THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION: ADAPTING OR DYING?

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ABSTRACT

Over the past decade, developments such as the growth of enterprise bargaining and new legislation, particularly *The Workplace Relations Act* 1996, have directly challenged the traditional core role of the Australian Industrial Relations Commission (AIRC) in industrial relations. This paper assesses the current role of the AIRC, particularly the usage, processes and attitudes of the users of the AIRC. Basing our analysis on a questionnaire survey of users of the Commission, focus groups and interviews, the paper argues that, despite the *Act*, the AIRC is sufficiently adaptable to continue to play a vital role in the federal industrial relations system.

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INTRODUCTION

Throughout most of the 20th century, the Australian Industrial Relations Commission (AIRC) played a key, central role in the industrial relations system. Its primary role, specified in the objects of its founding legislation the *Conciliation and Arbitration Act* 1904, was to settle industrial disputes through conciliation and arbitration. More colourfully, in the words of its second President Mr Justice Higgins, it was to offer an alternative to the 'rude and barbarous' expedient of strike and lockout (Wooden 2001, 243). Based on the 1904 Act, and aided by an assortment of High Court decisions, the power and role of the AIRC expanded. Among other things, it registered industrial organisations, awarded these organisations exclusive jurisdiction over segments of the workforce and, in the process, resuscitated the union movement; it determined legally enforceable minimum terms and conditions of employment in increasing detail; and it resolved industrial disputes through arbitration. The semi-facetious comment of Mr Justice Kelly that he and his fellow judges were the ‘economic dictators of Australia’ had some element of truth (Dabscheck 1983). At times, such as the late 1960s and early 1970s, the role of the AIRC was more circumscribed. Overall, however, it played a major, centre-stage role in industrial relations and was very much a third party to the employment relationship.

Events during the last decade of the 20th century increasingly challenged this role. First, in 1991, the AIRC acceded to the requests of unions, employers and governments to introduce a system of enterprise bargaining. Second, the *Industrial Relations Reform Act* 1993 elevated this bargaining system above the traditional conciliation and arbitration system. Third, and most important, the *Workplace Relations Act* 1996 directly attacked the core of the AIRC's authority in establishing objects which included –

- ensuring that the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace level (s3(b));
- limiting the role of the AIRC to prevent and settle industrial disputes by conciliation, and where appropriate and within specified limits, by arbitration (s3(h)).

The then Minister for Workplace Relations saw his legislation as 'providing a framework that supports a more direct relationship between employers and employees, with a much reduced role for third party intervention' (Reith 1998, 1). Certainly the AIRC was legally mandated to a much inferior role:

- The scope of awards were greatly reduced and the AIRC could now arbitrate only on 20 allowable matters (s89A);
- Its role in industrial disputes was severely circumscribed, to the extent that in major disputes, such as the 1998 Waterfront dispute, it played only a cameo role;

- A new agency, the Office of the Employment Advocate, was established to oversee the new, individual Australian Workplace Agreements system (s83BA);
- The two main parties were encouraged to interact, reach agreement or resolve any differences without recourse to the third party AIRC (s3(b)), and;
- The relevant Minister not only allowed the number of members of the AIRC to dwindle through natural attrition, he also published a Ministerial Discussion Paper raising the possibility of private-sector provided mediation as an alternative to the use of the AIRC (Reith 1998).

How the mighty appear to have fallen. Dabscheck (2001) certainly holds this view. The title of his paper - *The Slow and Agonising Death of the Australian Experiment with Conciliation and Arbitration* – wonderfully captures his perception. In effect, he argues that the role of the AIRC has substantially diminished and is increasingly declining. His conclusion sub-heading (p. 290), without so much as a question mark, is equally evocative: '*All is fair in love and war': A suicide's epitaph*. The quote in the subtitle comes from a now famous paragraph in a decision of a Full Bench of the AIRC that utilised the adage to accept the legitimacy of varieties of industrial actions by both union and employer (CFMEU v Coal and Allied Operations. Print R9735).

In contrast to Dabscheck's views, a number of authors have argued that the AIRC still plays a significant role in industrial relations. Rimmer, for example, sees an on-going role for the AIRC, noting that it 'has bent with the wind many times to develop new roles relevant to changing circumstances' and that such flexibility is 'its main strength and source of enduring viability' (1997, 80). Richard Marles, ACTU Assistant Secretary, concurs that 'the Commission certainly has a wonderful ability to adapt to its circumstances' and holds that 'it is a unique place where all parties instinctively look to assist in resolving their disputes' (2002, 4). Finally, the President of the AIRC has argued that, 'despite the controversy it attracts from time to time', the conciliation and arbitration system 'has proved remarkably flexible and resilient' (Guidice 2002, 5). In an earlier paper he noted the increased frequency of 'private arbitration functions' and that the AIRC was 'an important resource in the bargaining process and plays a major role in the resolution of disputes both large and small' (Giudice 2001, 6).

The role of the AIRC is thus in some dispute. Has it, yet again, adapted to externally initiated change while continuing to play a vital role or is it a fatally wounded institution, irrelevant and close to its demise? Some five years after the implementation of the *Workplace Relations Act,* this paper seeks to answer this question. It does so by examining the role of the AIRC in its traditional core area of industrial disputes, thus facilitating comparisons of change over time. Three key issues are analysed. First, what is the current usage of the AIRC and has this usage varied under the *Workplace Relations Act*? Second, what are the processes utilised by the AIRC to perform its various roles and have these roles changed under the Act? Third, what are the views of the 'users' – the other parties who use the services of the AIRC – about the Commission, particularly its effectiveness? We regard this last issue as crucial because the AIRC is unlikely to survive without the support of its user group.

METHODOLOGY

The data presented in this paper derive from three main sources: a questionnaire survey, focus groups and interviews. In April 2002, a survey questionnaire was distributed to all individuals or organisations that had had an issue or matter, other than an unfair dismissal, notified to the AIRC during the three-month period October to December 2001 inclusive. In total, 1650 questionnaires were distributed, 280 were returned 'address unknown' and 255 completed, useable questionnaires were returned, giving a response rate of 19 per cent. Unfortunately, information obtained from the Industrial Registry did not include mail addresses, therefore a variety of sources were utilised; this explains the high number of 'address unknowns'. Given this context, the response rate of 19 per cent is acceptable.

To assist in obtaining more detailed information and assessments of many of the matters arising from the survey a number of focus groups were conducted. In total, five focus groups consisting of union and employer representatives, lawyers, human resources practitioners and industrial relations consultants, were conducted during the period June-September, 2002.

In addition, individual interviews were conducted with eight users of the Commission. The group comprised union officials, employer association officials, legal practitioners and industrial relations consultants. Their selection was based on a combination of lengthy experience before the Commission and frequency of appearances at the Commission. Finally, interviews were also conducted with seven members of the AIRC. All interviews lasted, on average, 1-1.5 hours.

USAGE OF THE AIRC IN DISPUTE RESOLUTION

A number of provisions of the *Workplace Relations Act* allow appropriate parties to bring issues before the AIRC. Not surprisingly, given the traditional role of the AIRC of dealing with industrial disputes, s.99 applications - notification of an industrial dispute - has been the core of the Commission's business. Given the new emphasis under the 1996 legislation for parties to negotiate directly and to resolve their own disputes, and given the reduced levels of strikes, the number of notifications of disputes to the AIRC should have decreased. Table 1 details the number of matters dealt with by the AIRC since 1997, the first year of implementation of the *Workplace Relations Act*. For comparison, data on equivalent notifications and workloads are also included for 1994-6, when the *Industrial Relations Reform Act 1993* was in effect.

These data do indeed show a significant reduction in the number of s.99 applications: a decrease from 3,624 notifications in 1993/4 to 2,564 in 2001/2. There are, however, a number of additional 'entry points' for parties seeking the intervention of the Commission in disputes, including:

- S127 – which enables the Commission to order that industrial action taken by either employees or employers stop or not occur;

- S166A – which provides that a party wanting to take common law action against another party must seek a certificate from the Commission;
- S170LW – which provides that the parties to a certified agreement may empower the Commission to settle disputes arising over the application of the agreement;
- S170MW – which provides that under certain circumstances, the Commission may suspend or terminate a bargaining period;
- S170NA – which provides that the Commission may, on the request of the parties involved in negotiating a certified agreement, exercise its conciliation powers.

A number of these entry points were newly introduced under the 1996 legislation and their role must be taken into account when determining the overall usage of the AIRC in dealing with industrial disputes. Lewin (2001) has documented the usage of these additional entry points (see Table 1, updated to include data for 2001/2). While conceding that notifications under s.99 have declined, he points to an increase in other notifications now initiated under other sections of the *Act*. Consequently, he concluded that the total volume of proceedings involving the exercise of conciliation and arbitration powers by the AIRC remained relatively constant over the period 1993 – 2001. Data for 2002 supports this contention. Overall, it would appear that total, numerical usage of the AIRC, regardless of legislative changes, has remained fairly constant. Indeed, the number of industrial dispute matters dealt with by the AIRC during the first year of operation of the *Workplace Relations Act*, 3,750, was very similar to the equivalent number during the fifth, and latest, year of operation of the *Act*, 3,704.

Table 1: Statistics on the activities of the AIRC: numbers of lodgments of sections 99, 127, 166A, 170MW, 170LW and 170NA applications, 1993/4 - 2001/2

	93-4	*94-5*	*95-6*	*96-7**	*97-8*	*98-9*	*99-00*	*00-01*	*01-02*
s99	3624	3588	4103		3273	2836	2679	2598	2564
s127	2	4	3		293	335	425	444	414
s166A	4	34	45		47	65	64	93	68
s170LW					45	260	280	399	549
s170MW		21	37		88	75	87	27	54
s170NA					4	28	32	41	55
Total (%change)	3630	3647 0.5%	4188 12.9%		3750- 10.5%	3599 -4.0%	3567 -0.9%	3802 6.2%	3704 -2.6%

Source: Australian Industrial Relations Commission, *Annual Reports*, various years.
*Data not included for 1996/7 because two different statutes applied - the *Industrial Relations Reform Act* 1993 until December 1996 and the *Workplace Relations Act* 1996 from January 1997.

More qualitatively, the range of issues referred to the AIRC has also remained very wide. Decisions of the Commission for the month of October 2001 were perused, and the following list of industrial disputes and grievances were identified as having arisen from s99 applications:

- Industrial action
- Safety issues
- Dispute concerning the use of contractors
- Accommodation facilities
- Wages and conditions
- Re-employment of employees
- Employment and classification of employees
- Redundancy
- Annual leave
- Employment of casual labour
- Adherence to custom and practice in the payment of wages
- Employers refusal to apply a clause in an enterprise agreement
- Payment for down-time of night-shift workers
- Non-payment of change of shifts
- Decrease in working hours
- Negotiation of a certified agreement
- Bans placed on performance of production trials
- Payment of wages during a period in which protected action took place
- Employers intention to deny Melbourne Cup day to non-metropolitan employees
- Staffing levels and workloads
- Log of claims
- Alleged overpayment of wages
- Failure to abide by award conditions
- Payment of fares and travelling allowances
- Failure to observe required consultation procedures
- Failure to abide by dispute resolution procedures in an agreement
- Company's promotion policy
- Failure to follow disciplinary procedures in an award
- Non-payment of entitlements on redundancy
- Refusal to allow employee to return to normal duties following sick leave.

Source: http://www.airc.gov.au.

Given this wide range of matters, it was not unduly surprising that the perception of many interview/focus group participants was that the AIRC was often a 'dumping ground' for issues that should be dealt with at the workplace. It was suggested by numerous interview/focus group participants that the AIRC was prepared to consider any matter that came before it, regardless of whether the matter had been the subject of workplace based dispute procedures or not. This concern arose in the context of the view that the primary object of the WRA, as noted earlier, is the capacity of the

employer/employee relationship to *'determine matters affecting the relationship … at the workplace or enterprise level'* (s3(b) WRA). In this regard it was argued by interview/focus group participants that the Commission should be more prepared to utilise the provisions of s92, which enables it to refrain from hearing a matter if existing workplace based dispute resolution procedures have not been complied with. Commission members with whom this matter was discussed had varying responses to the question of whether or not a matter might be referred back to the parties for them to comply with workplace based dispute resolution procedures. Some members indicated that regardless of workplace based procedures, they had a statutory obligation to '*prevent and settle industrial disputes*' and that if the parties had agreed that they could not resolve a matter, the Commission had an obligation to hear it. Other members noted that they would hear the parties but, if it was clear that the dispute procedures had not been complied with and their judgement was that there was a possibility of the parties resolving the matter, they may request the parties to consider the matter further and report back to the Commission.

It is hard to disagree with the 'dumping ground' contention. The range of matters brought to the AIRC is extremely varied. In the context of the nature of s99 applications, there was widespread agreement amongst focus group participants, interviewees and Commission members that the workplace parties may not be adequately equipped with dispute resolution skills. Additionally, there was also agreement that there appeared to be continuing dependency on the Commission as part of the traditional industrial relations culture of referring disputes to an independent third party. In effect, there exists a considerable gap between the rhetoric of the Act - that disputes should be resolved at the workplace - and the reality at workplaces.

Overall, it is apparent that the respective parties have continued to seek the services of the AIRC in relation to its core function of dispute resolution.

THE PROCESS OF THE AIRC IN DISPUTE RESOLUTION

The AIRC operates a wide variety of industrial relations processes, ranging from the mundane and the automatic on one hand to the highly contentious and discretionary on the other. This section of the paper analyses the process of the AIRC with regard to applications received under s99 – notification of a dispute - and s127 – application for an order to cease industrial action. Based on Table 1, these are two key processes of the AIRC in dispute resolution and an understanding of how it processes these applications will aid our understanding of the role of the AIRC. Four interrelated issues are analysed: first, the actual outcomes of s99 and s127 hearings; second, the use of 'the conference' in dispute resolution; third, the use of, and distinction between, mediation and conciliation; and, fourth, the extent to which the Commission exercises an interventionist role in dispute resolution processes.

Outcomes of hearings

Focusing initially on s99 hearings, our questionnaire survey data indicate that, in applications involving respondents, all matters were resolved in 26 per cent of cases,

some matters resolved in 50 per cent and no matter resolved in 24 per cent. Survey respondents indicated that only 10 per cent of matters were referred to arbitration, 57 per cent of matters being formally adjourned and the remaining 33 per cent were withdrawn or dealt with by other means. Focus group participants and interviewees expressed no surprise at these data. There was a perception that the small number of matters referred to arbitration reflects the effect of s89A of the WRA, limiting arbitration to 'allowable matters'. The high number of resolved matters reflected the fact that, as noted above, the AIRC was often a 'dumping ground' for many issues that should have been dealt with at the workplace but which members of the AIRC were prepared to hear. Despite these criticisms, interview/focus group participants were generally supportive of the Commission's role in s99 hearings. They acknowledged the extent to which these matters are more often than not resolved as a result of the Commission's intervention, noting that the high level of adjournments is likely linked to matters that are eventually resolved either by the parties themselves, or with the on-going support of the Commission. Overall, survey respondents indicated a high level of satisfaction with the way in which the Commission dealt with s99 applications (see Table 2).

Section 127 applications were perceived by interview/focus group participants as providing for a more formal and legalistic process than s99 applications. The general view was that s99 applications represented a 'soft' approach to a dispute that was more likely than not to be resolved by conciliation. In contrast, s127 applications were seen to represent a more serious and determined bid on the part of applicants to find a quick resolution to a dispute. Notwithstanding this clear distinction, it is notable that a number of s99 applications concerning industrial disputes are made in conjunction with s127 applications. Overall, in 63 per cent of cases involving questionnaire survey respondents, orders were not issued in s127 hearings. One likely explanation for this high figure is the fact that, in dealing with s127 applications, the approach of members of the Commission can often vary significantly. This was a matter raised by a number of focus group and interview participants. Some members of the Commission may utilise a conference as a means of seeking to resolve the issues in dispute, whereas others may focus on the substantive matters concerning the relevant industrial action and deal with the application in terms of either making or not making an order. There was also a general acceptance that some s127 applications are made with a view to obtaining some tactical advantage by putting pressure on the respondent to resolve the matter or risk the possibility of an order. Similarly, it was suggested that for some parties there may be considerable uncertainty as to whether to lodge a s99 or a s127 application, and this may affect the way the issues are presented to the AIRC.

In interviews concerning s127 applications with members of the Commission the point was made on a number of occasions that the Commission member hearing an application must be able to assess a range of factors, including the nature of the dispute, the basis upon which the application was made, the extent to which the applicant may be seeking some tactical advantage and whether in fact there may be some advantage in going into conference for the purposes of informal discussion. This distinction in approach was the subject of concern by some legal practitioners, who argued that an application for an order that industrial action stop or not occur is not an application requiring detailed conciliation, or a conference. It simply requires the facts to

be considered in the terms of s127(1) and a decision to be made concerning the request for the order. When this matter was pursued with members of the Commission, there were, understandably, differing responses. Some members indicated that they had a statutory duty to '*prevent and settle industrial disputes*' and that on that basis they would, as a matter of course, initially seek to aid a settlement of the issues in dispute. Other members indicated that, having initially heard the issues in dispute, they would make an assessment as to whether there appeared to be any room for settlement between the parties. If so, the member would utilise a conference to explore the possibility of a settlement in more detail. If, however, there appeared to be little chance of a settlement the matter would be dealt with on the facts and a determination made in relation to the order one way or another.

Perhaps not unexpectedly then, survey respondents' level of satisfaction with s127 applications was lower than comparable figures for s99 applications (see Table 2). Nevertheless, a majority of respondents, 51 per cent, were either satisfied or very satisfied with s127 processes.

Table 2: Survey respondents' levels of satisfaction with s.99 and s.127 processes (%)

Level of Satisfaction	*s.99 processes (N = 89)*	*s.127 processes (N = 39)*
Very satisfied	15.7	10.3
Satisfied	41.6	41.0
Neither satisfied nor dissatisfied	23.6	15.4
Dissatisfied	12.4	23.1
Very dissatisfied	6.7	10.3

Source: Questionnaire survey of users of the AIRC.

The use of the 'conference' in dispute resolution

Whilst the *Workplace Relations Act* 1996 provides for particular processes to be followed by the Commission in relation to s99 applications (refer ss99 – 104) and s127 applications (refer ss127(1) – (4)), questionnaire survey respondents, as well as focus groups and interviewees, indicated that a consistent, initial procedure adopted by the Commission upon receiving an application is to go into 'conference'. A conference is normally convened following the identification of the parties and their representatives and an overview of the issues to be dealt with by the Commission during the initial conciliation hearing. The conference may be an informal discussion between the parties and the Commission member with no transcript in a closed room or, alternatively, the Commission member may ask the parties to meet privately without the member being present. The conference process is widely used by the Commission as can be seen from the data in Table 3.

Table 3: Applications referred to 'conference' (%)

	Conference with AIRC member	*Conference without AIRC member*	*No Conference*
S99 (N=89)	75.3	5.6	19.1
S127 (N=39)	64.1	15.4	20.5

Source: Questionnaire survey of users of the AIRC.

Table 3 indicates that there is little difference in the overall use of the conference in s99 and s127 hearings. The commitment by members of the Commission, and indeed the parties, to the process of the conference as an initial step in dispute resolution is long standing and strongly supported. Interview/focus group participants demonstrated widespread support for the conference. The general perception was that whilst a conference is to some extent a process which is separate from conciliation, it is nevertheless a part of conciliation as prescribed by the *Workplace Relations Act*.

What then does the conference process provide that has resulted in it being accepted by the majority of the parties appearing before the Commission as an important feature of both s99 and s127 hearings? Interview/focus group participants overwhelmingly indicated that the conference process provided a more informal setting that generally enabled the parties to be more open and honest in relation to the matters under consideration. Participants indicated that, in the absence of a formal record of the proceedings and behind a 'closed door', there was a greater capacity for more creative and innovative options to resolve the dispute(s) being discussed. An important qualification on the value of the conference, as identified by a majority of the participants in interviews and focus groups, was that the effectiveness of the conference was directly related to the 'style' of the member of the Commission facilitating the conference.

Conciliation/mediation

The perception that the conference provides an environment in which more open, honest, creative and innovative solutions may be found raises the question as to the processes of dispute resolution that are used in the conference. Conventional dispute resolution theory indicates that there are a number of dispute resolution processes available (Boulle 1996; Astor and Chinkin 2002). The statutory obligation of the AIRC is that, when dealing with industrial disputes, it is required to use conciliation as its primary dispute resolution process (s100, WRA). Should conciliation fail, the matter may be dealt with by arbitration (s104) where legally mandated. However, and notwithstanding the requirement to use conciliation, the Commission is also free to utilise any other means of dispute resolution it considers appropriate (s110).

In recent years, there has been significant debate about the use of mediation as an alternative form of dispute resolution. This debate originated with a series of public

discussion documents produced by the then Minister for Employment, Workplace Relations and Small Business in 1998 (see Reith 1998). In many ways, the reasons for the mediation/conciliation debate orchestrated by the Minister are difficult to ascertain. Arguably, it was related to the political debate about the role of the AIRC and the attraction, to some, of private sector competition for the AIRC. The mediation/conciliation debate is even more difficult to comprehend when the respective definitions of the terms are considered. Boulle notes that not only is there no universally accepted definition of mediation, it is equally difficult to find consensus on the definition of conciliation. Further, "the distinction between the terms 'mediation' and 'conciliation' is unclear. There are areas of overlap between mediation and conciliation, the principal one being that the 'third party does not impose binding decisions on the parties in dispute'" (Boulle 2002, 7).

Notwithstanding the ambiguity in the definitions of both terms, it is useful to explore the distinction between two contrasting models of dispute resolution. The 'facilitative mediation' model is based on a commitment by the mediator to enable the disputing parties to resolve their conflict. Such an approach presumes a non-interventionist approach. This model is often contrasted to a more interventionist form of conciliation where the conciliator may offer guidance and advice as to likely outcomes for the dispute. This approach may also be referred to as 'settlement mediation' (Boulle 1996). The key difference is the level of intervention.

Which process is used in the AIRC? Survey respondents did perceive differences between mediation and conciliation, with 21 per cent seeing the processes as very different and 42 per cent seeing some difference. In contrast, only 17 per cent perceived the two processes to be the same, with the remaining respondents unsure. Additional questions in the survey, however, point to a degree of ambiguity with which users of the AIRC view the distinction between the two processes. For instance, when asked whether mediation had been used in s127 hearings, some 41 per cent of respondents indicated that it had been utilised. Given the more formal and arguably more legalistic framework within which s127 hearings take place, it was somewhat surprising that respondents indicated that mediation appears to have been used to a significant level in these hearings.

Follow up discussions took place with focus groups and in individual interviews for the purpose of exploring further the views of users concerning mediation and conciliation in both s99 and s127 hearings. A strong consensus emerged from interview/focus group participants that mediation was, in fact, understood by users of the AIRC as quite an interventionist approach, similar to Boulle's 'settlement mediation'. In contrast, the members of the AIRC who were interviewed generally defined mediation in terms of the facilitative model. They were, however, not concerned with definitional distinctions or models, and expressed the view that textbook definitions of conciliation and mediation are of little assistance in defining their respective roles in dispute resolution. The strong view was that, regardless of definition, in practice conciliation and mediation are used as nothing more than a range of skills that may be used in whatever form is necessary according to the nature of a dispute and the needs of the parties.

In the context of these findings it is interesting to note that users wanted a stronger mediation capacity in the Commission: only 8 per cent of survey respondents opposed this proposition (see Table 4). Further, no statistically significant differences (chi-square test, $p<.05$) existed between the views of three sub-groups of respondents - employer, union and other. Given this finding, and the views of participants in focus groups and interviews in relation to mediation, the conclusion to be drawn is that there is a desire for what the users perceive to be a stronger, settlement mediation capacity within the Commission.

Intervention

The appropriate level of AIRC intervention has always been a contentious issue within industrial relations. Much of the debate has been shrouded in political ideology. What are the views of the users of the system? Forty two per cent of survey respondents indicated that the Commission overall can be characterised as having an appropriate level of intervention with 25 per cent holding a contrary view. Complementing this finding, only 7 per cent of respondents agreed that the Commission approach was too interventionist while some 57 per cent disagreed (see Table 4). No statistically significant differences (chi-square, $p<.05$) existed between the views of sub-groups of employer, union and other respondents. Overall, 75 per cent of all respondents believed that the AIRC should have greater power to compel parties to participate in its dispute resolution processes. This view was held by 90 per cent of employer respondents and 65 per cent of union respondents, which is a statistically significant difference ($p = .03$).

Table 4: Survey respondents' attitudes towards the AIRC (%)

Statement	*Strongly Disagree*	*Disagree*	*Neither agree nor disagree*	*Agree*	*Strongly agree*
There should be a stronger mediation capacity in the AIRC (N = 247)	0.4	7.5	26.3	52.5	10.2
The AIRC has an appropriate level of intervention (N = 242)	3.5	22.0	27.1	40.0	2.4
The AIRC is too interventionist (N = 244)	9.0	47.5	32.5	6.3	0.4
The AIRC should have greater power to compel parties in dispute resolution (N =244)	1.2	5.3	18.9	52.5	22.1

Source: Questionnaire survey of users of the AIRC.

Given these generally pro-interventionist views of respondents, this support was explored in the focus groups and interviews. The basis for this strong support was the perception that the *Workplace Relations Act* 1996 had reduced the capacity of the AIRC to deal effectively with industrial disputes. In part, this concern was characterised by the limitations on the arbitration powers of the Commission but also by restrictions placed on the Commission by different sections of the *Act*. Making allowances for the 'dumping ground' notion discussed earlier, interviewees and focus group participants wanted the AIRC to be able to effectively process industrial disputes once the Commission was notified of a dispute. Specifically, they identified two aspects of the interventionist role of the Commission they considered necessary to enable the Commission to meet its statutory obligation to '*prevent and settle industrial disputes*'. They were that the AIRC should:

(a) Play a more interventionist role in the conciliation process. This view arose in the context of the general acceptance that, as the arbitration powers of the Commission have diminished, there is a greater responsibility on the part of the Commission to ensure that the conciliation process is effective. Interview/focus group participants were generally supportive of the Commission being more interventionist within the conciliation process to more effectively enable a settlement of the matters in dispute. Whilst there was general acceptance that in some circumstances it was appropriate for the parties to 'find their own resolution', there was strong support for the view that the nature of industrial disputes is such that the parties want advice and guidance from the Commission within the conciliation process.

(b) Have greater powers to compel parties to participate in dispute resolution. Participants expressed concern that there are occasions when the Commission is literally unable to complete the process of dispute resolution because either one party or the other will walk away from the resolution and prolong it unnecessarily. In this context there was strong support for what was referred to as 'a more interventionist Commission'.

The strong support from users of the Commission for a 'more interventionist Commission' raises some interesting questions concerning the culture of industrial dispute resolution within Australia and the future role of the Commission. Post-1996, the AIRC has lost not only its centre stage role but also much of its legal power and influence. In seeking a greater level of intervention by the Commission are contemporary users simply harking after the past where the Commission could act as the circuit breaker in disputes and compel the parties to resolve matters? Whilst the answer to that question is beyond the scope of this paper, it is apparent from the questionnaire survey responses and from the interviews and focus groups, that there is a strong belief that the workplace parties appear to be ill-equipped to deal with many workplace disputes and need the assistance of a more interventionist Commission.

USER VIEWS OF THE COMMISSION

As we have seen, the questionnaire survey found strong support from users of the AIRC for its involvement and role in s99 and s127 processes. Survey respondents indicated an even stronger level of satisfaction with the overall effectiveness of the Commission: 59 per cent of respondents either agreed or strongly agreed that the Commission is effective while only 19 per cent disagreed or strongly disagreed (see Table 5); no statistically significant differences (chi square, $p<.05$) existed between the perceptions of the three sub-groups.

Table 5: Respondents' perceptions that the AIRC is effective (%)

	Employer (N = 41)	*Union (N = 34)*	*Other (N = 106)*	*Total*
Strongly agree	7.3	2.9	2.8	6.2
Agree	14.6	11.8	17.9	52.9
Neither agree nor disagree	19.5	14.7	17.9	22.3
Disagree	48.8	64.7	52.8	15.7
Strongly disagree	9.8	5.9	8.5	2.9

Source: Questionnaire survey of users of the AIRC.

Overall, there was very significant support for the AIRC among survey respondents as can be seen from the following summary of survey responses:

- 70 per cent either agreed or strongly agreed that the AIRC is playing a useful role in industrial relations;
- 59 per cent either agree or strongly agreed that the AIRC was an effective organization;
- 59 per cent either agreed or strongly agreed that the AIRC was supportive and constructive;
- 71 per cent either agreed or strongly agreed that the AIRC is generally contributing to dispute resolution;
- 73 either agreed or strongly agreed that the AIRC is a worthwhile institution, and;
- 68 per cent either disagreed or strongly disagreed that the AIRC is a waste of time and money.

In seeking to better understand the nature of this high level of support for the Commission, the views of interview/focus group participants were explored in some depth. The majority of views concerning the effectiveness of the Commission tended to focus on the nature and skills of individual members and their flexibility in seeking to resolve disputes. In this regard, the following matters were identified as being of particular importance:

- there was strong support for individual members of the Commission whose experience and skills were coupled with significant personal efforts to assist the parties in resolving disputes; and
- similarly, individual members of the Commission were prepared to adopt flexible approaches in seeking to assist the parties to resolve disputes. In this regard interview/focus group participants referred to the fact that individual members of the Commission were often available to provide informal advice and guidance to parties seeking assistance with workplace based issues.

Notwithstanding these positive views of the AIRC, there were a number of issues raised by survey respondents and interview/focus group participants that indicate that there are some significant matters of concern to the users of the Commission. There was a perception by survey respondents of bias by the Commission in favour of employees. Thirty three per cent of survey respondents indicated a perception of bias in favour of employees, whereas only 10 per cent of respondents perceived a bias in favour of employers. Some concerns were expressed about the personal styles of some AIRC members and in this context a number of comments were made about the need for some sort of performance management system for members, though limited tenure appointments to the AIRC were overwhelmingly rejected. The current unsatisfactory, non-bipartisan appointment process of members of the AIRC drew some sharp comments as did the increasingly legalistic nature of the AIRC and a perceived division within AIRC panels of the allocation of more complex legal matters between Commissioners and more senior members. Thus, while survey respondents, interviewees and focus group members were generally very supportive of the role of the AIRC, they identified a number of matters of significant concern.

CONCLUSION

This paper has explored the role of the AIRC some five years after new legislation sought to greatly diminish its role. We conclude that any report of its death, or its increasing decline, is premature. Its processes, particularly the use of the conference and increased mediation, have become increasingly important and its role as a mechanism to resolve industrial disputes remains at a high level. Further, there is a demand for a more interventionist role by the AIRC in the dispute resolution process. Finally, a key finding is that the users of the AIRC and the industrial relations practitioner community generally hold very supportive views of the AIRC, while, at the same time, recognising that some changes are necessary. Overall, it would appear that regardless of the statutory framework within which it operates the AIRC continues to demonstrate the flexibility and resilience that has been its hallmark of success over many years.

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