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Future Directions for Unions after ASAHI

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Major Issues

It has been almost ten years since the Australian Council of Trade Unions Congress in 1985 was made aware of the union movement's declining membership base. The ACTU addressed the declining membership issue in a document *Future Strategies for the Trade Union Movement* in 1987. The aim of that report was to plan an amalgamation strategy to mobilise union resources more effectively through amalgamating the then 300 unions into twenty large industry-based unions and to eliminate wasteful duplication of services. In so doing it was claimed that service delivery to members would be improved.

Statistics on union membership published in 1994 show however that, despite the realignment of unions into twenty or so large unions, the extent of workforce coverage by unions has fallen by 7 per cent to 35 per cent of the workforce over six years. The employed labour force stands at almost 8.2 million, while union membership numbers hover around 2.2 million. Clearly union membership is not rising in concert with the expanding labour force.

Unions envisaged that the certified agreement provisions of the *Industrial Relations Reform Act 1993*, supported by new good faith bargaining provisions in the Act would assist them to recruit members. At the time that the Bill was being drafted there was a union expectation that workers would realise the value of union membership. It was that membership of the relevant union would be the prerequisite before that union commenced the procedure of gaining a certified agreement for workers in the enterprise, and thus a wage rise. The ASAHI decision by the Australian Industrial Relations Commission on appeal in March 1995, made clear that unions could not rely on "good faith orders" issued by the Commission under which, it was assumed, an unwilling employer would be obliged to negotiate an enterprise agreement.

The ASAHI decision was propitious given that the ACTU at about the same time received two reports on future organising strategies for unions. One is an internal union working document which sets a target to recruit 200,000 members by mid 1997 and proposes a range of reforms. The other is a report by the Evatt Foundation. Both documents appear to share many themes on the need for unions to become more service oriented.

The Evatt report, *Unions 2001, A Blueprint for Union Activism* proposes that the new mega unions provide new services for members and a limited service for non-members; that they adopt their structures to more accurately reflect the composition of their memberships by raising the status of delegates. It also asserts that unions need to grasp enterprise bargaining since their members closely identify with their firms and workplaces and that union administrations need to be streamlined with union services being more directly oriented to members, for example with the establishment of one-stop union shops.
Implicit in the Evatt report is a theme that the typical national union — state branch office structure may over time be replaced by a national office — section or enterprise group replacing unnecessary office administration with targeting industrial resources at the membership and the enterprises in which they work; to put it another way, this would mean more organisers and administrative assistants and less branch secretaries, assistant branch secretaries and similar 'official' positions. At least one union the PSU group of the Community and Public Sector Union has taken up the challenge by proposing a radical restructure of its operation to give groups or sections of its membership more direct influence in the executive administration of the union.
1. Union Recruiting Strategies before the ASAHI Decision

The Full Bench of the Australian Industrial Relations Commission (AIRC) on 1 March 1995 quashed an order given by Commissioner Hodder made in December 1994, requiring the Sydney metal manufacturing firm, ASAHI, to negotiate in good faith with the Automotive Food and Metal Engineering Workers Union (AFMEU).

The AIRC set out some principles as to the meaning and application of the certified agreement sections contained in Part VI B, Division 2 of the Industrial Relations Reform Act 1993. This Act amends and is incorporated within the Industrial Relations Act 1988. The ASAHI decision is important since these bargaining provisions are almost one year old and were, in many respects, untested. This is due to this Division more or less replicating the earlier bargaining provisions effective from July 1992 until March 1994 and adding some novel provisions such as "good faith bargaining" and "protected" industrial action if used, in the prescribed manner, in the course of striking an agreement. Thus the ASAHI decision reveals how the principal industrial tribunal understands these new provisions. By combining the ASAHI Full Bench decision with the "Statement of Principles" (arising from the AIRC's Review of Wage Fixing Principles, August 1994), a more comprehensive picture of the new system of enterprise bargaining running as it does in parallel with award safety net reviews, can be gleaned.

The Full Bench decision, in a nutshell, quashed the idea that unions would be able to rely on the AIRC to issue orders requiring a firm to enter into enterprise negotiations; the notion that AIRC orders made under s.170 QK could be issued making negotiations "compulsory" were clearly discarded by the AIRC in the statement:

The industrial relations system envisaged by the Act is one designed to facilitate and encourage direct bargaining underpinned by an effective award safety net. However it is not a system of compulsory negotiation.

Prior to this decision, unions generally saw the bargaining provisions as a mechanism to assist recruitment, the argument being that workers in non-unionised or lowly unionised workplaces would respond to recruitment initiatives when the chance of securing a certified agreement (hence better pay and conditions) was offered by the union.

Addressing the ACTU's Congress in September 1993, the National Secretary of the State Public Services Federation, David Bunn, acknowledged an intention to use the bargaining provisions to recruit new members in a debate over the then proposed industrial reforms. Delegates at the 1993 Congress saw some of the proposed reforms (now in Part VI B Division 3 — enterprise
flexibility agreements) as having a latent potential to extend rights of unionists to non unionists:

You started off with the situation of the minister saying he wanted enterprise bargaining to occur in the non-union sector ... now it is a ... different thing about whether, in the non-union sector, we can take on an organising role, extend unionisation and extend award and enterprise agreement coverage, that is very different to creating rights for non-unionists across the board.\(^1\)

It is clear from this statement that unions saw the revised certified agreements provisions as assisting them to organise non-unionists, to extend award coverage and extend agreements. In the ASAHI case, much of the transcript highlighted the dual objective of the union to recruit members and seek to secure a certified agreement from the company. Workers at ASAHI apparently rejected recruitment initiatives by the AFMEU, but nevertheless the union sought orders from the Commission requiring ASAHI to negotiate an agreement with the union.

The upshot from ASAHI seems to be that unions will not devote the considerable resources required to negotiate a certified agreement where there are few or no members at stake. The alternatives for future employment conditions of these workers are: either to be covered in the award safety net reviews which the AIRC is obliged to conduct, or the employer (in certain circumstances) can offer an enterprise flexibility agreement to the workforce, or the employer can continue to offer above award wages, as appeared to be the case at ASAHI (note Commissioner Hodder's decision Print L7818 at p.20).

Had Commissioner Hodder's decision and order been upheld, the status of unions might have been enhanced in the eyes of potential members and they might have been more receptive to the membership offer, believing that the union could use the AIRC to extract an agreement from the employer. The "good faith" bargaining provision cannot now be seen as a substitute to unions recruiting members prior to seeking certified agreements, or as an aid to recruitment.

In short the AIRC has closed off one option (good faith bargaining orders) which unions might have relied on to recruit members\(^2\). It is therefore pertinent to ask what alternatives are left for unions to restore their relevance to workplaces.

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2  See also "IR Act is more than we bargained for" in *The Australian*, 27 March 1995.
2. Some Perspectives on Union Fortunes

In an era of rapid employment growth, union membership numbers are not reflecting any increase which the jobs growth should produce, but rather are showing the reverse. The Australian Bureau of Statistics included in a recent Labour Force Survey (December 1994), data on union membership. Over the six years 1988 to 1994, the union membership rate fell by almost seven per cent; from 42 per cent to 35 per cent of the labour force. This was not solely due to unions failing to recruit new members. Actual membership numbers declined over the two years (from August 1992 to August 1994) from 2.5 million to 2.25 million.

Various reasons are often advanced to explain the decline; many industries which were strongly unionised have been restructured with jobs and union membership lost as a result; the old pattern of the male breadwinner relying on a single job/career over his working life (and being reliant on unionism often to assist with career moves) has been replaced with different career models whereby women working part-time have entered the labour market and are not as prone to union recruitment, and for the unions it is more resource intensive to recruit at smaller establishments than larger. Writers such as McGuinness, P.P., dispute these excuses, instead pointing to the "success" of unionism infiltrating political institutions and influencing the political and legal agendas. Working through the political process produces a result — a foundation of labour rights accessible to all, and thereby engenders unionism's decline. He also points to more enlightened management practices which value employees by providing good remuneration and conditions, thus vitiating earlier notions of class struggle3. Many of these reasons correlate with those given for the decline of unionism in the United States.

One bright spot in the fortunes of unions in the United States has been noted by an academic, Leo Troy4. In the US context, he distinguishes "Old" unionism from "New" unionism, where old unionism correlates to the growth of unionism in the United States from the 1930s to the 1950s and ties into the growth of manufacturing industry. As manufacturing and tariffs have declined relative to the growing service sector, so old unionism has also declined. The overall level of US unionism is put at almost 17 million in a labour force of about 120 million.

New unionism based around white collar employment in the public sector is expanding, by about 370 000 in the first year of Mr Clinton's presidency according to Troy. However old unionism centred around craft and industrial occupations in the private sector, is down by 7 million from its absolute peak

in 1970 of 17 million. So, there are some sectors of membership growth for unions in the United States, although Troy argues that it will never regain its post-war labour force penetration. The labour strategy of the Clinton administration is to revitalise a labor bill introduced during the Carter presidency in the 1970s. The Bill will seek to make union recognition a less hostile process and also seeks to end the practice of replacing striking workers with non-union labor.

Two reports recently received by the Australian Council of Trade Unions (ACTU) have once again alerted the Australian union movement to an apparent declining influence of unions in Australian workplaces.

One report on union membership strategies was received by the ACTU Executive in February 1995 and although reported in the media, is an internal ACTU working document, not yet publicly available. According to media reports, this strategy calls on affiliates to commit themselves to a recruitment strategy costing some $40 million. Some 300 recruiters will be employed and the funds will also be used to promote union services through media campaigns. The implementation of this report through the ACTU’s affiliates has been given to Assistant Secretary Jennie George.

A second report addressing the future role and relevance of unions, Unions 2001, A Blueprint for Trade Union Activism was prepared principally by Dr Peter Botsman and former building union official, Tom MacDonald, for the labour think-tank the H.V. Evatt Foundation. A summary of key recommendations of the Evatt report is presented below.

From what can be gleaned from the media, both the ACTU and Evatt reports share many recommendations — for example the setting up of "one-stop" union shops to provide information to members and potential members, the greater emphasis on the provision of non-industrial services such as discount retail purchases and air travel through some type of travel club and providing industrial services to non-members on a fee for service basis.

However the Evatt report is written in a philosophic vein and puts the radical notion that the "labourist" tradition under which unions built up their membership base through a strong manufacturing industry protected from competition by tariffs and advanced the cause of their members through awards of industrial tribunals under compulsory arbitration, is over. If unions assumed that the labourist tradition could be extended through offering certified agreements to the so-called non-unionised sector by using the AIRC to enforce negotiations, then the ASAHI decision shows that this avenue too has been

5 A full account of President Clinton’s proposed labor reforms can be found in "Industrial Relations Reform under Clinton" by a previous United States Labor Secretary, Ray Marshall in the Evatt Papers.

closed. Understanding that the old method of securing members and a role in workplaces is drawing to a close, the Evatt report suggests a new means for the union movement retrieving its role lies in the strategies set out below.

3. Findings and Recommendations of Unions 2001

Strategic Unionism — The union movement requires well resourced and managed trade unions using "state of the art" technologies and organising tactics. Democratisation of the union movement and workplace should be promoted. Unions should foster co-operation with industry and government where this is in workers' interests.

New Challenges — The major challenge is the attempt by employers to dismantle the award system, and to exclude unions from wage fixing. Unions should respond by developing strategies to handle enterprise bargaining, modernising union organisations and recruiting new areas of the workforce.

Rebuilding Unions — Australian unions have recently undergone the largest restructure of their history. Decision-making within unions needs to be democratised. There is also a need to build workplace and delegate organisations. Cross-union management services (fee for service for non-unionists) is needed. Large unions require management and budgetary skills, but strong centrally organised unions are in the best place to survive. Unions provide a range of working-life services to members.

Recruitment Culture — All of a union's functions such as workplace organisation, services and activism need to be seen as dimensions of recruitment. Unions should disaggregate the potential recruitment market between those who are influenced by the employer, those who will never join and those who will join if properly approached. Databases on recruitment campaigns need to be built up, and results used to determine "best-practice". One option is intensive local recruitment campaigns and localised pressure tactics on employers who warn their staff against membership.

Democratisation — Top heavy duplications of services needs to be replaced by democratic decision-making and participative structures. Leadership needs to reflect the female, ethnic and youth composition of membership. Special access to decision makers for Aboriginals and Torres Strait Islanders should be facilitated. Unions need internal grievance mechanisms (see Accountability below). Unions should function in a philosophy of solidarity with international labour movements.
Union Modernisation — Best-practice techniques will need to employ modern financial management practices and communications technologies. Unions should determine what functions can be performed in-house and what require an alternative mix of resources (e.g. research projects jointly undertaken by other unions). Officials and staff need ongoing training.

Accountability — Union rules should provide an avenue of redress for members who complain of administrative weaknesses, communications failure, poor service delivery and arbitrary decisions by officials. Where the rules do not provide explicitly for redress, unions should make available an ombudsperson to process grievances.

Enterprise Bargaining — Unions have to accept the need to operate in a decentralised system. Workplace negotiations need to be the focus of activism, as these generate most interest and participation by members. Mass meetings are losing their relevance. Awards still need to be maintained as the base for bargaining. Problems with enterprise bargaining concern a low emphasis on long term planning or strategy: tendency to take what can be taken.

Solidarity Wages Strategy — "Industry framework agreements" struck at a national level by industry unions will be the means to bargain at the enterprise level. Framework agreements could contain floor and ceiling wage limits, classifications, training and superannuation. Local agreements would be developed within this framework. National wage reviews will still be needed to maintain the relevance of awards, especially to those who have not secured agreements.


Organising — Declining membership and relevance has been in part caused by over reliance on the "closed shop" and over reliance on the Accord. Unions need to combine to provide "one-stop shop" advice on a range of services such as career advice and health and safety advice and provide a linkage for those needing community services (e.g. job placement). Joint consultative rights need to be a feature in every workplace.

Workplace of the future — Small and medium sized enterprises will increase in number. Jobs will need to combine "the best interests of people". The national training systems will build on life-long personal development.

National strategies — Social wage activism, National Wage Case decisions and Accord wage negotiations have protected low wage income families. The ALP's industry policy has produced strong gains to enterprises exporting sophisticated manufactures. Benchmark targets for income distribution need to be established so as to provide lower income earners and social wage recipients an increasing share of an increasing pie.
Full Employment — Labor's commitment to growth is essential to a 5 per cent unemployment target, but a positive trade balance is needed to ease current account deficit pressures, and growth strategies need to be environmentally conscious. Infrastructure development (rail projects mentioned) is one mechanism to achieve a number of these targets.

Social Wage — The welfare system is being over-taxed in terms of demands. Unions need to advocate a new social wage: work and life opportunities for those who will remain outside the paid workforce need to be explored; Conditions need to be created so that all Australian can participate in life-long training. To finance the social wage requires higher taxation and a more progressive tax system.

International Labour Rights — Social clauses need to be written into GATT and APEC agreements to facilitate labour rights in Asia-Pacific countries. These clauses need to embrace the basic ILO conventions on the freedom to organise, bargain collectively, minimum age for workers, freedom from forced labour and discrimination.

Future of the Accord — If Labor does not win re-election, then Accord-type values should be pursued by unions and they should seek support from like-minded community organisations which share a similar social future. A new Accord needs to be articulated before the next election.

4. Some Implications and Challenges

The Evatt report projects monumental structural changes for unions, and may not have universal acceptance by all sections within the ACTU's affiliates. The report justifies the move (since 1987) to large unions, some of which are industry based where others are conglomerates. This direction has rarely been welcomed at the level of State peak councils in each of the States representing union branches, and predictably the NSW Labor Council has dissociated itself from the Evatt report. Yet ironically, unions will be required to assist each other at a much more local level than has been the case previously.

Reading between the lines of the Evatt report one can detect if not the end, then an assumed further decline of union state branch structures. The argument for their demise would run along the following lines: the national industrial system is on the ascendancy, given the expansive set of functions now provided by the Industrial Relations Reform Act; ipso facto, the importance of State industrial jurisdictions will decline. The national industrial system recognises national unions and thus national officials and federal awards and agreements typically bind a union's national secretary on behalf of the

union. Branch officials as distinct from branch organisers and administrative staff, do not materially add to effective administration of the union and there are huge administration costs for branch elections, in turn breeding wasteful factional conflicts with all of these features adding up to a diversion of financial resources from face to face contact with the membership.

A working document for the PSU Group of the Community and Public Sector Union proposes a restructure of that group by creating a new sectional structure, where its members in Australian Public Service agencies will fall into one or another group or section. These sections will have direct representation to the executive structures of the union. A role for PSU branches is retained, although their functions are yet to be precisely defined.

All in all, the Evatt report poses some worthwhile questions which unions will find hard to ignore. The inclusion of a committed and experienced official such as Tom MacDonald as one of the report’s authors and now a principal advocate of union restructure, lends credibility to *Unions 2001*. When officials with such long serving experience as Tom MacDonald question the future relevance of unions under their present structure, other officials as well as members will need to listen.

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8 *Restructure... a proposal for the PSU Group.* The Community and Public Sector Union, March 1995.