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Cost, loss and disruption: Another year of the Fair Work Act

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I have been attacked for agreeing to speak to you tonight because you are seen as the enemies of trade unionism

I speak in my personal capacity tonight, not as an official of the HSU.

I happen to think that dialogue is important. Including with those with whom I disagree on matters that are important to me.

I am sure that there are very great differences that will remain between how I see the world and how some of you see it.

I think it better that we have a dialogue about those differences rather than to simply call each other names.

I am sure that, at the end of the day, much of what separates us comes down to matters of deep philosophical outlook, not to mention fundamental differences about matters of economics and how the greatest good can be achieved in society.

Some of you are convinced that the market offers the best hope of the greatest good in all things, including the labour market. I profoundly disagree. And I rely not just on notions that some may dismiss as ideological. I believe that that labour is not just another commodity, because it involves human beings and is tied up with their dignity as human beings. I also believe that the economic evidence is clear that the free market approach to the regulation of labour does not deliver better economic outcomes. I commend the research of Professor Peetz to you.

You will find me at the forefront of the union side of any fight to bring back some modified form of WorkChoices, or any other changes that are going to prejudice working men and women. However, I do believe that constructive dialogue between the two ends of that constructive ideological, philosophical and economic debate is

better for us all rather than the old *ad hominem* rejection of the other side of the debate.

A friend of mine, an older friend I have to say, likes to tell me the story of when, as a student activist, he was called by a trade union friend to help organise a demonstration against the latest supposed outrage by the then Fraser government. He duly obliged and rounded up a group of what he calls his 'dial-a-demo' mates to join the demonstration at the Victorian Trades Hall.

What was the issue that was behind the union angst?

The Fraser government was bringing in changes to have union elections taken out of the hands of unions and employer groups and given to the AEC.

My friend likes to tell me that, several years later, he and his friends, as young unionists, found themselves involved in successful reform groups in several unions and that, he believes, that success would have been impossible without the impartial role of the AEC. Reform brought in by a conservative government and resisted by many unionists actually served for the better governance of unions.

Tonight's discussion centers on the current review of the Fair Work Act. I have to be frank and say, first of all, that I'm not totally up to date on the progress of that review. I'm sure the audience will understand that for the last 10 months or so, ever since I took certain allegations to the NSW police, I've had a few things on my plate.

But second, of what I know of the review to date, and despite the controversy that has raged surrounding the HSU, there has been surprisingly little debate about the need to review the governance, electoral and regulatory framework for industrial organisations.

I want to make it clear too on the more substantive issues going to the respective rights of workers and employers that are subject to the review, it's very unlikely that there will be very much common ground between me and most of this audience.

I've been publicly critical of the Fair Work Act, not because it goes too far in tipping the balance in favour of unions and workers which, I'm guessing, is the collective view of this audience, but rather that the bargaining rights of workers are not well enough protected in the current law. Indeed at the time of the introduction of the Act

by the then Rudd government I well remember being angrily confronted by people closely associated with then Minister Gillard demanding that I stop referring to the new laws as “WorkChoices Lite”.

And I’m very sure that that’s not a characterization the many in this audience would give to the Act.

But there are some things about the regulation of industrial organisations, including unions, that all those involved in industrial relations could and, I hope, would agree on.

And I’d like to put forward my ideas about those.

Unions enjoy, in my view deservedly, a very special role in the political and economic life of the nation. And that special position carries with it very clear obligations. Despite the special role of unions it is very clear that unions are, at the end of day, corporations albeit ones created under the provisions of the Fair Work Act.

Particularly in light of the HSU controversy, I believe that there is a very strong case for extending, to the full extent possible and applicable, the same governance, investigation and enforcement provisions that apply to other corporations, generally those registered under the Corporations Act, to unions.

And given the widely-criticized role of FWA in the HSU matter, it is unlikely that that body would be appropriate to carry out the investigation of possible regulatory breaches; the enforcement of both prospective new and current regulations and prospective new powers to bring criminal prosecutions directly to the courts. We would need a better policeman than FWA has shown itself to be.

Now I anticipate a chorus of commentary from my union comrades that I’m simply adopting here Tony Abbott’s position to which I say this.

First I advocated an ‘ASIC-type’ reform process for union regulation before the federal coalition adopted its position.

Second as far as I’m aware that union movement has not altogether rejected this approach. Some of the senior officials of the ACTU have made very unenthusiastic

noises but the ACTU, rightly, is undertaking its own review process and I'd hope that they would, at least, give some consideration to supporting this approach.

In the past I've sat with some of the current senior officials of the ACTU on superannuation boards and other forums where corporate regulation was discussed. One thing we always agreed on is that corporate regulation needed to be tightened and investor's money needed to be protected. We acknowledged that the vast majority of companies did the right thing but that strong regulation is needed to promote investor confidence.

So just to make myself clear on the point – I believe that the vast majority of unions and unionists do the right thing and protect members' money. But particularly in light of the HSU episode, stronger regulation has an important role to play in promoting member confidence.

The current ACTU review of union governance practices is appropriate and, ideally, will lead to further union proposals for stronger regulation. Unions rightly reject self-regulation of commercial corporations as inadequate and, I believe, self-regulation is similarly inadequate for unions themselves.

Finally on this aspect of reform I say this. This type of stronger regulatory framework is not only desirable but is, I believe, ultimately irresistible. Smart unions will get with the program.

In my view the other area in pressing need of reform is union election process.

Big money in union elections, like big money in all elections, threatens the democratic foundations on which a healthy union depends.

Put bluntly in most unions today a rank and file member who decides to stand for a position in the union, as neither part of the leadership's ticket nor as a member of a well-sponsored reform group, has absolutely no chance of winning.

In contested union elections the cost of a campaign now runs to the high 10's to 100's of thousands of dollars, depending of the union's size. Ordinary union members aren't in a position to contest elections in their own union.

And because the rules governing elections are largely in the hands of the union's leadership themselves, with very few restrictions in legislation, the grip of incumbents has continually tightened.

I'll give you an HSU example.

The HSU rules once provided that each candidate for election could provide to the AEC a photograph and short statement that were published at no cost to the union in a booklet posted by the AEC with ballot material. Of course this very limited publicity was itself no match for candidates on tickets who can bombard union voters with material for weeks before voting papers arrive.

But even this small measure was too much for the HSU's senior national and branch officials.

While he was National Secretary Craig Thomson, with the encouragement of most union branches, presented a rule change to revoke a candidate's right to provide a photo and statement for publication at no cost to the union. That rule was dutifully passed with overwhelming support.

Incumbents, you see, don't need to have the photos and statements of candidates on their tickets posted out by the AEC. They can pay for campaigns from the large war chests that they typically have available.

HSUeast General Secretary Michael Williamson recently told another official that he had a \$2 million war chest available to fight union elections both inside and outside the HSU. Given the corruption allegations against Williamson and his lieutenants one has to wonder at the source of many of those funds.

Can I say as an aside since HSUeast is now in administration and this must result some time in new elections, it would be a travesty if monies stolen from the union were used by Williamson to ensure the re-election of his cronies in another guise. That's a live danger at the moment.

But in my experience most incumbents, particularly those in ALP-affiliated unions have large funds available to them with which to defend themselves against challenge.

And in my view this is largely because factional warlords in the ALP work hard to ensure that those incumbents that pledge their support to those warlords have the funds they need to fight elections.

I again want to make myself clear. The leaderships of many unions have many legitimate means of raising funds for electoral purposes and they use them. For example I've attended in my time very many fund-raising bbqs, bought raffle tickets and so on. Many unionists also set a proportion of their salaries aside each week – a system indeed that operates in many branches of the HSU.

But in my experience, increasingly, additional funds are provided, when necessary, from ALP factional sources keen to continue harvesting the votes of affiliated unions in pre-selection contests.

I recently presented a paper to my own National Executive in which I proposed a number of rule changes to restore some meaning to union elections.

Amongst other things, I proposed that we restore the right of candidates to submit a photo and statement for publication and that we limit election expenditure per candidate to 1000 dollars so that a ticket of, say 50 candidates, would be capped at \$50,000 total expenditure.

In a written response, these and my many other proposals have been robustly knocked back by the HSU Acting National President who says, for example, that I've provided no evidence of a need to restore a candidate's right to a photo and statement. The HSU Acting National Secretary is a major ALP factional player in Tasmania.

I'm very encouraged, however, that the whole issue of election funding in elections generally is back on the radar following the recent initiatives of the O'Farrell government in NSW.

Indeed given that the O'Farrell government has jurisdiction over NSW registered unions I'd very much welcome the opportunity to have a discussion with the NSW government about my ideas in this regard.

But clearly the federal government is the biggest player here. I'd like to be able to say that I'd welcome the chance to discuss these issues with the federal government but since Minister Shorten continues to refuse to meet with me, I'm not holding my

breath. But even if I had the Minister's ear, do I need to mention that the Minister is probably the most senior factional warlord in the ALP? Do I need to point out that Minister Shorten is an international grand master in the process of using union's as chess pieces in ALP factional warfare?

Bill Shorten as Minister for Workplace Relations is the most obvious example of Dracula in charge of the blood bank that one can imagine. The notion of making a union more open to recapture by its own rank and file is anathema to a warlord's world view. I would certainly have no luck there.

But some of the independents have shown some interest and I've yet to discuss these matters with the federal opposition. Although I'm a member of the ALP, I've long since stopped being concerned with partisan matters and I've resolved instead to make common cause with anyone who shares my desire to see reform in unions.

But just a word of caution. If the federal opposition was willing to look seriously at the issue of electoral reform in union elections or, who knows, took the issue up as opposition policy, I ask that you all be my witnesses that I proposed it first – it would be a case of Abbott adopting the Jackson policy and not the reverse.

You see, just as my friend the student activist later benefited from the actions of his then-nemesis Fraser, it's not always important from which direction reform comes so long as it does indeed come.

I deeply regret that the troubles of my union have caused some, wrongly, to see union's generally in a bad light. But there is an axiom that says 'never let a crisis go to waste'.

I very much believe that the crisis arising in the HSU could and should give rise to a reform process that would aid in the process of reinvigorating and reinventing unions in this country.

I want to finish on a personal note. I am not Joan of Arc. I am not a political virgin. I have been an activist in the labor movement all my adult life, played the political game and have the bruises to prove it. But the things that have occurred in the HSU and which, to my mind, point to a need for more fundamental reform should be addressed in a process above the hurly-burly of day to day politicking.

To say the least, this is an unorthodox venue for a unionist to give this type of address. But my options for giving such a speech to an audience that might listen are pretty limited these days. In fact I think I would have given this speech to a meeting of the Tallarook Country Women's Association if they'd invited me to give it.

I would, of course, have preferred to give it to the recent ACTU congress before my union was unceremoniously bundled out to the ACTU in the most idiotic example of slamming the barn gate after the horse has bolted.

The only thing perhaps I have in common with Joan of Arc is that I did suffer a bout of psychiatric illness and the historical consensus now is that she frequently did.

But a period of illness, psychiatric or otherwise, brings one advantage – it focuses one's attention on the things that are really important. So when I left hospital I made a very conscious decision to be unpolitic - to say what I think, do what I think is the right thing and let the devil take the hindmost.

Things rarely work out well for whistle-blowers and I didn't enter into my current endeavour in the expectation of arriving at glory days for me. My expectations are a lot more modest. I want to see wrongdoing exposed. I'd like to see my union put in a position of strength and with the confidence of the membership restored, and I'd like to see reforms made to make union leadership more accountable to members and which would protect against possible future financial and political corruption.

In his recent address to parliament, Craig Thomson bestowed on me almost supernatural powers. Apparently I am the chief author of a conspiracy so devious and clever it would be impossible for an ordinary mortal to achieve even with the combined assistance of the team from Mission Impossible; Spooks; Hustle and MacGyver.

If I had a fraction of these powers I would have fixed the problems in the HSU a long time ago. But my capacities are limited and so, accordingly, are my goals

I don't think those goals are unduly ambitious and I'm determined to see it through.

Thank you for the opportunity of addressing you tonight.