

Thursday 8th September 2016

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Attention: Senate Education And Employment Legislation Committee
Re: Fair Work (Registered Organisations) Amendment Bill 2014

Dear Senators,

Herewith my submission to the enquiry into the Fair Work (Registered Organisations) Amendment Bill 2014.

Yours faithfully,

Andrew Oliver

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3.0 The Aims Of This Bill

We have had a Trade Union Royal Commission. The people associated with this Trade Union Royal Commission may if I may say so systematically misdescribe their objections to trade union typical activities. My understanding is that selfish common and garden corruption is rather rare in the trade union movement. There are isolated examples bad as they are which appal honest trade unionists the press the general public and sincere fair-minded parliamentarians alike. But when it comes down to brass tacks it is effective militant trade union activity that forces trickle down of prosperity to ordinary workers that is most objected to. Some sincere managers and some sincere shareholders sometimes admit that their opinion is that some of the ordinary workers in their business are for their level of responsibility overpaid. The ordinary workers in this situation typically have above minimum wage and above award wages and conditions. The ordinary workers in the situation remember past militancy and treasure their existing wages and conditions. The truth is that parliaments lack the power to redistribute effectively to ordinary workers and the only way ordinary workers can share fully in the prosperity of modern capitalism is by free trade union organisation and demanding that share of the prosperity. Words of empty compassion about trickle down of wealth to ordinary workers are pure cant.

If I might reference a work of political philosophy JD Mabbott's *The Citizen And The State* where the 1800s economic freedoms of the employer the shields of the reactionaries are said to become the swords of the revolutionaries if in the hands of employees. I think this is the right way to see it. Giving employees the civil political legal and economic freedoms that employers claimed in the 1800s allows employees using their rights of petition free-speech free press peaceful assembly peaceful processions peaceful strikes peaceful boycotts to effectively demand real trickle down of the material prosperity of modern capitalism. With the system of arbitration tribunals as prescribed in the Australian Constitution this used to work for better or worse to cause said trickle down.

This bill and other industrial legislation by tying up trade unions in red tape declaring some of their lawsuits not justiciable criminalising some of their peaceful strategies and tactics drives some workers in the direction of those revolutionaries who preach violence. This need not be. Violence and criminal damage to property by union hotheads angry about genuine industrial disputes whose solution is blocked by parliamentary legislative red tape is in some sense a similar social grievance to those social grievances of small business people who whinge about red tape and green tape and the nanny state.

I believe that the vast majority of trade union leaders and delegates are not corrupt. I can understand ordinary trade union members getting angry if their industrial demands and their claims about civil wrongs suffered are deprived of the right to a fair hearing either through negotiations between employer and employee representatives or through arbitration tribunals.

The remedy I suggest to such idiotic restrictions in industrial tort law is to appropriately authorise administrative and judicial tribunals appoint persons of good character to said tribunals and provide in the forms and schedules of industrial relations legislation a number of dispute settlement forms where the employer and the employee sign cross-claim waivers on the dispute settlement form that summarises the items in dispute and the remedies therefor.

4.0 The Separation Of The Executive Judicial Legislative And Policing Functions Of Government

This bill confuses the different roles of different kinds of government officials. I believe 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 Organisations 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 organisation or organisations the Commissioner would have difficulty contorting their mind while swapping hats in order to be fair to the employer the employees all relevant organisations and the general public. This is inappropriate.

A better way of implementing the same sort of regulation would be to provide that minor cases would be dealt with by a single Federal Circuit Court Judge on application by an aggrieved party, and to provide that major cases would be dealt with by a panel of three Federal Court Judges on application by an aggrieved party.

Not only that but schedule 1 part 2 section 137 provides for the "Minister by legislative instrument to make rules in relation to transitional matters arising out of the amendments and repeals in part 1 of this schedule." This suggests that the changes are hasty ill-considered legislation not well thought out and not progressive reform.

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.

This bill is more what you would expect from a big C Conservative government.

Look at proposed section 329 DD of the Fair Work Act. "The Commission has the privileges and immunities of the Crown." I ask you does this look like bottom up industrial democracy? Or, does it look like top down authoritarian trade union bashing?

Tying up trade unions in red tape might lead to the followers of Trotsky revolutionaries winning office in trade union elections because the reformist trade union delegate class give up the battle for democratically run peaceful trade union organisation. Is this the intent of the government?

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

6.0 Affiliation Of Trade Unions To Political Parties

I noticed when reading this bill that one possible interpretation would mean the trade unions couldn't affiliate with political parties without membership ballots. I say this because trade union leaders on the National Executive of each union if members of a political party might be declared to have a personal material interest in said political party and might therefore be unable to vote to affiliate by National Executive resolution.

Sad to say in Australia most trade unions don't refer political affiliation resolutions to membership ballots. Whether or not this is an intended consequence of this bill I don't know but it should be drawn to Senators' attention.

7.0 Recommendation To The Committee

I recommend to the committee enquiring into this legislation that the committee conduct a close audit of the text of the bill and if they agree with my general criticisms after said audit report back to the Senate to the fact that the bill contains fine words in respect of its aims but the bulk of the bill just needs to be sent back to the cabinet for reconsideration and re-drafting.