# Address

Given by the Honourable Jeff Shaw QC, MLC, NSW Attorney General and Minister for Industrial Relations at the Launch of the new office of the University of New South Wales, Industrial Relations Research Centre on 6th April, 2000

I am pleased to be present at the launch of this new office of the University of New South Wales Industrial Relations Research Centre, and to say a few words about industrial relations in New South Wales.

Those who followed the progress of the New South Wales Drug Summit will have appreciated that the Government adopted, what some might consider a slogan, others consider a cliché or a mantra of "evidence based" policy.

In other words, it was argued by the Government that the incremental reforms in the areas of drug policy were based on the facts as ascertained at the Drug Summit. For some, this terminology may invoke cynicism. But in reality it is good old-fashioned Bertrand Russell style empiricism.

All of this is in sharp contrast to the post modernist denial of the existence of objective truth and the assertion that everything is relative and in the text. My view, that some may consider heretical, is that public policy is best based upon a scientific search for the facts and a disinterested consideration of the various options, resulting (in the end) in a value judgement about which is preferable.

So that is the approach I have sought to take in dealing with industrial relations policy in this State. Whether this has been successful or not is for others to judge. But what is clear is that I have valued and relied upon academic research and opinion in formulating government policy.

Perhaps the most obvious example is the role played by Professor Ron McCallum, Professor of Industrial Law at the University of Sydney, in assisting us to put together the 1996 industrial relations legislative framework which applies in this jurisdiction.

However, there are at least three other examples where the work of scholars has been extremely influential in crystallising a policy conclusion.

First, in the area of balancing work and family responsibilities, the Government was considerably assisted by a 1998 study published by the University of New South Wales Industrial Relations Research Centre which

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considered the approaches of three Australian organisations in successfully introducing various family friendly policies.

The study highlighted the significant role that government can play in encouraging organisations to develop policies which help workers to accommodate work and family demands. The Government then co-ordinated a publication with Dr Robyn Kramer of Macquarie University entitled, "The Business Case for a Family Friendly Workplace".

Secondly, in relation to forming a policy to combat the exploitation of outworkers in the clothing industry, a substantial contribution was made by another publication of this Industrial Research Centre in 1998 by Claire Mayhew and Michael Quinlan entitled, "Outsourcing and Occupational Health & Safety: A Comparative Study of Factory-Based and Outworkers in the Australian Textiles, Clothing and Footwear Industry".

The study found that the occupational health and safety of outworkers was clearly significantly worse than that of factory-based workers in the textile, clothing and footwear industry. Indeed, it was concluded that the annual incidence of injury amongst outworkers was almost three times the rate for factory-based workers.

That work underpins an issues paper published by the Government last December entitled, "Behind the Label: the NSW Government Clothing Outworkers Strategy" which provides arguably a way forward for governments to tackle what is an inherently difficult task, but an important moral project, seeking to protect some of the most exploited workers in the labour market.

Thirdly, the Government has relied heavily upon the work of labour market economists, sociologists and industrial relations scholars in formulating an approach to pay equity, that is the attempt to remove gender imbalance in the wage and salary structure. In a case recently argued, the Government has supported the formulation of principles designed to progressively eliminate inequities based upon gender in the pay structure and, in the course of that task, it is impossible to overestimate the value of academic research in that field.

So, I hope that I have said enough to indicate my personal support for and appreciation of serious academic research in fields relevant to industrial relations. Hence, my continuing support for this research centre.

As you know, over the last five years, it has been my job to administer, in a ministerial sense, a New South Wales based industrial jurisdiction. In recent times, a threat to such state based systems has been articulated by the Federal Workplace Relations Minister, Mr Reith. It has been foreshadowed that the Commonwealth Parliament may consider legislation to

override state industrial relations laws, and that such legislation would purport to be based upon the constitutional power with respect to corporations.

The question arises as to how realistic a threat this is to the State systems.

Traditionally, federal industrial laws have been based upon Section 51(35) of the Australian Constitution, that is the provision empowering the Commonwealth Parliament to make laws with respect to the conciliation and arbitration of disputes extending beyond the boundaries of any one state. Obviously, limitations on the face of that power mean that it could not be used to override state laws which are concerned with the resolution of intra-state disputes.

However, there is also a power to be found in Section 51(20) of the Australian Constitution which gives the Commonwealth Parliament the power to makes laws with respect to trading or financial corporations formed within the limits of the Commonwealth. The corporations power has been broadly construed by the High Court of Australia.

However, it has not been conclusively resolved that the power would extend to regulate, in a comprehensivel way, the industrial relations between a corporation and its employees.

In a 1995 case, Justice McHugh said that; "It is not enough ... [to satisfy the corporations power] that the law merely refers to or operates upon the existence of a corporate function or relationship or a category of corporate behaviour."

Assuming that the corporations power would sustain such an overriding Commonwealth law, it is plain that that law could not deal with the industrial relations of employees of a non corporation such as a partnership or some other unincorporated trader. Hence, a significant sector of small business would not be comprehended in any such Commonwealth law, leading necessarily to anomalies and gaps in the system.

Mr Reith's proposal seems strangely inconsistent with some provisions he had inserted into the Workplace Relations Act 1996. Traditionally, it was the law, by virtue of a statute and Section 109 of the Australian Constitution, that whenever a federal award or agreement was made it would override any state industrial prescription which was inconsistent with it. However, by amendments made to Section 152 of the *Workplace Relations Act*, the current provision is that federal award provisions would not override or affect the provisions of state unfair dismissal laws (so far as those provisions are able to operate concurrently with the federal award) and it is also provided that state employment agreements could apply, notwithstanding the subsistence of a federal award binding on the employer in respect of a

particular employee, provided that the state employment agreement is one which has been approved by a state industrial authority applying the test that employees covered by the agreement should not be disadvantaged in comparison to entitlements under the relevant award.

Those amendments, effected in 1996, obviously had a states' rights focus. It is not too cynical to suggest that they were predicated upon a political environment in which the only Labor government in the federation was in New South Wales, and that the other states were moving rapidly to a deregulated regime of wages and conditions.

The Commonwealth's present proposal to override state laws may have been influenced by the fact that along the eastern seaboard we now have Labor governments intent upon a more regulated approach to wages and conditions.

Of course there are significant practical obstacles facing the Commonwealth overriding state laws in this area. It seems incongruous that controversial mandatory sentencing laws will not be overridden by the Federal Government because of objections based upon state and territorial rights. It can be expected that both Labor and conservative states will mount strong objections to their systems being overtaken by federal laws.

We live in interesting times. In all of these controversies the efforts of academic researchers such as those here at the University of New South Wales will no doubt contribute to the content and level of the debates surrounding industrial relations in the new century.

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