other."

As the last government introduced major changes favouring management over labour, this government now seeks to correct that imbalance and bring fairness back to the system. This government was elected with a clear mandate for industrial relations reform, to establish a fair and effective industrial relations system that balances the rights and interests of all parties.

The Labour Relations Reform Bill 2002 will help to achieve this, and I'd like to just comment on a couple of the main provisions. It will set about by repealing workplace agreements and replacing them with employer-employee agreements which will come under the jurisdiction of this Commission.

Repealing the controversial third wave legislation with its pre-strike ballots, restrictions on political expenditure, compulsory return to work orders and restrictions on right of entry and inspection of time and wages records and also replacing the former government's restrictions on union rights of entry with a more balanced system broadly consistent with the federal system.

The role and powers of the Commission will be strengthened with new objects of the Act. These include to promote equal remuneration for men and women for work of equal value; to promote a collective approach to industrial relations and good faith bargaining; to balance the needs of enterprises and industry with fairness to employees; to provide a system of fair wages and conditions of employment for employees; and ensure that all agreements registered provide fair terms and conditions of employment.

The Commission, under these changes, will have new and improved powers to set the minimum wages for all employees in the state including a minimum wage for apprentices and trainees; overseeing the introduction and registration of the new employer-employee agreements and the development of the no disadvantage test; facilitate award making processes for employees without the protection of an award; oversee the process of good faith bargaining and modernise existing awards to ensure that they are relevant for the current workplace and current conditions of employment.

The Commission will also be given stronger powers of enforcement, improved unfair dismissal provisions and greater discretion in making principles and establishing guidelines. There will also be improvements to minimum conditions of improvement. The Industrial Commission will be able to improve upon the prescribed minimum conditions of employment for employees by way of general orders if the Commission considers it appropriate to do so.

These amendments to the Industrial Relations Act 1979 will build on the strong foundations of the industrial relations system that were laid, stone by stone, by our predecessors over the past 100 years. I look forward to a strong industrial relations system that provides fairness to employees balanced with meeting the needs of enterprises and industries as we embark on this new century together.

I thank you, Mr President.

PRESIDENT: Thank you, Minister. Ms Thompson?

MS THOMPSON: May it please the Commission. I appear on behalf of the Law Society to express our congratulations and warm wishes on the occasion of the centenary of the WA Industrial Relations Commission first sitting.

In expressing the congratulations of the society there are many observations which may rightly be made regarding the extraordinary contributions of this Commission, its predecessors and its many members to Western Australia. I will briefly touch on but some of those.

The Commission has, of course, had the prime responsibility for the resolution of industrial disputes in this state. In that pursuit it has worked side by side with the general law of the state in the broader legal framework within Western Australia for the past century.

Indeed, our very surroundings today illustrate quite aptly the role of this institution within the broader Western Australian legal framework. This is not the first time the Commission has shared a building with other courts in this state and it is fitting and appropriate that it should continue to do so.

Accommodation has always been an issue of interest to the Commission I note from reading past histories and newspaper articles. In The West Australian on Saturday the 18th of January 1964 under the heading "Difficulties face new Commission" the writer noted that lack of court accommodation was likely to impede a major benefit of the new Commission which was to come into place in February that year, that is, being the speeding up of cases.

At that time, despite the fact that four Commissioners were appointed, only two courtrooms were available. The obvious difficulties were pointed out.

The Commission had dealt with that difficulty in the past by sitting in the Perth police court, a circumstance which, no doubt, would have led to some trepidation and perhaps even potential confusion for parties who had occasion to appear at some hearings.

In a further article in The West Australian on the 31st of July 1964 the paper discussed the impact of the then courthouse on proceedings, showing aptly how the court's accommodation can impact.

> "The old stone and iron building is so small that a scowl becomes everybody's property and a smile on the face of an employer might bring creases to the face of a unionist. A whispered aside is almost a shout. But during the hearing of the state basic wage case there has been marvellous decorum under the old timber roof, even when Trades & Labour Council advocate, Bob Hawke opened the union case and the tiny building was packed with unionists. Chief Commissioner Fred Schnaars had no need to raise his soft voice."

The building being referred to in that article was, of course, the building which now houses the Law Society's Francis Burt Law Education Centre in the grounds of the Supreme Court of Western Australia, a building that holds a very special and unique part in Western Australia's legal history, and it is fitting today that we recognise the contribution that that building made to this court.

A special feature of the Commission over the past century has been the way lawyers and other advocates have worked side by side. The need to obtain the consent of the Commission to be represented by counsel first became a feature of the legislation in the 1902 amendments to the Industrial Conciliation and Arbitration Act.

These days, one observes great camaraderie between the legally trained and lay advocates. Of course, there have been significant numbers of industrial advocates and others who have worked in and around the Commission, undertaking part-time law degrees, often to join one of the major law firms working in the industrial relations field, and sometimes even representing interests quite different from those they represented in their previous incarnations. Indeed, the society has an ever busy and growing industrial relations committee, and many, many members practising in the area. Most, if not all, of the largest 50 law firms in Perth would

include this important field of practice in their area of practice and I note from a quick look at the WA Bar Association web page this morning that there are several dozen barristers who note industrial relations as one of their areas of expertise.

The question of representation rights has always been something of a unique feature of this jurisdiction. Looking through some of the history of the Commission I noted that in the 1904 parliamentary debates, the member for Boulder moved an amendment to debar members of parliament from appearing before the Commission's forerunner, the Arbitration Court and the Boards of Conciliation.

Included amongst those appearing were the then Minister with responsibility for industrial relations, J.B. Holman who apparently regularly appeared for various unions along with numerous of his parliamentary colleagues. Employers, too, used parliamentarians as advocates. The debate apparently drew a great deal of heat but eventually the amendment was dropped.

It would be an interesting exercise, if not already done, to trace the history of sitting parliamentarians appearing as advocates in the Commission. Judging by present company, it appears there is some considerable synchronicity between the Commission and parliamentary office.

The breadth of representation before the Commission is probably best illustrated by the representation at the bar table on the occasion of the inauguration of the Commission in February 1964. On that occasion the Law Society was represented by Mr, later Justice Clarkson, who I note is here today. H.A. Jones appeared for the Crown; F.J. Darling for the Employers Federation; J. McKerrow for the Commissioner for Railways; W.R. Sawyer for the Federated Clerks Union, and B. Collier for the Civil Service Association. Somewhat cryptically, The West Australian's newspaper report notes that no one spoke on behalf of the WA Trades & Labour Council.

It is pleasing to again see broad representation here today. Another obvious distinction which must be made between the 1964 celebrations and, of course, the 1902 celebrations, and today, is the now common appearance of women, both at the bar table and on the Bench. All this goes to show the unique, the special, and the important place that the Commission and its predecessors have had on the ongoing affairs of this state. Undoubtedly that contribution will continue.

Congratulations on your centenary. Warm wishes on the future endeavours of the Commission. We look forward to the continued contribution of the Commission and of its members to the working lives of so many Western Australians.

PRESIDENT: Thank you, Ms Thompson. Mr Viner?

MR VINER: Mr President, Chief Commissioner and Commissioners. I am pleased to accept on behalf of the Western Australian Bar Association the invitation to speak on this special sitting of the Commission.

Lawyers, whether as barristers or solicitors appearing before the Commission and its predecessors; Judges sitting as Presidents of the Arbitration Court or in more recent times, on the Industrial Appeal Court; and today, as President of the Commission, have played a central role in the history of conciliation and arbitration and industrial relations in Western Australia.

There is more than a touch of irony in recognising this fact when legislation over the last 100 years has striven to limit the right of appearance of legal practitioners before every constituent body of the Court or the Commission, having jurisdiction under the Acts enforced since 1902. That obviously says something about the resilience of lawyers or the message, "You can't keep a good lawyer down."

But really, it points to the fact that whilst it is desirable in industrial relations, no more than in so many other walks of life where the rights of people are affected by the conduct of others that disputes are settled by agreement, whether by processes of conciliation or mediation, rather than resort to legal argument, in the end it is the rule of law which binds society to the satisfactory and orderly resolution of disputes affecting the rights of citizens.

It can be fairly observed that whilst lawyers are blamed for many ills within society, or made the scapegoat for problems beyond their making or control, the humblest citizen or the most powerful organs of state or of commercial enterprise or collective unionism will always turn to the lawyers to represent them and to argue their cause within the rule of law.

I think a detailed history of the Arbitration Court and its successors - the Commission - in its varying forms would show a kind of law of natural selection between those industrial matters where no one wanted or needed a lawyer, and those where the nature of the issues at stake meant that there was acceptance of legal representation on all sides. I expect it will ever be thus, and I am sure the Commission today and in the future will find legal practitioners to be more of a help than a hindrance.

I was fortunate to be introduced to industrial relations in 1958 by my principal, F.T.P. Burt, now Sir Francis Burt, whose

Masters thesis written in 1941, before he saw active service in the RAAF, formed the basis of annotations of the 1912 Industrial Arbitration Act printed as part of the 1950 reprint of that Act. That must be a rare occurrence where a reprint is an annotation on the basis of someone's legal thesis.

For all practitioners, legal and non-legal, of industrial relations in those days, that annotation was the bible, guiding a generation of union and employer advocates alike through the mysteries of industrial law. It is also a compact history of the social and political history of this state. Industrial battles between master and servant; the employer and the employed; the bosses and the unions; the ideologues? and the rank and file; parliaments; governments and peak? bodies all find their way into industrial relations by whatever name it is described and the shifting provisions of industrial legislation as each new government tampers with the legislation of its predecessor.

In reflecting upon today's occasion I noted to myself how the 1912 Act remained substantially unamended in its basic provisions for over half a century which must say something about the social stability of Western Australia over that long period compared to the volatility of legislative change and industrial conduct in the workplace and before the Commission in more recent times. The comparison, I suspect, deserves to be the subject of an historical thesis in its own right.

My own career in industrial law and relations spans that period and I participated in that change before the Arbitration Court and its successors, the Commission. I first appeared before the Arbitration Court sitting in the old Supreme Court building, presided over by Justice "Spud," as he was fondly called, Neville, with Burt, acting for the Collie Miners Union, engaged in a major strike at that time which created new law by establishing that the Arbitration Court was, in certain circumstances, subject to the prerogative writs issued by the Supreme Court notwithstanding what was said then and now in the Industrial Relations Act.

Again, before the Arbitration Court, representing the Amalgamated Engineering Union, in one of the first big construction strikes of the 1960s when the then executive director of the Employers Federation, John Darling, was himself the subject of a lock-out. He was locked out of the court building by a mass of union members, forcing him to peer through a window to see what was going on inside. And Frank Cross, who is behind me, may remember that occasion.

And then, acting on a number of other cases where those battles were heady stuff indeed. And hearing your Honour's introduction of Owen Salmon reminded me of a case which we

fought together in Kalgoorlie when we urged upon the Commission at the time that capacity to pay was relevant to the level of wages that should be awarded. We lost at that time because it was almost an heretical proposition but I rather expect that we would succeed today with the same proposition.

But so much has happened in those years in which I have been privileged to appear before the Court and the Commission. The times have indeed changed in the years between. Economically; socially; demographically; in education; skill training; workforce structure; industry location; in union representation and organisation; and in employer-employee relationships.

The 1912 Industrial Arbitration Act is no longer the appropriate model for industrial relations today, but much of its language and many of its provisions remain at the heart of Western Australia's industrial law, not least concerning the Commission itself, its jurisdiction and powers and the essential feature that it must act with equity, good conscience and the substantial merits of the case.

Moreover, it may be fairly observed that industrial - or workplace, if that is the preferred description - relations lies at the very heart of the workday lives of every Western Australian. For that very reason passions and ideologies will continue to be roused around it. Industrial law will continue to be changed with the ebb and flow of debate and political fortunes.

But whilst that goes on, the Commission in one form or another, will continue as a unique Western Australian institution, serving the people of Western Australia, standing the test of time, in this case 100 years, of Western Australian history; a stature of service only made possible by the standing and capacity to which one might add sagacity of presidents from Stone J to President Sharkey and the many, many members who have sat on the Court and the Commission over those past 100 years.

Members of the Western Australian Bar Association express our thanks to present and past members who have served the Western Australian community so well. May it please the Commission.

PRESIDENT: Thank you, Mr Viner. Mr Flood.

MR FLOOD: Thank you, your Honour. Your Honour, it gives me great pleasure today to stand here and represent the West Australian resource sector. I'd also like to take the opportunity to thank the Commission for making that opportunity available today, particularly on this special occasion.

The Western Australian resource sector has been a participant in the state industrial relations system since it was first created. The mining industry has not only been involved in the industrial relations system itself, but also played a role in the development of the system.

The gold industry was active during the 1800s, and therefore was one of the founding industries, if I can say so. The nickel, mineral sands, iron ore, tin, lead, diamonds, and to a lesser extent, the oil and gas industries, have all utilised the West Australian industrial relations system. Of more recent times, with alternate forms of employment regulation available, the mining industry and its representatives have had a lesser role with this Commission.

This Commission has assisted during the period of time since its creation all parties in the resource sector to work through their issues when required, and the Commission has ably assisted the resource sector in the development of the state's abundant supply of natural resources. The resource sector has provided benefits to those directly involved, and also to all West Australians through employment opportunities, royalties and taxes to the various governments.

In preparing for today, I took the opportunity to review several writings and the formal records of the history of the West Australian industrial relations system. In undertaking this review it was amazing to see that not only that changes have occurred since those early days, but also to see that some things haven't changed in over 100 years.

Some of the changes I noted were as follows: the legislation initially was not as extensive and therefore less complex. The decisions of the tribunal at the time were shorter. The awards issued were equally shorter. As a result, the volumes of the West Australian Gazette, when issued, were far thinner than they have been in recent times.

The changes observed also go to the terms and conditions of employment. It was a common feature of awards at the beginning of the 1900s that an ordinary week's work was 48 hours per week with 2 weeks annual leave. The many and varied changes in the terms and conditions of employment that we have seen, probably match the changes I earlier highlighted and probably the changes to the West Australian industrial relations system that are imminent.

I also mentioned that some things haven't changed. I discovered this when reading the first judgment. They were recalled remarks in those days, of the West Australian Court of Arbitration in volume 1 of the West Australian Industrial Gazette.

This judgment related to the Kalgoorlie Miners Award. The President of the Court on that occasion, when commenting upon creating the definition of "fireman" within the award, amongst other observations observed:

"I may say, too, in passing, that as far as I can see a further difficulty would arise in relation to firemen when another union which apparently is approaching the court comes along to make their claim."

Demarcation disputes are obviously not new. Another member of the same court, Mr Good, had this to say about the claims by the Australian Workers Union:

"This award of the miners' demands on mine owners of Western Australia will have far reaching effects and I greatly fear disastrous results will follow in its wakes."

Comments that I think are echoed from many parties from time to time in industrial tribunals today. The third member of the same court made a statement which I'm not sure whether it fits into the "changed" or "unchanged" category. Mr Somerville, in his remarks, said about the classifications within the award:

"This is a very old problem which the court has had to deal with on many occasions, and unfortunately for the court, they never get much assistance from the parties."

Perhaps individuals today can determine which category this matter falls into.

I said earlier that the mining industry played a role in the original formation of industrial relations legislation in Western Australia. In reviewing some of the respected work by the late Dr Norm Dufty in the development of industrial relations in Western Australia, I discovered some interesting information that may sound familiar to the current Minister for Labour Relations in his recent dealings with the resources sector.

In 1900, in an endeavour to influence the government of the day regarding the proposed industrial relations legislation, the then London Chamber of Mines - we had to bring the heavyweights in back in those days - petitioned the Premier regarding about lack of prior consultation and made the following statement:

"If this bill becomes law without substantial

modifications to protect the interests of the mine owner, it is feared that it will be impossible to obtain English capital to protect or further develop the mining industry."

Sounds that have echoed through parliament for several months - - recent months, I should add.

My understanding as a result of that petition to the Premier was that several significant amendments were made to the proposed legislation and as a result of these amendments the mining industry moved forward.

In conclusion, to this Commission, its members and staff, have all served Western Australia well now for 100 years. The Australian Mines and Metals Association congratulates the Commission for a job well done and wishes its members and staff all the best for the future, whatever that may hold. If it please the Commission.

PRESIDENT: Thank you, Mr Flood. Mr Williams?

MR WILLIAMS: Thank you. Your Honour, Chief Commissioner, Commissioners, the Honourable Minister, distinguished guests, ladies and gentlemen. For 100 years this tribunal, as we have heard this morning in many and varied forms, has served the interests of this state, the interests of the employees of this state and the interests of business and industry in this state.

Today, I think, is an opportunity for us to reflect on how far we in Western Australia as a community have come over that 100 years.

Approximately 100 years ago one Andrew Barton Paterson aka, also known as "Banjo" Paterson, was admitted as a solicitor. That was in 1886. At the time he was not the well known poet we know him to be today, but at the time he was a regular contributor to the then Bulletin magazine, which itself was born in 1880.

And so it was that a little earlier than 100 years ago today, in fact, in 1889 as part of his contributions to the Bulletin, he penned the starting piece for one of those articles which was a pamphlet entitled "Australia for the Australians." And in that he made a number of observations, and one of these I'd like to quote this morning:

"The fact is that the only way to improve the welfare and prosperity of the country at large is to improve the individual welfare and prosperity of the inhabitants. To advance Australian we must advance

> the Australians and the question of individual advancement is the question of the greatest national importance. It may be said that we are already the most prosperous country in the world; that in no other place can a good living be got so easily and certainly as it can be here. Even if we grant this, it does not prove that we are as prosperous as we might be, or as we have every right to expect to be. And when we come to look into the matter we find that we are a very long way from any such happy state.
>
> It ought to be possible, in a new country like this, for every man with a willing pair of hands to be always employed and at good wages."

Arguably, I think, most of us would accept that the same concerns expressed by "Banjo" Paterson a little over 100 years today are ones we share today as we stand here in 2002. In the verbiage of economic commentators who freely make these observations in the press, unemployment remains stubbornly high. However, I think if we look at a range of other changes, some of which, I think, were mentioned by Mr Viner, we have in many ways come a long, long way.

Over those 100 years we have life expectancy increasing nearly 50 per cent for males and females. Over the last 45 years alone we have school retention rates for year 12 which have increased from 11 per cent of school aged children to 65 per cent. Even in the last 20 years, for instance, the percentage of the population holding bachelor degrees has gone from 15 per cent to - - sorry, from 5 per cent to 15 per cent.

We have seen many changes of significance in the world of work. Over that time labour force participation rates for females over the last 90 years, to be precise, have increased from 25 per cent to 54 per cent whereas over that 90 years for males the labour force participation rate has decreased from 93 per cent to 72 per cent.

Over that time we have seen parliaments enact a whole raft of legislation, generally to benefit and protect employees. They include such legislation as the Minimum Conditions of Employment Act, the Long Service Leave Act, the Super Guarantee Surcharge Act, plus Acts covering workers compensation and occupational health and safety.

As we've also heard, in the 1980 amendments to the current legislation, individual employees for the first time were given rights that they continue to hold today to pursue claims of unfair dismissals and contractual benefits, and to pursue award breaches in this tribunal and before magistrates courts on their own behalf rather than represented by individual unions.

Clearly, there have been significant changes in terms of globalisation which were also referred to by a number of the speakers. Capital is mobile, as are workers. New graduates of our universities are as likely to be employed in Perth as in Sydney, Singapore or London.

So during the life of this tribunal, the depth and breadth of the changes we have experienced as a community have been, I think, enormous. Little in reality has remained the same other, I suspect, than the view expressed by "Banjo" Paterson over 100 years ago is one many of us would share today. Things could always be better for many of the members of our community.

Over the 100 years employers and their organisations have, on many occasions, challenged the role and even the very existence of this tribunal. Today though, is not a time for that policy debate or for an airing of our differences on those issues but rather it is a time to reflect that rarely does the arbitrator's role or their actions please all parties and to that end it is often sadly a thankless task.

Today we, on behalf of the Chamber of Commerce and Industry's members and employers generally, wish to thank the tribunal; to thank its current and former members for all their efforts over the years in what will always be, simply, a difficult job. Thank you.

PRESIDENT: Thank you, Mr Williams. That completes the proceedings and the Commission will adjourn.