Unions in a fight to save their lives

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The CFMEU is set to be the subject of a fresh barrage of interrogations in 2015. Photo: Glenn Hunt

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"Calling royal commissions into trade unions is as irresistible for Liberal governments as for dogs to lick their bottoms," says the boss of the Construction, Forestry, Mining and Energy Union, David Noonan.

As national secretary, Noonan's role is roughly equivalent to the chief executive of a company, and what no amount of colourful language can hide is the fact that he is facing the fight of his career.

On Friday, counsel assisting the Royal Commission on Trade Union Governance and Corruption released 1000 pages of initial findings and recommendations, with much of the most damning material directed at the building union.

Recommendations

Union royal commission preliminary reform proposals

UNION ELECTIONS

- Give the Fair Work Commission power over electoral campaigning
- Ban direct debits from members to fighting funds
- Ban fund-raising for union campaigns except in designated periods
- Require the Australian Electoral Commission to run union elections

BUILDING & CONSTRUCTION

- Give serious consideration to the reintroduction of the Australian Building and Construction Commission
- Call for submissions on the introduction of US-style anti-racketeering legislation
- Consider changes to strengthen laws against secondary boycotts and cartels

WHISTLEBLOWERS

- Provide greater anonymity to whistleblowers
- Increase penalties for victimisation of whistleblowers

ENTERPRISE BARGAINING

- Require unions and employers to fully disclose any commissions, fees or other benefit that will flow from a term in an enterprise agreement
- Change the law to stop unions choosing superannuation funds for workers as part of an enterprise agreement

UNION OFFICIALS

- Expand the statutory duty of union officers to activities beyond the financial management of the union
- Increase the maximum penalty for breach of statutory duties from $10,200 to $200,000 - the same as for company directors
- Make it a criminal offence to solicit or accept a bribe from an employer

SLUSH FUNDS

- Expand the disclosure of all benefits between a union and related parties including any organisation where a union/official has a material interest

Jeremy Stoljar SC at The Royal Commission into Trade Union Governance and Corruption

"A number of officials of the CFMEU seek to conduct their affairs with a deliberate and disturbing disregard for the rule of law," counsel assisting Jeremy Stoljar, SC, concluded.

As torrid as recent months have been, Noonan now faces an even more sustained attack. The commission was originally due to report by the end of this year but its time frame has been extended by 12 months.

The CFMEU is set to be the subject of a fresh barrage of interrogations in 2015.

Noonan tries to be stoic.

“The organisation has been through royal commissions before,” he says.

“Of course it’s stressful, of course it’s expensive. But the last Liberal government that didn’t call a royal commission into trade unions was Billy McMahon’s.”

Late on Friday, Stoljar’s submissions were published on the commission website.

These submissions summarise the evidence heard so far and make recommendations about which witnesses should be trusted, as well as suggesting avenues of reform.

Final recommendations to the government will, however, come from commissioner Dyson Heydon, a former High Court judge.

He has said he will deliver an interim report in December. Although the process still has a way to run, Stoljar makes some immediate recommendations.

Full disclosure

Counsel assisting submits that a range of high-profile union leaders should face charges, including that CFMEU Victoria branch secretary John Setka committed the offence of blackmail via his involvement in an unlawful secondary boycott on Boral.

Less spectacular but likely to have longer-lasting effects are directions for policy and legal change.

Along with more robust protection for whistleblowers and new restrictions on union election funding, Stoljar says the Fair Work Act should be changed to require parties to an enterprise agreement to disclose any financial gains they stand to make from that deal.

Why is this important? Because the commission has heard how unions use their industrial clout to enshrine preferred suppliers into enterprise agreements.

In some cases these preferred suppliers are controlled by unions.

This recommendation is a direct attack on the business model of the modern union movement.

The commission examined a series of severance, income protection, welfare and training funds linked to the Construction, Forestry, Mining and Energy Union in Queensland.

“The CFMEU receives many millions of dollars as a result of arrangements with these entities,” Stoljar says.

Another case study involved the Victorian Electrical Trades Union, which derives $4.55 million a year in fees and other income from payments made by employers pursuant to the terms of enterprise agreements negotiated with employers directly or with the Victorian chapter of the National Electrical and Communication Association.

In response, the Fair Work Act could be amended to include a requirement that any direct or indirect benefit, and an estimate of the sum of that benefit, be disclosed in writing, Stoljar says.

This stops short of what the Australian Industry Group would like to see happen.

It has called for union-linked severance and insurance funds to be – at the very least – overseen by the prudential regulator.

Ai Group says employers are, in effect, funding the very unions that subsequently cause industrial unrest and cost blowouts.

"The revenue streams need to be closed off to break the current business model of some construction industry unions," it said in a submission to the commission.

"Worker entitlement funds had relatively modest beginnings but nowadays they control billions of dollars and the existing governance arrangements are not appropriate."

Stoljar recommends the commissioner consider recommending improvements to the governance and financial management of redundancy and income protection funds given that they are a "class of high-risk relevant entities for which there is currently little regulatory oversight".

Slush funds and super mandates

The commission examined a related case study concerning the Transport Workers Union. The TWU denied individual employees a choice of superannuation fund when it insisted TWU Super be included in clauses written into enterprise agreements negotiated with transport company Toll, the commission heard.

Money paid by TWU Super to TWU each year include about $200,000 in directors' fees, $500,000 in reimbursement for salaries and expenses of superannuation liaison officers and $100,000 in sponsorships.

Stoljar's recommendation is to change superannuation legislation to disallow unions from mandating the use of a particular fund in an enterprise agreement.

Another major focus of the first half of the commission's work has been on so-called slush funds.

A range of different funds have been examined, from the Australian Workers Union account that Stoljar says probably helped to pay for repairs on former prime minister Julia Gillard's house to the National Union of Workers' IR 21, which holds cash and shares in excess of $1 million and has been used to fund union election campaigns.

Stoljar says the concern is that innocent forms of fund-raising such as raffles and barbecues have given way to more sophisticated yet less transparent endeavours.

"Companies with deliberately broad and uncertain objectives are established. They raise funds by unlawful or unconventional means. Those who pay money to these entities may not appreciate who or what they are really contributing to.

"The monies may be raised for the personal advancement of the officials, and not for the union. Officials may seek to attract funds to themselves using the name and resources of the union, and through the exercise of the power and influence they hold as a union official."

Governance and reporting arrangements for these funds should be tightened, Stoljar says.

For example, the IR 21 slush fund, which raises money by holding educational seminars attended by employers, did not account to the National Union of Workers for any of the money it raised.

Keynote speakers at lunchtime seminars hosted by IR 21 included Labor luminaries Kevin Rudd, Julia Gillard, Bill Shorten, Nicola Roxon, Craig Emerson and Wayne Swan, as well as business leaders.

IR 21 was controlled by former NUW general secretary Charles Donnelly and part of the money it raised was used to fund his re-election campaigns, and the re-election of Martin Pakula, an assistant secretary. The activities of IR 21 came at a "significant cost" to the NUW, according to counsel assisting.

"In these circumstances, Mr Donnelly used his position … to raise money for his own gain and for the advancement of politically like-minded associates, rather than for the benefit of the NUW and its members," Stoljar writes. In so doing, he contravened section 287 of the Fair Work Act, Stoljar says.

Donnelly is now chief executive of the $4 billion Labour Union Co-operative Retirement Fund industry super fund.

Pakula is now the Labor member for Lyndhurst in Melbourne.