

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003

Proposed Democrat Amendment

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Mr John Vander Wyk
Clerk Assistant (Committees)
SG 39
Parliament House
ACT 2600

24TH September 2004

Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003

Dear Sir,

I write in reference to the abovementioned bill, moved by Senator Murray, and which is being reviewed by a Senate Committee. In particular I will comment on section 221 of the Bill, i.e. "Participation of delegates of organizations in decision – making processes of registered political parties."

I enclose for your committee's information my biographical details, which I believe indicates that my opinions on these matters, is backed by considerable ALP and Labour movement credentials. I am currently self employed as an Industrial Relations, Employment Practices and Government Relations consultant.

I support the Murray Bill. Personally I would like it to go further, such as providing the choice for union members to "tick a box" on their membership application form to decide for themselves if they wished to be counted as part of their union's affiliation number to a political party. Those who have "ticked" yes to their being included and who pay a separate political levy to the industrial representation fee, for services the union provides, should then be the only members, to be able to nominate for a delegates position or vote in their election.

I also support the public disclosure of the source of donations to trade union election funds of any candidate for office under the union's rules. Enormous sums of money are spent in some union elections and there is no requirement for candidates to disclose the source of those funds.

If it is good enough for political parties to disclose the source of their donations at State and Federal elections, and if it is good enough to require a candidate for a local government body such as the Corporation of Peterborough in SA, population 2,500, to declare any donations over a certain

amount, then it is time to do likewise for Organizations under the Workplace Relations Act.

Trade Unions that affiliate to the ALP, do so by their respective State Committees of Management (COM) deciding, on the recommendation of their union secretary, whether they,

1. Affiliate to the ALP. Rank and File members almost in every instance have no chance to decide that issue in a secret ballot of all members for themselves.

The last occasion I recall a union holding a rank and file ballot, on the issue of affiliating to the ALP, was my own union, the Federated Clerks Union of Australia (SA Branch). That was in 1987, and the ballot was held of all the branch's membership. There was a 40% voter turnout and 57% of the members voting, supported affiliation. The ballot was conducted by the State Electoral Office of SA, and the union paid them to do the job. There was no opposition on any organised basis, e.g. no mail out of leaflets explaining why members should vote no for instance, yet the "NO" vote was 43%. Had there been organised opposition I doubt if the union would have been successful in its bid to affiliate. How do I know these facts, because I was the SA secretary of the union at the time and I ran a vigorous "yes" campaign, including direct mail outs to all members etc.

2. If affiliation is agreed to, the COM again usually on the say of their secretary decide how many of its members they will affiliate to the ALP for. The larger the number of members affiliated for by the union, the larger their delegation to ALP bodies such as State Conferences, which in turn determine major ALP policies and crucially, who gets preselected for a multitude of Parliamentary seats State and Federal.
3. On having become affiliated for "X" number of members, the union is allocated "Y" number of delegates, who can attend various governing bodies of the ALP. Those delegates are elected almost exclusively in unions by the COM's, again usually on the say of the secretary. Rank and File members have in those cases no say in who represents them at these governing bodies. Yet those governing bodies of the ALP, particularly when it is in Government, have crucial influence on the affairs of union members, e.g. Industrial laws, including Workers Compensation, Occupational Health and Safety and a raft of other issues that effect every individual worker.

The Workplace Relations Act 1996 and its predecessors, stretching back to the days of Clyde Cameron, when he was Minister for Labour in 1973, has a heavy emphasis on the democratic control of registered organizations under the Act, by rank and file members of Trade Unions. Indeed it was the landmark legislation of Clyde Cameron in 1973, which saw inserted into the Act at that time, an object which positively made it mandatory for unions to

have rules which were democratic and made their committees of management directly accountable to rank and file members through secret ballots.

Despite this history of ensuring democratic control of unions, the one remaining area of crucial importance to union members, left untouched by the Workplace Relations Act, is the issue of who should elect the union's delegates to ALP governing bodies. There is no logic in compelling unions to have rank and file ballots for their COM's including all office holders under their rules, e.g. Nation Conference delegates to a unions National Conference, yet allow the secretary of the union to hand pick the union's delegates to an ALP conference. Either you provide true rank and file control over all of the affairs of their union or you don't . You can't as a matter of logic be half pregnant on the issue.

There is no argument of the Murray Bill being too complex or costly for unions to comply with its requirements. Unions hold elections for office bearers now every four years and the election of their delegates to the ALP can be placed in the same election cycle. Often unions hold the election of their full time office holders every 4 years and their honorary committee's of management every 2 years. Again the election of their ALP delegates can be rostered on this same time scale, avoiding unnecessary cost. If an elected delegate to the ALP resigns mid term, the replacement can be chosen by the COM, if for example the delegate has less than 12 months of their term of office unexpired. That is broadly how it operates for elected office holders now, where a vacancy is created with less than 12 months of the term of office of the predecessor unexpired.

Factionalism, which is rife in the ALP, and also in all political parties, feeds on union affiliation. Huge sums of money are spent by competing factions in union elections to win control of the secretaryship and COM's of unions that are affiliated to the ALP. Why? well certainly not for the benefit of rank and file members. Its about "getting the numbers" in the ALP State Conferences and who gets preselected for what. The factions know that once they have the numbers on a union's COM they elect 100% of that union's ALP delegates. More power more influence in the ALP.

The media in all its forms and in every part of Australia have reported at length on the various titanic power struggles in various unions, e.g.AWU, TWU, NUW, HSUA to name but a few of a passing parade. Rank and File elections of ALP delegates, particularly based on a PR system of voting, would destroy or at least severely inhibit the factional "warlords", as members would firstly, become aware they are affiliated to the ALP and secondly they would be in a position to vote for someone, who had to get out on the "hustings" and earn that members vote to be a delegate to the ALP.

A side benefit to unions in the Murray Bill, which can't be underestimated, is that the factions may well start to leave certain unions alone as they realise that the old, "winner take all" mentality will no longer be a viable option in

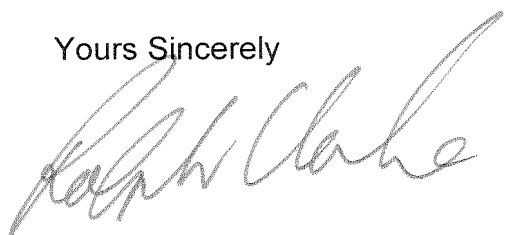
many cases. Union leaders may then be able to concentrate on looking after the industrial interests of their members.

Trade Unions hold, rightly in my view, a special place in our society, in protecting the interests and standard of living of vulnerable workers and their families. Parliament has a duty to pass laws such as those proposed by Senator Murray, because it will assist those unions to become more responsive to the needs and aspirations of their members, not playthings for factional warlords.

I am also enclosing a copy of a letter I wrote to the Speaker of the House of Assembly of SA in June 2002 at the time he was calling a conference of South Australians to consider changes to the State Constitution. Whilst not exactly on point with the Murray Bill, it nonetheless in my view further amplifies the central theme of my submission to your Senate Committee.

I would be only to happy to give further oral submissions to the committee if requested to do so.

Yours Sincerely

A handwritten signature in cursive script, appearing to read 'Ralph Clarke', written in dark ink.

Ralph Clarke

Ralph D. Clarke
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Mobile 0419 806 049

Parliament of South Australia

- ❖ Member for Ross Smith – 11 December 1993 to 9 February 2002
- ❖ Deputy Leader of the Labor Party – September 1994 – October 1997
- ❖ Shadow Minister for
 - Industry
 - Trade
 - Employment
 - Further Education
 - Industrial Relations
 - Police
 - Emergency Services
 - Public Sector Management
 - Aboriginal Affairs
 - Regional Development
- ❖ Member of the Legislative Review Committee
- ❖ Member of the House of Assembly Committee dealing with the Aboriginal Lands Trust
- ❖ Member of the Tripartite Parliamentary Committee to establish a revised Disputes Resolution Procedure dealing with worker's compensation claims

Employment in Industrial Relations

- ❖ 1974
Employed as a Union Official of the Federated Clerks Union (F.C.U.)
- ❖ August 1984 – December 1993
Secretary of the Federated Clerks Union of Australia, South Australian Branch (now known as Australian Services Union)
- ❖ 1991 – 1993
National President of the Federated Clerks Union of Australia
- ❖ 1993 – 1994
Joint National President of the Australian Services Union
- ❖ Member of the Australian Council of Trade Unions Industrial Legislation Committee
- ❖ Member of the Executive of the United Trades and Labour Council (UTLC) of South Australia
- ❖ Member of the UTLC Industrial Legislation Committee
- ❖ Member of the S.A. Government Industrial Relations Advisory Council
- ❖ Member and Deputy Member of the Industrial and Commercial and Training Commission of South Australia
- ❖ Member and Deputy Member of the Occupational Health and Safety Board of South Australia
- ❖ Member of the Advisory Board Trade Union Training Authority of South Australia

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ALP Activities

- ❖ Member ALP SA Branch 1966 – 2001
- ❖ State President 1993 – 1994
- ❖ Senior Vice President 1992 – 1993
- ❖ Junior Vice President 1991 – 1992
- ❖ Member of the State Executive for 5 years
- ❖ Member of the Rules, Finance and Campaign Committees
- ❖ Delegate to the National Conference 2000
- ❖ Delegate to State Conference and State Council
- ❖ Numerous positions at Sub-branch and Federal Electorate Council level

Other Activities

- ❖ Board Member Workers Education Association of South Australia
- ❖ Tutor Trade Union Postal Courses
- ❖ Director Statewide Superannuation Trust
- ❖ Participant Duke of Edinburgh Commonwealth Study Conference 1986
- ❖ Participant Australian Political Exchange Council Inaugural visit to U.S.S.R. 1991

Hon. P. Lewis M.P.
Speaker
House of Assembly
Parliament of S.A.
North Terrace
Adelaide 5000.

14 June 2002

Dear

I am writing in relation to the forthcoming Constitutional convention to be presided over by your good self. In doing so, I congratulate you for getting this convention on the road so to speak.

I have some issues that you may find of interest, as well as merit for the convention to consider. They are as follows;

- (1) I believe that there is an urgent need for the Electoral Act to be amended, to compel all political parties registered under the Act, to have their rules provide for their democratic control by their membership.

We have the absurd situation in Australia where there are a number of laws governing the conduct of State and Federal elections, yet there are almost no laws governing the conduct of the Parties who will govern the State or Nation.

The public interest is served by ensuring that voters in general elections can vote in secret, the election is conducted by impartial Electoral Office staff and on the basis of one person one vote. Further our laws provide for a Court of Disputed Returns and there are heavy penalties for any person caught acting fraudulently during an election. ***However there are no laws governing how a political party governs itself. In short the parties can pervert our electoral laws simply by the rules they use internally to govern themselves.***

I use as examples the Labor Party (ALP) and the Liberal Party (LP). The ALP rules provide for the affiliation of Trade Unions on the simple basis that X union affiliates, for say 20,000 members. They are then entitled to 20 delegates out of 200 delegates to the ALP State Conference. That conference among its other duties preselects ALP Parliamentary representatives. Where is the principle of one person one vote in ALP elections, where one union can by exercising a block vote, carry 10% of the convention vote? The ALP rules also allow persons who are not on the Electoral roll to vote in preselection ballots which can have a decisive influence as to which candidate gets ALP endorsement. However that same person is not eligible to vote for that candidate in the general election. The public have witnessed already over the last few years evidence of widespread practices of branch stacking and the like in virtually all State branches of the

ALP. Yet where are the safeguards to protect the public interest from undemocratic political party rules and fraudulent behavior? None I suggest.

The LP is no better. Their rules allow members who not only don't live in the electorate to vote in preselection ballots but allow members who live in another State or even in another country to vote in such ballots. The most recent examples occurred in 2001 in the seat of Unley were some 30 odd persons joined the LP Kings Park branch of the LP whilst living in Echuca, Victoria. In the Federal seat of Ryan (QLD) one of the candidates flew in his supporters from Hong Kong to vote in a LP preselection. Those supporters were allowed to be members and attached to a LP branch in Ryan even though they lived and worked in Hong Kong.

- (2) What remedies does the ordinary member have to put a stop to these types of shenanigans? None effectively. Whilst the rules of political parties are justiciable (Refer to Clarke vs. ALP (SA) branch SASR 1999), the legal costs are prohibitive for all but the very wealthy or the insane. In my case, had I lost the Supreme Court action I would have faced a legal bill of \$160,000.

Therefore not only should there be laws compelling political parties to have rules that are democratic but there must be a mechanism to allow members of parties to challenge undemocratic rules in a forum that is affordable. I deal with these issues in (3) below.

- (3) In return for the recognition of Trade Unions in Australia and the role they play in society, Parliament both State and Federal by statute determine that their rules must be democratic, that they can't be harsh or oppressive on members and that their committee's of management must be able to be held accountable to the rank and file membership. The election of office bearers must be conducted through the Australian Electoral Commission by secret postal ballot (on the basis of one member one vote) and there is recourse by members through the Federal Court, to challenge election results or undemocratic rules. Financial assistance is available by the Federal Government to assist members. (Refer to Ss187A, 195,196,197,198,208,210,218 and 342 of the Commonwealth Workplace Relations Act 1996)

If it is deemed to be in the public interest for Trade Unions to be subject to such regulation why not political parties? The answer is obvious, each of the major parties and their powerbrokers do not want to have their internal affairs regulated because it would interfere with their personal fiefdoms and perks of power. This is one of the major factors in my submission why the public has such little regard for political parties generally and politicians in particular.

- (4) I want to also draw your attention to a report issued by the Joint Standing Committee on Electoral Matters dated May 2001, in particular Recommendation 18 which reads; "That the Commonwealth Electoral 1918 be amended to ensure

that the principle of one vote, one value for internal party ballots be a prerequisite for the registration of political parties.” I hasten to add that the ALP members of that committee did not support this recommendation. Their reasons are given at page 103 of the report. In essence they believed that without proper consideration of the wide range of methods used by the different political parties to conduct their internal ballots and the effect of how such a decision might affect them it was ludicrous for the Joint Committee to propose the recommendation.

However not all members of the Federal ALP front bench share the views of their colleagues on the Joint Committee. Dr. Carmen Lawrence M.P in a speech to the Sydney Institute on 23/8/01 said:

“ While I do not intend to single out my own party for criticism, it is clear that unions- honourable contributors to Labor history and policy-exercise disproportionate influence through the 60:40 rule and through their affiliated membership, many of whom have no direct connection to the party. One vote, one value-the prime condition for a democracy- is not observed in the party’s rules...”

It should also be noted that the Liberal Party organization also opposes “ any further involvement by the Australian Electoral Commission in the affairs of political parties”. (Refer to 4.56 page 86 of the Joint Committee Report)
My response to the stated views of both major parties is “they would say that, wouldn’t they”.

Australia in my view has been lucky to escape widespread corruption in our body politic, at least in S.A. How long can we remain lucky before criminal elements wake up to how easy it would be to buy a major political party and have a major say in the passing of laws and the awarding of patronage and contracts in return for kickbacks the like?

There seems little point in having fair electoral laws in place, for the conduct of general elections, if the major political parties are able to set their own rules, without regard to the public interest, thereby effectively subverting those same laws.

The major parties will argue, that in a free society, parties should be free to determine their own internal system of government. However when they occupy such an influential place in our society, with great power over the lives of their fellow citizens, surely society has the right to expect that they will operate in a democratic fashion.

CONCLUSION

In my submission Parliament should pass amendments to the Electoral Act governing the conduct of political parties similar to that which applies to Trade Unions. That is, the electoral Act would lay down the basic principles that every registered party has to follow, e.g. the democratic control of the party by its members, rules cannot be harsh or oppressive, members having access to a specialist Court to determine disputes between the party and a member etc.

Such a Court could be the Industrial Relations Court which already has a great deal of expertise in interpreting Trade Union law. I also strongly suggest that as in Trade Union matters, legal aid be made available to members of political parties who are challenging the rules of the party as happens under the Workplace Relations Act.

The advantage of my proposal is that it allows each party to determine their own internal governance subject to certain overriding principles. For example the Federal Industrial Court allow Unions to have rules which allow some weighting in the allocation of numbers of Federal Councillors to smaller State branches of the Union. However the weighting cannot subvert the general principle that those State branches containing the majority of the Union's members have the majority of Federal Councillors.

The major parties will argue that my proposal will invite endless, expensive litigation. That will only happen if the powerbrokers ignore the law. Trade Unions have been subject to this type of legislation since 1973 and once there have been a few test cases everyone becomes aware of the parameters and conforms. Those that don't, do face expensive litigation and in such cases there is an obvious need for legislative protection to ensure fair play all round.

Thank you for giving me the opportunity of addressing you on this issue.

Best Wishes

RALPH CLARKE
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