

# 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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**Submission no:** 2

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24<sup>th</sup> November 2004

Mr John Carter  
Secretary  
Senate Legislation Committee  
Employment, Workplace Relations and Education  
Parliament House  
CANBERRA ACT 2600



Dear John

Further to our recent conversation this letter is my submission to the Committee's enquiry into amendments moved to the Industrial Relations Bill by Senator Murray prior to the Parliament's rising before the recent federal election.

In recent years I have made a number of public speeches and statements regarding changes to the ways Trade Unions affiliate to the Australian Labor Party. On December 3<sup>rd</sup> 2002, at a speech I gave hosted by the Monash University at Old Parliament House Canberra I commented at some length about the issue of Trade Unions affiliating to the Labor Party. The speech gave some history of how Trade Unions created the Labor Party and were affiliated in the early days of the Party.

My speech also explains how over the last 100 years the role of affiliated Trade Union members has changed significantly. My speech points out how there is little or no connections between the members of an affiliated Trade Union and the way their Union conducts itself within the Labor Party. In my speech of December 3<sup>rd</sup> I propose significant changes to how individual Trade Union members can be affiliated to the Labor Party and have a say in that Union's role within the Labor Party.

The most relevant part of my speech on December 3<sup>rd</sup> regarding the Murray amendments will be found particularly on pages 6, 7, 8, 9 and 10. On page 9 I list 3 specific proposals to change the union rules for affiliation to a political party. I believe the Murray amendment, Workplaces Relations Amendment (Codifying Contempt Offences) Bill 2003 substantially is in line with my proposal.

I would be more than happy to appear before the committee and give evidence regarding my submission and to answer any questions or comments from committee members.

Yours sincerely

A handwritten signature in cursive script that reads "Chris Schacht".

CHRIS SCHACHT

copy of my speech is enclosed  
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# **EMBARGOED AGAINST DELIVERY**

**Address by Chris Schacht**

**To the Conference: The Whitlam Government as modernist  
politics**

**(Hosted by Monash University)  
Old Parliament House, Canberra**

**Tuesday 3<sup>rd</sup> December 2002 at 3.45pm**

**Session: Contemporary Issues**

## ***How to make the Labor Party work in the 21st Century***

In 1967/68 Gough Whitlam challenged the power of the National Executive of the Australian Labor Party to direct the Federal Parliamentary Labor Party on policy.

Until Whitlam became leader the power of the National Executive and National Conference to direct the Parliamentary Labor Party on policy issues had never been effectively challenged. During the barren years of the 50's and 60's the twelve members of the National Executive (2 from each State) and the National Conference (6 from each State) had become completely out of touch with the issues which interested ordinary Australians. The members of the National Executive still hankered for the days of policies such as bank nationalisation as a cornerstone of ALP policy. They were rabidly opposed to any consideration that State Aid would be provided to private schools.

Until the late 60's the Federal Parliamentary leadership were not members of either the National Executive or National Conference. Whitlam's description of the National Executive as 'Twelve witless men' brought to a head the issues of whether

the Parliamentary Party was under the control of the National Executive or could be free to develop a broad range of modern and relevant policies for the Australian people. Though it was a close run thing, Whitlam won the battle and the National Executive and the National Conference were changed to allow the four Federal Parliamentary Leader to sit on both bodies as full voting members. Whitlam's real victory was psychological in that the Federal Parliamentary Labor Party would no longer be challenged as the main policy developer in the Australian Labor Party.

Looking back we can now see that Whitlam was not only a great reformer of Australian society but made the most significant reform in the operation of the Labor Party in its history till that time.

From the very beginning of the Labor Party in 1891, the Party has been bedevilled by the conflict not only between the organisation and its parliamentary party but also between the power of the State branches viz a viz the power of a national organisation. In our first 100 years the Party in effect was not even a strong federation but really a loose confederation of States. This confederation of States created and exacerbated the splits which occurred in 1916, 1931 and 1955.

During the first half of the 20<sup>th</sup> century there were disputes over whether a State branch had the power to direct its Federal MP's on how to vote on policy in the Federal caucus and if they didn't follow the direction of the State branch, it would use that refusal to disendorse or expel them from the Labor Party. This was best exemplified in the split in 1931 when the Labor Party in many States split into 3 - with a State Labor Party organisation, a Federal Labor Party organisation and a Lang Labor Party organisation.

It took until the 1940's and 50's for this issue of State branch direction to be resolved in favour of Federal Members of

Parliament being able to vote in the Federal caucus without a threat of State discipline or expulsion. It should be remembered that through most of the 30's Ben Chiffley represented the Federal Labor Party organisation in NSW which was at war with the State ALP organisation which was controlled by Jack Lang. In the early 1940's a unity Conference took place and the two Labor Parties merged back into one body which greatly contributed to the election of a State Labor Government followed by a Federal Labor Government. The new unity meant that Ben Chiffley could finally be re-elected to Parliament after spending a decade in the political wilderness as the two Labor Parties in his Federal electorate of Macquarie killed each other first before they worried about taking on the conservatives.

In the 1950's when Labor suffered its third and most grave split we saw for the first time the National Conference exercising the power to expel a State branch from the Labor Party, that is the Victorian State branch, and this led to the formation of the DLP and a generation of Opposition for Federal Labor.

After the successful 1969 National Conference, Whitlam, with the support of Mick Young and Clyde Cameron moved to intervene into the moribund Victorian ALP branch and the sectarian-riddled NSW ALP branch. The National Executive exercised for the first time its plenary power to carry out this intervention and in Victoria the National Executive abolished the State branch and rebuilt a new branch with new rules. The NSW branch saw what was coming and rolled over and agreed to the new rules to avoid a fully-fledged intervention.

So again Whitlam established a precedent that a State branch which was particularly unsuccessful could be dealt with by the national body and could be reformed.

The interventions of 1970 were a real turning point in establishing the Labor Party with a proper national focus. It is

again a testament to Whitlam's vision and will that he achieved these changes despite intense parochial opposition.

The real irony is that those who strongly opposed his original changes in the late 60's and early 70's were within a few years chanting at Labor Party meetings and rallies "We want Gough! We want Gough!"

The next major change which occurred in the Labor Party was the 1981 special National Conference which grew out of the national enquiry into the Labor Party, conducted after the heavy 1977 Federal election defeat. This was initiated by the new leader, Bill Hayden and I believe the changes the Labor Party adopted at that special Conference in 1981 laid the foundation for the successful 13 years of Federal Labor rule of the Hawke and Keating governments. The irony of course is that it was Hayden who drove these changes but it was Hawke and Keating who were the beneficiaries. The changes that the national Conference adopted in 1981 were significant in that the national Conference directed State branches to amend their rules in how they conducted some of their affairs, for example, they were told that the election of all delegates from State branches to the national Conference would have to be conducted in a proportional representational ballot with affirmative action and that delegates elected from the State branch could not be directed by their State branch to vote in a particular way at the national Conference. The Conference was expanded from 42 delegates to 100. For the first time a form of representation based on population was adopted and the larger States got more delegates than the smaller States. It had taken 91 years for the Labor Party to have a national Conference based on population rather than equal State representation.

When the first national Conference was established just after Federation the Labor Party based representation on the then Senate model of 6 senators per State to be 6 delegates from each State. It is another irony of history that the Labor Party should

have a Conference model for its first 90 years based on the Australian Senate, a chamber that had consistently thwarted the popularly elected Labor governments' policy agenda. It is even more ironic that a national Conference was based on the Senate formula when it was Labor's policy to abolish the Senate for most of the 20<sup>th</sup> century.

In 1980 under Bill Hayden's leadership the National Executive intervened into the Queensland branch to establish a new branch more representative of Labor supporters in that State. The ensuing brawl between those who opposed intervention and those who supported it affected the Labor Party in Queensland as an electoral force for nearly a decade. The most important aspect of this intervention occurred when the old administration appealed to the Queensland Supreme Court to overturn the intervention, but to everybody's surprise the full bench of the Queensland Supreme Court upheld the National Executive's right to intervene in the Queensland State branch, so it was the court which finally established the superiority of the national body over the State body. Subsequent to the new changes to the National Conference and the outcome of the Queensland intervention in the 1980's the national executive intervened on many occasions into the affairs of State and Territory branches to overcome administration, factional and political problems.

One reason the Federal Labor Party had 13 successful years in the eighties and nineties was because the national executive could take action to overcome Party problems which prior to 1980 and certainly prior to 1970 could fester for years and hamper the Australian Labor Party's effectiveness. The 1981 changes to the Labor Party, though overwhelmingly positive, have led to one deficiency and that is with the introduction of proportional representation to elect delegates, it meant that national factions were formed and over the last 20 years have grown to such an extent in size and strength they are now a negative and stultifying influence in the Labor Party.

Now that I have given a brief, and I emphasise brief, history of the development of structural organisation issues in the Labor Party and in particular point out the role that Whitlam had played so successfully in reforming the Labor Party no discussion about the operation of the Labor Party and its future can be dealt with without consideration of the affiliations of Trade Unions to the Labor Party.

When the Trade Unions formed the Labor Party in the 1890's, membership of the Party was very simple. If you joined a union and it was affiliated to the Labor Party and you were automatically accepted as a full member of the Labor Party with all rights of voting at Labor Party forums and being able to stand for Labor Party positions. Though people who weren't in Trade Unions such as farmers and small business could join the Labor Party as individual members at a local branch they were a minority and the local branch would overwhelmingly be made up of affiliated Trade Union members who lived in that locality.

But during the 20<sup>th</sup> century the establishment, usually by Labor Governments, of industrial Arbitration and Conciliation Commissions and the registration of industrial unions, it evolved that membership of the union did not automatically make you a member of the Labor Party. We now had a situation where to get a vote in your local branch you must hold an individual Labor Party ticket irrespective of whether you hold an individual Union ticket. In most States up until the 50's if you were a member of an affiliated union but weren't a member of the local branch you still got a vote in the local plebiscite to decide the local candidate if you lived in the electorate.

Unfortunately the Labor Party had no control over testing the bona fide of such members and the Party would rely on the secretary of Trade Unions to themselves distribute the ballot papers to their union members. In the end there were claims that Trade Union officials kept the ballot papers and filled them in in favour of their candidate of choice. This certainly



happened in South Australia and lead to Trade Union involvement in preselection ballots being changed to introduce a card vote for all preselections. That meant that if a union was affiliated for 10,000 members the union secretary as delegate to State Conference would cast 10,000 votes for every State and Federal preselection, irrespective of how many of his members lived in the electorate concerned.

So over 100 years what had started out as a very democratic process of Trade Union members to be involved in the Labor Party had now evolved into a system of anonymous bulk Trade Union affiliations to the Labor Party where the Trade Union official usually the State Secretary of the Union uses the bulk affiliation numbers to have a significant influence in the outcomes on Party policy and administration.

During the recent ALP Hawke Wran enquiry there was a lot of comment about the Trade Union representation in the Party, the so-called 60/40 v 50/50 issues, but though I support the change from 60/40 to 50/50 it does not fundamentally alter the power structure of the Party and, in particular, it did not alter the Trade Union officials' iron grip on the Labor Party. The bulk affiliation of Trade Unions that does not require the Trade Union to supply the names to the Labor Party of the individual members that they are affiliating; does not require the Trade Union to consult with its own membership on what should be Labor Party policy and or who should be Labor Party candidates, but what it does allow is coterie of Trade Union officials to use this block vote to demand the outcomes it wants at ALP State Conference.

This has lead to the major ALP factions, the Left and Right, to use much of their time and energy trying to get their factional allies elected to the positions of control in a union because they know if their factional allies control the union, that union would deliver a block vote for their faction at the State Conference.

In NSW a large union of the Left or Right have many dozens of delegates, but the delegates are appointed by the factionally controlled administrative committee of the union, to all vote as a block in any ballot or on any policy issue. A Federal Electorate Division in NSW may have only 1 or 2 delegates elected, but when they see one Trade Union with between 50-70 votes all putting their hand up for one particular view it means the union block vote overwhelms the many and varied delegates elected from the branches.

But the union block vote at State Conference has an even more debilitating effect in that it is used to control and discipline the faction to which they belong e.g. the LHMWU or Shop Assistants Unions may be eligible to have 50+ delegates to the NSW State Conference, but these Unions are also fully committed unions in the Left and Right factions respectively. When the factions meet just prior to the State Conference to decide how the faction will vote at the Conference, the 50+ delegates from the Misso and Shoppies will vote as a block in accordance with the secretary's wishes and they will out-vote the many dozens of individual delegates from branches across the State who are also members of the faction. Therefore you do not have to be a mathematical genius to realise that if you have an ambition to be supported for some position at the State Conference, you will need to get the support of the union. It is much easier to convince the secretary of the union than to spend many hours and days talking to many individual members throughout the State. Of course if the union gives you support within your faction they would expect you to support them in other ballots or on other policy issues. If you have the temerity to vote against the faction on the floor of State Conference then the union block vote will be used against you at the next faction meeting. That is how factional discipline is applied and why the Labor Party now has a problem in that loyalty to the faction is now greater than loyalty to the Party.

During the last year some members of the Labor Party have said that unions should no longer be able to directly affiliate to the Labor Party because with rapidly declining union membership Trade Union affiliation is no longer able to deliver to the ALP electoral success. I am not one who wishes to disaffiliate the unions from the Labor Party. But I believe unless there is fundamental reform in how union affiliation is managed then it will be inevitable that either the unions will disaffiliate from the Labor Party or the Labor Party will change itself into a different form of Social Democratic Party where unions are not affiliated.

The reform I propose is that unions should be able to affiliate to the Labor Party but only affiliate for those members of the union who each year on their annual union membership ticket, tick a box which indicates they wish part of their membership fee be paid to the ALP as an affiliation fee.

Secondly, that those union members who wish to be affiliated to the Labor Party will by postal ballot decide who their union delegates should be to the Labor Party; a ballot that is conducted under the rule of proportional representation and takes into account affirmative action.

Finally, each year the union would provide to the Labor Party the names and home address of those union members who wish to be affiliated to the Labor Party.

I believe these changes would dramatically improve the connection between the Labor Party and rank and file unionists. The Labor Party would be dealing with genuine individuals who wish to support the Party and because the ALP has their names and addresses the Party can send directly to them material about policy and Labor Party activities and seek their views on Labor policy. During an election campaign it would mean that the Party leader could write to these members individually seeking their support and providing them with election material to take to the work-mates, family and friends.

At the moment the Labor Party is totally reliant on the goodwill of the secretary or the Federal secretary of the union to send out material on behalf of the Labor Party. One reason union officials are often reluctant to send material out to their union members is because they don't want to upset those members who do not support the Labor Party. They do not want to raise the ire of such members because they may vote against that union official at subsequent elections within the union.

By insisting that only those union members who wish to be affiliated to the Labor Party can vote to elect the delegates to the ALP union officials will no longer be able to pick and choose their own factional mates to represent the union and we may then achieve a union delegation which instead of voting 50/nil for one faction. There would be a delegation, because it's elected by proportional representation rules, be representative of views right across the union, and might have elected representatives who don't belong to any faction.

A further impact of these changes would mean the trade union secretaries who at present laud it over the Labor Party to get what they want will now have to go out and convince their own members to vote for them to be a delegate to the ALP; a totally democratic process. Because unions will no longer be locked into one faction, factional control in the Party will be weakened. Non-factional candidates standing for preselection would be more likely to win preselection.

The changes adopted at the recent special Conference have improved the Party but they do not go anywhere near far enough to make the Labor Party really successful in the 21<sup>st</sup> century.

Apart from the above Trade Union reforms which I believe are most important, there are other reforms which I believe are necessary:

- There should only be one membership fee for the Labor Party in Australia and that should be set by either the National Conference or the National Executive and apply across Australia. Most strong national unions have one membership fee and if it is good enough for the unions it is good enough for the Labor Party. And when people join the Labor Party they should join the Australian Labor Party, not just a State branch and therefore there would not be different rules in different States for eligibility and we could establish an up to date database of members so that within a month of someone joining the Labor Party their name and address would be listed on the database and therefore able to receive information from the Labor Party. It would also make it easier for the Party to monitor branch stacking and other rorting that is carried out by factions from time to time.
- A most significant change would be to elect the overwhelming majority of the 400 delegates to national Conference by a direct ballot of all members across Australia. Unfortunately the special national Conference defeated such a proposal mainly because the factional warlords were frightened such a system would weaken their factional control. But if we want a strong national Labor Party connected to our rank and file then the rank and file should elect the delegates and that should not be filtered through State Conferences that are under tight factional control.
- All Lower House members of parliament, State and Federal, should be preselected by a local plebiscite of eligible members. Legislative Council and Senate candidates should also be selected by a rank and file ballot from within the State or Legislative Council district that they wish to represent. There are many arguments put forward that such a system would be unpredictable and chaotic. This is a spurious reflection on our own members. I am confident that the local

plebiscite with a committed membership which hasn't been rorted by branch stacking would ensure that a broader range of candidates are being selected than the present factionally controlled system provides.

For the Labor Party to remain relevant to the 21<sup>st</sup> century then it has to make the changes to its organisation to bring into the Party all of those elements within our community which have a commitment to reforming society so that equality and social justice is available to all. Unless these changes are made I doubt whether the Labor Party would ever be able to end up with a leader of the calibre of a Gough Whitlam, a Don Dunstan, a Bob Hawke, or Paul Keating because the present factional system means that those with imagination and ideas will not be able to survive the narrow mindedness of the factions.

On the 30<sup>th</sup> anniversary of the election of Gough Whitlam as Prime Minister of Australia it is time for the Labor Party to implement the institutional reforms of the Party so that policies of vision and imagination for our country can be developed and put to the people. If this is done the Labor Party will not only survive for another century but will have genuine electoral success.