

Wednesday 5th February 2014

Attention: Senate Education and Employment Legislation Committee

Dear Senators,

Herewith my brief submission to the enquiry into the Fair Work (Registered Organizations) Amendment Bill 2013.

Yours faithfully,

Andrew Oliver.

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3.0 The Aims of This Bill

No doubt there is some idealistic purpose in the minds of those behind this Bill. Nevertheless I would contend that this Bill implements an inappropriate authoritarian model of enforcement that to many a democratically run union will be like using a sledgehammer to crush a few odd peanuts.

Who could object to promoting efficient management of organizations, high standards of accountability, good financial reporting, or proper democratic functioning and control of organizations by their members? Despite these fine words, I suspect that this Bill will actually promote an industrial war between the trade unions and an alliance of government officials and the more warlike employers who have a secret agenda of smashing what little power the trade union movement still has.

I believe that the vast majority of trade union leaders and delegates are not corrupt. Corruption, the use of positions of authority for selfish gain rather than for a political purpose, what is ordinarily called common and garden corruption, is rarer in the union movement than amongst those land developers wont to bribe local government officials! Nevertheless there does exist some criminality in the union movement. There are those members of the union movement be they ordinary members delegates or officials who if deprived by legislation of a right to a fair hearing before a tribunal that has the power to order moot and just remedies for legal wrongs suffered, perhaps by express provision of industrial legislation that declares the relevant wrong as not justiciable, it is not uncommon for such union members to get really angry and criminally damage their employer's property. The remedy I suggest to such idiotic restrictions in industrial tort law is to appropriately authorize administrative and judicial tribunals appoint persons of good character to said tribunals and provide in the forms in schedules of industrial relations legislation a number of disputes settlement forms which allow employers and their representatives and employees and their representatives to agree to end a dispute or a series of related disputes by signing off on a dispute settlement agreement lodged with the dispute settlement form where the employer and the employees sign cross-claim waivers on the dispute settlement form that summarizes the items in dispute and the remedies therefor.

Unfortunately this Bill is not going to lead to industrial peace. This Bill in fact will incite an industrial war between the stronger unions and the big employers. In these days of globalization this will lead in the long term to ordinary Australians becoming poorer.

4.0 The Separation of the Executive Judicial and Legislative Functions of Government

This Bill confuses the different roles of different kinds of government officials. I believe that the end of justice is best served by the separation of the legislative judicial executive and policing roles played by different kinds of government officials. In this Bill the Commissioner for Registered Organizations plays too many of these roles at one and the same time, in respect of any particular dispute between a particular employer and the particular employee organization subject to this act. This is inappropriate.

I say this in part having skim read the draft bill linked to the committee's website most particularly page 29 schedule 2 part 1 section 6 and surrounding sections.

A better way of implementing the same sort of regulation would be to provide that minor cases would be dealt with by a Federal Magistrate on application by an aggrieved party, and to provide that major cases would be dealt with in the Federal Court by one or more judges on application by an aggrieved party.

Not only that but section 329FA on page 19 Directions From the Minister suggests to me that members of the government want to make war on the trade union movement.

5.0 Political Freedom

Having read John Stuart Mill's On Liberty many years ago, it disappoints me to see a Liberal government introducing such authoritarian legislation that imperils the right to freedom of association and related basic political freedoms.

The fine sounding aims of this Bill are directly contradicted by the authoritarian methods of implementation which will tend to undermine the fine sounding aims of this Bill.

I remember many years ago in the 1990s I was a member of the public sector union and I remember that the rules of the public sector union in relation to union elections were not exactly very fair to independent candidates wishing to take on the ALP aligned leadership group of the union. At that time some 60% of the membership of the public sector union were broadly supportive of this leadership. However some 20% of the membership were cheesed off by a series of enterprise and agency bargaining agreements that traded off valuable work conditions for next to nothing to wit small percentage pay rises little more than the annual cost of living price indexes produced by the Australian Bureau of Statistics.

In the mid-1990s there was a Federal Court case brought in relation to a particular disputed public sector union election where someone who rightly should have won a place on the Victorian Branch executive according to the laws of mathematics, missed out on a place because of obscure technical rules about eligibility to stand for election and the methods of how to go about counting elections. In retrospect, I would much rather have this sort of dispute settled in the Federal Court under general principles of tort law in respect of general concepts of what constitutes a free and fair election than let any Registered Organizations Commissioner appointed by this government meddle unasked in the affairs of Australian trade unions.

Political freedom in respect of organizations is best dealt with on the ground. Authoritarian top-down solutions do not lead to a democratic outcome!

6.0 Problems I See with This Bill

6.1 Confusion of Administrative Policing and Judicial Roles in Respect of the Commissioner

A real problem with this Bill. And grounds to send it back for reconsideration and redrafting.

6.2 Sharing of Information Privacy and Leaking

The Bill contains several provisions about sharing of information. No doubt these express provisions being specific to industrial relations law are meant to take precedence over more general provisions in the privacy law. However the provisions about sharing of information being badly drafted in my view will encourage and incite partisan leaking of confidential information in the name of industrial disharmony.

6.3 The Inappropriate Authoritarianism of This Bill's Enforcement Model

In my view the authoritarianism of the enforcement model this Bill proposes for the regulation of industrial organizations is totally inappropriate.

7.0 Recommendations to the Committee

I recommend to the committee that the committee conduct a close audit of the text of the bill and if they agree with my general criticisms after said audit submit a report back to the Senate to the effect that the bill contains fine words in respect of its aims but that the bulk of the bill just needs to be sent back to the Cabinet for reconsideration and redrafting.