INTRODUCTION

The passage of the British Trade Union Acts of 1871 and 1876 has generally been viewed as marking an important shift in British labour law and the beginning of modern trade union law.1 By providing unions with some form of legal personality through registration and attempting to reverse common law and statutory provisions which rendered them criminal conspiracies or unlawful bodies in restraint of trade, these Acts were said to have an ‘emancipatory effect’ on the industrial position of the English trade unions.2 For this reason these Acts have commonly been referred to as the ‘Charter of Trade Unionism’.3 The quarter century which followed the enactment of these two statutes, all the Australian colonies (with the exception of Western Australia)4 passed legislation which followed the English Acts almost to the letter. While the English Acts were to have an immediate effects on the standing of British trade unions, and ‘laid the firm foundation of all that was to come’,5 their importance for colonial unions in the period immediately following their enactment by colonial legislatures remains unclear.

Creighton, Ford and Mitchell suggest, ‘There is no doubt that [the colonial trade union Acts] were important provisions in the development of Australian labour law.’6 They go on to note, however, that:

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1 'In 1871 the modern era of labour law began… The Trade Union Act of 1871 gave labour organisations a secure status; although the act was often amended and only in our own day repealed, it laid the firm foundation of all that was to come.' See J V Orth 'The Law of Strikes, 1847-1871,' in Law and Social Change in British History, eds J A Guy and H G Beale, Royal Historical Society and Humanities Press, London and New Jersey, 1984, pp 126-144 at p 141. Also see K W Wedderburn, The Worker and the Law, Penguin, Harmondsworth, 1965, p 217.
5 J V Orth, 1984, note 1, p 127.
No published research on the use made by Australian unions of the registration provisions of the British ‘model’ of the 1870s is available, and therefore the precise impact of these statutes remains open to further examination.\(^7\)

This gap seems somewhat surprising for two reasons. First, as noted above, the English trade union Acts had proved to be an important step in the legal recognition and protection of trade union rights for much of the twentieth century. The question of the comparative importance of the colonial Acts would therefore seem to be an important starting point for modern Australian labour law.\(^8\) Second, prior to their enactment, many Australian unions clearly saw the introduction of such legislation as important, and they had been active in petitioning for them in all colonies. The question of the usage and effects of these Acts would therefore seem an important issue to address. A central issue concerns whether these Acts provided unions with the protections they expected of them. While the events of the 1890s are at least suggestive of the failure of these Acts to protect unions, little attention has been paid to either a comparison of the colonial and British Acts or their usage by unions themselves.

The central purpose of this paper is go some way to filling this gap by examining trade union responses to the enactment of the various colonial trade union Acts. What emerges is a puzzle.

Despite the protections these Acts generally provided to unions, and the apparent reversal of the general hostility of colonial labour laws towards trade unions, the colonial trade union Acts appear to have been all but ‘dead letters’. In contrast to the English Acts of 1871 and 1876 – on which the colonial Acts were largely based – the conclusion drawn from this analysis is that over the period 1876 to 1900, unions viewed the colonial Acts as relatively unimportant and a source of disappointment. The reasons for this are traced to the limits placed on the invocation of their (criminal) provisions by other legislation and then, later, their effective incorporation and superseding by various arbitral and wages board statutes. Moreover, the central benefit which registration provided unions – legal personality and the protection of assets against absconding officials – was relatively unimportant and to some extent redundant in a period of economic depression in which unions faced declines in membership, held few assets and were under attack from employers and, to some extent, the state.

The remainder of this paper will proceed as follows. The next section will contextualise the subjects of our enquiry by providing a brief overview of English labour law from which the colonial regimes evolved, and which form the context for the introduction of the Trade Union Acts of 1871 and 1876. Section 3 examines the provisions of the English Acts. Section 4 then compares them with the colonial Acts and presents evidence on their effects by examining the pattern of registration under

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\(^8\) It is worth noting, however, that these Acts have not been completely ignored by Australian labour law scholars. See J H Portus *The Development of Australian Trade Union Law*, Melbourne University Press, Carlton, 1958; D W Smith and D W Rawson, 1985, note 3; and D W Rawson, *Unions and Unionists in Australia*, Allen and Unwin, Sydney, 1978 (second edition
their provisions. The central point to come form this analysis is that relatively few unions bothered to register in most colonies. The penultimate section (5) asks why, given their intended effects, were the Acts relatively unimportant in practice. A resolution to this puzzle is offered. The final section then draws some conclusions.

**English Labour Law and the Trade Unions Acts of 1871 and 1876**

The English trade union Acts of 1871 and 1876 emerged as a response to the view at common law that unions were unlawful bodies whose actions were in restraint of trade, and the continued insistence of some judges that some trade union activities remained criminal conspiracies at common law. Along with the Criminal Law Amendment Act 1871, the Conspiracy and Protection of Property Amendment Act 1875 and the Employers and Workmen Act of 1875, these Acts were intended to place beyond doubt the capacity of unions to establish themselves as legal organisations and, simultaneously, to carry out industrial activities normally associated with them. To understand the purposes and effects of these Acts, this section provides a brief overview of English labour law as it had developed prior to 1870 and then outlines the central provisions of the trade union Acts passed during the 1870s.

**Pre-modern Labour Law**

If the trade union Acts can be viewed as the beginning of modern labour law in England, pre-modern labour law derived from three distinct sources: statutes intended to fix wages, common law responses to the emergence of unions or combinations, and specific statutory initiatives designed to outlaw ‘combinations’ of workers. These three forms of legal interventions brought into play a combination of what Portus described as ‘some of the most obscure and difficult doctrines of law: the law of unincorporated associations, the law of conspiracy and the law of restraint of trade’. What follows is not intended to be a definitive legal outline of this difficult combination of legal doctrine, but rather a background sketch of the legal position of trade unions prior to the introduction of the trade union Acts.

‘The earliest legal memory of labour in England dates to the aftermath of the Black Death in 1348.’ Commencing with the Statutes of Labourers of 1349 and 1350, a series of Acts were passed which made magistrates responsible for the determination of wages and the regulation of the mobility of labour. These Acts were intended to deal with the problem (for employers) of high wages and labour

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1986). These treatments were, however, concerned with outlining the legal position of union under these Acts rather than the effects of such legislation on trade unions.


10 J H Portus, 1958, note 8, p3. Portus cites W M Baily’s *Trade Unions and the State* London 1934, p 165, as the source of this observation.


shortages following the Black Death.\textsuperscript{13} The Ordinance of 1349 provided that (i) any person under 60 covered by the statutes could be required to work, (ii) that wages were to be set by magistrates at the level which prevailed before the Black Death and (iii) it was to be a criminal offence for a servant to leave their place of employment before the expiry of their contract. By 1389, however, the provisions for fixed wages were abandoned, but justices maintained the authority to determine appropriate rates of pay.\textsuperscript{14} These earlier statutes which, by their nature, outlawed collective action to raise wages or improve conditions,\textsuperscript{15} were repealed in 1563 by the Elizabethan Statute of Artificers.\textsuperscript{16} This law continued the practice of wage regulation, but made local justices responsible for wage determination. It remained in place until 1875,\textsuperscript{17} by which time it had become all but ineffective, and wage fixing had become the province of market forces.\textsuperscript{18}

The approach taken by these statutes, which provided for ‘the regulation of employment by summary action for offences within the work relationship’,\textsuperscript{19} was also reflected in the Master and Servant Acts of 1747, 1765 and 1823.\textsuperscript{20} Under the provisions of these Acts a master was able to take summary proceedings against a striking or absconding servant. Such offences were punishable with up to three months imprisonment.\textsuperscript{21} This approach ‘culminated in the Employers and Workman Act 1875 which removed the primary penalty of imprisonment of employees and thus placing them on the same footing – as to penalties – as employers. This seemed to have been regarded by British historians as tantamount to a repeal of the Master and Servant legislation.’\textsuperscript{22}

\textbf{The Combination Acts}

The illegality of unions was reinforced by a series of Acts intended to outlaw ‘combinations’, ‘conspiracies’ or ‘confederacies’, as unions were then known.\textsuperscript{23} Commencing with an Act of 1721 to outlaw combination among London tailors, a series of piecemeal Acts were subsequently passed

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\textsuperscript{14} For a detailed discussion of these Ordinances, see R Y Hedges and A Winterbottom, \textit{The Legal History of Trade Unionism}, London, 1930.
\textsuperscript{15} ‘If wages were to be fixed, they must not be collectively bargained!’ See K W Wedderburn, 1965, note 1, p216.
\textsuperscript{16} 5 Eliz. 1 c. 4 in J V Orth, 1991, note 2, p3
\textsuperscript{17} This statute was extended to all workmen by two further statutes in 1604 (1 Jac. I c. 6) and 1640 (16 Car I, c. 4). These, and the earlier statute, were partly repealed by Acts in 1813 and 1824, but were not completely repealed until 1875. See R Kidner \textit{Trade Union Law}, Stevens, London, p 4.
\textsuperscript{19} A Merritt ‘The Historical Role of Law in the Regulation of Employment – Abstentionist or Interventionist?’ (1982) 1 \textit{Australian Journal of Law and Society} 56 at 60.
\textsuperscript{20} 20 Geo 11 c 19, 6 Geo III c 25 and 4 Geo IV c34.
\textsuperscript{21} S Webb and B Webb, \textit{The History of Trade Unionism, 1666-1920}, published by the authors. Also see Lewis, 1976, note 2 at 10.
\textsuperscript{22} A Merritt, 1982, note 19 at 61.
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outlawing the formation of unions intent on raising wages. These culminated in the general Combination Acts of 1799 and 1800. The central provision of the 1799 Act made any agreement intended to raise wages, reducing hours, decreasing the quantity of work, interfering with freedom of contract or interfering with the conduct of business, illegal and void. To enter into any such agreements or to form a combination with the intent of doing so, were rendered criminal. Other provisions, following those contained in master and servant legislation, made attempts to induce or prevent a workman from agreeing to work or leave employment, or to refuse to work with other workman criminal offences. Likewise attending a meeting held for illegal purposes, encouraging others to do so, or paying or collecting monies for illegal purposes were deemed criminal offences, were punishable by up to three months gaol or two months hard labour in a house of correction.

This Act was, however, repealed and replaced by a new Act in 1800. The central illegality of trade unions and the offences contained in the 1799 Act were retained. These Acts remained in place until their repeal by the Combination Laws Repeal Act, which also repealed the host of piecemeal Acts passed before 1799. In doing so, ‘it swept away all the laws (common as well as statute) on combination and conspiracy’, and included provisions intended to provide some legal basis for the formation of unions and collective bargaining. Following a surge in strike activity immediately after the 1824 Act, a further Act repealing the 1824 Act was passed for the purpose of reviving the common law crime of conspiracy, and in order to strengthen provisions relating to intimidation of other workmen and employers. In addition to provisions against violence, threats and intimidation, the 1825 Act included provisions against the more vague crimes of obstruction and molestation, which were deemed by some judges to include threats to undertake legal strike actions or to engage in peaceful picketing. Thus, the ‘practical effect of these decisions was that although combinations to raise wages


26 39 Geo 3, c 81, section 1 and 2.


28 The major amendment being the creation of a crime of combination among masters. However, the Act required two rather than a single justice to hear a matter, justices who themselves were masters were disqualified from hearing offences, and introduced a provision for arbitration of disputes over wages, damage to work done, delay in completion of a job or completing work in an unsatisfactory manner. See Appendix 1 in J V Orth, 1991, note 2, for a detailed comparison of these two Acts.


30 It did, however, contain a host of criminal liabilities intended to ‘punish either workmen or masters, who by threats, intimidation, or acts of violence, should interfere with that perfect freedom which ought to be allowed to each party.’ 5 Geo 4, c 95 (1824) quoted in J V Orth, 1991, note 2, p 79.
were lawful they were hamstrung’.31 Between 1825 and the passage of the first trade union Act of 1871, ‘labour law changed only in detail’.32

The Common Law Status of Unions

The illegality of the newly forming combinations was also placed in no doubt by judges who viewed trade unions as unreasonable restraints on trade. One major implications of this common law illegality was the courts’ refusal to enforce agreements to which unions were a party, or protect union assets held in trust by elected officials. The implications of this view were made clear in Hornby v. Close, where the Boilermakers’ Society sought to recover monies embezzled by a branch secretary (Close).33 The claim was dismissed on the grounds that the Society was formed for illegal purposes in restraint of trade.

The effects of this decision were reinforced by the lack of legal status of trade unions who, as voluntary associations, were without legal personality. As such, unions could not hold property, and any property held in the name of the union was the jointly held property of all its members. For this reason, a single member could not be prosecuted for embezzlement of union assets or monies.34 Although unions attempted to deal with the problem by registering under the provisions of the Friendly Societies Act 1855, the decision in Hornby v Close made this ineffective. The immediate response was further statutory reform in the form of the Larceny and Embezzlement Act 1868 and the Trade Union Funds Protection Act 1869. These decisions, however, led to the establishment of the Royal Commission on Trade Unions in 1867, charged with assessing the legal position of trade unions.35 The Commission issued no less than eleven reports, all of which favoured the legal recognition of trade unions and conferring certain rights and obligations. It was, however, the Minority Report that most influenced the shape of the Trade Union Act 1871,36 and which was to close ‘the era opened by the first tailors’ combination act (1721)’.37 It is to a closer examination of this and the other emancipatory Acts that we now turn.

31 N M Citrine, 1950, note 13, p 8. The Molestation of Workmen Act 1859 was intended to reverse the view of the courts in relation to merely agreeing with others to fix wages or endeavoring to do so by peaceful means. The impact of this Act was, however, minimal, doing ‘nothing to enlarge the sphere of strikes’. See N M Citrine, 1950, note 13, p 9.
34 R v Blackburn (1868), 11 Cox, C C 160 in N M Citrine, 1950, note 13.
35 Orth also notes the role of the so-called ‘Sheffield Outrages’ of 1866, in which a group of workmen threw a can of gunpowder down the chimney of a fellow worker as punishment for breaching union rules. in contributing to the appointment of the Royal Commission. See J V Orth, 1991, note 2, p 134.
The Trade Union Acts of the 1870s

The first English Trade Union Act of 1871 was intended to deal with two outstanding problems which had emerged prior to 1871. Firstly, it sought to relieve unions of the civil and criminal liabilities to which they previously been subject. By clarifying the legality of union objectives it intended to establish beyond doubt the legal capacity of unions to enter into contractual and trust arrangements. Secondly, it was intended to clarify the legal status of trade unions through the creation of a registry of trade unions, which established the capacity of a trade union to hold property in the name of trustees and to instigate legal action to protect it. A second Act, the Criminal Law Amendment Act of 1871, addressed the issue of strikes.

The Trade Union Act 1871 repealed the Trade Union Funds Protection Act 1869, which was in any case due to expire. The first substantive section sought to make clear that the Act intended to limit the common law of criminal conspiracy, declaring: ‘The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.’

Section 3 was directed at overcoming the judgement in *Hornby v Close*, which had rested on the view that a union’s assets were not protected by trust agreement because its objectives were in unlawful restraint of trade. It provided that: ‘The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust,’ In so doing, this section sought to ensure union property and trust agreements remained valid. The extent to which trade union agreements were to be enforceable was, however, circumscribed by s 4 of the Act, so as to limit the capacity of the courts to intervene in the internal affairs of trade unions.

Section 6 provided for any union to register so long as it has seven or more members and complied with the provisions of the Act. The benefits of doing so were set out in sections 7 to 10. Section 7 provided that registered unions were free to purchase or lease land and engage in transactions related to that holding. Section 8 in turn provided that a registered union’s assets were vested in trustees and were vested in succeeding trustees without requiring conveyance or assignment. Section 9 provided that the trustees of a registered union were enabled to instigate legal proceedings on the union’s behalf, while s 10 relieved the trustees from personal liability for union’s debts. Other sections of the Act, then set out a number of obligations and rights of registered unions, including:

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38 34 & 35 Vic, c 31, s24.
39 The Trade Union Funds Protection Act provided that the Act would expire on August 31 1870 (32 & 33 Vic, c 61), but the Expiring Laws Continuance Act 1870 provided it should continue for a further year (33 & 34 Vic, c 103).
40 34 & 35 Vict., c. 31, s2.
41 34 & 35 Vic, c. 31, s3.
42 It specifically declared unenforceable agreement between members of a trade union intended to enforce (i) union rules concerning the conditions under which members were required to work; (ii) union rules concerning dues, levies or penalties on members; (iii) union rules concerning the use of union funds in provision of benefits to members; and (iv) agreements between trade unions. Bonds to secure performance were also deemed unenforceable.
• The appointment of a treasurer who was responsible for maintaining proper accounts, and reporting to the trustees and members the financial state of the union (s 11). The treasurer was also responsible for holding monies or securities held on behalf of the union and could be sued for the balance not returned to the union or accounted for. This section also required trustees to ensure that a union’s accounts were regularly audited.

• Legal action for the return of property held by any member on behalf of the union or repayment for any money or property used fraudulently or in a manner inconsistent with union rules (s 12).

• The procedure to be followed for a union to be registered (s 13)

• Provisions to be included in the union’s rules, a copy of which was required to be made available to all members (s 14).

• The registration of a union office (s 15)

• The submission of a general statement of accounts to the Registrar of Trade Unions, or any alterations to a union’s rules (s 16).

Section 17 made provision for the appointment of a Registrar of the Act, who was responsible for preparing an annual Parliamentary Report, while s18 made the circulation of false copies of a union’s rules a misdemeanor. Sections 19 to 22 then outlined legal proceedings under the Act. Finally, s23 provided definitions.

Three additional pieces of legislation passed between 1871 and 1875 were intended to further clarify the legal position of unions. The first of these, the Criminal Law Amendment Act 1871, was intended to deal with the issue of strikes. It repealed the Combination Act of 1825 and the Molestation of Workmen Act 1859, which had included provisions relating to the use of violence, threats, intimidation, molestation and obstruction in trade disputes. This Act also made such acts criminal, but specifically sought to restrict its interpretation by the courts, limiting the meaning of ‘threats’ and ‘intimidation’ ‘to such acts as would justify a justice of the peace in binding over the defendant to keep the peace. Thus a mere threat to strike was longer a statutory offence.’43 The Act also restricted the definition of molestation and obstruction to persistent following a person, hiding a person’s tools, cloths or property, watching or besetting or following a person in the street with two or more other persons. Offences under the Act were liable to imprisonment for up to three months.

While the intention of this Act was clear, its effects were more uncertain. Within a year of its passage, Brett J in *R v Bunn*, ruled that, despite the provisions of the Criminal Law Amendment Act, workmen were unable to do anything which interfered with an employer’s business. He thus held a threat by a group of London gas-stokers to strike unless a union member was reinstated, while not a conspiracy in restraint of trade, was a criminal conspiracy at common law to coerce an employer carry out businesses contrary to his will.

Following the appointment of a further Royal Commission in 1874, the Conspiracy and Protection of Property Act 1875 sought to finally clarify the common law issue of criminal conspiracy. This Act reversed the decision in *R v Bunn*, repealed the Criminal Law Amendment Act 1871, the Master and Servant Act 1867 and all other laws which deemed breach of contract criminal, and made peaceful picketing lawful. A further Act, the Employers and Workmen Act, was passed in the same year and sought to reflect the growing recognition of unions and strikes as a normal part of the industrial landscape. ‘All that seemed to be left was a certain amount of legal tidying up.’ This was duly undertaken in the following year in the second Trade Union Act. With the exception of a provision providing for the amalgamation of registered unions (ss 12 and 13), the Trade Union Act of 1876 did not to change the Act of 1871 in any significant ways.

In summary, by the end of the 1870s, British trade unions had won, albeit in a limited and uncertain form, legal immunity from common law actions in which they were viewed as illegal combinations or conspiracies in restraint of trade and were freed from criminal liability for strike action undertaken during an industrial dispute. This had been the result of a long and drawn out battle between the judges, parliament and the unions themselves. In addition, the law had provided them with some form of legal personality through a system of registration, the benefits of which came in the form of a capacity to own and manage assets through the appointment and succession of trustees. Of course, the

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44 (1872) 12 Cox C C 316.  
46 38 & 39 Vic, c 86.  
47 38 & 39 Vic, c 86, s17.  
48 Subsequent decisions, however, placed considerable limits on the capacity of unions to engage in peaceful picketing. See N M Citrine, 1950, note 13 pp 14-5.  
50 Section 2 made some provisions of the Friendly Societies Act 1875 applicable to trade unions that had paid benefits to members. Section 3 made a minor amendment amended section 8 of the 1871 Act in relation to the vesting of property in the name of branch trustees, while s4 extended the provisions of s8 of the Act of 1871 relating to the succession of trustees. Section 5 likewise amended the proceedings as set out in s12 of the 1871 Act. Section 6 included an additional provision relating to unions operating in more than one country. Section 7 exempted the application of the Life Assurances Companies Act 1870 to trade unions. Section 8 set out a procedure for deregistration of unions previously registered under the 1871 Act. Sections 9 and 10 concerned the membership of minors, their participation in union affairs. Section 11 set out the procedure for a registered union seeking to change its name. Section 14 required a union to include in its rules a provision for dissolution of the union. Section 15 penalized unions who fail to give any notice required of it under the Act. Section 16 contained an altered definition of a trade union to ensure both legal and illegal combinations came within the scope of the Act.
The legal status of the English trade unions continued to be undermined by common law decisions, and the conflict between common law and the will of parliament as manifest in statute continued. It was not until the Trade Disputes Act 1906 that unions were finally freed from civil liability for strike actions taken by them. They had, in Citrine’s words, simply become organisations tolerated by the state. But for trade unions, there is little doubt that these Acts were of central significance in the process by which they emerged from the shackles of illegality. This is perhaps reflected in the proportion of trade unions who sought the protection of these Acts in the form of registration. There does not seem to be any published research which systematically examines registrations. The Webbs, however, reported that: ‘The Chief Registrar of Friendly Societies gave particulars, in his Report for 1892... of 1,063,000 members in 442 registered trade unions alone, after deducting organizations which are not trade unions, and many duplicate entries.’ By their own reckoning this accounted for approximately half of all trade unions then in existence in the United Kingdom, and approximately 85 percent of all union members.

**The Colonial Trade Union Acts**

Unlike their English counterparts, the colonial legislators did not seem to view the enactment of legislation in a form similar to that of the trade union Acts of 1871 and 1876 as having any great urgency. In all colonies the passage of a trade union Act was preceded by a deputation of unionists in favour of the adoption of the English legislation. However, the Acts that were eventually passed did not result from some crisis precipitated by courts, nor were they the result of some lengthy process of investigation and deliberation in the form of a Royal Commission. Furthermore, with the exception of Victoria, there was no great controversy over the content and purposes of the Acts.

The first colonial trade union Act to be passed was the South Australian Act of 1876. A Bill was introduced in August of 1875 by Attorney General Bray following ‘a deputation by working men and others representing Trade Societies asking that they might be placed on a similar footing to the Societies in England’. While a number of proposals to amend the original Bill were put forward, its final form did not deviate substantially from the English Act of 1871, and was ‘nearly all scissors and paste, being almost a copy of the English Act’. The South Australian Act did not, however,

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51 See N M Citrine, 1950, note 13 for a detailed analysis of legal developments after the 1870s.
52 S Webb and B Webb, note 21, p 423.
53 The Trade Union Act 1876 (No. 41 of 1876), assented to 27 October.
54 (1875) *SAPD* at 898.
55 These included proposals for compulsory registration of all unions, that union contracts be legally enforceable, and that provision for private arbitration of individual disputes should be included (see (1875) *SAPD* at 1078-83). These various proposals were rejected by Bray as not ‘coming reasonable within the scope of the Bill, which was simply to recognise Trade Unions as lawful Societies, and to let them carry out themselves the purposes for which they were combined’ (1975) *SAPD* at 1083.
56 (1875) *SAPD* at 898.
include the amendments made in the British Act of 1876, nor was the Act subsequently amended during the nineteenth century.

In New South Wales, the passage of a Trade Union Act was slightly more contentious. With the support of the Trades and Labour Council, a Trade Union Bill, similar to the Trades Unions Funds Protection Act 1869, was introduced twice in 1879 by former Labour Council secretary Angus Cameron, but was never passed by both houses. A third Bill was introduced by Frederick Darly (who had been a major opponent of the 1879 Bills) in October 1881, and finally passed in December of that year. ‘The Bill’, Darly said, ‘simply proposes to enact here what is the law now in England.’ Cameron, criticized the Darly Bill claiming that the Act went much further than unions had themselves wanted, many of whom objected to the provisions for registration. ‘The whole plan laid down by the Bill for registration’, he said, ‘is not in the interests of the unions themselves, but rather in the interests of those who wish to keep a strict eye upon them’, and could be used to restrict the ability of unions to use their funds in support of strikes. Cameron instead proposed a more limited Bill, claiming ‘trade unions do not require, and do not ask for, anything more than the protection of their funds’. This perhaps reflected a deep suspicion on the part of colonial unions of the potential role and interference by courts and judges who had shown a considerable hostility towards unions in the past. Despite some support for Cameron’s position and other amendments (including a provision for arbitration), the Bill passed with little opposition and with the support of the Trades and Labour Council. The final form of the Act was again almost identical to the English Acts, but unlike the South Australian Act, the 1876 English amendments were incorporated almost to the letter.

More contentious was the passage of the Victorian Act. In June 1882, the Premier was asked if he would be introducing a Bill to legalize trade unions. While Premier O’Loghlan stated the government would not be in a position to do so, he invited Mr Clark to introduce a private Bill. As a consequence two Bills had been passed by the Legislative Assembly in 1882 and 1883, but had failed to pass the Legislative Council. In introducing the first of these in August 1882, Richardson stated that, in line with the wishes of trade unions, it was intended simply to ‘legalize trade unions in this country, so as to place them in the same position as that occupied by similar societies in England.’

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58 (1881) NSWPD at 1726, 2184 and 2190.
59 Trade Union Act 1881 (45 Vic. 12), assented to 16 December.
60 (1881) NSWPD at 1729.
61 (1881) NSWPD at 2188.
62 (1881) NSWPD at 2190. ‘They might not object to the current Act, but it would be of no benefit to them’ (p 2192).
63 J H Portus, 1958, note 8, p 246.
64 R Markey, 1994, note 57, p 41.
65 (1882) 39 VPD at 591
The Bill, he said, was ‘almost a transcript of the two English Acts of 1871 and 1876’. 67 In introducing a second Bill in July 1883, which was ‘word for word, as the former measure’, 68 Richardson noted that ‘the societies which the measure is intended to legalize are becoming more numerous and of greater importance every day’. 69 This Act, however, also foundered in the Legislative Council. In both cases, the Council attempted to amend the Bill to include additional provisions intended to ensure that criminal actions could be taken against striking workers. Without such provisions the Act was viewed as ‘a case of taking the fat and leaving the lean’. 70 Richardson (and others) rejected the amendments demanded by the Council, arguing that their adoption would have been fatal to the Bill, and fatal to trade unions… [T]here would be an end to combinations of workmen in this country so far as the law was concerned… The Council had placed the most offensive parts of those Acts [repealed by the English trade union Acts] in the Bill and had omitted to put in those enactments which relieved trade unions. By the new clauses, a number of offences were created which would render it impossible for men to do anything connected with trade unions without being brought under the law and dealt with as criminals… The clauses were perfectly needless, and in fact, an insult to the working men of Victoria… They had been discussed by trade societies, all of whom condemned [the amendments] and had asked to abandon the Bill rather than permit such provisions to become law’ 71

And so it was abandoned rather than ‘make the Bill a mongrel measure’. 72 Virtually the same Bill was reintroduced in June 1884, but this time by Deakin. 73 ‘The members of the trade unions in the colony’, he said, ‘felt it to been a great hardship that they had hitherto been refused privileges in regard to the management of their affairs which had been enjoyed by their brethren in England for years past’. 74 Again, however, the Legislative Council held steadfast to the view that the Bill should be amended to include scope for criminal liability for strike action. By December of that year, ‘with the greatest of regret’, Deakin moved that the Assembly accept the amendments order to finally achieve the passage of the Act. Richardson objected arguing that:

The Assembly could disagree with the amendment and let the Bill be lost, and let the responsibility be placed upon [the Council] for refusing to place trade unionists in a proper position, free from

67 (1882) 40 VPD at 1573-4.
68 (1883) 43 VPD at 238.
69 (1883) 43 VPD at 237.
70 (1883) 44 VPD at 1638.
71 (1883) 44 VPD at 1629-30.
72 (1883) 44 VPD at 1630.
73 (1884) 45 VPD at 496.
74 (1884) 47 VPD at 1727.
the criminal law. [I am] satisfied that the trade unionists would not thank the Legislature for passing the Bill with this criminal law in it.\textsuperscript{75}

In the end, despite attempts by some members to delay the vote on the Bill in order to determine the views of the Victorian Trades Hall, the Council’s amendments were accepted. Deakin took consolation in the view that unions would prefer the ‘mutilated Bill’ to no Act at all, and the Bill was finally passed on December 12, 1884.\textsuperscript{76} This Act remained close to the English Act, but did not include s2 of the 1871 Act providing for immunity against common law prosecution for criminal conspiracy in restraint of trade. The Act also contained an additional clause, s28, which provided that ‘Nothing in this Act shall be construed to affect any rule of common law or any statute which creates or punishes any offence.’\textsuperscript{77} Just two years later, Richardson’s position appeared vindicated, and it was apparent to all that the Act had remained a dead letter. A second Act was thus passed in 1886,\textsuperscript{78} both repealing the offending s28 of the 1884 Act and inserting the omitted s2 of the English Act of 1871. These amendments were then consolidated in a final Act in 1890.\textsuperscript{79}

In the case of Queensland, an Act was passed with no controversy whatsoever in 1886.\textsuperscript{80} While the order of its provisions were somewhat different to the English Acts, the Queensland Act, contained no significant alterations in the wording of the consolidated form of the English Acts that had been passed in New South Wales five years earlier.\textsuperscript{81} Like the Victorian Act of 1884, the Queensland Act included an additional provision requiring the Registrar of Trade Unions to table an annual report before Parliament.\textsuperscript{82} Finally, an Act almost identical to the amended Victorian Act was passed in Tasmania in 1889, although the Legislative Council rejected a similar Bill in 1888.\textsuperscript{83}

\begin{itemize}
\item \textsuperscript{75} (1884) 47 VPD at 2528.
\item \textsuperscript{76} The Trades Unions Act 1884 (48 Vic No 822), assented to 12 December, 1884.
\item \textsuperscript{77} 48 Vic No 822, s28.
\item \textsuperscript{78} The Trades Unions Act 1886 (51 Vic No 880), assented to 24 September 1886.
\item \textsuperscript{79} 54 Vic. No. 1147.
\item \textsuperscript{80} The Trade Unions Act 1886 (50 Vict. No. 29), assented to 2 December.
\item \textsuperscript{81} (1886) 50 QPD at 1387.
\item \textsuperscript{82} 50 Vic No 29, s31.
\item \textsuperscript{83} Smith and Rawson, 1985, note 3, p 47.
\end{itemize}
A more systematic comparison between the English Acts and the colonial Acts is given in the Appendix. With few exceptions, notably the South Australian Act (which did not incorporate the 1876 English amendments) and the first Victorian Act of 1884, the provisions of the colonial Acts were almost identical to those contained in the English Acts. The deviations contained in the Victorian Act of 1884 were quickly amended and made consistent with that of the English Act of

### Table 1 Colonial Trade Union Acts, Registrations & Cancellations, 1876 - 1900

<table>
<thead>
<tr>
<th>YEAR</th>
<th>SA (1876)</th>
<th>NSW (1881)</th>
<th>VIC (1884)</th>
<th>QLD (1886)</th>
<th>TAS (1889)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NR</td>
<td>DC</td>
<td>TR</td>
<td>NR</td>
<td>DC</td>
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<td>-</td>
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<td>10</td>
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<tr>
<td>1883</td>
<td>5</td>
<td>*</td>
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<td>*</td>
<td>*</td>
</tr>
<tr>
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<td>3</td>
<td>*</td>
<td>6</td>
<td>*</td>
<td>*</td>
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<tr>
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<td>*</td>
<td>9</td>
<td>*</td>
<td>*</td>
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<tr>
<td>1886</td>
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<td>*</td>
<td>12</td>
<td>*</td>
<td>*</td>
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<tr>
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<td>1</td>
<td>*</td>
<td>8</td>
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<td>*</td>
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<td>8</td>
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<td>38</td>
<td>*</td>
<td>*</td>
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<td>2</td>
<td>*</td>
<td>21</td>
<td>*</td>
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</tr>
<tr>
<td>1892</td>
<td>1</td>
<td>*</td>
<td>9</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
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<td>2</td>
<td>*</td>
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<td>*</td>
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<tr>
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<td>3</td>
<td>*</td>
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<tr>
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<td>1896</td>
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<td>3</td>
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<td>*</td>
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</tr>
<tr>
<td>1900</td>
<td>2</td>
<td>*</td>
<td>*</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**Key:** NR: New registrations; DC: De-registrations and cancellation of registration; TR: Total number of unions registered; and * Not recorded.

1. In that year the registrar reported that the existence of 21 organizations was doubted (Eighth Annual Report of Registrar)
2. In that year the Registrar reported that 2 organizations were no longer in existence and their registrations would be cancelled.

**Sources:** Calculated from figures contained in Parliamentary Reports of Colonial Registrars of Trade Unions in each colony, various years.

A more systematic comparison between the English Acts and the colonial Acts is given in the Appendix. With few exceptions, notably the South Australian Act (which did not incorporate the 1876 English amendments) and the first Victorian Act of 1884, the provisions of the colonial Acts were almost identical to those contained in the English Acts. The deviations contained in the Victorian Act of 1884 were quickly amended and made consistent with that of the English Act of
1871. Despite the identical nature of their provisions, however, it is not clear that the colonial Acts functioned in the same way as their English forebears, and were certainly not embraced by unions to the extent that was evident in the United Kingdom. While the formal content of these Acts was the same, their operation and effects appear to diverge.

Registrations Under the Colonial Trade Union Acts

To establish the impact of these Acts, the level and pattern of registration by unions in the various colonies were examined for the period 1876 to 1900. This is summarized in Table 1. It provides details of the number of new registrations, the number of de-registrations and the total number of organisations registered in each year for which data is available. Unfortunately, data could not collected for all colonies for all years in which the Acts were in force. This is largely due to the absence of this information on the public record. Victoria and Queensland, it will be remembered, were the only Acts which specifically required the Registrar of Trade Unions to table an annual report. Parliamentary reports for other colonies, most notably Tasmania and South Australia, are few in number and, when reports were tabled, tended to provided very little information. In the case of New South Wales, the Registrar of Friendly Societies and Trade Unions did not table a detailed report on the Act until 1896, which provided detailed information on new registrations, but not de-registrations or the total number of organisations registered in any year. In some colonies, notably Queensland, the Registrars’ Reports contained detailed information not only on registrations, but also financial returns submitted by registered unions and the Registrar’s discussions with unions who had failed to register.

These limitations aside, t available information nonetheless provides a fairly comprehensive overview of the pattern of registration in all colonies. Most significantly they reveal that unions were generally averse to registration. With the exception of Queensland and New South Wales, registrations were few in number. In Tasmania, the Act was all but unused. In the eleven years after the Tasmanian Act was passed in 1889, only one union was registered in that colony. In South Australia, no more than five unions had registered in the first five years of the Act and, by 1890, only thirty-three registrations had been recorded by the Registrar. In Victoria, a slightly larger number of registrations were recorded, although in no year did more than a small proportion of all unions affiliated with the Victorian Trade Hall register under the Act. In his second annual report (1888), the Victorian Registrar of Trade Unions noted that:

In comparison with what might have been expected, The Trade Unions Act 1884 has been but little taken advantage of by the public. At the end of the year under review it has been in

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84 While the proportion of non-union registrations could not be determined from the Reports, it is noteworthy to point out that among the thirty-three registrations were a number of non-union bodies, including the Port Adelaide Working Men’s Association, Yorke’s Peninsula Labor League, and the Amalgamated Eight Hours Celebration Union of South Australia.
Of the ten registrations recorded to December 1888, one included an employer’s association and seven were regional branches of the Associated Australian Yeomanry. Between 1885 and 1900, only twenty-one registrations were recorded. Of these, nine were branches of the Australian Association of Yeomanry, one was the Victorian Branch of the Australasian Union of Herbalists, one was an inter-union body, four were employer associations and two performed mutual benefit functions only. Thus only four unionate organisations had been registered under the Act. In his Fourth Annual Report, little had changed:

*The Trade Union Act is still very little availed of. Out of the large number of Unions in Victoria, that so few have yet become registered under that Statute can only be accounted for by the fact that the protection and security afforded, and the powers conferred by it, are not generally realized by the members of these Associations.*

In a number of subsequent Reports, the Registrar reported his inquiries at the Victorian Trades Hall:

*Believing that particulars respecting the large number of Trade Unions which had not registered under the Act would be interesting, I recently addressed a letter to the Melbourne Trades Hall Council, asking whether there would be any objection to supply me with a list of such unregistered Unions as were in existence at the end of 1892, together with a statement of their numerical strength and financial position at the same date. In reply, I received a communication to the effect that the council deemed it inadvisable to supply such particulars asked; and, moreover, that one of the objections to the Trade Unions Act was that under it the Unions feel that they are compelled to furnish information the disclosure of which might place them in the hands of unscrupulous employers; and, further, that as Employers’ Associations keep their affairs within their own circle, so the Trade Unions consider it better for them, under present circumstances, to remain outside the Act.*

By the following year, the Trades Hall apparently relented to his request, and he was able to report:

*The registered Unions bear but a small proportion to the very large number of unregistered Unions existing in the Colony. It has been found impossible to obtain a complete list of such

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Unions, but, by the kind permission of the Trades Hall Council, the Secretary of that body has furnished [a] list of 50 unregistered Unions affiliated to it.\textsuperscript{88}

Similar reports were made in the years to follow, and unions continued to abstain from registration.

Registrations under the New South Wales and Queensland Acts appear to be the exceptions, but the figures for these states over-estimate the number of union registrations, particularly after 1890. In the case of New South Wales, the first decade of the Act appears to have been quite successful with many organisations registering under its provisions. However, of the 141 registrations recorded to the end of 1891, twenty-three performed mutual benefit functions only, fourteen were Eight Hour Demonstration committees or inter-union associations (such as regional trades and labour councils), a further ten were employer associations, while three were seemingly unrelated to unionism at all.\textsuperscript{89}

This leaves ninety-one unionate organisations for the period. This number is, however, inflated by the tendency of some unions to register at the branch level. Where multiple branches are deleted and replaced as a single union (fifteen cases), the total number of unions registered for the period to the end of 1891 falls to seventy-six, or just over half of all registrations.\textsuperscript{90}

In the case of Queensland, the number of registrations in the first four years of the Act’s life produced seventy-two registrations. This initial response prompted the Registrar in that colony to comment optimistically: ‘it appears probable that before long the whole of the unions existing in the Colony will have come under the provisions of the Act’.\textsuperscript{91} However, between 1891 and 1900 only twenty-seven additional registrations were recorded. By the end of 1900, there were only twenty-four current registrations, seven of which were of employer associations.\textsuperscript{92} A breakdown of all registrations for the period 1886 to 1900 confirms the modesty of the Act’s success. Of the ninety-nine organisations registered in this period, twenty-seven were registered employers’ associations, five organisations had mutual benefit functions only, and a further five organisations were Eight Hour and peak union bodies. Of the sixty-two remaining registrations, a large number were registrations of union branches. When these are taken account of, a total of forty-five unions were registered in the period 1886 to 1900, or less than half of all registrations.


\textsuperscript{89} I have relied on several sources to trace the functions of registered organisations. The most important source being R Jadeja Parties to the Award, Noel Butlin Archives Centre, Research School of Social Sciences, The Australian National University, 1994. The three non-industrial organisations being the Protection of Trade Marks and Exchange Association (Limited) (registered 17 September 1888), the Australian Commissionaires’ Guarantee Society (registered 23 January, 1890) and the Association of Graphic Arts (registered 9 October 1891).

\textsuperscript{90} It is worth making the distinction between the total number of registrations and the total number of registrations in any one year. Where the former refers to the gross total number of registrations, the latter term refers to the number of registrations current in any one year.

\textsuperscript{91} ‘Third Report of the Registrar of Friendly Societies, Building Societies and Trade Unions,’ QVP (1889) at 918.

\textsuperscript{92} ‘Sixteenth Report of the Registrar of Friendly Societies, Building Societies and Trade Unions,’ QVP (1901) at 18.
Our capacity to quantify the propensity of colonial unions to register under the various trade union Acts is, however, severely limited by available data on the precise number of all unions in existence. The negligible level of registrations during the 1890s is obviously connected to the high rate at which unions disappeared or went into hybernation. Unfortunately, no data series on the number of unions or union membership is as yet available. But some (conservative and incomplete) estimates of the number of formal union organisations for the period 1825 to 1900 are presented in Table 2. While only one formal union organisation was found to have formed prior to 1830, by the end of the 1840’s twenty-five unions were in existence. They were, however, generally small and insignificant. Connell and Irving estimates that: ‘at an absolute maximum, [unions] cannot have had a total membership of more than 1000 at any time before 1850, and the actual total was probably much less.’ As Table 2 indicates, between 1850 and 1890, the number of unions and their collective membership had increased at a phenomenal rate. At the end of the 1880s, approximately 610 organisations were found to be in existence, covering more than 190,000 workers; by 1900 this number at slipped substantially to 502. While these estimates are incomplete, and were not available in a disaggregated form by colony, they are nonetheless suggestive of the very low proportion of all unions that had registered under the colonial Acts, and stand in marked contrast to the success of the English Acts at the same period.

**TABLE 2  FORMAL UNION ORGANIZATIONS, 1825 TO 1900**

<table>
<thead>
<tr>
<th>PERIOD/YEAR</th>
<th>No. of Formal Union Organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1825-1829</td>
<td>1</td>
</tr>
<tr>
<td>1830-1839</td>
<td>9</td>
</tr>
<tr>
<td>1840*</td>
<td>10</td>
</tr>
<tr>
<td>1840-1849</td>
<td>25</td>
</tr>
<tr>
<td>1850-1859</td>
<td>45</td>
</tr>
<tr>
<td>1860-1869</td>
<td>88</td>
</tr>
<tr>
<td>1870-1879</td>
<td>188</td>
</tr>
<tr>
<td>1880-1889</td>
<td>610</td>
</tr>
<tr>
<td>1890-1900</td>
<td>502</td>
</tr>
</tbody>
</table>

* 1840 figure for Sydney only.


93 But see M Gardner and M Quinlan ‘Researching Industrial Relations History: The Development of a Database on Australian Unions 1825-1900,’ (1994) 66 Labour History, pp 90-113. They report on their as yet unfinished attempts to produce a comprehensive data set covering the period from the early 1820s to the turn of the century.


95 See M Quinlan and M Gardner, ‘Strikes, Worker Protests and Union Growth in Canada and Australia, 1815-1900,’ (1995) 36 Le Travail, pp 175-208
Explanation and Discussion

The poor response to the trade union Acts, it has been contended, poses a small but significant paradox. Given the role of unions in bringing about their enactment, it seems puzzling that unions subsequently failed to register under their provisions. Why did these Acts fail to have the ‘emancipatory effect’ posited for their English antecedents? Why did colonial unions generally fail to register and seek the benefits which this allegedly involved? This puzzle has thus far received little attention from labour law scholars or labour historians.

Some comment has been made in relation to the Victorian Act. It was noted in the previous section that the introduction of the 1884 Act had been controversial and followed two failed attempts at introducing a Trade Union Act. Serle noted that the interest of unions in that colony in having such an Act centred on their ongoing concerns about the use of the Master and Servants Act by magistrates to mete out harsh penalties to unionists involved in industrial action. The failed Bills of 1882 and 1883 had, however, foundered on whether or not to include s 2 of the 1871 Act, which was then omitted in the Act of 1884. As protest against the gutted Act of 1884, Victorian unions refused to register.\footnote{G Serle, 1971, note 66 pp 97-8.}

This, however, cannot have been the whole story, for even after this section was restored in 1886, unions continued to ignore the Act. Moreover, the central benefits of registration did not derive from these provisions, as they applied to both registered and unregistered unions. Finally, it has also been argued that this pattern was consistent with the pattern of registrations recorded in other colonies before 1900. It is the purpose of this section to provide some explanation for this general failure of unions to ‘take advantage of the Act’. Three factors taken together, it is argued, account for the poor response to the Acts. First, conflicts between the provisions contained in the trade union Acts and other laws and judgements relating to union activity, raised uncertainties about the protection such legislation provided to unions against criminal conspiracy. Second, the benefits of registration under the Act were questionable given the economic context unions generally faced. And third, the benefits these Acts provided were effectively superceded by the provisions contained in arbitral statutes passed after 1890.

The Political and Legislative Context

Portus has noted that the structure and representation of class interests within colonial legislatures and magistrates courts had led to a general ‘distrust of the impartiality of the law’ among colonial unions.\footnote{J H Portus, 1958, note 8 pp 246-9. In noting the low number of registrations, the Registrar was of the view that this could ‘only be accounted for by the fact that the protection and security afforded, and the powers conferred by it, are not generally realized by the members of these Associations. His inquiries with Trade Hall, however, suggested an ongoing mistrust of the disclosure provisions of the Act, and the potential use of this information by employers made registration a risky business. See ‘Fourth Annual Report of the Proceedings of the Government Statist in Connection with Trade Unions,’ VPP, 1890, at 4.} This is perhaps hardly surprising given that for much of the period before 1900, political
franchise was limited and subject to a plural voting system in which parliamentarians remained unpaid. The appointment of magistrates also remained limited to men who owned land and capital and who inevitably showed a considerable bias in favour of employers. All of this imposed significant constraints on the ability of unions to influence the nature of legislation, other than through relatively indirect means. This is perhaps reflected most directly in the provisions of other colonial labour legislation passed during this period, which proved to be harsher than that contained in the English counterparts. This was particularly the case with master and servant legislation.

In addition to the application of the English master and servant Acts of 1747, 1765 and 1824, colonial legislatures passed a series of new Acts intended to meet the concerns of employers in accessing and retaining an adequate supply of labour. While the Employers and Workmen Act 1875 is generally seen as the termination of master and servant statutes in the United Kingdom, the colonial legislation remained in place well after that date, and in some states remained in place well into the second half of the twentieth century. The provisions of these various indigenous Acts and their application differed in a number of respects. Comparisons of colonial statutes and their application differed in a number of respects.

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99 The granting of legislative powers to colonial administrators gave rise to a situation in which pre-1828 labour laws – most of which were hostile towards unions – remained applicable to the colonies, while a number of important pieces of legislation enacted after 1828 – many of which were concerned with providing unions with legal immunities against criminal conspiracy – were not enacted. See J H Portus, 1958, note 8 at 92; and B Creighton and A Stewart Labour Law: An Introduction, Federation Press, Sydney, 3rd ed, 2000.

100 See in particular F Crowley ‘Working Class Conditions in Australia 1788-1859,’ Unpublished PhD thesis, University of Melbourne, 1949. His research in fact suggests colonial governors took a strong interventionist line well before 1828. Also see A Merritt, 1982, note 19; and M Quinlan, ‘State Regulation of Labour in Australia 1828-1860’; paper presented to the Australian Law and Society Conference, Griffith University, Queensland, Brisbane, December 1986 at 8. Creighton and Stewart suggest this continued reliance on master and servants legislation is not surprising given the ‘pre-industrial’ nature of Australian economy. See B Creighton and A Stewart, 2000, note 99, p 33.

101 The first Master and Servant Act was passed in NSW in 1828 (9 Geo IV No 9). This was followed by three further Acts in 1840 (4 Vic No 23), 1845 (9 Vic No 27) and 1857 (20 Vic No 28). The Act of 1902 (Act No 59) remained in force until the 1980s. South Australia passed its first Master and Servant Act in 1837 (Act 7 William IV, No 3), but this was eventually repudiated by the Privy Council in 1838. Further acts were passed in 1841, 1847, 1849, 1852 and 1863. Master and servant legislation was not repealed in that state until 1972. The first Van Diemans Land Act was passed in 1837, but was refused royal assent. Further Acts were then passed in 1840, 1854, 1856, and 1882. In Western Australia an Act was passed in 1840, but was refused royal assent. Further Acts were then passed in 1892, which was modelled on the English Act of 1867. In the case of Victoria, the New South Wales Acts of 1828 and 1840 applied. Further Acts were passed in 1851, 1864 and 1890, which was then repealed by the 1891 Employers and Employees Act. As was the case in Victoria, Queensland was originally part of the colony of New South Wales, thus the Acts of 1828 and 1840 applied there. Further Acts were passed in 1861 and 1868.

predecessors\textsuperscript{103} have found that the formal provisions contained in colonial laws differed from their English counterparts in six specific areas:

- **Coverage.** Colonial master and servant Acts usually covered a wider range of occupations, most notably domestic servants, independent contractors and some types of skilled work (especially in pastoral occupations), and, in some respects, left the coverage of the legislation open and ill defined.

- **Offences.** The range of offences proscribed under the various colonial Acts was not substantially different from the English Acts, but often included innovations to deal with the problem of absconding labourers (notably, provisions relating to periods of notice after the expiry of the term of a contract, harbouring and enticement of absconding workers, and the compulsory discharge certificate) and often contained expanded definitions of offences contained in the English Acts.

- **Penalties.** Early colonial Acts contained penalties which were substantially more severe than the English Acts. While the penalty for offences under the English Acts was usually a three month prison sentence, colonial Acts contained both prison sentences (of three to six months) with hard labour and pecuniary fines or forfeiture of wages. By the 1850s, this dual penalty had been replaced with harsher fines or other punishments, with prison sentences restricted to the offence of defaulting on fines (in NSW and Van Diemans Land). Few of these Acts allowed magistrates to cancel agreements or required cancellation to be with the consent of the employer.

- **Administration and prosecutions.** The procedures for determining cases under the provisions of these Acts were decidedly in favour of employers and were undertaken by part-time justices who were themselves employers.\textsuperscript{104} While earlier research had assumed that Master and Servants legislation had little importance after 1850\textsuperscript{105} or for urban employees,\textsuperscript{106} Merritt has estimated that over 115,000 master and servants prosecutions were launched between

\textsuperscript{103} A Merritt, 1982, note 19 pp 64-7 and M Quinlan, 1986, note 100 pp 8-31.

\textsuperscript{104} A report into the operation of NSW master and servants legislation in 1845 found that employees on the whole were unwilling to use the legislation to resolve grievances. Windeyer, a Sydney magistrate, stated that ‘When I have asked servants why they have not applied to the local Bench for the decision of their disputes with their masters, their reply has generally been, “it is of no use going to Bench, the Magistrates all hang together,” or something of the kind; it is the general; feeling that they do not have justice from the bias of the magistrate, who is a master, being against them.’ See Report of the Select Committee on the Master and Servants Act with Minutes of Evidence and Appendix, NSWPP (1845) at 505-57.

\textsuperscript{105} R McQueen, 1987, note 102, p 84.

\textsuperscript{106} ‘[T]he laws remained a dead letter for urban wage earners… Their existence may have inhibited workers but they were not the normal machinery for regulating the relationships of employers and employees.’ See E C Fry ‘The Condition of the Urban Wage Economy Class in Australia in the 1880s,’ Unpublished PhD thesis, Australian National University, Canberra, 1956, pp 480-1.
1881 and 1935,\textsuperscript{107} suggesting a much higher rate of prosecution than under the English Acts.\textsuperscript{108}

In summary, the formal provisions of the colonial master and servant Acts was such that they regulated a wider range of occupations, imposed far more severe restrictions on the free movement of labour and involved the application of harsher penalties that their English counterparts. Indeed, Quinlan claims that:

*British authorities found the early authorities so sweeping in scope, so lopsided, so arbitrary (in terms of the discretionary powers granted to magistrates) and so repugnant to British notions of justice that the 1828 New South Wales Act was only assented to after some deliberation, and the first statutes introduced into South Australia (1837), Tasmania (1837) and Western Australia (1840) - all similar to the NSW statute - were disallowed. Although this rebuff caused some modifications to be made in redrafted laws, the changes were more cosmetic than substantive.*\textsuperscript{109}

The heavy handed nature of these statutes has been attributed to the legacy of brutal control over convicts being extended to free settlers of the period and ex-convicts alike. That these Acts had a clear economic rationale can be discerned form their use in the free settler colonies of Western Austral and South Australia, where equally draconian provisions explicitly served to provide a mechanism, to regulate the exigencies of local labour market conditions. Under conditions of recurring labour shortages – particularly acute in frontier rural areas, or those stemming from economic and seasonal fluctuations – the master and servant statutes served to control the geographical mobility of labour, and were extensively used by employers against individual employees during periods of labour shortage.\textsuperscript{110}

While the extent to which the application of the colonial Acts diverged from English practice has more recently been bought into question,\textsuperscript{111} there is ample evidence to suggest that these Acts served to regulate ‘both individual and collective employee action’,\textsuperscript{112} and were used in a systemic fashion against unionists and union activities alike. They therefore undermined the potential benefits of those provisions in the trade union Acts intended to provide unions with immunity against prosecution for

\textsuperscript{107} A Merritt ‘Forgotten Militants: Use of the NSW Master and Servant Acts by and Against Female Employees, 1845-1930, in C L Tomlins and I W Duncanson, eds, *Law and History in Australia*, La Trobe University, Bundoora, 1982, p 70. While there is limited evidence for other colonies, Merritt’s disclosure of a high rate of prosecutions under the NSW acts is supported by McQueen’s study of urban magistrates cases in the Melbourne and Brisbane districts. See R McQueen, 1987, note 102, p 86.

\textsuperscript{108} M Quinlan, 1989, note 102, p 35.

\textsuperscript{109} M Quinlan, 1989, note 102, p 30.

\textsuperscript{110} Crowley suggests this was particularly so in the case of female labour, see F Crowley, note 100, p 281.

\textsuperscript{111} B Creighton and A Stewart, 2000, note 99, p 34.

conspiracy in restraint of trade.\textsuperscript{113} Early research by Coghlan, Crowley and others details incidences in which the master and servant legislation was used against workers engaged in collective action. Although these researchers did not indicate that the master and servants Acts were used in a systematically against unions, the incidence of prosecutions did at least have a significant influence on colonial unions, constraining their activities and reinforcing their economic vulnerability.\textsuperscript{114} More systematic evidence on the use of master and servant Acts by McQueen however, finds that collective action was in fact one of the few categories of offences that attracted imprisonment by local magistrates after 1850, particularly in periods of economic upturn.\textsuperscript{115}

In addition to the more systematic use of master and servant legislation against collective action, there is also some evidence to suggest the crime of conspiracy continued to be used against trade unions well after the passage of the various colonial trade union Acts. It will be remembered from earlier discussion that the Conspiracy and Protection of Property Act 1875 had been passed in England directly in response to the decision in \textit{R v Bunn}, which effectively over-ridden some aspects of the Criminal Law Amendment Act of 1871. In addition, the 1875 Act had repealed the Master and Servants Act. However, not all colonial legislatures had followed this lead before 1900 and, by the time similar legislation was passed, arbitral legislation had been introduced and offered unions more significant protection against employer actions and legal proceedings.\textsuperscript{116} In South Australia a Conspiracy and Protection of Property Act similar to the English Act was passed in 1878. However, its own Trade Union Act of 1876 did not included those amendments contained in the English Trade Union Act of 1876. In New South Wales, no Conspiracy and Protection of Property Act was passed before 1900.\textsuperscript{117} Thus it was ‘still possible for persons taking part in a trade dispute to be guilty of the crime of conspiracy’.\textsuperscript{118} In Victoria, it was not until the Employers and Employees Act 1891 that provisions similar to that contained in the English Conspiracy and Protection of Property Act were passed. Similarly in Queensland, similar provisions were not included in the Queensland Criminal Code until 1899. In Tasmania, an Act similar to the Conspiracy and Protection of Property Act was...
passed in the same years as the Trade Union Act (1889). In this case, however, Davidson found that the Tasmanian administration deliberately refrained from repealing the harsher provisions under the Masters and Servants Act 1856.119 Thus, while the 1889 Act provided unionists with immunity from criminal conspiracy charges, this was ‘completely undermined by prosecuting individuals for breach of contract involved in ... strike action’.120 A similar relationship between the Trade Union Act and Master and Servant legislation was clear in debates over the attempt to amend the Victorian Bills of 1882-4. Richardson argued that the amendments were ‘perfectly needless’ as the same offences were regulated by Master and Servant law. ‘In this country’, he maintained, ‘under the Master and Servants Act, no man could leave his employment without proper notice.’121

The evidence on the extent to which charges of conspiracy were used against trade unions is less clear. Portus suggests that: ‘There appears to be little evidence in Australia of the application of the Combination Acts 1825 or any of the principles of the criminal common law.’122 Instead, colonial employers exhibited a ‘decided preference… to use the master and servant legislation against combinations rather than resort to actions for common law conspiracy.’123 Svenson’s detailed account of the Queensland shearsers’ strike of 1891 found that at least twenty six unionists were charged with various types of conspiracy under the Combination Act 1825, including ‘conspiracies to intimidate workmen, molest workmen, threaten workmen, to use force to induce persons to belong to unions, to force persons to make alterations in the mode of conducting their businesses, and to obstruct people’.124 Gollan also found evidence of similar actions in NSW.125

**Economic Context**

The benefits of registration were likewise undermined by the economic conditions that prevailed for much of the period in which these Acts were in force before 1900. With the exception of the South Australian Act, all the colonial Acts had been in force for less than ten years before the depression of the 1890s struck. The effects of the depression and the employer assault on trade unions are well known and documented.126 They are most clearly evident in the trajectory of the number of unions and union membership between 1870 and 1900. These estimates show the number of unions increased in a slow and gradual manner until the late 1870s, after which the rate of union formation accelerated.

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119 ‘The point [of not repealing the Master and Servant Act] was not lost of (sic) the Tasmanian government which, in acting the 1889 Act, deliberately refrained from repealing the 1856 statute.’ See A Davidson, 1975, note 102 at 205.
120 A Davidson, 1975, note 102 at 205.
121 See (1883) 44 VP at 1630.
122 J H Portus, 1958, note 8, pp 90-1. He does however cite some specific cases in which both the conspiracy Acts and common law conspiracy charges were used against unions.
123 M Quinlan, 1989, note 102, p 37.
125 R Gollan, 1960, note 98, p 135.
By the late 1880s, the total number of unions increased three-fold in just ten years.\textsuperscript{127} While there is less systematic evidence on union membership, the picture is consistent with the pattern of growth described so far with most growth being concentrated in the 1870s and 1880s, declining precipitously during the 1890s.\textsuperscript{128}

This effect of the general decline in the number of unions and membership is reflected in the pattern of deregistrations recorded in Table 1, particularly in the case of Victoria and Queensland, the colonies for which the most complete information is available. In the case of Queensland, while 32 organizations sought registration in 1890 – possibly as an attempt to protect themselves in a period of economic difficulty – 23 registrations were cancelled in 1892, and a further 22 registrations cancellation in 1894. (These years of mass cancellations were the direct result of failed inquiries directed to unions by the registrar.) Thus, the total number of registrations had fallen from a high of 74 in 1891 to just 22 in 1895. In the case of Victoria, a similar trend is evident despite the significantly smaller number of registrations. There the total number of effective registrations fell from 14 in 1890 to eight in 1895. In the case of New South Wales, the colony in which the largest number of registrations were recorded, comparable information on cancellations is unfortunately not available. However, on the few occasions that a report on the Act was tabled, it is clear that a similar pattern occurred there. In particular, in certain years where it was clearly evident that many organizations were no longer in existence, the Registrar initiated a mass cancellation.\textsuperscript{129}

**Union Recovery and the Rise of Arbitration**

By 1900, the year in which our analysis ends, unions were just beginning to recover from the 1890s. In the Report for the year ending 1899, the New South Wales Registrar stated:

\begin{quote}
\textit{Matters in connection with Trade Unions have been very quiet; they are, as a rule, unwilling to show any numerical strength, and in many cases they are only bought under notice by the appearance of banners at the Eight Hours Demonstration.}\textsuperscript{130}
\end{quote}

Other colonial Registrars made similar remarks. By this time, however, some unions had begun to look to an alternative model for protection, that of arbitration. In some respects, this preference was evident in debates over the trade union Acts. In all colonies, amendments were moved to include in the trade union Acts some provision for arbitration. While these amounted to little, the disappointing

\textsuperscript{127} This growth period culminated in a dramatic increase in union numbers in the year immediately prior to the 1889-90 collapse. See Graph 3 in M Quinlan and M Gardner, 1995, note 95. A more complete discussion of this issue is undertaken in P G Gahan 'Nineteenth Century Union Growth and Strategy in Australia: A Re-examination’, unpublished paper, School of Industrial Relations and Organisational Behaviour, University of New South Wales, 2000.

\textsuperscript{128} See M Quinlan and M Gardner, note 95. These data are presented in graphical form only and, unfortunately, are not publicly available.

\textsuperscript{129} See, for instance Report of the Registrar of Friendly Societies and Trade Unions for the Year Ending 1895, NSWPP (1896) at 781
experience with the trade union Acts and their almost complete failure to protect unions in a period of economic decline made such a move seem almost inevitable. Yet support was fractured and difficult to muster. In South Australia, a Bill for compulsory arbitration had gone before parliament in 1890, but had failed. An Act was finally passed in 1894 (the Conciliation Act), but had been stripped of its compulsory elements. By 1900, the arbitral system had been replaced with a wages board system largely based on the Victorian system. Similar systems were also introduced in Queensland (Wages Board Act 1908 and Industrial Peace Act 1912) and Tasmania (Wages Board Act 1910).

| TABLE 3 UNION ATTITUDES TOWARDS CONCILIATION AND ARBITRATION, EVIDENCE FROM THE 1891 NSW ROYAL COMMISSION ON STRIKES |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| **Group** | **TOTAL** | **In Favour of Conciliation** | **In Favour of Arbitration** | **In Favour of Voluntary Arbitration** | **Against Compulsory Arbitration.** | **Against Arbitration.** |
| Union | 14* | 14 | 7 | 1 | 1 | 1 |
| TLC Official | 2** | 2 | 1 | 1 | - | - |
| Employee | 4*** | 4 | 3 | 2 | 1 | - |
| TOTAL | 20 | 20 | 11 | 4 | 2 | 1 |

Notes: * includes one retired union official (Ramsey McKillop, Wharf Labourers’ Union).
** includes John Talbot, ex-President of the NSW TLC, and former president of the Ironmoulders’.
*** includes one shop steward (John Armstrong, tobacco worker).
Source: Royal Commission on Strikes, Conciliation Appendix.

The Report of the New South Wales Royal Commission on Strikes provides some evidence of the shift in union attitudes towards arbitration that had begun to emerge in the 1890s. Of the twenty-five union submissions made by union organisations to the Commission, twenty of these reported their attitudes towards arbitration: fourteen from unions, two from Trades and Labour Councils’ representatives and four from employees, one of whom was a shop steward. The attitudes of these representatives towards various forms of conciliation and arbitration are summarized in Table 3. From this table it is evident that of all those union representatives who expressed an attitude in relation to conciliation and arbitration, support for some form of conciliation was unanimous, and half of these favoured some form of arbitration. Only two union representatives objected to arbitration altogether. These findings, while they do not cover all unions, and relate to union attitudes before all major defeats had occurred, do suggest that while union attitudes were somewhat mixed, support for arbitration was gaining a degree of currency. By 1901, the new state of New South Wales had

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130 Report of the Registrar of Friendly Societies and Trade Unions for the Year Ending 1899, NSWPP (1900) at 948.
132 Royal Commission on Strikes, Government Printer, Sydney, New South Wales, 1891, Appendix at p 80.
133 This conclusion is also supported by analysis of union attitudes by Markey. See R Markey, The Making of the Labor Party in NSW, 1880-1900, University of New South Wales Press, Kensington, 1988 at p 275; and R Markey, ‘Trade Unions, the Labor Party and the Introduction of Arbitration’, in S Macintyre and R Mitchell, note 4, pp 156-177 at p 158. Markey also calculates estimates on union attitudes from the same source, but some of his calculations are in error.
passed a compulsory Act which included a system of union registration as one of its central elements.\textsuperscript{134}

In Victoria, less information is available. The Victorian labour movement had not developed organizational links or coordination between the various unions, and other industrial and political bodies to the same extent as unions in NSW. The political context in which unions were to agitate for state intervention was also less favourable, with the Victorian Labor Party remaining a ‘hopeless minority’ until after the first world war.\textsuperscript{135} Thus, unions were reliant on other parliamentary and political interests, particularly the Anti-Sweating Leagues, to ensure support for the enactment of wages board legislation.\textsuperscript{136} Despite this, or perhaps because of it, union support for arbitration seemed more conclusive. As Macarthy notes, although it ‘is clear that Victorian labour preferred and pressed strongly for compulsory arbitration as distinct from wages boards’, such a position was unrealistic. While Victorian unions continued to push for compulsory arbitration well into the first decade of the twentieth century, ‘disillusioned by repeated failures to obtain industrial arbitration’, they turned to expanding and developing industrial control by the Factories Act, a move encouraged by non-labour organizations ‘who favoured less radical or less legalistic measures for wage regulation’.\textsuperscript{137} Furthermore, it has already been noted that with federation and the passage of federal legislation, Victorian unions found wages boards more willing to impose significant regulations on employers through their determinations. Evidence of support for arbitration among Victorian unions can also be found much earlier. Prior to the depression of 1890, the Melbourne Trades Hall Council had functioned, in part, ‘as an institution for conciliation in industrial disputes’, and, in conjunction with the Employers’ Union, operated a Board of Conciliation. As early as 1890, the Melbourne Trades Hall Council had debated the possibility of including in the Board’s constitution a provision for compulsory arbitration. However, due to employer opposition to it, it remained untenable.\textsuperscript{138}

CONCLUSION

This paper began with observation that little research has been undertaken to determine the effects of the colonial trade union Acts on the position and behaviour of Australian unions. This gap seemed somewhat surprising given the view that the same legislation in Britain had been viewed as a major turning point in position of labour law as it related to trade unions by providing them with legal immunity against prosecution for conspiracy in restraint of trade and by providing with some form of


\textsuperscript{137} P G Macarthy ‘Victorian Wages Boards: Their Origins and the Doctrine of the Living Wage’, (1968) 10 \textit{Journal of Industrial Relations} 116-134 at p 120.
legal personality. It was therefore expected that these Acts would seem to be an important starting point for modern labour law in Australia. The importance of this question was also emphasized by the observation that in all colonies unions had actively supported the introduction of such legislation.

Creighton, Ford and Mitchell suggest that these Acts were important, although precisely how and why this was so had was not firmly established. Following their suggestions, this paper began with a comparison of the position of English and colonial trade unions before the introduction of the trade unions Acts. In the United Kingdom, these Acts were viewed as marking the beginning of modern labour law in that for the first time positive protections were provided to trade unions and their activities, albeit in a limited form. Nineteenth century colonial labour law, largely derived from the United Kingdom had similarly been hostile towards trade union activities. This was then followed by a comparison of the provisions of the English Acts with the colonial Acts. With two exceptions (South Australia and Victoria) the colonial Acts followed the English Acts almost to the letter. It was therefore expected that the effects of the colonial Acts was similar to that of the English legislation.

Yet, what emerged from the analysis was a puzzle. Despite the similarity with the English Acts, and union support for them, few unions actually registered under the provisions of corresponding colonial legislation. This paper has sought to offer a resolution to this puzzle. The central contention of this paper is that the colonial Trade Union Acts did not have the emancipatory effect that is claimed of its English antecedent. Rather, they were all but dead letters. The reasons for this were traced to three factors. First, despite the similarity with the English Acts, other colonial legislation explicitly sought to restrict trade union activities in a way that undermined one of the central provisions of the trade union legislation: immunity from prosecution for conspiracy. Although this did not of itself reduce the benefits of registration, it did serve to undermine unions and generated a degree of hostility towards the trade union Acts and registration. The major benefit of registration under the trade union Acts, namely the protection of union assets against unscrupulous officials and the endowment of some legal personality and capacity to own or lease property via registration, proved to be relatively unimportant in a period of severe economic decline. By the time unions had made some recovery from the 1890s depression, arbitration had become the focal point of union strategy and within a decade had provided unions with those protections promised but not delivered by the colonial trade unions Acts. The most interesting, yet unexplored question remaining is perhaps the link between the trade union Acts and what was to come.

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immunity against prosecution for conspiracy in restraint of trade and by providing with some form of legal personality. It was therefore expected that these Acts would seem to be an important starting point for modern labour law in Australia. The importance of this question was also emphasized by the observation that in all colonies unions had actively supported the introduction of such legislation.

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Finally, it is important to note the limitations to the argument presented here. This paper is intended to be a first step in attempting to establish the relative (un)importance of the trade union Acts and the reasons for this. In many respects, the validity of the argument has not been established. The three factors used to explain the failure of unions to utilize the trade union Acts offer at best convincing
circumstantial evidence – they do not provide evidence which places their role beyond doubt. A number of related issues also require further examination, but lie outside the scope of this present paper. Most notably, the paper does not examine the role that the administration of the Acts may have played in the pattern of their usage. This would seem particularly important in the context of an emerging union movement in which many unions had not yet established organizational permanency and initiating legal actions would have been costly. Moreover, our judgement of the role of the British Act was never precisely established. It may have been the case, for example, that British unions stood to gain a great deal more from these Acts by virtue of the general importance of the common law and the hostility of judges towards them. Colonial unions, it was noted, did not have to contend with such an extensive use of common law actions by employers. This suggests three obvious avenues by which the arguments developed here could be further explored. Firstly, to establish whether or not the circumstantial argument presented here was truly reflective of union attitudes would require an examination of historical union records (union minutes, trades and labour council records) to ascertain why unions consciously ignored the Act. Secondly, a more systematic examination of the administration of these Acts would provide useful information on the accessibility and difficulties unions faced in taking advantage of the Acts. Thirdly, as yet, no similar work has been undertaken which examines union registrations under the British Act. This would allow for a more robust comparison of the role of the British Act with its colonial counterparts.

139 I thank Suzanne Hammond for bringing this point to my attention.
**APPENDIX:**
Comparison of the Provisions of the Trade Union Acts 1871 and 1876 with Colonial Trade Union Acts.

<table>
<thead>
<tr>
<th>England</th>
<th>SA  (1876)</th>
<th>NSW (1881)</th>
<th>VIC (1884)</th>
<th>QLD (1886)</th>
<th>TAS (1889)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1871) (1976)</td>
<td>S1</td>
<td>S1</td>
<td>S1</td>
<td>S1</td>
<td>S1</td>
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<tr>
<td><strong>1. Short Title:</strong></td>
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<tr>
<td>The Trade Union Act 1871</td>
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<tr>
<td>and Trade Union Act 1876</td>
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<tr>
<td></td>
<td>S1</td>
<td>S1</td>
<td>S1</td>
<td>S1</td>
<td>S1</td>
</tr>
<tr>
<td><strong>2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such union liable for criminal prosecution for conspiracy or otherwise.</strong></td>
<td>S2</td>
<td>S2</td>
<td>NI (1884)</td>
<td>S2 (1886)</td>
<td>S4 (1890)</td>
</tr>
<tr>
<td><strong>3. The purposes of any trade union shall not by reason merely that they are in restraint of trade be unlawful so as to render void or voidable any agreement or trust.</strong></td>
<td>S3</td>
<td>S3</td>
<td>S3 (1884)</td>
<td>S4 (1890)</td>
<td>S25</td>
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<tr>
<td><strong>4. Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely:-</strong></td>
<td>S4</td>
<td>S4</td>
<td>S4 (1884)</td>
<td>S5 (1890)</td>
<td>S26</td>
</tr>
<tr>
<td>(1) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed.</td>
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<td>(2) Any agreement for the payment by any person of any subscription or penalty to a trade union.</td>
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<td>(3) Any agreement for the application of funds of a trade union:-</td>
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<td>(a) To provide benefits to members; or</td>
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<td>(b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or</td>
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<td>(c) To discharge any fine imposed upon any person by sentence of a court of justice; or</td>
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<td>(4) Any agreement made between one trade union and another; or</td>
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<tr>
<td>(5) Any bond to secure performance of any of the above-mentioned agreements</td>
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<tr>
<td>But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.</td>
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<tr>
<td><strong>5. Provisions of certain Acts not to apply to trade unions</strong></td>
<td>S5*</td>
<td>S5*</td>
<td>S5* (1884)</td>
<td>S6* (1890)</td>
<td>S3*</td>
</tr>
<tr>
<td>Made pre-existing registration under the Friendly Societies Acts 1855 and 1858, The Industrial and Provident Societies Act 1867, and the Companies Acts 1862 and 1867 void.</td>
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<tr>
<td><em>Amended by 1876 Act</em></td>
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<tr>
<td>2. Notwithstanding anything in section 5 of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of...</td>
<td>NI</td>
<td>NI</td>
<td>S5* (1884)</td>
<td>S6* (1890)</td>
<td>S3*</td>
</tr>
<tr>
<td><strong>6. Any 7 or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if one of the purposes of such trade union be unlawful such registration shall be void.</strong></td>
<td>S6</td>
<td>S6</td>
<td>S6 (1884)</td>
<td>S7 (1890)</td>
<td>S4</td>
</tr>
</tbody>
</table>
7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of trustees for the time being of such union any land (not exceeding one acre) and to sell, exchange, mortgage or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to enquire whether the trustees have authority for any sale, exchange, mortgage or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

Amended by 1876 Act

3. Whereas by section 8 of the principal Act it is enacted that ‘the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch’; the said section shall be read and construed as if immediately after the hereinbefore cited words there were inserted the words ‘or of the trustees of the trade union, if the rules of the trade union so provide’

4. When any person, being or having been a trustee of a trade union or of any branch of a trade union, and thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it unknown whether such persons is living or dead, the Registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, of if such trustees refuse to be unable to make such transfer, and the Registrar so direct, then by the Accountant-General or Deputy Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be bought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right or claim to property of the trade union; and shall and may, in all actions concerning the real or personal property of such trade union, sue or be sued, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if their action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.
10. A trustee of any union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as hereafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

12. If any officer, member or other persons representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate, upon a complaint made by any person on behalf of such trade union, or by the Registrar, or in Scotland at the instance of the Procurator Fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, of the court think fit a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided that herein contained shall prevent the said trade union, or in Scotland Her Majesty’s Advocate, from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Amended by 1876 Act

5. The jurisdiction conferred in the case of certain offences by section 12 of the principal Act upon the Court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that Court or by the Court of summary jurisdiction for the place where the offence has been committed.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect:

(1) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the Registrar under this Act:

(2) The Registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules;

(3) No trade union shall be registered under a name identical with that by which any other existing trade union has been...
registered, or so nearly resembling such name as to be likely to deceive the members or the public:

(4) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the Registrar before the registry thereof a general statement of the receipts, funds, effects and expenditure of such a trade union in the same form, and showing the same particulars as required as hereinafter mentioned to be transmitted annually to the Registrar;

(5) The Registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with:

(6) One of Her Majesty’s Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry and the inspection of documents kept by the Registrar under this Act, and respecting the fees, if any, to be paid on registry not exceeding the fees specified in the Second Schedule to this Act, and generally for carrying this Act into effect.

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**Amended by 1876 Act**

5. Trade unions carrying or intending to carry on business in more that one country shall be registered in the country in which their registered office is situate, but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the Registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union is not entitled to any privileges of this Act or the principal Act, in the country in which such rules have not been recorded the same shall not take effect in such country.

In this section ‘country’ means England, Scotland or Ireland.

6. Whereas by the Life Assurance Companies Act, 1870, it is provided that the said Act shall not apply to societies registered under the Acts relating to friendly societies: the said Act (or the amending Acts) shall not apply nor been deemed to have applied to trade unions registered or to be registered under the principal Act.

7. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the Chief Registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the Assistant Registrar for Scotland and Ireland, and in the following cases:

   (1) At the request of the trade union to be evidenced in such manner as such Chief or Assistant Registrar shall from time to time direct.

   (2) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section 6 of the Trade Union Act, 1871, or that such trade union has willfully and after notice from a Registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less that two months’ previous notice in writing, specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the Chief or Assistant Registrar to cancel the same forthwith), shall be given by the Chief or Assistant Registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.
14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect:
   (1) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the First Schedule to this Act.
   (2) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum of not more than one shilling.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed; and if any trade union this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.
   Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

16: A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the Registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out to such date, in such form, and comprise such particulars, as the Registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.
   Together with such general statement there shall be sent to the Registrar a copy of all alterations of rules a and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.
   Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding 5 pounds for each offence.

17. The Registrars of the friendly societies in England, Scotland, and Ireland shall be the Registrars under this Act.
   The Registrars shall lay before Parliament annual reports with respect to matters transacted by such Registrars in pursuance of this Act.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being on the pretence that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed under the Summary Jurisdictions Acts.
   In England and Ireland summary orders under this Act shall be made and enforced on complaint before a Court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.
   Provided as follows:
   1. The ‘Court of summary jurisdiction’, when hearing and determining information or complaint, shall be constituted in some one of the following manners; that is to say,
      (A) In England,
      (1) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute;
      (2) In the City of London, of the Lord Mayor or any alderman of the said city:
(3) IN any other place, of two or more justices of the peace sitting in petty sessions.
(B) In Ireland,
(1) In the police district of Dublin metropolis, of a divisional justice;
(2) In any other place, of a resident magistrate.
In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county
in the Sheriff Court under the provisions of the Summary Procedure Act, 1864.
In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers and authorities necessary for giving effect to these provisions relating to Scotland are hereby
conferred on the sheriffs and their substitutes.
Providing that in England, Scotland and Ireland–
2. The description of any offence under this Act in the words of such Act shall be sufficient in law.
3. Any exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this
Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or
negatived shall be required on the part of the informant or prosecutor.

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20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on
determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions
and regulations following:
(1) The appeal shall be made to some court of general or quarter sessions…

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21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit
Court of Justiciary, or where there are no Circuit Courts to the High Court at Edinburgh, in the manner prescribed by and under
the rules, conditions, and restrictions contained in the Act passed…

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22. A person who is a master, or father, son or brother of a master, in the particular manufacture, trade, or business in or in
connexion with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of
summary jurisdiction or appeal for the purposes of this Act

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As to the term ‘Summary Jurisdiction Acts’

23. In this Act –
The term Summary Jurisdiction Acts means as follows:
As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-
three, intituled ‘An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and
Wales with respect to Summary Convictions and Orders’, and ant Acts amending the same:
As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justice of the
peace for such district, or of the police of such district, and elsewhere in Ireland, ‘The Petty Sessions (Ireland) Act, 1851’, and
Act amending the same.
In Scotland the term ‘misdemeanor’ means a crime and offence.

As to ‘trade union’
The term ‘trade union’ means such combination, whether temporary or permanent, for regulating the relations between
workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive
conditions on the conduct of any trade or business as would, if this Act had not passed, have been deemed to have been an
unlawful combination by reason of some one or more of its purposes being in restraint of trade: Provided that this Act shall
not affect–
(1) Any agreement between partners as to their own business;
(2) Any agreement between an employer and those employed by him as to such employment;
(3) Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft

Amended by 1876 Act

16. So much of section 23 of the principal Act as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows:

The term 'trade union' means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

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24. The Trades Unions Fund Protections Act, 1869, is hereby repealed.

Provided that this repeal shall not affect –

1. Anything duly done or suffered under the said Act;
2. Any right or privilege acquired or any liability incurred under the said Act;
3. Any penalty, forfeiture, or other punishment incurred in respect of any offence against the said Act;
4. The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering or imposing any such liability, penalty, forfeiture or punishment as aforesaid.

Other provisions of the 1876 Act:

9. A person under the age of twenty-one, but above the age of sixteen, may be a member of trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

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10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator), to whom any moneys payable on the death of such member not exceeding fifty pounds shall be paid at his decease, and may form time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

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11. A trade union may, with the approval in writing of the Chief Registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the Assistant Registrar for Scotland or Ireland respectively, change its name by the consent of not less than two thirds of the total number of members.

No change of name shall affect any right or obligation of the trade union or any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of the trade union notwithstanding its new name.

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12. Any two or more trade unions may by the consent of not less than two-thirds of the members of each and every such trade union become amalgamated together as one trade union with or without any dissolution or division of the funds of such trade unions or either or any of them, but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

S13: Registration of changes of name and amalgamation. Requires notice of change of name and amalgamations to be given to registrar.

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<td>S14</td>
<td>Dissolution. Requires the inclusion of procedure for dissolution of a union in union rules</td>
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<td>S15</td>
<td>Penalty for failing to give notice or send a document required under the Act</td>
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**Additional Provisions**

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Note: The short titles of the colonial acts varied slightly. SA: The Trade Union Act 1876, NSW: The Trade Union Act 1881, VIC: The Trades Unions Act 1884 & 1886, and the Trade Unions Act 1890, QLD: The Trade Unions Act 1886, TAS: The Trades Unions Act, 1889

NI = not included.

* With minor changes to the wording of the original provision in the Trade Union Act of 1871 or 1876.
** With more substantial, but not significant changes to the wording of the original provision.
*** Significant changes to the wording of the original provision

1. Registrar and Govt. Statistician to make annual report which is to be laid before both houses of parliament
2. Provided that ‘Nothing in this Act shall be construed to affect any rule of common law or any statute which creates or punishes any offence.’ This section was repealed by the 1886 Act (s.2).
3. Repealed by Criminal Code Act, 1899
4. Registrar to prepare a report to be laid before Parliament.
5. Registrar and Govt. Statistician to make annual report which is to be laid before both houses of parliament.