

## **CHAPTER 4**

### **THE MASTER BUILDERS ASSOCIATION OF NSW 1890 - 1913**

#### **CHALLENGES FROM THE STATE**

##### **Introduction**

This chapter considers the tumultuous events of the 1890s and the period leading up to World War I. There were significant changes to both the *Builders and Contractors Association of New South Wales* (BCA/NSW) and its external environment. The BCA/NSW was renamed the *Master Builders Association of New South Wales* (MBA/NSW) in 1901.

The Association also underwent changes in both its administration and attitudes that were to have an impact for decades to come. New industrial laws created industrial relations jurisdictions that were to dominate employment relations in Australia for over a century. The association initially responded to the new NSW industrial arbitration legislation forming a separate association comprising a limited number of its membership. It also fought against being drawn into the industrial relations system introduced by the newly created Commonwealth Government.

The formation of the Labor Party by trade unions in NSW changed the political landscape. A Progressive Government, which relied on Labor Party support, favoured day-labour and imposed conditions related to wages on contracts that were let by the Department of Public Works. This challenged the employment practices of the BCA/NSW, which launched a major media campaign against these government initiatives.

##### **The Context**

The early 1890s were a testing time for the colonies as the long economic boom began to collapse. It had lasted virtually since the 1850s gold rushes. Overseas investment dried up, prices for wool and wheat fell dramatically, and many individuals lost their savings when a number of local banks collapsed. Unemployment and poverty soared, government tax

revenues collapsed and public works projects were abandoned. A long drought began that further damaged the rural industries on which NSW and most of the other colonies depended. The NSW Government initiated a program during 1885-1888 under which work was found, or created, for the unemployed.<sup>1</sup> The unemployment resulting from the severe depression in the early 1890s, led to the establishment in 1892 of the *NSW Government Labour Bureau*. In 1896, thirty five branches were established throughout the Colony, a number which later increased to forty two. The operations of the Labour Bureau encouraged departments of both local and Colonial governments to utilise the unemployed as day-labour in lieu of the practice of putting works out to tender. By 1897 day-labour had become cause for concern within the building industry.<sup>2</sup>

Trade unionism growth during the 1880s was sufficient to cause alarm amongst employers. In 1890 a massive national maritime strike erupted when employers refused to negotiate with strikers on ships and the waterfront. This was followed in January 1891 by a shearers' strike in Queensland when pastoralists cut wages and employed non-union labour. That strike soon spread to NSW and Victoria. Those events fostered a rise of republican and socialist sentiment,<sup>3</sup> and a spirit of rebellion that was fuelled by such writers as Lawson:

But Freedom's on the Wallaby,  
 She'll knock the tyrants silly,  
 She's going to light another fire  
 And boil another billy.  
 We'll make the tyrants feel the sting  
 Of those that they would throttle;  
 They needn't say the fault is ours  
 If blood should stain the wattle.<sup>4</sup>

Cooler heads, however, prevailed as the defeat of the Maritime unions in 1890 had led many trade unions to decide to pursue their objectives through political power. The Trades and Labor Council of NSW (TLC) resolved in November 1890 to establish Labour Electoral

<sup>1</sup> James Pringle, 'The Aims of Political Labour and the Unemployed', in Federated Master Builders' Association of Australia (FMBA), *Minutes of the Ninth Convention*, October 1906, p. 572.

<sup>2</sup> *The Building Engineering and Mining Journal*, 3.7.1897, p. 183.

<sup>3</sup> Manning Clark, *A History of Australia*, vol. v, Melbourne University Press, Carlton, 1981, pp. 34-5, 38-51, 63-5, 90-101.

<sup>4</sup> Henry Lawson, 'Freedom on the Wallaby', *Boomerang*, Brisbane in May 1891 as cited in Colin Roderick, *Henry Lawson: Poems*, Harper Collins, Sydney, 2000, pp. ix, xiv, 50-1.

Leagues (LELs) ‘in every electorate where practicable throughout the colony’.<sup>5</sup> In the 1891 elections, 35 members of the newly formed LEL (later to be known as the Labor Party) entered the NSW Parliament although they split almost immediately over the protection-free trade issue. The Labor Party vote gradually increased from a low point of 11.4 per cent in 1898 to 48.9 per cent in October 1910, when it won government. From July 1895 to August 1904 the Labor Party was able to win concessions from non-Labor governments as it held the balance of power.<sup>6</sup>

On 8 May 1901, the eight senators and the fourteen members of the House of Representatives of the first Commonwealth Parliament formed themselves into a “Federal Labour Party”, later known as the Australian Labor Party (ALP). In 1909 the two conservative federal parties amalgamated to become the Liberal Party. In 1910, the ALP became the first national party to win government in its own right.<sup>7</sup>

The NSW Government had established a Royal Commission on Strikes in 1891. It principally focused its attention on the maritime and pastoral industries that had been at the centre of the 1890 Maritime Strike. The Royal Commission had recommended a tripartite Arbitration Board with appointments by the Government, employers and unions, and conciliation committees appointed on an industry-by-industry and dispute-by-dispute basis. The NSW Government ignored the Royal Commission recommendations for compulsion and enacted the *Trades Disputes Conciliation and Arbitration Act*, 1892, which provided for voluntary arbitration and was restricted to eight occupations including building. No dispute could be notified for conciliation and arbitration without the prior agreement of the parties. A later attempt to establish a conciliation and arbitration scheme through the (NSW) *Trades Disputes Conciliation and Arbitration Act*, 1899 was also voluntary despite many within the labour movement and in the Labor Party were coming to favour compulsory arbitration. It merely authorised the Minister for Labour to seek to mediate in a dispute involving a strike or lock-out and was used on only four occasions by the Minister. The building industry ignored the legislation generally. Whilst it operated for only a few months before being abandoned, it served as a precursor to the compulsory arbitration Bill put before Parliament

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<sup>5</sup> Ian Turner, *In Union is Strength: A History of the Trade Unions in Australia 1788-1978*, Thomas Nelson, Melbourne, 1976, p. 37.

<sup>6</sup> Greg Patmore, *Australian Labour History*, Longman Cheshire, Melbourne, 1991, pp. 76-77.

the following year.<sup>8</sup> The failure of the 1899 Act served to increase demands for greater compulsion and led to the Labour Party ‘transferring its support from the Free Traders to the opposition Protectionists (later the Progressives)’ which formed a government and introduced an Industrial Arbitration Bill in June 1900.<sup>9</sup> This Bill became the NSW *Industrial Arbitration Act* 1901.

The seriousness of the strikes in the early 1890s led the framers of the proposed constitution for Australia to consider the need for a mechanism through which conflict between capital and labour could be resolved.<sup>10</sup> At federation, the parliaments of each colony/state relinquished their control over such national affairs as defence,<sup>11</sup> but retained all other powers,<sup>12</sup> including regulation of industrial relations within their borders. The powers of the Commonwealth were limited to merely *set up* machinery for the resolution of industrial disputes that extended across State borders. The new federal parliament passed the *Conciliation and Arbitration Act* 1904 to enact these powers.

### Structure and Leadership

Since 1875, membership of the BCA/NSW had been expanded to include suppliers of materials and services to the building industry. Whilst accepting the symbiotic relationship between the BCA/NSW and the Builders Exchange of NSW,<sup>13</sup> by the end of the 1880s some BCA/NSW members were expressing concern at the wider direct membership.<sup>14</sup> Initial attempts by John Harrison to limit BCA/NSW membership to builders foundered.<sup>15</sup> His later proposal to form a Builders’ Union within the Association was also unsuccessful. Mr. Harrison accused the BCA/NSW of having become a ‘conglomeration of trades and businesses whose respective interests might as some times be in conflict’.<sup>16</sup> He pursued the issue, in December 1890, by providing a notice of motion to limit membership to ‘bonafide

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<sup>7</sup> Clem Lloyd, ‘Andrew Fisher’, in Michelle Grattan (ed.), *Australian Prime Ministers*, New Holland Publishers, Sydney, 2000, p. 80.

<sup>8</sup> R. B. Walker, ‘Australia’s Second Arbitration Act’, *Labour History*, no. 19, 1970, p. 24.

<sup>9</sup> Patmore, *Australian Labour History*, pp. 108-9.

<sup>10</sup> J. H. Portus, *Australian Compulsory Arbitration 1900-1970*, Hicks Smith & Sons, Sydney, 1971, pp.4-5.

<sup>11</sup> W. J. Byrt and F. Crean, *Government & Politics in Australia*, McGraw-Hill, Sydney, 1972, p. 58.

<sup>12</sup> Sections 106-108, *Commonwealth of Australia Constitution Act*, 1900.

<sup>13</sup> The Builders Exchange, *The First 100 years*, The Exchange, Newtown, 1964, p. 7.

<sup>14</sup> BCA/NSW, *Minutes of General Meeting*, 18.12.1889.

<sup>15</sup> BCA/NSW, *Minutes of Annual General Meeting*, 21.1.1890.

<sup>16</sup> BCA/NSW, *Minutes of General Meeting*, 10.2.1890.

builders and contractors of good character --- those who are actually engaged in the business of building...' a motion that was not intended to 'affect the position of existing members.'<sup>17</sup> The motion, which was ultimately successful, attracted acrimonious debate at the Annual General Meeting. A month later, an application by a Commercial Broker for membership was denied 'in conformity with the resolution recently passed.'<sup>18</sup> Later meetings resolved to restrict meetings to builders and contractors,<sup>19</sup> and the BCA/NSW and the Builders Exchange formed a bipartite committee to find a solution.<sup>20</sup> The result was that suppliers who were existing BCA/NSW members transferred to the Builders Exchange. The Exchange continued to be a *branch* of the BCA/NSW and its President was the BCA/NSW President, however, it became necessarily more autonomous.<sup>21</sup>

While its Executive Committee dominated the structure of the BCA/NSW, its operations were pursued through committees of honorary members. However, shortly after it entered the final decade of the nineteenth century, the Association was to commence its move towards assuming the characteristics of employer associations of the twentieth century. The catalyst for that development was the resignation in March 1891 of Enos Dyer, Honorary Secretary since 1874, after he had been criticised by another member, Thomas Loveridge, for not having obtained copies of the Government's Conditions of Contract.<sup>22</sup> Following that event, a series of *paid* part-time secretaries were employed and a list of them is included in Appendix 3.

The MBA/NSW (as the BCA/NSW became known in 1901) appointed *Norman Phelps-Richards* as the first *full-time* secretary in 1905. He attended arbitration court proceedings in Sydney and Melbourne and produced a wide variety of reports. His role was similar to that of contemporary paid association officers of the twentieth and twenty-first centuries. The duties of those secretaries who preceded him were somewhat menial and did not include representing the association in any capacity or performing a managerial role. The duties of one part-time secretary, for example, included cleaning the premises, and his salary

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<sup>17</sup> Ibid, 16.12.1890.

<sup>18</sup> Ibid, 17.2.1891.

<sup>19</sup> BCA/NSW, *Minutes of Special Committee Meetings*, 14.4.1891, 16.4.1891.

<sup>20</sup> BCA/NSW, *Minutes of General Meeting*, 17.2.1891.

<sup>21</sup> The Builders Exchange, *The First Hundred Years*, p. 8.

<sup>22</sup> BCA/NSW, *Minutes of Special Committee Meeting*, 11.3.1891.

increase was supported by expressions of support for his courtesy and his enterprise in displaying advertisements in the meeting room.<sup>23</sup> The duties of the MBA/NSW secretary were set out in by-law 3 of the rules, but it was not until 1912 that the secretary's role was included within the main body of the rules as an employee under the direct authority of the President.<sup>24</sup> In 1907, the MBA/NSW purchased a substantial building and occupied the first floor comprising a committee room, meeting room, and Secretary's office.<sup>25</sup> Its administration assumed an air of professionalism and it experienced problems typical of any office – such as the unauthorised use of the telephone.<sup>26</sup>

During the period 1890 to 1913, the Association was led by a number of influential and prominent builders such as *George Parker Jones* who arrived at Sydney Harbour from England by three-masted sailing ship in February 1849 at the age of ten years with his parents. In his short memoirs (the classic: "The road I came"), he described his days in the building industry, his membership of the Progressive Society of Carpenters and Joiners, and his passionate support of the eight-hour day. He was BCA/NSW President in 1893 and was also very active in community life being at one time an alderman and Mayor of Paddington Council. Other leading builders who served as MBA/NSW President during this era included James Milne Pringle, Edward Harman Buchanan and William Stuart.

The shift towards federation had its implications for builders and contractors. Builder Associations were also formed in Victoria (1874), Queensland (1882), and in South Australia (1884). By 1890, the associations from the four colonies had considered the value of creating a mechanism through which they could manage their relationship. On 19 November 1890, they commenced a two day conference at the Builders' Exchange in Sydney 'with a view to forming the *Federated Builders and Contractors' Association of Australasia*' (FBCA).<sup>27</sup> Peter Dow, the President of the BCA/NSW, chaired the conference. George Parker Jones was FBCA president in 1894. The first federal employers' body in Australia, the FBCA changed its name to the *Federated Master Builders Association of Australasia* (FMBA) on 3 November 1900.

<sup>23</sup> BCA/NSW, *Minutes of Special Committee Meeting*, 30.6.1891; BCA/NSW, *Minutes of General Meeting*, 18.4.1893.

<sup>24</sup> Rules registered (No.870) 29 October 1901, (No.6617) 3 July 1908, and Rule 48 registered (No.135) 23 July 1912 under the *Trade Union Act*, 1881.

<sup>25</sup> MBA/NSW, *Minutes of General Meetings*, 26.3.1906, 23.7.1906, 25.2.1907.

<sup>26</sup> MBA/NSW, *Minutes of Committee Meeting*, 27 August 1912.

### Trade and Tendering Problems

Initially, the BCA/NSW regarded the introduction of fair contract conditions as an appropriate protection against bad debts, but during the economic slump of the late 1880s its interest in the possible advantages of liens surfaced. A lien provides the right to hold the property of another as security, a common provision in relation to the sale of goods.<sup>28</sup> The interest of builders in the subject was of course related to buildings under construction. A committee established by the BCA/NSW in 1889<sup>29</sup> recommended legislative action and produced a draft Lien Bill. In early 1890 the Association adopted the draft Bill and resolved to 'take some steps to bring this under Parliamentary notice.'<sup>30</sup> Unable to achieve a meeting with the Member of Parliament of its initial choice, the Association approached Jacob Garrard, Member for Balmain,<sup>31</sup> who sought to introduce the Bill before the House in October 1890.<sup>32</sup> By the end of 1890, each colony had a lien law before its respective parliament. However, conflicting views as to whether sub-contractors and workmen should be included within its scope developed.<sup>33</sup> In March 1891, the Newcastle Branch of the BCA/NSW complained that the Bill did not provide protection for 'material vendors'.<sup>34</sup> Each Lien Bill was rejected by respective colonial parliament due to a general belief in the community that builders suffered little loss in comparison with that suffered by merchants and sub-contractors. No colonial association saw any chance of a Lien Act being effected within the foreseeable future, and believed that any Lien Bill introduced could be 'spoiled by amendments in favour of supply merchants and sub-contractors.'<sup>35</sup>

The Association also came into conflict with the NSW Government over what became known as the *Day-Labour Issue*. In 1897 the BCA/NSW became concerned at the degree to which the NSW Government acceded to demands by its Labour Bureaus to utilise the

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<sup>27</sup> FBCA, *Minutes of the First Annual Conference*, 19.11.1890, p. 3.

<sup>28</sup> M. Tilbury, M. Noone and Bruce Kercher, *Remedies*, The Law Book Company, Sydney, 1993, p. 45.

<sup>29</sup> BCA/NSW, *Minutes of Special Meeting*, 12.11.1889.

<sup>30</sup> BCA/NSW, *Minutes of Annual General Meeting*, 21.1.1890.

<sup>31</sup> BCA/NSW, *Minutes of Monthly General Meeting*, 15.7.1890.

<sup>32</sup> BCA/NSW, *Minutes of Committee Meeting*, 7.10.1890.

<sup>33</sup> FBCA, *Proceedings of First Annual Conference*, 19.11.1890, p. 11.

<sup>34</sup> BCA/NSW, *Minutes of Monthly General Meeting*, 17.3.1891.

<sup>35</sup> FBCA, *Proceedings of Second Annual Conference*, 27.10.1891, p. 56.

unemployed as day-labour in lieu of the practice of putting works out to tender.<sup>36</sup> Anger was expressed over the use of day-labour on projects for such government agencies as the Government Printing Office and the Postal Department.<sup>37</sup> In 1899 the NSW government centralised the decision making regarding public works construction with the Minister for Public Works, Edward William O'Sullivan, a protectionist sympathetic to labour.<sup>38</sup> The expenditure on public works was increased and the previous use of public works as systemised relief works, to alleviate the effects of the 1890s depression, was rapidly expanded with day-labour replacing much of the construction work formerly performed by contractors.<sup>39</sup> Further, public works put out to tender required contractors to pay their employees at the rates established by the Minister in consultation with the unions. A deputation from the BCA/NSW in early May 1900 complained to the Minister for Public Works at being told to pay rates prescribed by the unions and at the lack of advice as to the 'wages they were expected to pay in each trade.' The Minister replied that union wages were those fixed by the union and prevailing in the trade. When the deputation pointed out that the rates named by the unions were not those prevailing in the trade, the Minister had no satisfactory answer to give and would not let himself be bound to any more definite statement on the point. Whilst promising to consider a suggestion to emulate the practice of London County Council in which 'the Department of Labour tendered against contractors and were held responsible to carry out that work' as a contractor would have been, the Minister was adamant in his support of wages set by the union. The delegation reported that the Minister had told them:

that while he was Minister for Works the men would have the highest wages and generally speaking posed as the men's good angel refusing to let them be ground down by the grasping Contractor etc. etc.<sup>40</sup>

O'Sullivan's pro-union policies encouraged the United Labourers' Protective Society (ULPS) to broaden its membership base and to change its focus from workplace organising to one of seeking intervention and support from the Minister. The day-labour policies during the period 1899-1904 'turned militants into petitioners' and this reduced the position of the ULPS in

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<sup>36</sup> *The Building Engineering and Mining Journal*, 3.7.1897, p. 183.

<sup>37</sup> *Ibid.*, 10.7.1897, p. 196.

<sup>38</sup> B. E. Mansfield, *Australian Democrat, The Career of Edward William O'Sullivan*, Sydney University Press, Sydney, 1965, pp. 156-60.

<sup>39</sup> Peter Sheldon, 'In Division is Strength: Unionism among Sydney Labourers, 1890-1910', *Labour History*, no. 56, 1989, pp. 46-9.

dealing with private sector projects.<sup>41</sup> Its failure to maintain its workplace relationships was to ultimately lead to a break-away by its builders' labourers' membership. The day-labour policies of the NSW Government also caused concern among those government officers charged with overseeing their operation. James Pringle of the BCA/NSW told the sixth national convention:

In Sydney [we have] had great experience in the matter of day-labour. --- The day-labour system was a failure in New South Wales. --- under the Government the work was carried out by men who had not the ability to supervise. .... The Government Architect of New South Wales [told the BCA/NSW] that he did not know whether he was an architect or contractor, because under the system they expected the Government officer to occupy two positions at once.<sup>42</sup>

In seeking to force an end to the day-labour policies of the Government, the MBA/NSW (as it was now called) adopted a recommendation to become 'an active political unit' and formed a Political Advisory Committee at its Annual General Meeting in January 1901.<sup>43</sup> It later considered, printed and distributed, the Committee's 'lengthy' report, *Ten Years of Labour Rule in NSW*, which criticised government policy.<sup>44</sup> The MBA/NSW resolved to have the report published in the *Sydney Morning Herald* at a cost of one hundred guineas (£105), and to pledge 'itself to support the Liberal Party provided that a promise be obtained to give a fair and independent inquiry into the Day-labour system.'<sup>45</sup> The Association maintained a vigorous publicity campaign that was taken up in the editorials of the press in Victoria and Queensland. The *Brisbane Daily Telegraph* was cited as reporting on 14 March 1902 that the daily labour cost the New South Wales Government was 'fully 50 per cent more than would be the case if they were let out on contract.'<sup>46</sup>

The day-labour policies resulted in many tenderers failing to win a tender even though they had the lowest bid. The MBA/NSW proposed to the Architects that the lowest tenderer should be compensated where no tender was accepted or where the work was subsequently carried out by day-labour.<sup>47</sup> The Institute of Architects did not respond to the MBA/NSW proposal but, rather, formed a deputation to the government, over the resumption and

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<sup>40</sup> BCA/NSW, *Minutes*, 15.5.1900.

<sup>41</sup> Sheldon, 'In Division is Strength', pp. 51-2.

<sup>42</sup> FMBA, *Minutes of Sixth Convention*, 31.10.1900, p. 320.

<sup>43</sup> MBA/NSW, *Minutes*, 19.2.1901.

<sup>44</sup> *Ibid.*, 18.6.1901.

<sup>45</sup> BCA/NSW, *Minutes of Annual General Meeting*, 22.1.1901.

<sup>46</sup> FMBA, *Minutes of First Annual Conference*, 1902, pp. 366, 370-1.

<sup>47</sup> MBA/NSW, *Minutes of Monthly Meeting*, 18.12.1900.

proposed rebuilding of the Rocks area at which they expressed views that supported the Government's right to engage day-labour. This support for the Government increased tensions between the MBA/NSW and the Architects.<sup>48</sup>

In May 1901 the Prince Alfred Hospital Committee successfully sought donations from the MBA/NSW toward equipping the proposed new Queen Victoria wards.<sup>49</sup> The MBA/NSW tried to persuade the committee to have the construction carried out by contract. The Hospital Committee decided to advise the Government to construct one ward under day-labour and put the other ward out to tender.<sup>50</sup> On 5 February 1902, the MBA/NSW told the Hospital Board that no test between the two systems could be conclusive unless supervised by independent architects and that all plans and specifications be available prior to tenders being called. The President of the MBA/NSW, R. D. Sime, had a personal interview with the Under Secretary for Works following which the Association stated that it had never unconditionally 'accepted the proposed comparison as a fair test of the relative merits of the two systems.' The MBA/NSW suggested a number of conditions under which such a test could proceed: first, that tenders be called for the largest pavilion (ward)<sup>51</sup> with the Department depositing a tender at the same time and then drawing lots as to which pavilion would be done by contract; second, supervision to be by independent architects; third, that the contractors have a free hand in purchasing all materials; fourth, quantities to be supplied free to the contractor who had the right to take his own measurements, and a priced schedule for extras and deductions to be attached to the contract; fifth, that the system for checking the day-labour work be submitted to the MBA/NSW for its consideration; and sixth, that contractors be allowed to take the plans home with them.

The Department regarded supervision by the Government Architect as 'the best possible arrangement' and, whilst it agreed to the condition related to quantities, it rejected the right of contractors to purchase materials other than face brick or stone. The Department insisted on its right to determine who is to supply and the price to be paid by the contractor. The Department further rejected the provision whereby the Contractor took such plans home and limited their use to 'the Contractor's Room at the Public Works Office', and stated that

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<sup>48</sup> Ibid, 17.12.1901.

<sup>49</sup> Ibid, 2.5.1901, 16.7.1901.

<sup>50</sup> MBA/NSW, *Minutes of Annual General Meeting*, 21.1.1902.

<sup>51</sup> The term *pavilion* is still evident in Scotland today. It refers to a detached building at a hospital.

supervision would be ‘by separate Clerks of Works for each pavilion’. An MBA/NSW deputation to the Under Secretary for Works and the Government Architect proved unsuccessful as the Department was willing to modify its position ‘in respect to the purchase of certain material but in no other respect’. The MBA/NSW expressed its regret at the Department’s decision as it imposed ‘such one-sided conditions as to preclude any member of this Association from tendering for the work.’<sup>52</sup>

It was a change in government in August 1904 that led to the day-labour policies being moderated, and the then President of the MBA/NSW, Edward Buchanan, was to later praise ‘Our State Government’ for having accomplished a great deal towards securing that reform.<sup>53</sup> The NSW Government, shortly after assuming office, took steps to end day-labour on Central Railway Station and the Cataract Dam, where cost estimates had been greatly exceeded, and call for tenders to complete the works. By the latter part of 1906, the list of government tenders had grown from nil in 1904 to a list of over forty different projects.<sup>54</sup> In reporting on his visit to the Cataract Dam in early 1905, in the company of the Premier of NSW, the Lord Mayor of Sydney, and principal officers of the Water Board, Edward Buchanan noted that:

The contractors .... have made good progress, and in the temporary city of Cataract, composed of workmen, wives and families, good health and contentment reigned, thus reflecting good opinions on the few officials in charge and the contractors.

The absence of the government stroke and the large army of officials, so noticeable on day-labour jobs, was conspicuous to any observer on this important national work.<sup>55</sup>

## **Industrial Relations**

By the end of 1890, deteriorating economic conditions resulted in building contractors tendering at extremely reduced prices. They commenced an overall downward pressure on

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<sup>52</sup> MBA/NSW, *Minutes of Special Meeting*, 5 May 1902.

<sup>53</sup> MBA/NSW, *Annual Report*, 1906 -1907, p. 2.

<sup>54</sup> *Sydney Morning Herald*, 27.10.1906, p.21.

<sup>55</sup> MBA/NSW, *Draft Annual Report*, 15.1.1907.

wages due to their reliance on sub-letting and piecework rates,<sup>56</sup> which undermined the Conciliation Board established in the late 1880s by the BCA/NSW and the Building Trades Council (BTC). Its decisions were not adopted by many within the industry, and its efforts over a demand for uniform working hours were unsuccessful throughout 1890 and 1891. The authority of the Board was undermined by the failure of the BCA/NSW and the unions within the BTC to represent the entire constituency on whose behalf they sought to speak, and by the fact that the BTC membership became fragmented.<sup>57</sup> Finally, the use of learners and the ‘sub-letting’ of contracts further weakened the authority and effectiveness of the Board.<sup>58</sup> In July 1891, the Stonemason’s Society refused to submit to conciliation over one of its disputes and had pursued the matter independently.<sup>59</sup>

During 1892, the BCA/NSW held a number of discussions with building unions about uniform hours of work.<sup>60</sup> Those discussions ceased, however, when the BCA/NSW resolved to reduce wages by 10 per cent from the end of May 1893.<sup>61</sup> The stonemasons went on strike for twelve months against the wage cuts. The strike was unsuccessful and depleted union funds. The wage cuts effectively signalled the end of the Board of Conciliation and there is little evidence of any negotiations between the BCA/NSW and building unions throughout the remainder of the decade. Unions faced increasing unemployment among their membership and a deteriorating industrial relations situation, whilst the BCA/NSW was by the end of 1893 recording concern at its own dwindling membership.<sup>62</sup>

The BCA/NSW also had to face the challenge of growing State intervention in industrial relations and registered under the *Trade Union Act*, 1881 to obtain the benefits of being a legal entity.<sup>63</sup> This was useful to the Association as such registration gave the

<sup>56</sup> C. E. Mayes, *The Australian Builders Price Book*, Melbourne, 1891.

<sup>57</sup> Alice Coolican, ‘Solidarity and Sectionalism in the Sydney Building Trades: The Role of the Building Trades Council 1886-1895’, *Labour History*, no. 54, May 1988, p. 25.

<sup>58</sup> BCA/NSW, *Minutes of General Meeting*, 15.4.1890; *Minutes of Committee Meeting*, 13.1.1891.

<sup>59</sup> *Australasian Builder and Contractors News*, 11.7.1891, p. 28.

<sup>60</sup> BCA/NSW, *Minutes of General Meetings*, 15.3.1892, 15.11.1892, 16.11.1892, 29.11.1892; BCA/NSW, *Minutes of Committee Meeting*, 8.11.1892.

<sup>61</sup> BCA/NSW, *Minutes of General Meeting*, 18.4.1893, 19.5.1893, 20.6.1893.

<sup>62</sup> *Ibid*, 21.11.1893.

<sup>63</sup> The BCA/NSW had been advised that the cost of registering under the Friendly Societies Act would not exceed Fifteen Guineas (Fifteen pounds and fifteen shillings - £15/15/- the equivalent of \$31.50) and resolved to pursue the matter once the review of the BCA/NSW rules had been completed. BCA/NSW, *Minutes of Committee Meeting*, 14.7.1891. The Association later decided to register under the Trade Union Act because its rules were acceptable to the Trade Union Act but were not compatible with the requirements of Friendly Societies. BCA/NSW, *Minutes of Special Meeting*, 14.3.1892.

BCA/NSW rights of nomination under the *Trades Disputes Conciliation and Arbitration Act*, 1892. The BCA/NSW had no qualms in making nominations to the *Conciliation Board* but expressed concern over, first, whether the person nominated to the *Arbitration Board* should be a member of the Association and, second, whether it should follow other employers by refraining from nominating an arbitrator at all.<sup>64</sup> There was unsuccessful opposition to the Association nominating an arbitrator.<sup>65</sup> The founder of Stuart Bros, William Stuart, noted the ‘futility of arbitration’ suggesting that ‘the labor party (*sic*) has got something and now they wanted something more.’ Peter Dow, the Association President, responded by suggesting that ‘the opponents of arbitration appeared to forget that no person was bound to resort to that method of settling disputes, and there was therefore no reason why an arbitrator should not be appointed, as cases might arise when such an official would be useful.’<sup>66</sup> The Association’s nomination to the Arbitration Board and four of its eight nominations to the Conciliation Board were successful.<sup>67</sup> The BCA/NSW, however, never utilised the services of either Board and, in fact, both the BCA/NSW and the building unions rejected an offer of arbitration during the dispute that followed the May 1893 wage reduction initiative of the BCA/NSW. As agreed rates of pay became unenforceable, voluntary agreements failed.<sup>68</sup> Further, as Patmore observed:

Employers took advantage of a declining labour market to ignore the legislation. Miners, printers, railway employees and maritime workers, ..... found the legislation ineffective ..... Disillusionment led the Labor Party and a majority of the Protectionist Opposition in the Legislative Assembly to end funding for this ineffective arbitration system in December 1894.<sup>69</sup>

The BCA/NSW’s view of conciliation and arbitration became more hostile. The failure of the BCA/NSW-BTC Conciliation Board in 1892 and the Stonemasons’ strike in the following year had caused a change in attitude within the BCA/NSW to both conciliation and the union movement. By 1894 W. Mainier of the BCA/NSW perceived that many members of the NSW Parliament hated the private enterprise system and observed ‘that latterly the pay and privileges of strike leaders [had] increased greatly.’ He noted ‘for what

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<sup>64</sup> BCA/NSW, *Minutes of Special Meeting*, 2.8.1892.

<sup>65</sup> BCA/NSW, *Minutes of Committee Meeting*, 19.7.1892.

<sup>66</sup> BCA/NSW, *Minutes of Special Meeting*, 2.8.1892.

<sup>67</sup> BCA/NSW, *Minutes of Committee Meeting*, 20.9.1892.

<sup>68</sup> *Australasian Builders and Contractors News*, 20 October 1894, p. 158.

man of character has aught in common with professional strife promoters, when they are known as such, who in their speeches and manifestoes deny the legitimacy of the employer's position.'<sup>70</sup>

The MBA/NSW (as the BCA/NSW was now called) viewed the passage of the (NSW) *Industrial Arbitration Act 1901* (the 1901 Act) with serious reservations, but at times its attitude to the issue appeared schizophrenic. While it proudly claimed credit for the formation of a committee of nine (comprising: Stockowners, Steamship Owners, Morts Dock, Colliery Owners, Pastoralists' Union, Chamber of Manufactures, Brickmasters, Colonial Sugar Co and the MBA/NSW) to seek amendments to the Industrial Arbitration Bill before Parliament, but would not register as an industrial union under that Act. Its support of the 1901 NSW Act was impeded by two influential members: James Milne Pringle who suggested caution and Robert Doig Sime who warned of 'pains and penalties to which the Association might become liable under the Act if it registered.'<sup>71</sup> Registration was discussed at a special meeting held early in January 1902, at which the Industrial Registrar, G. C. Addison, explained the provisions of the new Act and answered questions. No decision was taken until the following month when 'permission [was] given to Builders (members of the Association) who wished to form an Industrial Union under the Act, to use the Association Rooms .... for 6 months free of cost'.<sup>72</sup> They formed the Master Builders Union (MBU) on 5 March 1902, which initially comprised 20 members with another four joining over the next few months.<sup>73</sup> The MBA/NSW regarded this initiative as assisting to protect the interests of builders under the Act without placing in jeopardy its general membership who, in the main, opposed the Act.<sup>74</sup> The MBU quickly proved its value to the MBA/NSW. When the ULPS sought a meeting over wages and working hours MBA/NSW referred the matter to the MBU.<sup>75</sup>

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<sup>69</sup> Patmore, *Australian Labour History*, p. 108.

<sup>70</sup> W. Mainier, 'Hindrances to a General Resort to the Court of Conciliation and Arbitration', FMBA, *Minutes of the Fourth Annual Conference*, 31.10.1894, p. 241.

<sup>71</sup> MBA/NSW, *Minutes of Regular Meeting*, 17.12.1901.

<sup>72</sup> MBA/NSW, *Minutes of Special Meetings*, 21.1.1902, 28.2.1902.

<sup>73</sup> MBA/NSW, *Master Builders Union Roll Book*, 1902-1906.

<sup>74</sup> J. M. Pringle, *The Master Builders' Association of New South Wales: A Jubilee Record*, Building Limited, Sydney, 1923, pp. 9-10.

<sup>75</sup> MBA/NSW, *Minutes of Regular Meeting*, 21.10.1902.

There was concern that the MBU had removed from the MBA/NSW the important function of the settlement of wages and working hours. Sime expressed his fear that only 22 members had so far joined the MBU and ‘they now had a comparatively small body who would settle these matters for the trade’ and urged MBA/NSW members to join the MBU and protect their interests.<sup>76</sup> A special meeting of the MBA/NSW considered the possibility of the association either amalgamating with the MBU or registering in its own right under the 1901 Act.<sup>77</sup> The MBA/NSW also reasserted its industrial role by taking control of a potential dispute with the Bricklayers Society over the 44-hour week.<sup>78</sup>

The efforts of the MBA/NSW to either replace or amalgamate with the MBU were frustrated by lengthy proceedings before the Court of Arbitration dealing with an ASC&J claim,<sup>79</sup> and it was resolved to take various initiatives to encourage MBA/NSW members to join the MBU.<sup>80</sup> An offer to allocate eight shillings (80 cents) of their subscriptions to offset membership fees of the MBU was not taken up by the MBA/NSW membership, and it was later resolved to merely allocate without notice such proportion of all membership fees and to declare each member of the MBA/NSW to be also a member of the MBU.<sup>81</sup> There is no record of dissent from the general membership of the MBA/NSW and the apparent acquiescence by the MBU to this, *prima facie*, unilateral action by certain members of the MBA/NSW merely highlights the symbiotic and duplex relationship of the two bodies. A confidential internal memo in December 1902 highlighted the close relationship between the MBA/NSW and the MBU. It noted that the duties of the MBA/NSW Secretary included the secretarial work of the MBU.<sup>82</sup>

Despite the existence of the MBU, the trade unions continued to seek conferences with the MBA/NSW, due most likely to the blurring of the boundaries between the two organisations. A letter from the Employers’ Federation seeking financial support in defending an employer against the activities of the Shore and Firemen’s Union, attracted a

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<sup>76</sup> Ibid.

<sup>77</sup> Ibid, 1.12.1902.

<sup>78</sup> MBA/NSW, *Minutes of Annual General Meeting*, 21.10.1902.

<sup>79</sup> *Amalgamated Society of Carpenters and Joiners – v - Master Builders Union - IRC No.2 of 1903.*

<sup>80</sup> MBA/NSW, *Minutes of Regular Meeting*, 21.4.1903.

<sup>81</sup> Ibid, 19 August 1903.

<sup>82</sup> MBA/NSW, *Schedule of Secretary’s Duties*, 4.12.1902.

negative response from the Association on the grounds that it had ‘disputes with five different unions and our funds are needed to fight these and other possible attacks.’<sup>83</sup> But, employer associations generally continued to hold grave misgivings about the 1901 Act and on Friday 14 April 1905 the MBA/NSW participated in a deputation led by the Employers Federation that urged the Premier to repeal the Arbitration Act.<sup>84</sup>

Whilst the decision by the MBA/NSW to merge with the MBU was frustrated by a number of events, it did not stop the Association from involving itself in the affairs and operations of the Arbitration Court. For example, the MBA/NSW instructed its secretary to enter an appearance before the Arbitration Court and to represent its interests in an application by the Tip Carters’ Union to vary an award made on 4th March 1903.<sup>85</sup> The hours of work stipulated in the new Painters Award, and the liability to a penalty of one hundred pounds (\$200.00) for a breach of that award, led to a protest being lodged with the Registrar of the Arbitration Court in May 1904 by the MBA/NSW at ‘matters in which the members of this Association are vitally interested are being considered and settled by workmen and employers both of whom the members of this Association employ.’<sup>86</sup> The response by the MBA/NSW to the Painters Award highlights the fear and frustration of its membership at being marginalized in the new system of industrial arbitration.

However, the Carpenters Case, which had frustrated the merging of the MBA/NSW and the MBU since early 1903, was to allay those fears. After a delay caused by ‘congestion of business in Court’, and the appointment of Justice Heydon, the case was finally heard in 1905. The award dated 23 October 1905 provided benefits less than those offered to the Union by the MBA/NSW as a voluntary agreement on 10 September 1902.<sup>87</sup> The Court also concluded that it was not the appropriate forum in which to consider the question of a reduction in hours of work. It resolved, however, that all boys were to be apprenticed, defined ‘improvers’, and limited the time that a worker could be employed as an improver.<sup>88</sup>

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<sup>83</sup> MBA/NSW, *Minutes of Regular Meeting*, 21.6.1904.

<sup>84</sup> *Ibid.*, 18.4.1905.

<sup>85</sup> *Ibid.*, 15.3.1904.

<sup>86</sup> *Ibid.*, 17.5.1904.

<sup>87</sup> E. H. Buchanan, ‘Industrial Arbitration Act of New South Wales, 1901’, in FMBA, *Minutes of the Ninth Annual Conference*, 31.10.1906, pp. 502-503.

<sup>88</sup> Judgement, ‘Carpenters and Joiners Union v Master Builders Union’, (1905) *Arbitration Reports (NSW)* pp. 401-7.

The employers successfully standardized labour costs in the Carpenters and Plasterers awards through the adoption of a common rule by the Industrial Court. Buchanan, MBA/NSW President, noted that: '[the] Carpenters' Secretary is kept busy in seeing that speculative builders, house agents and others, observe the terms and rates in [the] award'. Despite his support for the decision in the Carpenters Case, Buchanan regarded the Act, which still had two years to run, as deserving the epitaph 'Tried and found Wanting.'<sup>89</sup> The MBA/NSW was also concerned with the heavy expenses associated with industrial arbitration.<sup>90</sup>

With the Carpenters Case completed on 14 February 1906, and outstanding cases against the MBU being struck off the list as no dispute could be proved, the MBA/NSW formally resolved in March 1906 'to register the Association as an Industrial Union under the Arbitration Act of 1901.'<sup>91</sup> The registration of the MBU was cancelled.<sup>92</sup>

Whilst the events related to the introduction of industrial legislation were unfolding within the State of NSW, the MBA/NSW was also concerned with the federal *Conciliation and Arbitration Act* 1904. The MBA/NSW viewed the foreshadowed passage of the federal legislation with alarm and called for a discussion by the 1902 FMBA convention on the need for 'Uniformity in Labour Legislation.' There was general opposition to the ceding of state rights to the new federal parliament.<sup>93</sup> The 1904 FMBA Convention unanimously resolved to call on all employers to vigorously oppose the passage of the federal legislation which they believed 'a flagrant violation of the whole spirit of economic and industrial freedom.'

No FMBA member registered under the provisions of the federal legislation thereby endorsing the Convention's resolution:

That ..... compulsory arbitration for the settlement of industrial disputes is not the best method of arriving at an amicable arrangement between employers and employees, and it desires to enter its strongest protest against the system .....

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<sup>89</sup> Buchanan, 'Industrial Arbitration Act, pp. 492-506.

<sup>90</sup> MBA/NSW, *Minutes of Annual General Meeting*, 16.1.1906.

<sup>91</sup> MBA/NSW, *Minutes of Regular Meeting*, 20.3.1906.

<sup>92</sup> 'The Master Builders Union. Application by Registrar for Cancellation (1906)', State Records NSW: Industrial Commission; NRS 5340, Transcript of proceedings of the Court of Arbitration 1902-08, [2/77 pp. 159-162]. The MBA/NSW was granted a Certification of Registration on 29 September 1906. MBA/NSW, *Draft Annual Report*, 15 January 1907.

<sup>93</sup> FMBA, *Minutes of Seventh Convention*, 1.4.1902, pp. 362-6.

and places both the employers and their employees in a position of subserviency to legal decisions and definitions.<sup>94</sup>

### **The First Builders' Labourers Award**

Despite their opposition to federal arbitration, the master builders were dragged into that jurisdiction by the Australian Builders Labourers Federation (ABLF). The union gained registration under the Federal Act on 23 January 1911. Prior to registration the ABLF sought a standard daily wage of ten shillings (\$1.00) and a 44 hour week, and supported its demand in Queensland with strike action. Mr. Justice Higgins of the federal Court of Conciliation and Arbitration summoned the MBAs to a compulsory conference on 1 February 1911.<sup>95</sup>

The FMBA responded to the ABLF by calling a special convention on 31 January 1911 due to the likelihood that other States besides Queensland could become involved in the dispute. Prior to attending the compulsory conference, delegates to the Special FMBA Convention called to discuss the situation resolved:

That in the opinion of this Convention it is desirable that each State should have full control of all State industrial legislation affecting the building trade. It having been very apparent after discussion that Federal legislation over such a large area, and dealing with such dissimilar conditions would be cumbersome, would cause unceasing friction, and would be practically unworkable. It is further of the opinion that the industrial machinery provided by the States is ample to deal with State industrial conditions affecting the building trade.

That this Convention being of the opinion that the present dispute in the building industry among the builders' labourers is of a local character, being confined to the city of Brisbane (the other states have merely received a paper demand which cannot be recognised as constituting a dispute within the meaning of the Commonwealth Conciliation and Arbitration Act) resolves:

- (1) That the representatives to the Conference called by Mr. Justice Higgins should request a ruling on the question of the jurisdiction of the Court to deal with the matter.<sup>96</sup>

Whilst the issue of jurisdiction did cause the compulsory conference to be aborted, it was not due to the "paper demand" but, rather, to the ABLF having served its log on the

<sup>94</sup> FMBA, *Minutes of Eighth Convention*, 7.6.1904, p. 456.

<sup>95</sup> Its name and its coverage were described as:

*Builders Labourers Federation to consist of an unlimited number of builders labourers, such to be employed on or about any building construction, as demolishing, attending on bricklayers, carpenters, masons, scaffolding, gear work, girder lifting, mortar mixing.*

MBAs, none of which were federally registered. On receiving the report of the delegates who had attended the Compulsory Conference before Justice Higgins, the Convention rather naively passed the Canute-like resolution:

---- this Convention recommends the different State Associations to maintain existing rates or awards until otherwise decided by a local industrial tribunal.<sup>97</sup>

The ABLF served a log of claims on some 570 builders and contractors in the states of New South Wales, Queensland, Victoria, Tasmania and South Australia. After hearings held in Melbourne, Adelaide and Sydney,<sup>98</sup> Justice Higgins handed down the Builders' Labourers Award on 16 December 1913.<sup>99</sup>

The MBA obtained two *Orders Nisi* prohibiting the award,<sup>100</sup> and the matter went on appeal to the *High Court of Australia* and after four days of hearing during April 1914, it dismissed the appeal on 15 May 1914.<sup>101</sup> In addressing the validity of the award itself Chief Justice Griffith and Justice Barton were of the opinion that the *Order Nisi* should be made *Absolute*, on the basis that no dispute could be found to exist. They expressed the view that any dissatisfaction with a determination made by state authorities was dissatisfaction with the state law 'which the President of the Arbitration Court has no more authority to over-ride than the Commonwealth Parliament itself.' The claim by the ABLF was viewed by them as constituting 'five different sets of disputants in five different States [who] agreed to consolidate their disputes, and make in a single document, on behalf of all, a series of demands':

If such a joint demand is sufficient, it is plain that the whole subject matter of the regulation of any and every branch of industry can be taken out of the hands of the State and transferred to the Federal Arbitration Court by the mere

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<sup>96</sup> FMBA, *Minutes of Special Convention*, 31.1.1911, pp. ii-iii, vi.

<sup>97</sup> *Ibid.*

<sup>98</sup> FMBA, 'Appendix - Privy Council Appeal, The Builders Labourers' Case 1910-1917', *Minutes of Meeting*, 1.10.1917, p. 2.

<sup>99</sup> *Commonwealth Arbitration Reports*, vol. 7 (1913), p. 215.

<sup>100</sup> One *Order Nisi* was obtained by G.P. Jones, Jnr. (at the time President of the MBA/NSW) and Others; and the other *Order Nisi* was obtained by W. Cooper & Sons (the principal of which was President of the MBA in Victoria in 1914-15) and Others.

<sup>101</sup> The King against The Commonwealth Court of Conciliation and Arbitration and The President thereof and The Australian Builders' Labourers' Federation, Ex Parte: Jones & Others and Cooper & Sons & Others. *Commonwealth Law Reports*, vol. 18 (1914), pp. 224-72.

consolidation of separate disputes in a common demand. In my judgement that provision is not capable of being so interpreted.<sup>102</sup>

However, the views of the four other members of the High Court Bench (Justices Isaacs, Duffy, Powers and Rich) prevailed. They held that the building trade was ‘an industry in respect of which there may be an industrial dispute extending beyond the limits of any one State within the meaning of s.51 (xxxv) of the Constitution and that, on the evidence, such a dispute existed.’<sup>103</sup>

The MBAs persisted in their opposition to the federal builders labourers’ award. It bore little resemblance to the NSW award,<sup>104</sup> and this dissimilarity continued in later awards. This was a cause of continuing complaint by MBA/NSW members.<sup>105</sup> All MBAs expressed bitter resentment over the intrusion of the federal court into their operations.<sup>106</sup> Whilst the MBAs maintained regular contact with each other, they held no formal meeting from November 1911 until after the dismissal of the appeal by the High Court, on 15 May 1914. The MBAs decided to appeal to the Privy Council, despite the refusal of the High Court to grant appropriate leave, and appointed three members of the MBA/NSW as a committee to oversee its conduct.<sup>107</sup> The Privy Council granted the right late in 1914.<sup>108</sup> The MBA/NSW was the driving force behind the appeal to the Privy Council as the MBAs of Victoria, South Australia and Tasmania were still questioning the wisdom of such action late in 1915,<sup>109</sup> on the grounds of cost.<sup>110</sup> On 8 May 1917, the Judicial Committee of the Privy Council rejected the appeal and awarded costs against the appellants.<sup>111</sup>

## Other Legislative Initiatives

<sup>102</sup> *The Builders’ Labourers Case*, (1914) 18 CLR 224.

<sup>103</sup> Ibid.

<sup>104</sup> For a comparison see *Commonwealth Arbitration Reports*, vol. 7 (1913), p. 236 for the 1913 Federal Award and *New South Wales Industrial Gazette*, vol. 4, 1913, p. 752 for the NSW Builders Labourers’ Award dated 12 November 1913.

<sup>105</sup> Pringle, *The Master Builders’ Association of New South Wales*, p. 11.

<sup>106</sup> J. M. Pringle, ‘Preface’, in FMBA, *Minutes of Twelfth Convention*, 28.11.1911, p. 3.

<sup>107</sup> FMBA, *Minutes of Special (Thirteenth) Convention*, 4.8.1914, pp. 10-11.

<sup>108</sup> MBA/NSW, *Minutes of Regular Meeting*, 5.12.1914.

<sup>109</sup> MBA/NSW, *Minutes of Privy Council Committee Meeting*, 18.11.1915.

<sup>110</sup> MBA/NSW, *Minutes of Meetings*, 6.10.1914, 14.10.1914, 20.10.1914.

<sup>111</sup> Judgment in ‘Jones and Others (Appellants) v The Commonwealth Court of Conciliation and Arbitration and Other (Respondents) and the Attorney General for the Commonwealth of Australia and the Attorney General for the State of New South Wales (Interveners) from the High Court of Australia’,

Whilst the operations of the state and federal industrial jurisdictions were to occupy much of the resources and time of the MBA/NSW, there were two other NSW government initiatives that attracted the attention of the MBA/NSW. They were the Scaffolding and Lifts Act and the regulation of apprentices.

The Scaffolding and Lifts Act related to the statutory control of safety in the building industry, an issue which was to gain increasing importance as employment became more concentrated in the building industry and building methods more complex. The issue had its genesis in late 1891 when the Minister for Works appointed an Inspector of Scaffolding. The BCA/NSW considered expressing its concern over not being consulted in the selection of the appointee, and also seeking advice as to the person's qualifications. The motion was defeated due, possibly, to lack of any rights of entry or authority vested in the position.<sup>112</sup> In 1901, the MBA/NSW and the Master Painters Association of NSW 'had jointly waited on the Premier', and subsequently the Government Architect, to discuss a proposed Bill related to Scaffolding and Lifts. The employers, while questioning the need for legislation related to scaffolding over the height of eight feet (roughly 2 metres), were opposed to the requirement for scaffold planks to be butting rather than overlapping. The Government Architect incorporated their suggestions into the Bill and the Association approved the proposed Bill in its amended form.<sup>113</sup>

The *Scaffolding and Lifts Act* 1902, came into force on 1 January 1903 and covered the operations of machine cranes and boilers and such gear as ladders, planks, hoists, chain rope fastenings, stays, blocks and pulleys, slings and braces. It also provided for the appointment of inspectors to police the Act. There was still criticism of the matters covered by schedules under the Act, and the MBA/NSW sought to offer suggestions as to appropriate amendments.<sup>114</sup> A working party of four was appointed to draw up amendments to the Act for consideration by the Government Architect,<sup>115</sup> and those 'amendments were practically agreed to by the labour representatives', at a conference convened by the Government and the MBA/NSW.<sup>116</sup> The agreed amendments were finally effected as regulations in December 1905.<sup>117</sup>

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*Commonwealth Law Reports*, vol. 24 (1917-1918), pp. 396-8.

<sup>112</sup> BCA/NSW, *Minutes of General Meeting*, 15.12.1891.

<sup>113</sup> MBA/NSW, *Minutes of Regular Meeting*, 20.11.1901.

<sup>114</sup> *Ibid.*, 16.2.1904.

<sup>115</sup> *Ibid.*, 15.3.1904.

<sup>116</sup> FMBA, *Minutes of Eighth Convention*, 7.6.1904, p. 460.

<sup>117</sup> *Ibid.*

The MBA/NSW turned to the State to regulate apprentices. In 1900, R. D. Sime of the MBA/NSW told a federal convention that many builders regarded their tradesmen as less proficient than those ‘of the old country’, Britain, due to the poor technical training facilities available. Another leading MBA/NSW member, James Pringle, stated that, whilst proud of his role in the establishment of a technical college at Bathurst in NSW, he deplored the teaching of ‘too many fancy subjects, such as music and painting’ and regarded as a mistake the action of the NSW State Government in abolishing the Board of Technical Education and placing such responsibilities under the Education Department.<sup>118</sup>

When nothing had improved by the FMBA Convention of April 1902, James Pringle complained that ‘the matter of taking apprentices in the old fashioned way had fallen out of use’, and doubted that it could be revived. Both he and William Stuart extolled the benefits of practical application of theoretical principles and the need to reinstate the Board of Technical Education which had comprised leaders in the field of ‘architecture, engineering, surveying and building’. The FMBA Convention passed the following resolutions:

- (a) That in the opinion of this Conference, to thoroughly train apprentices so as to make them competent workmen, facilities should be granted in the workshops, and that technical colleges can only serve as a secondary element in the attainment of mechanical skill, and that it is the duty of employers generally to assist in providing these facilities; and,
- (b) That this Conference recommend the appointment by State Governments of advisory boards composed of practical and professional men, for the purpose of securing better results in the system of technical education, and also in securing its extension on practical lines.<sup>119</sup>

The issue of apprenticeship was again raised at the FMBA convention of June 1904. Thomas Loveridge of MBA/NSW warned that technical education was, within reasonable bounds, of ‘primary necessity, but to outrun discretion and to allow the public mind to suppose that nothing is needed beyond the training which a lad receives at the Technical College, Sydney ..... would lead to disastrous results.’ He found the attitude of apprentices to their training as ‘but the prelude to obtaining better wages, and ..... not so much concerned to become an expert mechanic.’ He, like Sime and Stuart, saw the Australian system of apprenticeship training as

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<sup>118</sup> FMBA, *Minutes of Sixth Convention*, 31.10.1900, pp. 322-4.

<sup>119</sup> FMBA, *Minutes of Seventh Convention*, 1.4.1902, pp. 373-6.

comparing unfavourably with the close relationship that had been fostered ‘in the old country.’ Loveridge concluded by successfully moving:

- (1) That this meeting of Federated Builders, having taken into consideration the present unsatisfactory training of workmen in Australia, requests the delegates from the various States to take the matter into their early consideration with a view of suggesting means of amendment.
- (2) That it is desirable that a system of indenture be adopted and that attendance at technical classes be advocated by this Federated Association of Master Builders.<sup>120</sup>

The NSW Industrial Arbitration Court temporarily resolved the issue on 23 October 1905 through the handing down of the carpenters and joiners’ award. This award embodied the form of indenture apprenticeship promoted by the MBA/NSW and provided for technical training.<sup>121</sup> While the MBA/NSW gained its objectives for apprenticeship through the arbitration system, it continued to complain a lack of competent tradesmen. It promoted a legally indentured apprenticeship system administered by an Apprenticeship Board that comprised employers and employees. The Board would be administered by the Minister, of either Education or Labour, in conjunction with the Technical College. It also criticised the unions’ opposition to the importation of skilled tradesmen.<sup>122</sup> The NSW Government sought to resolve the issue by establishing a Royal Commission in 1911 to inquire into the alleged shortage of labour.

The MBA/NSW took its own action. It initially sought the import of skilled tradesmen through the offices of the British Immigration League, but then sent a representative to England to more effectively place immigrants in work,<sup>123</sup> due to the inaction of the State Government.<sup>124</sup> It formed a Labour Exchange to assist their English representative and asked other employer associations to support the Exchange.<sup>125</sup> The MBA/NSW maintained its lobbying and negotiations with the Government over trade training for apprentices and in relation to their belief in the need for employers to be involved in Technical College Advisory Committees. The NSW Government eventually invited the MBA/NSW to

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<sup>120</sup> T. Loveridge, ‘Industrial Conditions as they affect the Training of Workmen in Australia’, FMBA, *Minutes of Eighth Convention*, 7.6.1904, pp. 397-399, 407.

<sup>121</sup> FMBA, *Minutes of Ninth Convention*, 31.10.1906, p. 544.

<sup>122</sup> E. H. Buchanan, ‘Apprenticeship Under New Industrial Conditions’, FMBA, *Minutes of Tenth Convention*, 19 -22.10.1909, pp. 80, 83.

<sup>123</sup> MBA/NSW, *Minutes of Regular Meeting*, 12.11.1912.

<sup>124</sup> Ibid, 16.4.1912.

<sup>125</sup> MBA/NSW, *Minutes of Labour Exchange Sub-Committee*, 4.12.1912.

nominate three representatives to an Advisory Committee for Building Trades classes 'at the Technical College.'<sup>126</sup>

The Association also encountered difficulties with those apprentices who commenced their five-year carpenter and joiner indentures at an age in excess of 16 years. The problem was created by the provisions of the *Industrial Arbitration Act* 1912 which defined an 'apprentice' as 'an employee under 21 years of age and serving a period of training under an indenture or other written contract for the purpose of rendering him fit to be a qualified worker in an industry.'<sup>127</sup> This problem manifested itself in 1914 with the successful prosecution of a builder in the Industrial Magistrate's Court for not paying the journeyman's wage to a carpenter and joiner apprentice who had attained the age of 21 years whilst still within the five-year apprenticeship term. Attempts by the MBA/NSW to have the matter remedied, by the chairperson of the Building Trades Wages Boards, were unsuccessful, as he was powerless to act due to the legislation requirement that 'every man at the age of 21 should receive a living wage.' The MBA/NSW President sought the support of the Employers Federation in having both the *Apprentices Act* 1901 and the *Industrial Arbitration Act* 1912 amended so as to overcome the problem.<sup>128</sup> The *Industrial Arbitration (Amendment) Act* 1915, however, provided no relief as it was solely designed to protect the interests of apprentices enlisting for active service.

## Conclusion

This chapter has analysed the operations of the Association over a period in which government legislation transformed the industrial landscape of the newly federated colonies which became States of Australia. During the 1890s three events influenced governmental legislative and policy initiatives and were to have major implications for the BCA/NSW which was renamed the MBA/NSW in 1901. Those three events were: the unemployment resulting from the severe depression in the early 1890s; serious industrial disputation in the

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<sup>126</sup> MBA/NSW, *Minutes of Regular Monthly Meeting*, 17.3.1912.

<sup>127</sup> Industrial Commission of NSW, *The Apprenticeship System in NSW, A Report by the Commission to the Minister for Labour and Industry – July 1968*, NSW Government Printer, Sydney, 1969, p. 107.

<sup>128</sup> MBA/NSW, 'Secretary's Report', *Minutes of Regular Monthly Meeting*, 14.4.1914.

shearing industry and on the waterfront; and negotiations between the colonies over a constitution under which they would federate at the turn of the century.

The major impact on the MBA/NSW of the events of this period was in terms of the functions it performed as an employers association. While trade issues remained important, as Gladstone has argued generally with employers' associations, a major function of the MBA/NSW became the protection of its membership against legislative bodies and judicial and administrative agencies.<sup>129</sup> Two issues highlight this: first, the introduction of industrial arbitration jurisdictions both at the state and the federal level and the issue of day-labour. The Association and the Building Trades Council (BTC) experimented with a Conciliation Board that foundered in the face of deteriorating economic conditions and the failure of the Association to maintain its authority over its membership in that regard and due to the fragmentation of the BTC membership. The Association registered under the Trade Union Act 1881 thereby becoming a legal entity and achieving rights of nomination under the *Trade Disputes Conciliation and Arbitration Act*, 1892. Despite participation in the processes offered by the Act, there was growing dissent among Association members over the issue of arbitration. By the time the NSW Government introduced the *Industrial Arbitration Act*, 1901, at least two of its most influential members had had successfully cautioned against registering the Association under that Act. As a strategy, the MBA/NSW formed and registered the Master Builders Union (MBU) comprising 24 members including the two members who had opposed the Association being registered. By 1905, there was a shift in MBA/NSW ideology by lapsing the registration of the MBU and registering in its place.

The MBA/NSW, however, was concerned when the ABLF obtained an industrial award under the auspices of the Commonwealth *Conciliation and Arbitration Act* 1904. The MBA/NSW displayed a passion for states-rights, a passion shared by all other MBAs. Whilst its *laissez-faire* ideology was somewhat tempered by its ultimate acceptance of the state-based compulsory arbitration system introduced by the NSW State Government, the MBA/NSW was uncompromising in its ideology related to states-rights.

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<sup>129</sup> Alan Gladstone, 'Employer Associations in Comparative Perspective: Functions and Activities', in John P. Windmuller and Allan Gladstone (eds.), *Employers Associations and Industrial Relations: A Comparative Study*, Clarendon Press, Oxford, 1984, pp. 24-43.

The second issue was *day labour* – the MBA/NSW adopted political strategies in its fight to force the NSW State Government to end that practice on public works. It produced Reports on the issue which it had published in major Sydney newspapers. This strategy was also adopted by MBAs in Victoria and Queensland who were also experiencing that problem.

There were significant changes in the structure and internal government of the MBA/NSW. In 1890, formal links were established between the builders and contractors associations in NSW, Melbourne, South Australia and Brisbane by the formation of the FBCA, and due to some criticism levelled against him by another member, the BCA/NSW honorary secretary resigned and a part-time paid secretary was engaged. So as to achieve internal equilibrium, there was also a structural change to the BCA/NSW in 1890 by the transfer of its non-builder members to its Builders Exchange Branch. The autonomous MBA/NSW branch at Newcastle, however, continued to accept suppliers and subcontractors as members and this served to frustrate further efforts to achieve a Lien Bill.

Whilst throughout the period 1890-1913, the BCA/NSW-MBA/NSW was led by high profile and successful builders, its actions of appointing a full-time secretary in 1905 and of building its own premises in 1907, altered its structure and its status. Prior to 1905 the committee system had defined its structure and its operations and its part-time secretary had been essentially a servant of the committees rather than a participant. The president performed the role of manager and advocate. The appointment of Phelps-Richards as full-time secretary signalled the end to that situation and the role of the President altered to one of policy-maker. This change did not diminish the status or leadership role of the President, and those who were elected to that position continued to be those who were highly regarded by their peers within the industry. The MBA/NSW secretary assumed the role of manager/administrator and advocate that the secretary of a contemporary small employer association would occupy.