

ALFRED THEODORE CONYBEARE, 1902-1979

COMPENSATION JUDGE

AUSTRALIAN DICTIONARY OF BIOGRAPHY

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Alfred Theodore Conybeare, known as Theo, was born in Adelaide on 30 April 1902. His father, Alfred, after whom he was named, was a salesman. The Conybeare family had come to Australia from England. Theo Conybeare's grandfather (Charlie) migrated to Orange, New South Wales, where he set up in business as a saddler. Theo was born when Alfred, and his wife Marianne (nee Eglinton) were living in Adelaide. Theo was an only child. When he was aged five, his parents returned to New South Wales. His father was employed at David Jones' store, Sydney. The father established the family home at Lindfield. This was later to be the home occupied by Theo and his family.

Theo Conybeare was educated at the North Sydney Boys' High School and Sydney University. During his Arts course he met Ena Rice, whom he was to marry on 28 December 1929. Meanwhile, he completed the Arts course and also took the degree in Law. Although he completed articles of clerkship, as evidenced by an assignment of articles in November 1925, he did not practise as a solicitor. His practice as a barrister involved extensive work in damages cases in the Supreme Court, District Court and the New South Wales Workers' Compensation Commission. The last-mentioned tribunal was established by the *Workers' Compensation Act*

1926. That Act represented the first major review of workers' compensation law in NSW since the Act of 1910 establishing compensation rights.

Theo Conybeare's work at the Bar, although busy, had few notable highlights. However, his participation in the proceedings before Justice Roper involving the challenge to the award of the Archibald Prize to William Dobell stood out in his memory. In 1943 the Trustees of the Art Gallery had awarded the prize to Dobell for a portrait of the artist Joshua Smith. The award was challenged. It was contended that the painting was a caricature, not a portrait as required by the terms of the trust. Dobell was represented by Mr. F.A. Dwyer KC. Dwyer's junior was Theo Conybeare. Also at the Bar table were Mr. G.E. Barwick KC and Mr. F.W. Kitto KC, both later Justices of the High Court. Justice Roper found for the Trustees and held that the painting was "portrait". By an irony, if the challenge had succeeded, the prize would have gone to Joshua Smith himself. His portrait of Mary Gilmore had been awarded second prize.

On 30 June 1950 the first Chairman of the Workers' Compensation Commission, Judge Perdriau, retired. In his retirement remarks he referred to his cherished hope that a system of rehabilitation would be introduced into compensation law in New South Wales. The State government was slow in appointing Judge Perdriau's successor. Most observers at the time expected the call to go to Judge Rainbow, Perdriau's deputy. Instead, however, the Attorney General, Mr. Clarrie Martin invited Theo Conybeare, who had just then been appointed King's Counsel, to become the second Chairman of the Commission. Conybeare accepted in September

1951. He took up duties on 8 October 1951.

The work of the Chairman of the Commission included a full judicial workload but also administrative tasks of supervising the Commission's despatch of its growing workload and the licensing of insurance companies for the purpose of writing workers' compensation insurance.

At first the relations between the new Judge Conybeare and Judge Rainbow were formal. They remained so for many years, such was Rainbow's disappointment at not being preferred.

Judge Conybeare regarded the Commission to which he had been appointed the head as "a great and valuable social and legal institution". His period of judicial service is marked by numerous important decisions concerning the meaning of the Act and its application to the largest workforce in Australia. By the time he arrived at his post, the early disputes about the 1926 Act had settled down under what he later called the "tactful, polite, effective" work of Judge Perdriau. Judge Conybeare's obituary in the *Australian Law Journal* records the assessment that in his judicial work he "seldom if ever fell into error on facts".

As a judge Theo Conybeare was, as that note also stated, "entirely unpretentious and invariably courteous and friendly". He could, however, become quite testy where barristers were ill-prepared or had taken too many briefs so that they were required to be in different courts of the Commission at once. He frequently complained to his family about the wasted time, as he sat in his chambers waiting for barristers to become available. Himself a punctiliously courteous and gentlemanly person, he regarded such

courtesy as unacceptable. It is not an accident that he described the Commission as both a "social and legal institution". He always exhibited a self-image as a lawyer. Although his friend Garfield Barwick had gone on to a higher rank in the legal profession and was to become Chief Justice of Australia, Theo Conybeare set high standards for himself. He was no jury, but a judge applying technical law to often complex facts. Setting such a high standard was an important aspect of the training of the legal profession. On his retirement, Gordon Samuels QC, then President of the New South Wales Bar Association, said that he had played a part in the training of the Bar although Samuels admitted that this might be a "responsibility [he] might prefer to disclaim". It was said that he had curbed "the more disruptive prima donnas of the Bar, of whom there are a number".

In 1958, in a speech to honour Australian literature given at Sydney University for the English Association, Judge Conybeare stated his judicial *credo* that judges, like small boys, should be "seen but not heard". The speech nonetheless attests to his wide reading. His wife, Ena, a school teacher, had extremely wide interests in literature and social concerns. She stimulated her rather more conservative husband into areas of interest that would otherwise not, perhaps, have captured his attention.

In 1966, Judge Conybeare presided over the move of the Workers' Compensation Commission from its office in Bligh Street, Sydney to new premises in Macquarie Street, Sydney overlooking Sydney Harbour. The judicial chambers were then far superior to those enjoyed by the Supreme and District

Courts: a cause of envy in some quarters. The new premises were largely funded from the levy on employers' insurance payments. It was part of the role of the Commission under Conybeare to superintend its self-funding from insurance sources. Also during his chairmanship, the Commission expanded from three judges to seven, reflecting an enormous increase in the volume of its work.

Judge Conybeare described 1962 as his "annus mirabilis". In that year he took long service leave. With the support of the government he visited the United Kingdom, North America and Western Europe. He was later to describe how the scales were struck from his eyes by what he saw, particularly in the United States and Canada. Whilst he continued to admire the idealism of those who had established the 1926 scheme in New South Wales he grew increasingly aware of its defects and of the improvisations for which successive governments had settled instead of whole-scale review and reform of the Act.

He delivered a report of his study tour addressed to the Minister for Labour and Industry. It recommended new initiatives to support the rehabilitation of injured workers. This was to become a recurring theme of his later years.

The late 1960s saw important inquiries in other jurisdictions concerning a more radical approach to workers' compensation law. These included the 1967 Ontario Royal Commission on Workers' Compensation and the report of the same year by Justice Owen Woodhouse in New Zealand. It was the latter report which, after a sojourn with a Select Committee of the New Zealand Parliament, ultimately became the basis of the *Accident Compensation Act 1972 (NZ)*.

Woodhouse's radical proposals became the subject of much talk amongst lawyers and others interested in workers' compensation reform in New South Wales. In December 1968 Mr. Conybeare was asked to prepare a report on the possibility of establishing a system of rehabilitation in New South Wales. He chose a young barrister, Jeremy Gregory-Parker (later to be a Judge of the Supreme Court of New South Wales) to be counsel assisting him. The enquiry began on 27 February 1969. After collecting and collating many written submissions, and after many days of oral evidence, in June 1979 they set out for North America and, especially in Canada and New York, Conybeare studied systems introduced to stimulate rehabilitation measures. His report was delivered to the Government in December 1970. It recommended the establishment of a system for rehabilitation and its incorporation into the scheme of the then current Act. In its final recommendation, the report urged that "a public inquiry be held into the structure and working of the workers' compensation system in New South Wales". The report called attention to the dimension of compensable injuries in the State. At the time there were more than 90,000 injuries which caused more than three days loss in any one year. Five thousand injuries led to loss of work for eight weeks or more. Many caused serious disablement and a number caused death. Conybeare called for a radical approach to rehabilitation of injured workers. He recognised that this was more difficult whilst common law compensation for proved fault on the part of the employer survived in parallel to workers' compensation. Like the Ontario and Woodhouse reports, Conybeare recommended abolition of common law rights

and of certain benefits under the Act. These proposals elicited a note of caution from Mr. Badgery-Parker, expressed in a speech soon after the report was made public in February 1971 by the Minister, Mr. E.A. Willis. They were criticized by the Labor Council of New South Wales in March 1971. These criticisms effectively gave the reforms the kiss of death.

By this time Judge Conybeare was nearing his retirement from judicial office. A large dinner of the legal profession, the insurance industry, trade unions and employer organisations heard Sir Garfield Barwick toast Conybeare on the eve of his retirement. On 28 April 1972, a Full Bench of the Compensation Court Judges heard fulsome praise of Conybeare's work as Chairman. The Senior Judge (Judge Wall) spoke of his "patience, common sense, kindness and invariable courtesy". He also spoke of how he had presided over the Commission with great ability and of his industry and loyalty. He said that he was "a wise and kindly judge". These sentiments were repeated by the Minister, Mr. Hewitt, who spoke of the *Workers' Compensation Act* as the "most humane piece of legislation". Gordon Samuels QC for the Bar talked of Judge Conybeare's "special kind of humanity". He paid tribute to his "remarkable grasp of very often opaque law" and to his "determination to get to grips with fundamental problems". The President of the Law Institute (Mr. Broadbent) spoke of his "faithful leadership". In his reply, Judge Conybeare took to task the notion that the Act was "most humane". He declared that the State had been "lagging behind the rest of the world" in workers' compensation law. He announced his "disenchantment" with compensation law. He said that it had been "stagnant for too



it lacks freshness, innovation, initiative". He said there was a need for urgent reform especially to provide the rehabilitation of injured workers.

Judge Conybeare received many tributes from practitioners at his retirement. Even allowing for the usual hyperbole on occasions, they reflected a common theme. One Supreme Court judge said "You have earned an enviable reputation for possessing all the classic judicial virtues ... your kindly, serene presence and professional authority will be missed". A District Court judge, who had often appeared before him at the Bar, wrote that he had been "a good judge who did the job". Solicitors wrote to him expressing their thanks for his "unfailingly courteous and fair" approach to duty. Medical practitioners hoped that his retirement would be replaced with continuing efforts for rehabilitation". A Supreme Court judge who, like him, had attended North Sydney Boys' High School wrote "It is a long cry from NSBHS, but we catch up with us all". Another judge hoped that his retirement would bring in its train "compensation of a better sort". Judge Conybeare in his address had admitted that many challenges had arisen "out of and in the course of" his employment.

In April 1972, Theo Conybeare was appointed inaugural Chairman of the New South Wales Committee on Discrimination in Employment. This committee arose out of an International Labour Organisation convention which the Federal Government was contemplating to ratify. Conybeare held that post until 1975. He continued to play a part in university functions, especially connected with literature not law. He devoted himself to his garden and to his wife and three sons. All of his

children did well in their chosen careers: Jolyon (named for Forsyth Saga) became a solicitor. Darrel became an architect. His third son Christopher became a public servant and now holds the post of Secretary of an important Federal Department.

In his closing years Theo Conybeare suffered a long illness associated with cerebral arteriosclerosis. He spent his last days in a home at Greenwich where he died peacefully on 27 November 1979. His wife Ena survived him, but died in 1984.

Conybeare's call for a radical reconsideration of compensation law and for major renewal of compensation legislation to assist the rehabilitation of workers has only rarely been heeded since his death.

MDK

