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FIRST NATIONAL CONFERENCE ON INDUSTRIAL SAFETY

HYATT KINGSGATE HOTEL, SYDNEY

THURSDAY, 18 NOVEMBER 1982,

INDUSTRIAL SAFETY AND LAW REFORM

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission
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A NATIONAL PROBLEM

What a shocking commentary it is on the attention of the Australian people to industrial safety that this Conference can be called, without challenge, the 'First National Conference on Industrial Safety' in Australia. The aggregation of dead and injured workers reproaches us that we have nearly reached the third century of Australia's modern development, yet only now are we beginning to look as a country at the best ways of tackling the problems of accidents, injury and disease at work. Australia's development has co-incided exactly with the first Industrial Revolution. We are overwhelmingly a metropolitan people. As a country, until now, we have all to often shown indifference, resignation and buckpassing, to the daily evidence of lack of work safety. These attitudes must stop. They must be replaced by more sensitive concern and by imaginative policies which tackle the problems of industrial safety. I take this to be the objective of this Conference. Bringing together people from relevant disciplines and different parts of Australia, to tackled the issues of industrial safety is timely. Indeed, it is overdue.

In the High Court of Australia, Mr. Justice Murphy has, on a number of occasions, called attention to the interaction of the law and industrial safety. In doing so, he has had a few harsh things to say. For example, in Raimondo v. The State of South Australia[1], in dissent, he observed:

> 'Industrial accidents are a very serious national problem: every working day one Australian is killed and 1500 suffer significant personal injury. In the financial year 1974, fatalities were 300, temporary disabilities, involving the loss of one or more working days or shifts, 360,000, and working time lost from disabilities of one day

> or longer 1,010,000-man weeks.[2] Conservatively estimated the annual social cost is about $2,000million.[3] This is of somewhat the same order as the national defence budget. These figures do not include those for accidents travelling to and from work or for industrial disease...By international standards, Australia does not have a good record in industrial safety. It is generally accepted that the standard of care by those responsible for industrial safety should be upgraded. The Federal and State Governments are currently engaged in a campaign with this aim. The primary (but not the only) responsibility for industrial safety is on those managing industry, that is the employers'.[4]

Mr. Justice Murphy returned to this theme last December in his judgment in Todorovic v. Waller.[5] Again in dissent, this time agreeing with Mr. Justice Stephen, he brought up to date the appalling record of death and injury:

> 'To compensate plaintiffs adequately, according to the traditional principles of restitution, would be extremely costly in an era where enormous damage is caused by industrial and road accidents. Uniform and comprehensive statistics of industrial accidents are not available in Australia. However, in industry, each year there are at least 300 deaths and 300,000 disabling injuries (causing loss of some 1 million person weeks of working time of one day or more from work). This does not include death or disablement from disease and accidents on journeys to and from work.[6]...Road accidents in 1980 caused 3,272 deaths...But one way to reduce the burden is to transfer some or all of the social costs to the injured persons and their dependants. This has been the preferred judicial method, achieved (a) by unjustifiable discount rates...applied to earnings and expected medical expenses which the courts pretend will not increase with inflation; (b) by ignoring general increases in wages due not to inflation but to increases in productivity; (c) by miserable awards for pain and suffering for catastrophic injuries; and perhaps the worst (d) by declining to implement the direction in compensation to relatives legislation to award damages proportional to the injury...This has transferred much of the cost of serious road or industrial accidents (which would otherwise be borne by insurance companies and ultimately the public) to the injured person...In my opinion the Court should not continue, by giving less than full restitution, to reduce the pressure for measures to reduce the accident toll. The judicial policy of depressing damage awards means that insurance premiums are kept within

> tolerable limits even with very high rates of death and injuries. It obscures the true social costs. The unintended result is a social acceptance of a high rate of road and industrial deaths and injuries which would not be acceptable if the premiums reflected the implementation of full restitution. In practice, therefore, this judicial policy has contributed to the high rate of deaths and injuries...If the principle of full restitution had been observed, the demand for action to reduce deaths and injuries would have been irresistible'.[7]

Strong words. What about action?

ACTION ON INDUSTRIAL SAFETY IN AUSTRALIA

Of course, we must preface any examination of action by a realisation that the law and law reform will have only a supportive role here. No one would pretend that passing a statute - even an effective national statute - could, with a stroke, sweep away injuries and death. We must acknowledge that there is a level of human destruction that is part and parcel of the modern motor vehicle, factory and way of living. World-wide statistics establish the high risks of certain occupations, such as working on off-shore oil rigs, timber felling and quarry mining. To state these truisms is not to invite reinforcement of the apathy and resignation that often mark our response to industrial safety. It is simply to put the debate into context. Our efforts, in policy and law reform must be directed at reducing traumatic injury and disease to the truly unavoidable level. The recent Pearson Committee into civil liability and compensation in England concluded:

> 'An indication of the extent to which work injuries might be prevented is given by an analysis of a random sample of accidents in factories and in construction industry during the second half of 1972 carried our by the Factory Inspectorate. They found that for about half of all accidents, no reasonably predictable precautions were available. Where precautions were available, but not taken, the failure to do so was more often the responsibility of management than work people'.[8]

Some would dispute the estimate of the English Factory Inspectorate. Some would say the proportion of preventable industrial accidents and diseases was more than half; others, less than half. But if the figure be right, or even nearly right, and if it reflects (as it probably does) no better figures in Australia, we are exacting a shocking toll of unnecessary death and suffering. And this to say nothing of the economic dislocation that must flow from industrial injuries, removal from the workforce and the necessity to fund

compensation for victims or their dependants. As we are always reminded at election times, in the end someone pays. The tab of personal suffering is picked up by a disproportionate number of migrants and other workers exposed to high risk occupations. The tab of economic costs is picked up by the whole community.

Now, I do not wish to infer from what I have said that this is the first time anyone has got together to talk about industrial safety in Australia. Quite the contrary. There have been many conferences, including some in which I have taken part. For example, an important review of health and safety at work in February 1979 had resulted in a useful publication on the subject by CCH Australia Limited.[9] Nor should it be inferred that Australian policy and lawmakers have been entirely indifferent to the predicament exposed by the figures I have quoted. On the contrary, there has been a flurry of enquiries and even some legislative activity. For example, in South Australia the outgoing Government established a Workers Rehabilitation Board and a Workers Rehabilitation Unit. By way of responses after the event to encourage employers to face up to the real problem of responsibility for safety, a provision has been introduced by which an employer who has a very bad claims record may be given either a large workers' compensation premium increase or even refused insurance cover. The former South Australian Minister of Industrial Affairs, Mr. Dean Brown declared in September 1982:

> 'The employer must wake up to his real problem. His premium rates rest to a large extent on his own hands. Safety and the rehabilitation of injured workers are his responsibility. He cannot expect his premium rates to...continue to be set at a rate lower than the claims pay-out'.[10]

In Victoria, it was reported in August that the State Government is considering a new tax on employers to finance research into worker safety. As reported, the Minister for Labour and Industry, Mr. Rob Jolly, was examining a proposal for a 1% levy on workers' compensation premiums paid by companies to fund a commitment to the reduction of industrial accidents and work related illnesses.[11] Employers representatives concerned with the increase in workers' compensation premiums, opposed the idea. But Mr. Jolly said that he intended to continue with it as part of the financial arrangements for a new Health and Safety Commission in Victoria to tackle prevention, not just compensation:

> 'Research and new training procedures for inspectors can prevent huge losses both in human and economic terms. It is a challenge that we as a Government, employers, trade unions and insurance companies have to face'.[12]

In New South Wales, it is reported that the Government has before it a number of proposals for new legislation in industrial safety. A draft Bill was prepared by a tripartite committee representing a range of community interests, including employee and employer groups and the N.S.W. Department of Industrial Relations. Newspaper reports suggest that a number of problems have cropped up. One of them seems to be the applicability of the State occupational health and safety laws to companies falling under Federal industrial awards.[13] Another is said to relate to the large rises in compensation premiums in recent months. According to the Australian Financial Review[14]:

> 'The large rise has been added to the employer's arguments against the N.S.W. Government's plans to improve the State's occupational health and safety system. Legislation aimed at improving occupational health and safety practices in N.S.W. is expected to be introduced in the N.S.W. Parliament later this year'.

I am not aware of the design of the proposed N.S.W. legislation. Unhappily, a great deal of secrecy still surrounds the preparation of important, socially relevant legislation in Australia. The method used by the Law Reform Commission to encourage expert, lobby and citizen discussion of social legislation has not yet caught on in Canberra or Macquarie Street. But various hints have been dropped about the proposed law. For example, in a National Times article on repetition injury (a matter that will be dealt with later in this Conference) it was revealed that the proposed legislation will confer on workers the right to refuse to carry out dangerous work without victimisation.[15] As I shall show, this is a commonplace provision in the law in Canada.

Although we have not yet seen a major Commonwealth move, in recognition of a perceived national responsibility, into the area of industrial health and safety, there have been a few relevant developments that should be noted. Indeed since the late 1940's, the Commonwealth has been playing a co-ordinating role: bringing together State and Federal officials and working towards the development of standards and codes of practice on occupational health and safety. Until now, this has been done substantially by regular meetings of Commonwealth and State Ministers. The meeting of officials - the Department of Labour Advisory Committee (DOLAC) has also played some co-ordinating role.

The present Commonwealth Minister for Employment and Industrial Relations, Mr. Ian Macphee, has a background of keen interest in industrial matters. Before his entry into politics, he was active in the Chamber of Manufactures. He was Director of the Victorian Chamber between 1971 and 1974. In a recent speech, he pointed to a number of recent Commonwealth initiatives:

* DOLAC has extablished a permanent working party of Federal and State health and labour department interests. This body has invited employer and union representatives to participate. It is reviewing the need for more permanent national arrangements.

* At the National Labour Consultative Council, employer representatives proposed, with the support of employee interests, the creation of an Occupational Safety and Health Committee. This Committee had its first meeting on 22 July 1982. It will examine issues of national significance. Health and State interests are to be represented on the Committee.

* Improved liaison is being established at the Federal level with the Minister of Health, given that safety and health issues so frequently 'shade into each other'.

* As a result of this on-going co-ordination, there have been gradual amendments of State regulations to embody agreed uniform standards, particularly in the building and construction industry.

* In the area of its own employees, the Commonwealth has adopted a code of general principles of occupational safety and health. Discussions are under way to reinforce what the Minister has described as 'a consistent program of preventative action throughout the Commonwealth employment area'. Furthermore, with some minor amendments, the Governments of Western Australia, South Australia, Victoria and New South Wales have already adopted the code in respect of their own employees.[16]

Should the Commonwealth go further? Given the figures of loss and suffering and given that a good proportion may be preventable, is this an area in which further national initiatives would be useful? Certainly, the National Committee of Enquiry into Compensation and Rehabilitation in Australia thought so. The second volume of that Committee's report (known popularly as the Woodhouse report) dealt with issue of safety and rehabilitation.[17] As will be well known, Sir Owen Woodhouse and his colleagues recommend the substitution of a national system of compensation - broadly along society security lines - to replace the hotch potch of workers compensation, compulsory third party, tort remedy, sporting injury remedy, crimes compensation remedy, accident pay and other present means of redress. One of the chief criticisms offered by the Woodhouse Committee of the present system of compensating victims of industrial accidents and disease, was addressed to the concern of the system with recompense for victims after the event. Little or no concern was paid to preventing further like injuries or imposing court

orders for the correction of defective procedures. On the contrary, the reality of insurance all too frequently removes the financial incentive to remedy dangerous or unhealthy circumstances, because the actual cost is not borne by the employer directly, but by employers in aggregate, in the form of insurance premiums.[18] Furthermore, so far as rehabilitation is concerned, and especially in times of economic downturn, the provision of compensation and the inducement of high verdicts may sometimes positively impede rehabilitation by providing a motivation (conscious or unconscious) for continuing incapacity.[19]

It seems fairly clear that Federal Parliamentary Labor Party believes that the time is ripe for new and more direct Federal involvement, in Australia, in the sphere of health and safety at work. Senator Gareth Evans, Opposition spokesman on legal matters, announced in June 1982, following a meeting of Labor Attorneys-General and Shadow Attorneys-General, that a Federal Labor Government would embark 'on a major new attempt to secure nationwide reform of the law of accident compensation'.[20] Clear from the announcement is that apparent intention to abandon the unilateral Commonwealth action recommended by the Woodhouse report. Instead progress is contemplated 'on the basis of Commonwealth-State co-operation' and by a 'step-by-step approach'. The meeting apparently resolved to keep close contact with the New South Wales Law Reform Commission which is in the middle of a major study of accident compensation law in New South Wales, commissioned by Attorney-General Frank Walker. That Commission has made it plain that it regards prevention of accidents and rehabilitation of injured workers as being within its terms of reference, even though not specifically included.[21]

> '[I] t seems likely that some aspects of safety and rehabilitation are so closely related to the accident compensation system that they will need to be considered in the course of our Inquiry'.[22]

At the end of October 1982 Mr. Hayden committed a Federal Labor Government to 'upgrading Australian health and safety practices in the workplace'.[23] He stressed that the Federal administrative structure he had in mind would not be 'too top heavy'. However, he envisaged the establishment of 'an authority' specifically to licence and oversee the use of chemicals in industry. He also contemplated an undefined 'system' to collect information on health and safety and to conduct research and help in the training of occupational health workers. He stated that a Government led by him would also reform the law so that union appointed officers and committees have the right to police health and safety standards and processes. He contemplated, as well, reform of court procedures so that courts granting compensation could also order changes in work processes to prevent further injuries. He claimed that our record of work

related accidents was three times higher than that in Britain.[24] Statements earlier attributed to Mr. Hayden tend to indicate that he too sees a relationship between reform of accident compensation and reform of industrial safety laws:

> 'I don't think the conventional system of workers' compensation has much life left in it...It is my firm commitment and I stress it's a personal commitment, to a system of fair compensation integrated with a national rehabilitation program for victims of work related accidents and injuries. The aim would be, in fact, to provide not only cover for work caused and work related injuries and disabilities but non-work ones too. In the context of recent court decisions...the cost of premium and subscription to workers compensation will escalate substantially. In many respects the economics of workers' compensation must be questioned'.[25]

IS A FEDERAL APPROACH FEASIBLE?

On this issue, there is a not unfamiliar division of political opinion between the parties at a Federal level in Australia. The present Government contemplates persisting further with Federal/State co-operation, through working parties and committees, leaving Commonwealth involvement to a minimum - basically persuasion and example. The Labor Party envisages much more direct Federal involvement as a new initiative. The creation of new national institutions for research, training, standards and, apparently, some enforcement. Both parties talk in terms of Federal action. Both use the language of co-operation with the States. But clearly the Federal Labor Party is working up to an electoral promise of new initiatives in the area of health and safety at work at a Federal level.

It is important to recognise that Federal initiatives on this subject are not without constitutional problems in Australia. The Woodhouse report proposed the establishment of a National Safety Office to co-ordinate and help to fund safety projects, research and the definition of standard and 'an integrated attack on the accident problem as a whole'.[26] It also contemplated that the Safety Office would have the function to endeavour to co-ordinate the slow moving activity designed to harmonise or unify Australian State and Territory work safety laws. If Federal initiatives stopped here, there would probably be no constitutional impediment. The Executive Government of the Commonwealth almost certainly has the power, as such, to establish national bodies of an advisory character such as this. It is when it is contemplated to go further, that constitutional difficulties arise. The Commonwealth's power in the area of employment

and industrial relations is limited. There is the arbitration power, but that requires the indirect procedure of proceedings before the Arbitration Commission and limits the Commonwealth Parliament's direct legislative competence. Nine times the people of Australia have been invited to enhance this power. Nine times, at referenda, they have refused. There is, of course, the Territories power and the Commonwealth power over its own employees. But these could offer no prospect of national general legislation.

In the United States, a comprehensive act was passed by the U.S. Congress in 1970 depriving the States of much of their traditional area of responsibility in respect of work safety. The Act ensures a uniform national law on this subject. It now covers at least two-thirds of the total workforce of that Federal country. The United States legislation, is grounded, in section 2 of the Act, on a Congressional finding that:

> 'Personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hinderance to, interstate commerce in terms of lost production, wage loss, medical expenses and disability compensation payments'.[27]

In this way the United States law has been based on the interstate trade and commerce power, as it has been interpreted in that country. In the United States, a doctrine of 'comingling' or 'integration' of inter and intra State trade has been accepted. This doctrine permits Federal regulation of such intra-State trade as is incidental to inter State or overseas trade, at least where, in economic fact the two are so closely associated that uniform control is reasonable. A similar argument has not been accepted in the High Court of Australia.[28] Will things change? Economists may laugh at the Australian approach to Federal powers over inter State trade and commerce. Political scientists may regard the High Court's definition of the Federal power as naive in the extreme. The day may come when the High Court of Australia will expand the scope of the trade and commerce power to sustain, on the American analogy, Federal regulation where inter State and intra State trade have 'comingled'. But the decision of the majority of the Court in Minister for Justice of Western Australia; ex rel Ansett Transport Industries (Operations) Pty. Limited[29] in 1975 found only Mr. Justice Murphy willing to follow the American line of authority. Of the opposing justices, two have now retired. Furthermore, Mr. Justice Mason who sat in that case did not decide the point. Therefore the view of the High Court of Australia as presently constituted, cannot be predicted. Perhaps it can be said that the Court as now constituted has shown itself in matters of tax avoidance and elsewhere far more economically realistic than any Bench of the High Court since the

Second World War. Perhaps the time may be ripe for someone to test again the scope of the Federal power over interstate trade and commerce. The language is virtually identical to the United States Constitution, from which it was borrowed. Only the judicial authority has taken a different course. If an interpretation of the Australian trade and commerce power were upheld equivalent to that adopted in the United States, it would undoubtedly permit the valid enactment of a national Australian law similar to the United States Occupational Safety and Health Act of 1970 - in short, a national initiative on health and safety at work.

In addition to studying this line, Commonwealth lawyers in their expansive moments will no doubt be looking to the full purport of the power in respect of social security, insurance, the corporations power and, since Koowarta[30], the external affairs power in combination with ILO conventions as yet unsigned and unratified by Australia.

DIRECTIONS OF REFORM

Perhaps who takes the initiative on work, health and safety law reform may be less important than that a new initiative is taken and that it is taken in the right direction. Enough has been said to show that new initiatives are afoot. So this National Conference is timely and useful. Quite apart from political considerations and coming elections, I anticipate that cost factors will add to the pressures for new attention to work safety. Mr. Macphee has suggested that many employers would 'be in for a real surprise as the extent to which' the costs of accidents figure in their enterprise's overall cost in the form of workers' compensation premiums, the incidences of accidents and injuries and time lost and the effect on the firm's productivity and profitability incurred by meeting such costs.[30]

Apart from the costs of this kind, the direct cost of workers' compensation premiums has gone up so greatly in recent months that employers, large and small, are directly feeling the pinch of the cost of accidents reflected by various compensation schemes. One example of large premium increases cited in the press was that of Goodyear Tyre and Rubber Company (Australia) Limited. The company now has a workers' compensation premium bill equivalent to the total group net profit earned in the year to December 31, 1981. Goodyear's workers' compensation costs almost trebled from $2.3 million to $6.1 million in the present year. And that cost excludes premiums paid in Queensland where the overwhelming bulk of workers' compensation business is written by the State Government Insurance Office. Goodyear employs more than 3,000 people and, although the company is engaged in an industry regarded as a medium risk, its claims actually fell last year.[32]

Compensation insurance increases of this order are making even large companies think more seriously about prevention than ever before. Mr. Macphee has said that larger enterprises by now usually have some form of occupational safety and health program, simply because they have recognised the pay-off in terms of cost saving and improved productivity.[33] However he points out that employers of smaller numbers - those employing 100 people or less - tend to give 'minimal' attention to this problem. Plainly this is an area where reform activity could be directed.

Mr. Macphee was not insensitive to the problems that presently had beset small business people in Australia, including the sudden and rapid increase in compensation premiums:

> 'I can understand an instinctive reaction against suggestions from me that they should outlay more of their precious resources on improving the quality of work life of their employees. I hope however that on reflection there will be a realisation that productivity improvement and savings would more than offset any initial investment...[There is a] need to find solutions to avoid the costs in human suffering and to highlight not only the moral obligation but the sound business commonsense implicit in the adoption of proper occupational health and safety practices'.[34]

This is the point. Even in hard times, even in times of economic downturn, it is important that we should not lose the momentum on occupational health and safety laws. Our figures for injuries in Australia are sobering, indeed depressing. They are higher than most comparable countries. This reflects the division of national responsibility for occupational safety and varying degrees of concern about it in different parts of the country. It reflects a certain languid indifference to legislative and other initiatives, long since implemented, with effect, overseas. It reflects the concentration of the Labor movement upon compensating victims once injured and improving wages and salary, rather than upon prevention and rehabilitation. It reflects the attention of industrial tribunals to salaries and work conditions and their comparative inattention to health and safety matters, generally being regarded as within 'management prerogatives'. It may reflect the lack of clear constitutional power in the Federal Parliament to give a national led such as has occurred in the last decade in Sweden, the United Kingdom, the United States and Canada.

When one looks at the United Kingdom Health and Safety at Work Act 1974, the Swedish Work and Environment Act 1978, the Occupational Safety and Health Act 1970 of the United States and the Canadian Center for Occupational

Health and Safety Act 1978, one can see a number of common themes emerging which should form the agenda for modern Australian laws on occupational health and safety. These themes include:

* The gathering of more information and statistics on the causes, circumstances and methods of preventing accidents and diseases at work so that we can have a better appreciation of the scope of the problem and how we can efficiently tackle it.

* The encouragement of greater public awareness and effective information campaigns directed to key personnel.

* The promotion of expert attention to injury avoidance, preventive design in the environment, equipment, vehicles, product testing and so on.

* The creation of on site work bodies, especially health and safety committees to bring together workers and employers to identify dangers and to seek their cure in advance of accidents and disease.

* The simplification of a myriad of local, State and Federal Government law with which employers must comply. This is a powerful efficiency reason for a national approach to the problem. A Commonwealth law, if valid, and if intended to cover the field, will, under the Constitution, exclude all other laws. Whatever may have been the position of business and industry at the turn of the century, a great deal of it is now nationally organised, managed and financed in Australia. The obligation to comply with differing rules and regulations is not simply confusing. It is unreasonable. In the one corporation, with branches in different parts of the country, it can no doubt lead to genuine mistakes and uncertainty in compliance with basic safety rules.

A recent analysis of developments in this area in Canada identify a checklist against which occupational health and safety legislation in Australi should be measured. The checklist includes:

* The legislative guarantee and enforcement of the employees right to know the hazards of work, requiring the provision to workers of all information necessary to ensure their health and safety.

* The institutional attention to work, health and safety by combining the efforts of workers and employees. Joint committees and worker representatives have been widely accepted throughout Canada as the primary vehicles of shared responsibility.

* The right even in times of unemployment and economic downturn, to refuse, without penalty, work which is unsafe or unescapably dangerous to health is guaranteed in numerous Canadian laws. Of course, there are exceptions for 'normal dangers', for cases where the risk is not directly to the worker in question or where the risk is very remote or where the very nature of the work is dangerous (such as police, fire fighters, correctional workers, etc.). But the right to refuse and to compel management to rectify unsafe or unhealthy conditions is now a well-developed right in North America. It is based on the principle that prevention is much more valuable than cure.

* The provision of protective reassignment of workers who may be at special risk in a particular environment is another area that is now receiving some attention. Of course, the times are not good for developments here now with current economic conditions as they are. Only in one Province of Canada is management's power to transfer or discharge an employee with special susceptibility legally constrained.

* Provision of comprehensive programs of medical examinations and occupational health services is another ingredient in several Canadian laws.

* The provision of mandatory standards in at least some high risk occupations and the availability of standard setting and the creation of an advanced approval agency is given as another feature, even in a time of general disillusionment with intrusive regulations.[35]

* So far as sanctions are concerned, the differential use of civil proceedings, inefficient and slow criminal prosecution and direct orders by the court or other tribunals to cure unsafe and unhealthy conditions all require close attention in any reform package.

* Finally the inter-relationship of compensation law reform, now once again on the Australian agenda, with improvements in rehabilitation and prevention need close examination as the N.S.W. Law Reform Commission obviously recognises.

CONCLUSIONS

There are many themes which a national conference on industrial safety must tackle. A glance at the Conference agenda will show that many will come up for scrutiny here. I have addressed only one piece of the mosaic. The law's role in promoting industrial health and safety is not paramount. But

it can be supportive of initiatives taken by employers, employees and their representatives. We stand at the threshold of major law reforms affecting accident compensation, rehabilitation and industrial safety. Our record in Australian in this area of activity is not a proud one. All too often it has been marked by apathy, indifference and resignation. Let us hope that by the end of the decade we can boast of a coherent national strategy to tackle what is at once a human and an economic concern. If this National Conference on Industrial Safety contributes, even in a small way, to this end, we will not be wasting our time.

FOOTNOTES

* There is no reference before the Australian Law Reform Commission on industrial health and safety. The view expressed are personal views only.

1. (1979) 23 ALR 513.

2. The figures are taken from Commonwealth Parliamentary Debates (The Senate) 21 February 1979, 151.

3. Reference is made to the speech by the Mr. Ian Macphee at the presentation of the CMI Awards for Industrial Safety, Melbourne, 3 November 1978.

4. at 520-1.

5. (1981) 37 ALR 481, 518.

6. The reference is to Commonwealth Parliamentary Debates (House of Representatives), 17 November 1981, 2918.

7. at 519-520.

8. Royal Commission on Civil Liability and Compensation for Personal Injury. Report (Lord Pearson, chairman) (hereafter Pearson Report), 1978 Cmnd. 7054 (2 vols), vol 2, 49.

9. B. Keon-Cohen, M. Richardson, R. Davies and B. Boer, Health and Safety at Work: A view of current issues, CCH Aust., 1980.

10. D. Brown cited Insurance Broker, September 1982, vol 5 no 3/4, 5.

11. The Age, 14 August 1982.

12. ibid.

13. Australian Financial Review, 28 September 1982.

14. Australian Financial Review, 28 October 1982, 14.

15. D. Smith, 'New Thoughts on Repetition Injury' in National Times, 17 October 1982, 32.

16. Ian Macphee, speech to Victorian Chamber of Manufactures, mimeo, 1982.

17. National Committee of Enquiry (Aust.) Compensation and Rehabilitation in Australia, 1974 (A.O. Woodhouse, chairman) vol 2.

18. This point was made repeatedly by the Pearson Commission.

19. Cf N.S.W. Law Reform Commission, Accident Compensation, Issues Paper, 1982, 37.

20. G. Evans, Press Release, 36/82, 21 June 1982, 2.

21. N.S.W.L.R.C., n 19 above, 4.

22. ibid.

23. Australian Financial Review, 25 October 1982, 3.

24. ibid.

25. Insurance Broker, March 1982 (vol 5 no 2), 1.

26. National Committee of Enquiry (Aust.), Compensation and Rehabilitation in Australia, 1974 (A.O. Woodhouse, chairman), vol 2, 101.

27. Public Law 91-596 (December 29, 1970), (United States), 84 Stat 1590.

28. R. v Burgess; ex parte Henry (1936) 55 CLR 608, 621, 671-2; Wragg v New South Wales (1953) 88 CLR 353, 385-6.

29. (1975) 12 ALR 17.

30. Koowarta v Bjelke-Petersen (1982) 56 ALJR 625.

31. Macphee, 2.

32. The Australian, 1 July 1982.

33. Macphee, 3.

34. ibid, 11.

35. This discussion is based upon R.M. Brown, 'Canadian Occupational Health and Safety Legislation' (1982) 20 Osgoode Hall LJ 90.