

INDUSTRIAL DISPUTES DURING THE RUDD-GILLARD ERA: COMPARATIVE PERSPECTIVES AND REALITIES

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“A fly before his own eye is bigger than an elephant in the next field” —
Chinese proverb

ABSTRACT

This paper examines industrial disputes during the Rudd-Gillard political era. Claims made in the public arena implying a steep rise in the volume of disputes are tested. The analyses of other academic researchers are updated in the light of a longer run of data being now available. Among other things, it is found that during the entirety of the Rudd-Gillard era the (per-quarter) volume of disputes was proportionately larger during the second half of the era than during the first half. Also, during the time that the Work Choices Act was operative, the (per-quarter) volume of disputes was around half of that experienced during the Rudd-Gillard era. A different perspective on these data is gleaned, however, when making longer-term comparisons. Two preceding political eras are compared: the Howard Era of 1996-2007 and the Hawke-Keating era of 1983-1996. In its entirety, the Rudd-Gillard era registered a far lower volume of disputes than that registered in the earlier eras. The long term (three-decade) decline in the volume and frequency of disputes is noted and a number of hypothesised explanatory factors are discussed.

Keywords: Industrial Disputes; Strikes; *Fair Work Act* (2009); Rudd; Gillard

INTRODUCTION

The Australian Labor Party (ALP) came to office after the December 2007 federal election. A major plank in the ALP's policy platform at the time was to repeal the existing *Work Choices* legislation (enacted in 2006) and replace it with legislation less antagonistic to unions and more directly protective of the rights and conditions of employees. The *Fair Work Act 2009*, in conjunction with *Fair Work Amendment Act 2012* and the earlier *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*, gave effect to the ALP's electoral commitments.

The ALP's time in office came to an end in September 2013. Its six years in office were in some respects quite tumultuous. One reason was that the

office of Prime Minister changed hands twice; and a second reason was that during Labor's second three-year term in office, it failed to win an outright majority in the House of Representatives as well as the Senate, and had to rely on support from the Greens and various independents to remain in power. Added to all of these difficulties was a more-than-usually fierce campaign against the government, its political allies, and most particularly Prime Minister Julia Gillard. This campaign was driven by a sizeable section of Australia's newspaper and broadcast media plus various business identities and groups as well as, of course, the federal opposition.

One of the areas in which the government came under sustained attack was its industrial relations record. Various aspects of the government's industrial relations record were criticised; however this paper seeks to focus on the government's record with respect to industrial disputes.

Many in the business community were highly critical of government policies that they perceived to have disempowered management and overly empowered unions. This perception is reflected in the comments of Jacque Nasser, the Chairman of the Board of one of the largest companies listed on the Australian stock exchange and the world's largest mining company, BHP Billiton. Nasser stated:

... we have experienced a much more difficult industrial relations environment. It has not only affected productivity, it has resulted in management being unable to operate its business in a fair and consistent way for all stakeholders. Let me give an example. Over the last year, in our Queensland coal business alone, we have faced 3200 incidents of industrial action. We have received over a thousand notices of intention to take industrial action, and then approximately 500 notices withdrawing that action given on less than 24 hours' notice ... Restrictive labour regulations have quickly become one of the most problematic factors for doing business in Australia. (cited at Hepworth & Tasker, 2012)

This paper seeks to analyse the pattern of Australian industrial disputes during the period when the ALP was in government, ie 2007-2013: the Rudd-Gillard years. It was during this period that the *Fair Work Act* was introduced, which re-shaped the rules of the game and presumably contributed to the aforementioned complaints of Nasser and others. The paper updates the preliminary analyses of Borland (2012), Peetz (2012a) and Philipatos (2012), as well as the commentaries of various partisans and interested onlookers (eg Newman, 2009; Hannan 2012; Hepworth & Tasker, 2012; Keane, 2012; AMMA, 2013) by incorporating the final years of the era into the analysis

(except for the September quarter 2013 which was unavailable at the time of writing).

Accordingly, the next section examines time lost due to industrial disputes, which is the broadest measure of strikes plus lockouts, and compares the experience of the Rudd-Gillard era with two earlier political eras. This is followed by a discussion of the frequency, involvement and duration of industrial disputes. The penultimate section examines four hypothesised major drivers of changes in industrial disputes over the last three decades. Finally, concluding thoughts are offered on the differences in perspective that different observers have on industrial disputes during the Rudd-Gillard era

TIME LOST AND BEYOND

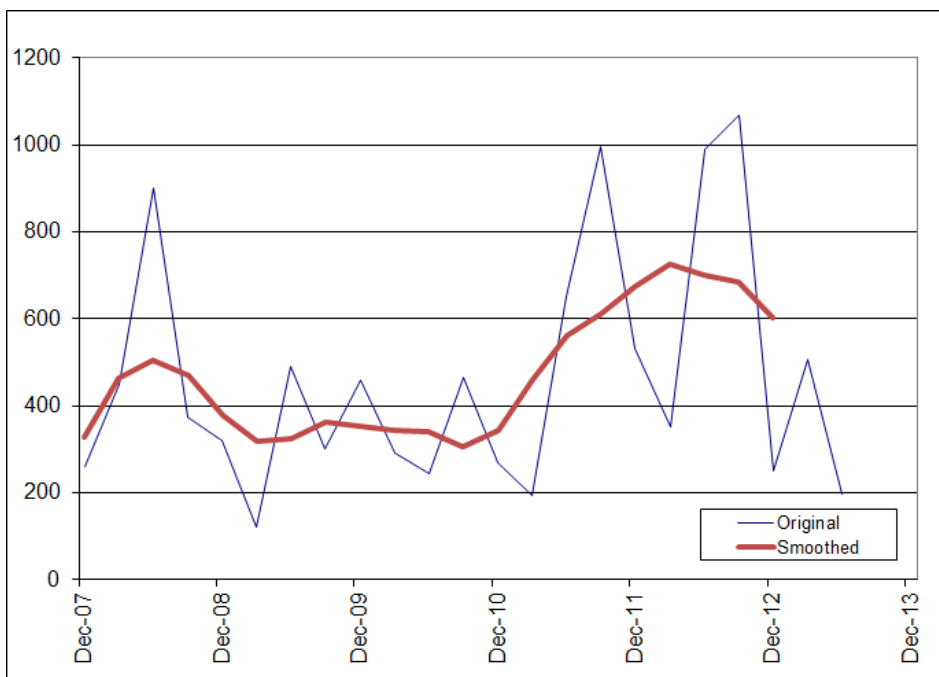
Time lost due to industrial disputes is measured by the number of working days lost per hundred thousand employees. Time lost is the broadest measure of work stoppages available. It is also sometimes referred to as the volume of disputes. Figure 1 depicts two quarterly series of that dimension for the approximate six years of the ALP: Rudd-Gillard government². The first is the original series based on Australian Bureau of Statistics (ABS) data on industrial disputes. The second series is a seasonally smoothed series (constructed by the author) which is the centred moving average annual value of the original series³.

It is evident from Figure 1 that time lost was larger for the second half of the period than for the first half. For the first (approximate) half, on average for each quarter, about 400 working days were lost per 100,000 employees. For the second half, around 550 days were lost. These values perhaps explain why concerns were expressed at the time about increases in industrial disputes (eg Hannan, 2012) plus an alleged accompanying deterioration in the general industrial relations environment (eg AMMA, 2013; Gollan, 2013). Indeed after a spike in the time lost during 2011, commercial broadcast television station Channel 10 was moved to report during its news program that:

² Kevin Rudd was Prime Minister from 3 December 2007 to 24 June 2010 and then 27 June 2013 to 18 September 2013. Julia Gillard was Prime Minister from 24 June 2010 to 27 June 2013.

³ This is a 5-quarter centred moving average. Thus for variable X_0 the de-seasonalised value for that quarter is $[(0.5)X_{-2} + X_{-1} + X_0 + X_1 + (0.5)X_2]/4$. Subscripts refer to quarter periods. The most 'distant' quarters are multiplied by 0.5 so as to attenuate for the presence of that quarter twice in the calculation. For further discussion of seasonality and measuring it, see Pindyck and Rubinfeld (1998, p.482).

New statistics reveal the number of working days lost to industrial action has nearly doubled. While the number of disputes has dropped, the total of lost working days spiked to 214 in the past year with New South Wales accounting for almost half. The announcement comes just before the start of the ALP National Conference at which unions will push for greater workplace rights. Business experts say the figures should be a huge wake up call for the government. (cited at Hannan, 2011)



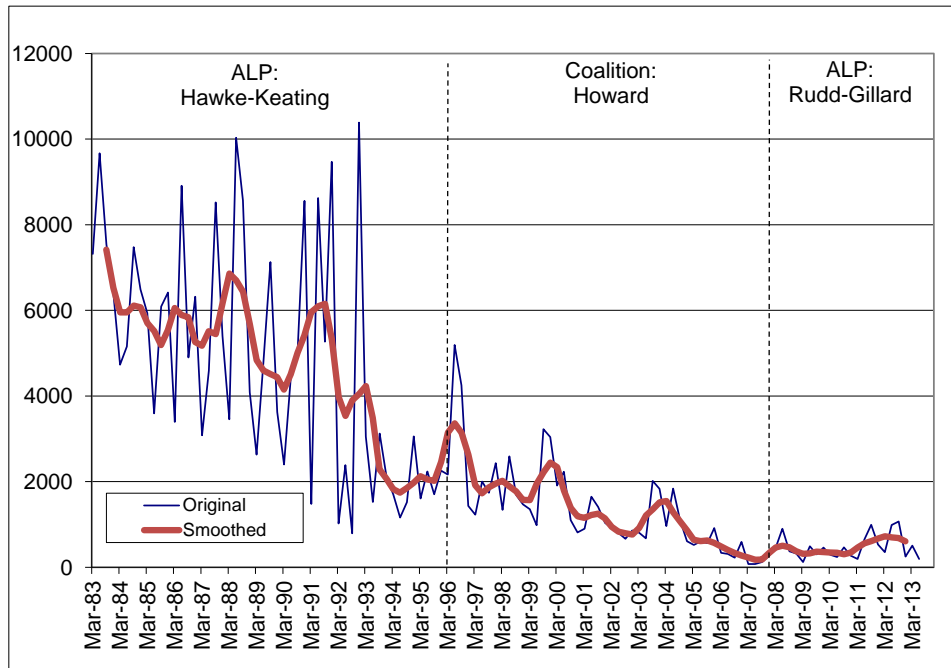
Source: Australian Bureau of Statistics (2013b)

**Figure 1: Time Lost — Rudd-Gillard Era 2007(4) to 2013(3)
Working Days Lost per Hundred Thousand Employees each Quarter**

In conducting these sorts of ‘statistical analyses’ from which politically-charged inferences are drawn, it is helpful, from an objective point of view, to clearly contextualise claims about changes in time lost due to work stoppages. For example, when a claim is made that time lost ‘... nearly doubled’, the question arises: over what timeframe?

To illustrate the importance of contextualising information, Figure 2 presents the same data from Figure 1 into a longer timeframe — a 30 year timeframe. The overall period in Figure 2 can be divided into three political-cum-legislative

eras. The first is referred to as the ALP Hawke-Keating⁴ era from March 1983 to March 1996 when the ALP held power. The second is referred to as the Coalition Howard⁵ era from March 1996 to December 2007 when the coalition (Liberals and Nationals) held power; and the third refers to the previously-identified ALP Rudd-Gillard era.



Sources: Australian Bureau of Statistics (1985 and predecessors and 2013b), OECD (2013)

**Figure 2: Time Lost — Three Eras 1983(1) to 2013(3)
Working Days Lost per Hundred Thousand Employees each Quarter**

Note the apparent seasonality in the data, particularly during the first 10 years or so. Industrial disputes tended to be less pronounced during the March quarter, because it includes January vacation time when many businesses close down for the holiday season. Stoppages tend to be somewhat more pronounced at other times of the year, but over the entire timeframe this particular pattern of seasonality has probably become more attenuated (Perry & Wilson, 2005).

⁴ Bob Hawke was Prime Minister from 11 March 1983 to 20 December 1991. Paul Keating was Prime Minister from 20 December 1991 to 11 March 1996.

⁵ John Howard was Prime Minister from 11 March 1996 to 3 December 2007.

It is clear from Figure 2 that there has been a long-term downward trend in time lost due to industrial disputes over the last 30 years. And while there may have been a kick up in time lost during the second half of the Rudd-Gillard era, it is a relatively small kick up that has not significantly reversed the earlier-established downward trend. Moreover, the overall rate of time lost during the Rudd-Gillard era is on average lower than in earlier eras. Thus the average quarterly number of days lost due to industrial disputes per 100,000 employees during the Hawke-Keating years was 4,700, compared to 1,300 during the Howard years, and 470 during the Rudd-Gillard years.

Nasser (who was cited in the introduction) is reported in Hepworth and Tasker (2012) as being dissatisfied with the industrial relations environment, among other things, during the Rudd-Gillard era. He appeared to favour the systems in place in earlier eras, and is reported as stating:

The success of a system that allows for direct employee engagement and alignment has been evident for many years, and even though it has been in different forms during the Hawke, Keating and Howard years, it worked.

This is puzzling.

On the one hand concerns are expressed about the threat of industrial action, for example BHP-Billiton's Queensland coal business alone having faced '3200 incidents of industrial action'. But on the other hand a preference is registered for the industrial relations arrangements in existence during earlier eras. The puzzle is that, compared to the Rudd-Gillard years, industrial disputes, on average, were nearly three times more prevalent during the Howard years and ten times more prevalent during the Hawke-Keating years.

In fact it may be all too easy to forget eras before those of the last 30 years, and take for granted the relative tranquillity of the industrial relations environment of the last decade or so. The reality is that, in earlier periods in Australia's industrial relations history, the amount of time lost due to industrial disputes was far greater than that experienced over the last 30 years. For example, during the first decade after World War II, time lost due to industrial disputes was, on average, 25 times greater than during the Rudd-Gillard years. And if we look at the first decade when stoppage statistics were collected for Australia as a whole, 1913 to 1922, time lost due to industrial disputes was, on average, about 65 times greater than during the Rudd-Gillard years.

However, there is in fact one near-two year legislative era, from 2006 (Q2) to 2007 (Q4) inclusive, that casts a different comparative light on the volume of

disputes during the Rudd-Gillard era. That is the legislative era of the *Work Choices Act*. As a close examination of Figure 1 indicates, during the period that *Work Choices* was operative, time lost was approximately half that experienced, on average, during the Rudd-Gillard era. This illustrates the importance of being careful in identifying exactly what it is that is being compared.

Official estimates of Industrial disputes are not of course the only indicator of workplace unrest. Gollan (2013) writes:

... Anyone with basic knowledge of industrial relations would tell you that strike statistics tell us very little of what is actually going on at many workplaces. Industrial action can take many forms and can happen either at a collective or individual level.

Statistics from the Fair Work Commission suggest that while collective industrial action numbers as expressed through strikes are down from 25 years ago, there has been a significant increase in other forms of industrial action since 2009, such as termination of employment, adverse action and unfair dismissal.

Further, many of these claims are in unionised workplaces where resorting to the Fair Work Commission is a more likely solution. It would thus seem that instead of minimising industrial conflict, the current system is creating further antagonism between employers and employees. As the *Fair Work Act Review* panel made clear, more needs to be done in producing more consensus based approaches through information and advice.

The statistics tell the story. In the last five years unfair and unlawful dismissal applications and general protections applications involving termination of employment claims have almost doubled.'

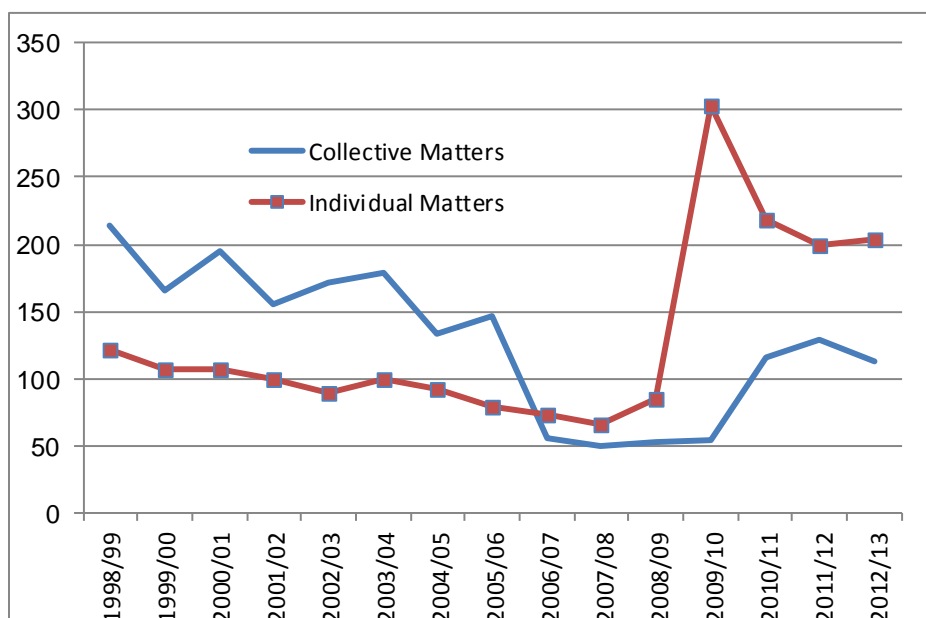
Gollan (2013) then goes on to argue that:

What all this tells us is that our industrial relations system has not yet culminated in the so called industrial 'peace', despite of what many in the union movement would have us believe.

[...] Now is time for a more consensus-based approach so as to build the conditions for sustainable productivity that would take Australia through the forthcoming challenging economic environment.

If the current [Rudd-Gillard] government will not decouple themselves from the vested interests and take action we hope that the next government will provide a far greater foundation of a consensus based IR system.

Gollan's reference to lesser known indicators of workplace conflict being important and instructive is correct. The Fair Work Commission's latest annual report illustrates this. Figure 3 draws on the Commission's data and depicts the matters dealt with by the Commission and its predecessors since 1998/99. The figure illustrates the substantial increase in the relative importance of individual matters brought to the Commission. The figure also indicates that there has been a pronounced increase in individual matters over the last four years or so, particularly when compared to the period when *Work Choices* was operative, roughly from 2006-2007 to 2007-2008 (or maybe to 2008-2009 on certain assumptions).



Sources: Fair Work Commission (2013), OECD (2013)

**Figure 3: Matters Dealt with by the Commission and its Predecessors
Matters per Hundred Thousand Employees each Financial Year**

However, care needs to be exercised when drawing strong conclusions from these data. Firstly, the series in Figure 3 conflate a number of different sorts of matters. Individual cases, for example, include (i) unfair dismissal appeals; (ii) applications to terminate individual transitional employment agreements (ITEAs); (iii) termination of employment and referral of AWAs (Australian

Workplace Agreements) to the Commission; and (iv) various other classifications of actions. Second, the reason that the number of matters coming to the Commission was relatively low during the *Work Choices* era is mainly that the legislation in place at the time prevented certain actions, for example unfair dismissal claims, being brought to the Commission. The low quantum of individual matters before the Commission was not necessarily a reflection of cooperation and consensus. The fact that matters before the Commission were small in number did not necessarily reflect a harmonious workplace. It is more likely that it simply reflected the effectiveness of the system of legal restraints (ie regulations) designed to suppress employee dissent. And thirdly, as an extension of the second point, the fact that there is a relatively large number of matters coming to the Commission after the dismantling of *Work Choices*, does not necessarily mean that there is a greater amount of labour market discord. It may be that the Commission is providing a vehicle to resolve labour market tensions, rather than having them suppressed. Of course, it could also be the case, as Gollan argues, that some components of the *Fair Work Act* inflame tensions between labour and management, thus pushing up the number of matters before the commission. The data are not sufficiently finely screened to throw further light on that issue.

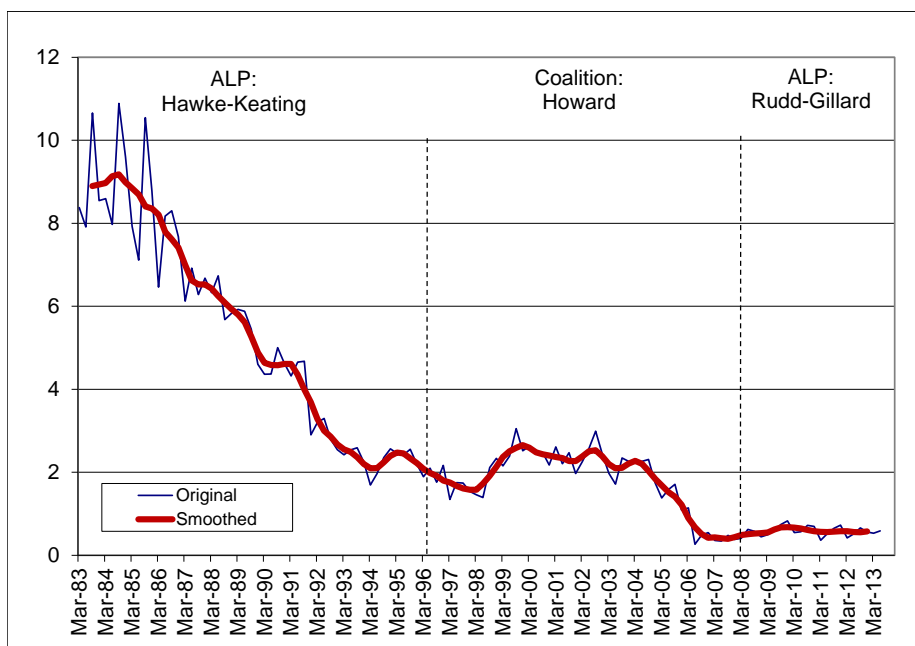
Finally it should be mentioned that non-industrial dispute indicators of workplace relations suffer from being very sensitive to legislative changes and historically have been inconsistently defined and generated. Historical time series are unavailable, except for brief periods, and the full meaning of many of the series is unclear. International comparisons are virtually impossible. Statistics on industrial disputes, on the other hand, do not suffer from the same weaknesses as just mentioned. That is not to say that they do not have their weaknesses. For example, over the last six years the ABS has ceased to publish a full set of statistics on industrial disputes by industry classification, apparently on privacy grounds. Data that have been collected for a century (eg coal mining and total mining) have now stopped being published in any meaningful manner. Sensible analysis of claims made by industry and union spokespersons in various industries can no longer be appraised objectively because of the decision of the ABS to purposefully obscure the truth. It might be thought that these missing observations can be estimated by interpolation. That is not the case. These data are not like price series that tend to steadily grow. Industrial disputes data are, in the short term, erratic and irregular.

FREQUENCY, INVOLVEMENT AND DURATION

Time lost due to industrial disputes can be decomposed (or divided) into three dimensions: (a) the *frequency* or number of industrial disputes per (say) million employees; (b) the average amount of worker *involvement* in each industrial

dispute; and (c) the average *duration* or length of industrial disputes. An independent increase (or decrease) in any of these dimensions will cause time lost to correspondingly rise (or fall)⁶. By decomposing time lost due to work stoppages into these three dimensions, we can gain a fuller appreciation of the underlying sources of change in the 'shape' of work stoppages.

Figure 4 depicts the frequency of industrial disputes over the last few decades. It is evident from the figure that the frequency of disputes, on average, has declined significantly for each successive era: from 54 per million employees during the Hawke-Keating era, to 18 during the Howard era and six during the Rudd-Gillard era. Of course, 'all is perspective', and if we choose to compare the Rudd-Gillard era with the period of the Howard government when *Work Choices* legislation was operative, there is on average a 40 per cent higher frequency of disputes.



Sources: Australian Bureau of Statistics (1984 and predecessors and 2013b), OECD (2013)

**Figure 4: Frequency
Number of Industrial Disputes per Hundred Thousand Employees each Quarter**

⁶ Time lost due to stoppages is the product of the frequency, involvement and duration of industrial disputes. Thus: Time Lost \equiv Frequency \times Involvement \times Duration. Expressed differently: $WDL/E \equiv NID/E \times WI/NID \times WDL/WI$ where WDL refers to working days lost due to industrial disputes, E refers to the employed employees, NID refers to the number of work stoppages and WI refers to the number of workers involved in work stoppages.

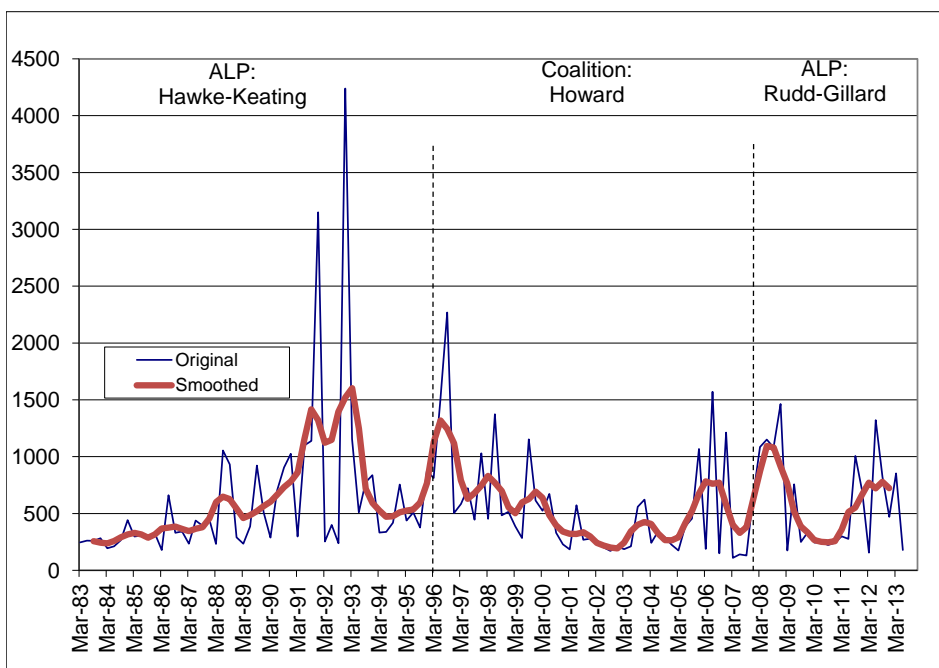
However, it needs to be kept in mind, as is evident in the figure, that the absolute number of disputes is very low, relatively speaking, during and after the *Work Choices* era, so small absolute changes in the number of disputes will necessarily register as large proportional changes. For the record, the political era when the frequency of industrial disputes was at its highest was the Whitlam era (1973-1975 inclusive) during which the average frequency of industrial disputes was nearly 130 per million employees (per quarter), which was more than twenty times that experienced during the Rudd-Gillard era.

The overall picture that emerges is that the longer-term decline in time lost due to disputes is largely mirrored in the decline in the frequency of disputes. Thus the proportional decline in time lost during the three eras is nearly identical to the proportional decline in the frequency of disputes. For example, time lost during the Rudd-Gillard era is on average about 10 per cent of that experienced during the Hawke-Keating era, while the frequency of disputes during the Rudd-Gillard era is on average about 11 per cent of that experienced during the Hawke-Keating era.

Figure 5 depicts the involvement in industrial disputes over the last few decades. It is evident from the figure that, on average, this measure has not changed greatly from one era to the next. This is not to deny that there have been some major positive and negative spikes in the data, particularly during the Hawke-Keating era. However, there appears to be little evidence in these data of an underlying long-term trend similar to the trend evident in the time lost and frequency series. Thus the average number of workers involved in disputes during the Hawke-Keating years was around 630, whereas during the Howard years it was 540 and during the Rudd-Gillard years around 610.

While there appears to be no pronounced trend in these data (compared to frequency and time lost), it can still be argued that longer-term influences might be expected to impact on these numbers into the future. Two such influences are suggested. The first is the tendency for the presence of economies of scale — particularly in the agriculture, mining and industry sectors as well as parts of the services sector (eg retailing) — to lead to a steady rise in the average size of businesses and thus an accompanying increase in the number of workers involved in disputes, if and when disputes arise. A second factor, with the potential to operate in the opposite direction, is that, with the inexorable rise in automation, the fraction of labour involved directly in the production process in various businesses can be expected to decrease. Hence, there may be a steady fall in the employment of labour in certain businesses and thus an

accompanying decrease in the number of workers involved in disputes, if and when disputes arise.

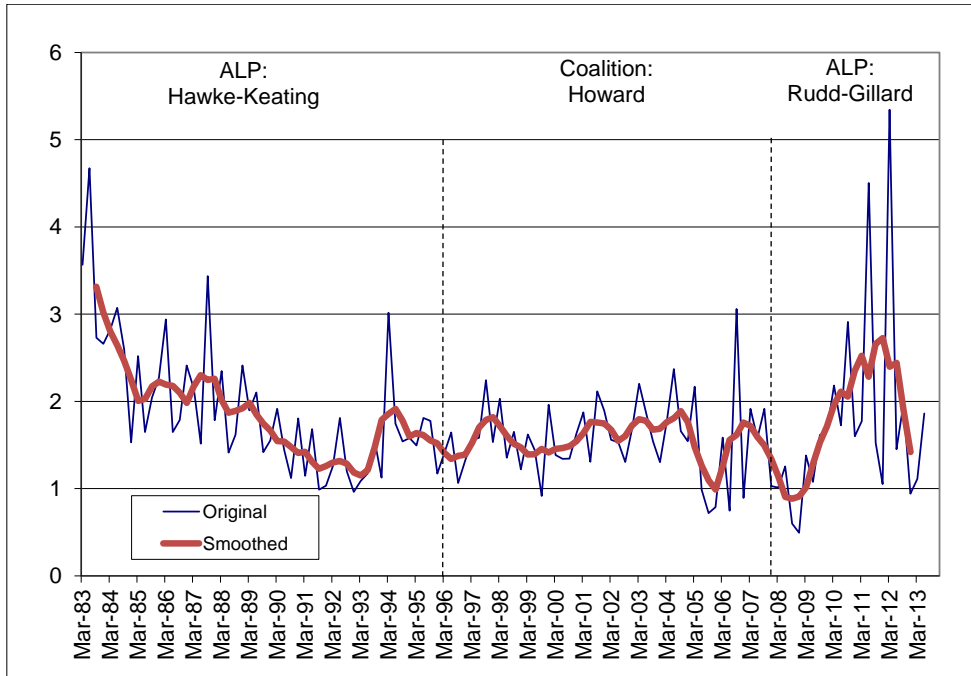


Sources: Australian Bureau of Statistics (1984 and predecessors and 2013b), OECD (2013)

Figure 5: Involvement
Average Number of Workers Involved per Industrial Dispute each Quarter

Notwithstanding the possible impact of these unfolding longer-term influences, the overall picture that emerges is that changes in the average level of involvement in industrial disputes do not appear to be a major factor explaining the pattern of decline in time lost due to industrial disputes over the last three decades.

Figure 6 depicts the duration of industrial disputes. It is evident from the figure that, on average, the duration has changed little. Over the entire 3 decades the duration of disputes averaged 1.7 days. During the Hawke-Keating era it averaged 1.9 days. During the Howard era it averaged 1.6 days, and the average for the Rudd-Gillard era was 1.8 days. These averages do not differ significantly. Thus, as was the case with the involvement data, there appears to be little evidence in the duration data of an underlying long-term trend similar in to the trend evident in the time lost and frequency series.



Sources: Australian Bureau of Statistics (1984 and predecessors and 2013b), OECD (2013)

Figure 6: Duration
Average Number of Days Industrial Disputes Last

It is notable that during the Rudd-Gillard era there was a greater degree of volatility in the duration data than in earlier eras. Given the small number of observations for each quarter, it is unlikely that strong inferences can be made about data seasonality during the Rudd-Gillard era. Nevertheless, it is noted that the heightened volatility of the duration data may have contributed to a greater sense of uncertainty about not only the duration of disputes, but also about the likely outcome of disputes.

SUMMING UP

A major result from this decomposition exercise is that the 30 year general decline in time lost due to industrial disputes is linked most strongly to the decline in the number of industrial disputes, ie the frequency of industrial disputes. This appears to be the main component involved in the 30-year declining trend. Variations in involvement rates and the duration of disputes do not account for much of the overall declining trend in time lost. This is not to say, however, that this has always been the case. There was a broad downward trend in the duration of disputes between 1913 and 1960, with the duration falling from a decadal average of about 15 days to two days (Perry,

2005a). During those periods when overall time lost displayed a downward trend (the two decades after World War I and the near decade and a half shortly after World War II), the general decline in the duration of disputes reinforced an accompanying downward trend in the frequency of disputes.

DRIVERS OF LONG-TERM CHANGE

Returning to the last three decades, the questions arise: why have time lost and the frequency of disputes declined and why has the decline been for such a protracted period?

First, over the same timeframe there has been a marked downward trend in union density, the proportion of employees who are union members (Miller & Mulvey, 1993; Healy, 2002; Peetz, 2012b; Peetz & Bailey, 2012). In 1982, on the eve of the ALP Hawke-Keating era, an ABS population survey found that 49 per cent of employees were union members in their main job, 53 per cent for males and 43 per cent for females. For those employed in the public sector, density was 73 per cent, whereas in the private sector it was 39 per cent (ABS, 1983). By 1996, at the beginning of the coalition Howard era, overall density had fallen to 31 per cent, and at the end of that era in 2007, it was 18.9 per cent. During the ALP Rudd-Gillard era density rose, for the first time in around three decades (Hilder & Davies, 2011), to 19.7 per cent in 2009. It subsequently fell again to 18.2 per cent by 2012 (ABS, 2013a). At that time (2012), public and private sector densities were 43 and 13 per cent respectively, while overall female density of 18.9 per cent now exceeded male density of 17.5 per cent (ABS, 2013a).

Over that three decade period, density declined by 31 percentage points. In absolute terms, the decline in union membership has been 28 per cent. Some of the decline in union density can be attributed to structural changes. For example, the growing proportion of employees in part-time positions (where union density is relatively low) and a declining proportion of employees in the manufacturing sector (where union density has been typically relatively high). However, these sorts of structural changes are not the main driver of declining density, as density has tended to decline for most sectors across the board.

That brings us to a possible second factor contributing to the decline in industrial disputes: government legislative-cum-administrative change. Various legislative-cum-administrative changes have in various ways sought to reduce the proclivity and/or the capacity of unions to strike. During the Hawke-Keating era the Prices and Incomes Accord was deployed to moderate industrial disputes. The Accord was more an administrative arrangement than it was legislative. It was an agreement between the Australian Council of Trade Unions (ACTU) and the government whereby union wage demands and thus

strikes would be reduced in exchange for government benefits such as the greater provision of public health care (ie the provision of social wage benefits). The nature, structure and operation of the Accord changed markedly over the years (Wilson, Bradford & Fitzpatrick, 2000). However, one foundational concept of the Accord did not appear to change, and that was to have a consultative arrangement between government and the ACTU with both parties, so far as possible, singing from the same song sheet of seeking to improve overall productivity and living standards in a consensual and cooperative manner. Beggs and Chapman (1987a,b) and Morris and Wilson (1994, 1995, 1999, 2000) produced econometric evidence that, during the period of the Accord, industrial disputes shifted to a lower underlying volume.

Apart from the Accord, the most far-reaching legislative-cum-administrative change during the Hawke-Keating period was, arguably, the introduction and embedding of enterprise bargaining in the early 1990s designed to add greater flexibility in wages and employment arrangements (Hodgkinson & Perera, 2004). Enterprise bargaining was promulgated by the Industrial Relations Commission in 1991 and legislation was subsequently introduced that buttressed this (Mulvey, 1997; Wooden, 2000). That legislation was the *Industrial Relations Reform Act 1993*.

The various Morris and Wilson studies do not identify separate legislative eras within the period of the Accord. Rather, they find that the entire period of the Accord is accompanied by a negative shift in disputes. In fact according to Morris and Wilson (1999) and Chapman (1998) the influence of the Accord on industrial disputes continued beyond the period of the Accord itself. Thus during the very early years of the Howard era, disputes remained relatively low because '... the Accord could have been associated with a landscape or cultural transformation in Australian industrial relations, which would manifest itself in a structural change in disputation that lasts beyond its early influence' (Chapman, 1998, p. 636). In any case, over the entire duration of the Accord-Hawke-Keating era, there can be no doubt that time lost due to industrial disputes trended downwards in a significant way, which is discernible in Figure 2.

The Howard era was not one of cooperation and consensus with unions. The ideological schism between the coalition and the union movement forbade any such arrangement. The Howard government legislated to constrain and reduce union power. When the Howard government eventually won power in the senate, it introduced the *Workplace Relations Amendment Act 2005 (WorkChoices)*, generally referred to as *Work Choices*. It became operational in late March 2006. *Work Choices* was an extension of the Howard government's *Workplace Relations Act, 1996* and was designed to both deregulate (and re-

regulate) labour markets to an unprecedented extent and simultaneously de-unionise and individualise employer-employee relations. Throughout the Howard era time lost due to industrial disputes trended down (see Figure 2), reaching an all-time minimum during the June quarter of 2007.

Thus far we have considered two eras during which very dissimilar policies were pursued with regard to the establishment and maintenance of cooperative and consensual arrangements with the union movement. The Hawke-Keating era involved, by and large, cooperative arrangements between government and unions. The Howard era, on the other hand, did not. In spite of polar opposite policies being pursued, throughout the combined two eras time lost due to industrial disputes trended down. That raises the question: were there other factors — other commonalities — that might help explain the declining trend in disputes?

One commonality of note is that both governmental eras moved, in one way or another, towards greater labour market flexibility. That means greater wage flexibility and greater employment flexibility. There was, and largely remains, a perception, on the part of governments, their advisors and to some extent the wider community, that greater economic flexibility in general was an important basis for sustaining improvements in productivity and thereby living standards. Not only was labour market flexibility to be encouraged, but so too was greater flexibility to be encouraged in other markets, such as in financial, retail and foreign exchange markets. What this usually meant was greater trust in and reliance upon market forces; in other words, neo-liberalism. Thus it is suggested that an important driver of declining disputes was a greater application of neo-liberal legislative-cum-administrative policies during both the Hawke-Keating era and the Howard era.

That brings us to the Rudd-Gillard era. During this era, neo-liberal labour market reforms stopped, and were in some ways reversed. However, it can be argued that these reversals, on balance, were fairly modest, especially in reference to the legalities of strikes. The fact that the (then) federal opposition undertook not to materially alter the *Fair Work Act* should it be returned to power in the upcoming election, is an indication of this; though it was also an indication of the (then) opposition's sensitivity to lingering community hostility to any suggestion that the opposition was planning to re-install *Work Choices*.

The *Fair Work Act 2009* commenced formal operation on 1 July 2009. Although it took some time before the new legislation came into play, it was clear very early on during the Rudd-Gillard era that *Work Choices* was finished, as the federal opposition quickly indicated that *Work Choices* 'is dead'. Also, the government introduced transitional legislation which made certain aspects of

Work Choices formally inoperative. Thus the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* took effect in March 2008. Among other things, it prevented employers from making any new Australian Workplace Agreements (AWAs), introduced a no-disadvantage test to be applied to collective agreements and expanded the role of the (then) Australian Industrial Relations Commission to undertake the so-called award modernisation process.

The *Fair Work Act* did not revert to a legislative framework equivalent to that which the previous ALP administration had. Judgments differ of course, but it is probably reasonable to say that the *Fair Work Act* fits somewhere between the initial Howard legislation of 1996 (*Workplace Relations Act 1996*) and *Work Choices* in terms of its overall legislative direction and treatment of unions. This may explain why more than a few commentators have referred to the *Fair Work Act* as 'Work Choices Lite'. See Forsyth and Howe (2008), Gittens (2008), Newman (2009), and Forsyth and Stewart (2009) for a range of views.

Many of the constraints *Work Choices* placed on unions are retained in the *Fair Work Act*. In the *Fair Work Act* strikes can only occur, as in the past, during a legally-set bargaining period and must be approved by a majority of union members in a secret ballot conducted by the Australian Electoral Commission or a ballot agent. 'Pattern bargaining' (where uniform agreements are made for different enterprises) remains forbidden. Strike pay is unlawful. Third parties who are harmed by an industrial action can apply to the Fair Work Commission (formerly Fair Work Australia and before that the Australian Industrial Relations Commission) to have that action terminated. And the workplace relations minister can apply to terminate an industrial action on essential services grounds. *Fair Work* also provides a number of new bases to suspend or terminate an industrial action. The Fair Work Commission can intervene 'if an intractable bargaining dispute is causing significant economic harm to the bargaining parties themselves' (McCrystal, 2010, p. 43). Lockout regulations have also changed. Employers are now not permitted to pre-emptively lockout employees. A lockout can be used only as a response to an industrial action initiated from the employee side of a dispute.

After detailing the historical foundations of the laws dealing with strikes and lockouts in the *Fair Work Act*, from the Keating government's *Industrial Relations Reform Act 1993* which established the current 'model' of legal recognition of strikes through to the *Work Choices* version of the model, McCrystal (2009, p. 46) writes that:

... the *Fair Work Act* retains the fundamental elements of the pre-existing approach to the regulation of protected industrial action. The

Fair Work Act continues to restrict employee and union choices over the use of industrial action in support of the level at which employees want to engage in collective bargaining and the subject matter of such bargaining. Further, the *Fair Work Act* tightly controls the potential consequences of any protected industrial action by containing extensive provisions to limit damage to the economy, third parties or the negotiating parties themselves.’

A protected industrial action is one that is legally sanctioned and thus gives the instigator immunity or protection from being sued.

So what, if any, bearing does the changing legal framework have on the overall volume of industrial disputes during the Rudd-Gillard era?

Let us recall that the declining trend in time lost due to industrial disputes ceased during this era as Figure 2 illustrates. Also, time lost due to industrial disputes during the second half of the Rudd-Gillard era, on average, exceeded that of the first half, as Figure 1 illustrates. Does that then justify, or at least explain, the views expressed by numerous commentators and business identities that, firstly, industrial disputes were on the rise during the Rudd-Gillard era, and second, the industrial relations environment created by the government — and thus the *Fair Work Act* — was responsible for a higher volume of workplace conflict?

It is suggested that the answer to the first question is a qualified ‘yes’; disputes did rise, on average. But the qualification is that the size of the *absolute* rise was, by the standards of the last few decades, very small. In earlier eras, these sorts of absolute changes would likely register as mere statistical ‘noise’. But during the Rudd-Gillard era, when the underlying volume of disputation was, on average, exceptionally low, small absolute changes in industrial disputes were magnified when expressed in terms of proportional change.

It is suggested that the answer to the second question is a qualified ‘no’. We have seen that the *Fair Work Act* has kept the main elements of the *Work Choices* approach to regulating industrial disputes. It is true that lockouts are more difficult to initiate and it is easier for third parties to apply to have disputes terminated. These changes potentially decrease the probability of there being industrial disputes. On the other hand, there has been a slight increase in the range of issues that come under the ambit of being a protected industrial action and this potentially increases the probability of there being industrial disputes. On balance, given that the overall framework has changed little and the underlying intent of the legislation is to avoid work stoppages, it

seems unlikely that the minor changes embodied in the *Fair Work Act* have acted as an enabling mechanism for more industrial disputes, such as they are.

If that is the case, it may be that the increase in disputes is linked to other administrative aspects of the Rudd-Gillard era. Or, it may also be the case that when the volume of disputes is at such historically low values, a 'natural limit' has been met below which it is difficult to go in a democratic society that protects certain minimum standards regarding freedom-of-association rights.

In summary, then, there does appear to be a prima facie case for linking the declining trend in industrial disputes to changing legislative-cum-administrative arrangements, to the extent that the overall decline in time lost due to industrial disputes has been linked to fewer and fewer legislative-cum-administrative enablers being in place. In other words, the Accord, the Keating legislative model prescribing when strikes and lockouts can and cannot occur, and the *Work Choices* version of that model all worked towards progressively reducing the proclivity and the capacity of workers to strike and businesses to conduct lockouts. During the Rudd-Gillard era that legislative model changed little, though it may be that other aspects of the *Fair Work Act* acted to signal a less antagonistic attitude to unions than was the case during the *Work Choices* era.

The question arises from the foregoing discussion: why is it that that these legislative-cum-administrative changes, that have more or less limited the capacity and/or the inclination of unions to strike, been instigated and installed in the first place? That brings us to a suggested third driver of change which might be described as a discernible rightward shift in political sentiment that became most noticeable around the late 1970s and early 1980s (Perry, 2005b). Other descriptors have been used to identify this socio-political change, such as a rising preference for individualism over collectivism, deregulation over regulation, and market-determined outcomes over centrally-planned outcomes. The 'rightward shift' descriptor has been chosen (on this occasion) because this is the way it has been principally perceived by a number of political analysts, notwithstanding some of the limitations associated with it as an adequate descriptor. Thus McAllister (1992, p. 89) refers to a "... perceived rightward movement in public opinion – [that] has been termed the "great moving right show" (Heath et al. 1991)". He writes that:

Whereas public opinion in the 1960s and 1970s was marked by consensus economic policies based on limited state intervention, the 1980s were dominated by the application of market solutions to economic problems ... Although there is little doubt that citizens

shifted their opinions towards the right, the debate has centred on how far this movement went and whether it was a consequence of changes among voters, or whether it was induced by *elite policies ...* (McAllister 1992, p. 89).

When comparing opinion poll responses to the question: 'are trade unions too powerful?' administered for the years 1967, 1979, 1987 and 1990, McAllister reports positive response rates of 54%, 81%, 83% and 85% respectively. These and other poll results are seen as being indicative of declining sentiment towards unions as well as towards the general political agenda of the union movement.

Wooden (2001) identifies similar sources of change in Australia's industrial relations system in recent decades. He writes that:

... the values and interests of wage earners have been shifting away from a collectivist orientation, with its emphasis on solidarity and equality, the common good, and the need for rational authority structures, towards a more individualist orientation, which places more emphasis on self-interest and personal development' [p. 248]

The fact that declining union power is an international phenomenon (Bryson, Ebbinghaus & Visser, 2011) is important. It indicates that focusing on local legislative changes and related labour market circumstances obscures the role broader global influences (Perry, 2005b). Lind (2009, p. 511) argues that, apart from structural changes in unions, broader attitudinal changes need to be appreciated as a more diffused source of workplace relations change. He writes that what has been at play has been:

... the weakening of social democracy and the ideas of a collectivist and solidaristic welfare state and the revival of liberalist ideas, which not only abandoned Keynesianism and revitalised the less interventionist strategies of monetarism, but also included an ideological reorientation putting the individual in focus. In working life, 'the end of mass production', with the ideas of restructuring workplace organisation in terms of 'new production concepts', post-Fordism and flexible specialisation were accompanied by a focus on the individual and his potentials and capacities. Human resource management became the *modus vivendi* for personnel policies instead of industrial relations...

A last important factor contributing to the three-decade decline in time lost and the frequency of disputes has been the success and luck of policy makers

in maintaining a low inflation environment. During the Hawke-Keating era inflation (measured by the Consumer Price Index) averaged 5.2% pa. During both the Howard and Rudd-Gillard eras it averaged 2.6% pa. A number of studies have found a positive association between industrial disputes and inflation (Beggs & Chapman, 1987a, b and the more recent and thus more relevant work of Morris & Wilson 1994, 1995, 1999, 2000), though that relation may not extend to more recent years (Hodgkinson & Perera, 2004) as those studies are now a little dated. During the 1970s, when inflation was relatively high, unions frequently went on strike to maintain real wage rates. Of course, they were much more powerful then, as union density was high and the general political climate was, in some ways, more accustomed to accepting unions and their importance in the economic and social landscape.

CONCLUDING THOUGHTS

This paper has examined industrial disputes in Australia during the Rudd-Gillard era. It has illustrated that the overall volume of disputation during the second half of the period was greater than during the first half. Comparisons have also been made between the Rudd-Gillard era and two preceding political eras. Time lost due to industrial disputes has trended down over the last approximate three decades. Each successive political era has experienced, on average, substantially less time lost than the earlier one. Indeed, time lost during the Rudd-Gillard era has been, on average, lower than that experienced in any other political era in Australia's recorded history.

But all is perspective. If the time lost during the Rudd-Gillard era is compared with time lost during the period that *Work Choices* was operative — the last near-two years of the Howard era — a different picture emerges. During the period that *Work Choices* was operative, time lost was approximately half that experienced, on average, during the Rudd-Gillard era. Interestingly, although the legislative dismemberment of *Work Choices* during the Rudd-Gillard era changed much of the framework of workplace rules and regulations, it did not substantially change the underlying legal model that was established in the early 1990s and employed in *Work Choices*.

Given that the new coalition Abbott government has indicated that it will not seek to significantly change the existing *Fair Work Act* and has publically committed to never return to *Work Choices*, it will be of great interest to labour market observers what trajectory the volume of disputes takes during the next three years and beyond.

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