

## Shifting Paradigms in Industrial Relations

- 1 In early 1975, whilst studying economics, I attended a lecture in an elective subject, industrial relations, in the lecture theatre of the Merewether Building at the University of Sydney. The lecturers were Associate Professor Kingsley Laffer, the Head of the then Industrial Relations School, which became a Department after his retirement, and Maxine Bucklow, a Senior Lecturer. The Associate Professor was soon to retire from the University.<sup>1</sup>
- 2 Kingsley Laffer pioneered the development of the field of industrial relations as a formal institutionalised entity, and it is a fitting tribute to the legacy of his life's work that he is commemorated in the annual Kingsley Laffer Memorial Lecture.
- 3 In the lecture I attended, the Associate Professor conveyed an infectious enthusiasm for the field and its development; although I did think it passing strange that he referred to my new major as an 'emerging discipline'.
- 4 A further, and somewhat more disciplined inquiry, would have led to an understanding that, in the mid-1970s, although the subject had spread to a wide range of universities and had developed "tighter self-conception in terms of problem area and body of knowledge",<sup>2</sup> the status of the field remained somewhat uncertain and subject to controversy. The field of study was metaphorically moving from the study of all aspects of employment – economics and law, labour relations, industrial sociology and psychology – to a narrower and more coherent field of research and teaching. The discipline also suffered as it was seen to be a "descriptive appendage to economics".<sup>3</sup>

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<sup>1</sup> Associate Professor Laffer retired on 20 June 1975.

<sup>2</sup> B Kaufman, *The Global Evolution of Industrial Relations: Events, Ideas and the IIRA*, (2004, International Labour Office) at 423.

<sup>3</sup> J Isaac, 'Foreword' in D Plowman and S Deery, *Australian Industrial Relations*, (1980, McGraw Hill) at vii.

- 5 By the late 1970s and early 1980s, the theoretical underpinnings of industrial relations were firmly established and provided a means of explaining, shaping and reflecting emergent industrial relations systems. The paradigm was that of a collectivist system built upon legal enactment with models of regulation through formal institutions and a supportive common law of employment. The foundation for that paradigm arose from the restructuring of employment in the post war period. That historical development and its predecessors assist in understanding both the emergence of industrial relations models in the late 20<sup>th</sup> century and the somewhat radical changes arising at the end of that period and the beginning of the 21<sup>st</sup> century.
- 6 I will begin my modest retrospective with reference to an American academic named Henry Carter Adams, who became the first person, it would seem, to use the term ‘industrial relations’ some 120 years ago.<sup>4</sup> As the 19<sup>th</sup> century moved into the twentieth, Adams, in the company of other notable scholars from around the industrialised world such as Sidney and Beatrice Webb, John R Commons and Lujo Brentano from Britain, the United States and Germany respectively,<sup>5</sup> was taking the first tentative steps towards the development of the discipline of industrial relations as we know it.
- 7 These pioneering thinkers examined the employment relationship broadly (whether private or public, union or non-union, formal or informal),<sup>6</sup> positioning their work as an alternative to the conventionally accepted classical or neoclassical economic theories of labour.
- 8 A somewhat colloquial expression of this broad focus was provided by John Hilton, a British industrial relations scholar writing in the 1930s.

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<sup>4</sup> B Kaufman, “The Theoretical Foundation of Industrial Relations and Its Implications” (2010) 64,1 *Industrial and Labour Relations Review* 74, 78.

<sup>5</sup> Ibid, 74.

<sup>6</sup> See B Kaufman, “The Core Principle and the Fundamental Theorem of Industrial Relations” (2007) *Andrew Young School of Policy Studies, Research Paper Series*, Georgia State University, 7 for examples of this focus in the literature of that period.

Industrial relations, Hilton said, is “how people who draw wages and the people who pay the wages get on together”.<sup>7</sup>

- 9 Such scholars saw the labour market as inherently unstable, inefficient and unjust; hence, they promoted efficiency and equity with a wide ranging but delimited program of market regulation, power balancing and democratisation of industry.<sup>8</sup> Their goal was to resolve the ‘labour problem’ within the economic context of democratic capitalism by tracing a “middle way” between, on the one hand, unregulated capitalism and, on the other, socialist revolution.<sup>9</sup> The industrial relations solution was “...a pragmatic, incremental but cumulatively substantial reform, reengineering and re-balancing of the institutions of capitalism in order to bring more stability, efficiency, justice, and human values to the employment relationship”.<sup>10</sup>
- 10 At this stage, the discipline of industrial relations, therefore, endeavoured to “ameliorate or solve these labor problems through a mix of institutional interventions, social re-engineering, and humanist ethical practices in labor and other markets”.<sup>11</sup> Industrial relations, so described,<sup>12</sup> first appeared as a formal field in the social sciences internationally in around the 1920s as the labour movement gained strength.
- 11 I will briefly suspend the historical analysis here. Given modern discourse on the topic of industrial relations, one may be forgiven for thinking it had a physical presence. It is, after all, a concept which, in my view, is partially manifested by the field of study, the demonstrable practice of labour relations, and, of course, in the modes of regulation (both in terms of the statutory systems and the various areas of law that govern working

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<sup>7</sup> Quoted in B Kaufman, “Paradigms in Industrial Relations” (2008) 46,2 *British Journal of Industrial Relations* 314, 316.

<sup>8</sup> *Ibid.*, 331.

<sup>9</sup> Kaufman, above n 4, 76.

<sup>10</sup> *Ibid.*

<sup>11</sup> Osterman, Kochan, Locke and Piore cited in Kaufman, above n 4, 83.

<sup>12</sup> This is not the only possible conception and articulation of industrial relations, as the field varied across time and nations, but it commands attention as the origin of the discipline as a formal concept and an institutionalised entity in both the academic and industrial worlds: Kaufman, above n 6, 40.

relationships more widely). In consequence, the definition and content of industrial relations have been in a state of flux.

- 12 The first significant shift in the paradigm of industrial relations occurred during the 1950s when, around the world, the field narrowed its attention towards the study of trade unions, collective bargaining and labour-management relations.<sup>13</sup> From this time, following the transformation of the structure of the workforce that occurred after the Second World War, the “original industrial relations paradigm”<sup>14</sup> and its intellectual foundations were being modified to accommodate the changed employment regime. It was during this significant shift in the paradigm of industrial relations that Kingsley Laffer commenced, in 1953, the first teaching and research of industrial relations in Australia as a discrete course. It was also at this time that he was involved in the development of the Industrial Relations Society NSW, which conducted its inaugural meeting in May 1958.
- 13 The change in the structure of the workforce coincided with the emergence of what Stone and Arthurs have described in their pioneering book, *Rethinking Workplace Regulation*, as the “standard employment contract”. It emerged, according to the authors, “at a particular historical juncture at the mid-point of the 20<sup>th</sup> century, when changes in economic organisation, the structure of the family, and the regulatory power of the nation-state came together to favour the standardisation and stabilisation of labour market relations”.<sup>15</sup>
- 14 It might be noted that the concept of employment as a species of contract is recent, born, as discussed by Owens, Riley and Murray, “out of the Fordist model of production enterprise”.<sup>16</sup>

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<sup>13</sup> Kaufman, above n 7, 317.

<sup>14</sup> Ibid, 314.

<sup>15</sup> Simon Deakin, 2002 (quoted in a lecture by Dr Chris Wright at the University of Sydney).

<sup>16</sup> Rosemary Owens, Joellen Riley, and Jill Murray, *The Law of Work*, (2011, Oxford University Press) at 212.

- 15 The standard employment contract was described by Stone and Arthurs as having the following features:
1. It was secure, open ended, long-term and full-time;
  2. It was a direct relationship between the parties;
  3. It provided decent wages and increasing remuneration with seniority/ promotion ladders for advancement within the firm;
  4. It was accompanied, over time, by additional working rights such as protections against unfair treatment at work and social insurance; and
  5. In terms of regulation, it was accompanied by discouragement and restriction of non-standard forms of employment.
- 16 Stone and Arthurs contended that this model became “one of the pillars of the post war economic system. Decent wages gave workers the opportunity to consume, to acquire the accoutrements of middle-class life, and to better the prospects of their families. The availability of long-term employment gave them the confidence to save and invest...Moreover, the standard employment contract, by providing governments with a dependable revenue stream based on income and consumption taxes, made possible the post war welfare state”.<sup>17</sup>
- 17 In Australia, workers engaged under such contracts were granted rights and entitlements under labour law superimposed over the contract of employment. It is worth noting that the standard employment contract was neither automatic nor universal during this period – some workers enjoyed more job security and associated benefits than others, while some had none at all. However, the pervasiveness of this arrangement undeniably shaped the industrial relations paradigm at that time, as the study, practice and regulation of industrial relations centred on continuing employment relationships.
- 18 It is not entirely clear why, consistently with the theoretical construct discussed earlier, the system of conciliation and arbitration in Australia, which emerged at the beginning of the 20<sup>th</sup> century, did not result in the

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<sup>17</sup> K Stone and H Arthurs (eds), *Rethinking Workplace Regulation: Beyond the Standard Employment Contract*, (2013, Russell Sage Foundation) at 3.

earlier development of this concept of industrial relations. This may be a matter of further research. In any event, the emergent contract of employment no doubt acted as a foundation upon which systems of conciliation and arbitration were based. Nonetheless, those systems have, until more recent times, dominated employment regulation.

- 19 I note in passing that the regulation of industrial relations went through a significant change during this period as a result of the judgment reached in the *Boilermakers* decision in 1957 and resulted in the establishment of the Conciliation and Arbitration Commission.<sup>18</sup>
- 20 The progressive development of the paradigm of industrial relations in the post war era reached maturity in Australia during the late 1970s and, in particular, the early 1980s. There developed an accepted domain of methodology, assumptions and analytical technique for the field of study and research.
- 21 The domain of the field of industrial relations in Australia was eventually narrowed by drawing upon two theoretical but compatible industrial relations models or streams. First, the importation from the USA of John Dunlop's industrial relations systems model, with its emphasis on a web of rules. The second from the UK, with the Oxford schools concept of job regulation.<sup>19</sup> In the latter case, the focus was principally upon the tribunal system and the process of collective bargaining between trade unions and employers or their organisations.<sup>20</sup> The centre of the teaching of industrial relations was undertaken within a pluralist and collectivist frame of reference in which the 'relations' within the concept of industrial relations were inherently the relations of conflict.<sup>21</sup>

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<sup>18</sup> *Attorney General of the Commonwealth v The Queen* (1956) 94 CLR 254 and (1957) 95 CLR 529.

<sup>19</sup> Kaufman, above n 2, 424.

<sup>20</sup> *Ibid.*

<sup>21</sup> D Plowman, S Deery and C Fisher, *Australian Industrial Relations* (1981, McGraw Hill); see also Kaufman, above n 2, 424.

- 22 The theoretical underpinning of this growth was, as Blain and Plowman described in 1987, “the study of the interactions between and among employees and employers, their respective organisations and intermediaries, focusing on the regulation of work”.<sup>22</sup> It might also be noted that it was in this era that the first industrial relations textbook was published (in 1981).<sup>23</sup>
- 23 Bruce Kaufman noted that the adoption of these models during that period meant the study of industrial relations was “largely coterminous with modes of regulation and rule making through formal institutions [and] with collectivist processes of legal enactment and collective bargaining at the core”.<sup>24</sup>
- 24 The explanations for these developments have, in my view, the strongest foundations in economic theory. Australia, like the rest of the industrialised world, experienced stagflation from the mid-1970s to the early 1980s, with high inflation and unemployment rates rivalling low economic growth. The labour movement had significant political and industrial power with a heavily unionised labour market. A significant component of inflation was considered to be wage inflation.<sup>25</sup> The policy initiatives developed to meet these changes had, as their centre, a social contract, the Accord, and the use of the existing regulatory systems to construct an incomes policy; the programme of wage indexation.<sup>26</sup> The Australian Conciliation and Arbitration Commission was, as Kaufman described it, “delegated the job of establishing and monitoring appropriate wage norms”.<sup>27</sup> These measures fell quintessentially within the framework of industrial relations theory and practice which I have thus far described.

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<sup>22</sup> N Blain and D Plowman, “The Australian Industrial Relations Literature, 1970-1986” (1987) 29, 3 *Journal of Industrial Relations* 295, 296.

<sup>23</sup> D Plowman, S Deery and C Fisher, above n 21.

<sup>24</sup> Kaufman, above n 2, 424.

<sup>25</sup> *Ibid.*, 427.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

- 25 Throughout most of this period the standard contract of employment model remained relatively stable.
- 26 The late 1980s and 1990s witnessed, however, a paradigm shift in employment regimes and industrial relations.
- 27 The study of industrial relations was affected by the rise of business schools and HRM. The convergence of these disciplines led to what Kaufman described as “some new hybrid field of study, most often called “employment relations”.<sup>28</sup> This model of industrial relations was not only confined to relations of a social, economic and legal nature but focussed on the relations of employee and employer and the concomitant Human Resources systems. I note that the Department of Industrial Relations with which I was familiar now goes by the name ‘Work and Organisational Studies’.
- 28 After the collapse of the Accord, the public regulatory system for industrial relations in Australia shifted from the exercise of power by centralised tribunals to enterprise bargaining. The *Industrial Relations Reform Act 1993* commenced the devolution of the industrial relations system to an enterprise framework which, through successive pieces of industrial legislation, became variously collective and non-collective in nature depending on the prevailing political aura.
- 29 This reform gave formal recognition to the evident advantages of having localised relationships. The enterprise was envisaged as being at the centre of the Federal industrial relations system, with new rules about how parties were to conduct themselves in negotiating wages and employment conditions to be incorporated into enterprise agreements. This shift also pervaded State industrial relations systems. Incidentally, the New South Wales system pioneered the shift to enterprise bargaining in wage fixing

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<sup>28</sup> Ibid.

systems with the introduction of the enterprise arrangements principle in the *State Wage Case – May 1991*.<sup>29</sup>

30 It is often said that this change represented a decentralisation of the industrial relations system. However, I do not consider this description to be accurate. Whilst there has been a devolution of responsibility for setting wages and employment conditions to an enterprise level in the Federal arena, the power to regulate industrial relations has moved in precisely the opposite direction. It became increasingly concentrated almost entirely in the hands of the Commonwealth following the 2006 takeover of the States' industrial relations powers in respect of the private sector.<sup>30</sup> Agreement making processes are regulated by the Fair Work Commission under a complex set of rules. In New South Wales, the Industrial Relations Commission's jurisdiction is now limited to the public sector and local government.

31 It may also be observed with some irony that the centralisation of power over regulation of the labour market runs directly counter to measures proposed by the recent report of the National Commission of Audit - "Towards Responsible Government" - designed to rekindle competition between the States. This inter-jurisdictional competition, it is argued, would encourage innovation and lead to greater efficiencies and less cost. The concept has been referred to as "competitive federalism" whereby the Commonwealth would provide greater scope for the States to compete with each other on such matters as taxes, services, minimum wages, education and health. The Commission of Audit, however, did not mention industrial relations (other than the reference to minimum wages). However, as the late honourable J W Shaw QC stated in 2002:

There is nothing unique to industrial relations about competitive tribunals. It occurs in the mainstream court system. Adam Smith noted in *The Wealth of Nations* that competition amongst courts

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<sup>29</sup> (1991) 36 IR 362 at 363.

<sup>30</sup> In 2009, the NSW Labor Government ceded its powers to the Commonwealth in relation to non-constitutional corporations putting the whole of the private sector into the Federal jurisdiction. NSW IR laws apply only to the majority of the public sector and local government.

had led to the development of causes of action like trespass, and he, as an advocate of the free market, regarded that as a good thing.<sup>31</sup>

- 32 The change in the scheme of industrial relations brought about by the enactment of the 1993 Act also began the displacement of conciliation and arbitration as the main focus of the Federal industrial relations system and the relegation of awards to the role of a safety net above which bargaining could occur.
- 33 Successive changes in the Federal industrial regulatory setting saw the effective abolition of the system of compulsory conciliation and arbitration which had operated in Australia until the early 1990s. Notwithstanding some restitution under the *Fair Work Act 2009 (Cth)*, the Fair Work Commission remains essentially a voluntary dispute settlement body having an overarching role in setting safety net award conditions and the approval of enterprise agreements.<sup>32</sup>
- 34 However, whilst the movement towards enterprise bargaining was radical in nature, it did not change the fundamental construct upon which the regulatory system was based. The axis of the system remained the contract of employment and the focus of dispute resolution remained non-localised and predicated on a conflict model.
- 35 At this time there also occurred a significant decline in union density. Various models to address the decline such as the ACTU's organising work program bargaining model seemed to have had some limited initial success but appear to be faltering.
- 36 These developments closely coincided with, and, I would argue, were related to (even if not consciously), significant worldwide shifts in

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<sup>31</sup> Jeff Shaw QC, 'Should we centralise Labour relations?' (2002) 46 *Quadrant* 36, 37.

<sup>32</sup> A Forsyth and H Smart, "Third Party Intervention Reconsidered: Promoting Cooperative Workplace Relations in the New 'Fair Work ' System" (2009) 22 *Australian Journal of Labour Law* 117, 13.

employment regimes which have been documented by Stone and Arthurs and in research undertaken by Dr Chris Wright at the University of Sydney.

37 This reconstruction of employment regimes was manifested in four ways:

- (1) To quote Arup and Mitchell, “the life-course of the typical worker today no longer even vaguely resembles the linear progression, in discrete segments, from education, to full time employment, to retirement, which lay at the heart of the old labour law framework”.<sup>33</sup>
- (2) The growth of non-standard forms of employment, such as contract and labour hire workers or precarious employment relations. These may be arrangements of an explicitly or implicitly limited duration, part time or project specific work and also consist of independent contractors or sub-contractors.
- (3) The emergence of fragmented organisational forms or different forms of organisation such as franchise, self-employment or home based work.
- (4) The emergence of extended supply chains. Such organisational restructuring has limited the regulatory power of the state, as multinational corporations now use extended supply chains with varied non-standard working arrangements. This may involve exporting work to newly industrialised nations.

38 The effects of these changes on the standard contract arrangements are profound. Stone and Arthurs have observed that, while the standard employment contract previously represented the paradigmatic set of relationships believed to be sufficiently typical to serve as the model for working arrangements, “[c]hanges in firm-level employment practices and labor market dynamics have undermined the descriptive validity, statistical incidence, and normative power of that paradigm”.<sup>34</sup> The authors

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<sup>33</sup> Arup and Mitchell quoted in R Johnstone et al, *Beyond Employment: the Legal Regulation of Work Relationships* (2012, The Federation Press) at 98.

<sup>34</sup> Stone and Arthurs, above n 17, 7.

concluded that, somewhat unsurprisingly, regulatory systems based upon the previous model have become “increasingly unstable”.<sup>35</sup>

39 The drivers for this change are at least threefold:

- (1) There has been a significant decline in the post-war Keynesian settlement.
- (2) Advancing globalisation, technological progress and new approaches to management.
- (3) Employment protection is increasingly seen as inhibiting organisational competitiveness.

40 The changes in employment regimes have created a dichotomy of outcomes.

41 Such arrangements enable work providers to hire individuals with specific skills on an as-needed basis from the external labour market,<sup>36</sup> which assists their need to respond more quickly to a more varied market.

42 For some classes of worker, this has meant high mobility between workplaces and a competitive power in securing wages. For others, this shift has resulted in flat or declining real wages, reduced social protection, weakened political influence and a diminishing capacity to defend their own interests.<sup>37</sup> Although flexibility may benefit a worker who can operate successfully as a free agent in a boundaryless workplace, it also effectively passes economic pressure or risk down to the parties least able to resist or counteract it,<sup>38</sup> potentially driving labour market polarisation.<sup>39</sup>

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid, 8-9.

<sup>38</sup> R Johnstone et al, above n 33.

<sup>39</sup> C Wright, above n 15.

- 43 In any event, it is clear that the preference for standardisation and stability is disappearing in the current globally competitive market, and, to a large degree, the primacy of the standard employment contract is going with it.
- 44 The brief excursion into the annals of industrial relations study, practice and regulation which I have undertaken in this paper suggests that existing models of industrial relations, whether based in theory,<sup>40</sup> practice, or regulation, will be increasingly strained as classical notions of the employment contract continue to alter and work regimes are reconstructed, except perhaps in areas of employment that have been, to a greater or lesser extent, quarantined from these significant structural changes. I have in mind, in this respect, public sector employment, whether it be at a federal, state or local level.
- 45 This is the precipice upon which industrial relations theorists, practitioners, regulators and policy makers stand. I shall now venture some discussion of the future in terms of systems of regulation.
- 46 Contemporary scholarship confirms the inevitable conclusion. Regulation must adapt to reflect the current labour market as it is completely different from the labour market which gave rise to existing systems of regulation and the standard employment contract.<sup>41</sup> Research has shown that a focus on continuing employment in regulatory regimes produces protective outcomes that diminish in effectiveness the further away from the standard employment contract a work relationship is.<sup>42</sup> We simply cannot rely on a 20<sup>th</sup> century regulatory system in a 21<sup>st</sup> century world.
- 47 The challenge for contemporary labour theorists and policy makers is, therefore, to develop a regulatory system which ensures that the original objectives of industrial relations are realised in the modern workplace.

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<sup>40</sup> Elsa Underhill and Malcolm Rimmer, "Industrial Relations" (1998) *Australian Research Council: Challenges for the Social Sciences and Australia*, 147-55.

<sup>41</sup> Stone and Arthurs, above n 17, 7.

- 48 One reform that may be considered to the present regulatory system is to shift the resolution of disputes, aided by public regulatory agencies, to purely localised systems. Such a reform would be consistent with the original reforms towards enterprise bargaining.
- 49 An expression of this goal, away from traditional models, may be the establishment of compulsory pre-claim processes to resolve employment problems collaboratively, which have as their objective the improvement of productivity and the provision of assistance to make human resources work most effectively. The support mechanisms to assist enterprises in Australia's Federal system of industrial relations fall well short of those found in other democracies including Canada, Ireland, the United Kingdom and the United States.<sup>43</sup>
- 50 An example of an international application of the localised approach is provided by Bluestone and Kochan, who proposed a fresh approach to labour-management relations in the public education system in Massachusetts following considerable conflict between public sector unions and the Commonwealth of Massachusetts over collective bargaining rights and education reform.<sup>44</sup> Their objective was to move away from the traditional adversarial structures and processes of collective bargaining and grievance resolution, embedded in systems based on the standard employment contract, to a process characterised by shared responsibility between individual schools, teachers and unions for outcomes involving a collaborative approach to be achieved by interest based bargaining at a local level.
- 51 The model envisaged broader, regional or even statewide collective bargaining for setting wage and benefit levels. It also proposed:

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<sup>42</sup> Johnstone et al, above n 30 (see, particularly, Chapter 5).

<sup>43</sup> See A Forsyth and H Smart, above n 32, for a summary of agencies and their dispute prevention roles in these other countries.

<sup>44</sup> Barry Bluestone and Thomas A Kochan, 'Towards a New Grand Bargain, Collaborative Approaches to Labor-Management Reform in Massachusetts' (2011) *The Boston Foundation*..

- Development of day-to-day shared responsibility among principals, teachers, and their union representatives at each school site for continuous problem solving joint decision-making.
- Creation of forums at the district level for engaging superintendents, school committee members, parents, and union leaders in the task of building a shared vision for educational innovation and leading, monitoring, sustaining, and communicating the results of innovation efforts to all interested stakeholders.<sup>45</sup>

- 52 Bluestone and Kochan referred to what they described as "strong" precedents for their approach (Saturn, Ford, and Kaiser) and stated that extensive research demonstrated that, where labour relations were transformed along the lines of these precedents, productivity improvements outpaced those in traditional non-union settings by 15 per cent and in traditional union settings by a margin of 35 per cent.<sup>46</sup>
- 53 In Australia there have also been "green shoots"<sup>47</sup> within existing regulatory systems. New forms of regulation for franchise holders and Textile, Clothing and Footwear outworkers, for example, "demonstrate solutions which can be tailored to particular problems and particular industries".<sup>48</sup> Further, innovative regulation in the federal jurisdiction of those outworkers as well as road transport industry participants suggests that such "targeted regulatory solutions are possible to protect workers irrespective of the form that their contractual arrangements take".<sup>49</sup>
- 54 Both local and international models point to the significant role that public industrial regulatory bodies such as the New South Wales Industrial Relations Commission may play in achieving such outcomes. That role may range from the provision of a quick and cost effective means of resolving conflicts involving individuals or small groups of employees (such as typical interpersonal disputes, the breakdown in working relationships

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<sup>45</sup> Ibid, 6.

<sup>46</sup> Ibid, 8.

<sup>47</sup> Stone and Arthurs, above n 17, 12.

<sup>48</sup> Johnstone et al, above n 33, 130

<sup>49</sup> Ibid.

and bullying and discrimination matters), the anticipation of workplace difficulties (not just through formal dispute procedures but by the taking of pre-emptive action to manage problems associated with changes in workplace systems or practices, such as occurred over many years with Bluescope Steel in Port Kembla), to informal processes anticipatory of the renewal of workplace agreements. All of these things have the character of pre-claim conciliation processes or steps taken very early in formal disputes and have, as their objective, the improvement of productivity and the provision of assistance to make human resources work most effectively. These processes can produce lasting change in the relationship between employers and employees and their representatives, as well as enormous improvements in productivity.

- 55 The flexibility that the *Industrial Relations Act 1996 (NSW)* provides the Commission in dealing with industrial disputes is obviously effective. The Act requires the Commission "to do everything that seems to be proper to assist the parties to agree on terms for the resolution of the dispute".<sup>50</sup> That provision gives the Commission a wide mandate including educative and preventative roles in individual and collective issues, and, of course, a hands-on role in the negotiating process through conciliation or mediation, and a monitoring role once the dispute is resolved.
- 56 It is arguable that a natural extension of this facility is to provide the Commission with an even broader role which, with appropriate resources, might enable it to adopt some of the functions undertaken by industrial tribunals in other industrialised countries.<sup>51</sup>
- 57 In discussing such reforms, there must be a pause to consider humanist considerations. Workers who depend upon selling their labour still require "a sufficient and reliably secure income to sustain decent living standards and to manage the usual vicissitudes of life: the risk of illness and injury; calls to support dependents in need; and the inevitable prospect of infirmity

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<sup>50</sup> s 134(1).

in old age”.<sup>52</sup> There appears to me to be a need for policy makers to endeavour to replicate some of the benefits of the standard employment contract in the context of contemporary industrial relations, in order to address the specific vulnerabilities workers face in the 21<sup>st</sup> century,<sup>53</sup> and to ensure that there is adequate protection for all workers.<sup>54</sup> In my view, the development of a flexible and localised regulatory system, which reflects the current paradigm of industrial relations, would be a step towards achieving this goal.

58 Looking back once more, it is evident that industrial relations was indeed the ‘emerging discipline’ described by Kingsley Laffer in his lecture. The field at present faces different, and in some senses more complex and difficult, challenges. The reforms proposed in this paper represent a response to such challenges by addressing the shifting paradigm of industrial relations which has driven them.

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<sup>51</sup> Forsyth and Smart, above n 32.

<sup>52</sup> Ibid, 186-7.

<sup>53</sup> Stone and Arthurs, above n 17, 75.

<sup>54</sup> Ibid, 233.