The IR club game is up, time to change the rules

JUDITH SLOAN, The Australian, July 10, 2015

Watching the proceedings of the Royal Commission on Trade Union Governance and Corruption is a bit like watching Test cricket. There is a lot of boredom interrupted by moments of intense excitement and interest. And the question all the time is: how will it end?

For signed-up members of the industrial relations club and interested observers like me, the nature of this week's revelations have been reasonably predictable. But the size of the kickbacks from employers to the unions and the existence of phantom members have come as something of a shock.

It is now clear that the shift to enterprise bargaining has greatly enlarged the scope for side-deals to be done between employers and unions behind the backs of workers, without their knowledge and consent. Let's face it, Bill, the payment of $100,000 plus GST per year to the AWU from the Thiess-John Holland Connect East consortium was not for services rendered by the union.

You know it, we know it.

And was it just a coincidence that Chiquita Mushrooms handed over precisely $4000 a month to the AWU because the value of services provided by the union to company came to precisely $4000 a month? That was until the company decided not to pay the invoices any more.

The trouble for Shorten is that there are just too many instances in which dubious payments were made to the union and where members were enlisted without their knowledge or consent.

Is the AWU the only union up to these shenanigans? Absolutely not — it's just the one with the best paper trails at this point.

From a policy point of view, there are some clear themes emerging. The first is that the legal governance framework that applies to registered trade unions is completely ineffective in terms of keeping union members informed and protecting them.

The second consideration is whether payments from employers to unions, both financial and in-kind, should be prohibited by law. This is the case in a number of countries; it should probably be the case here.

The third issue relates to weaknesses in the regulation of industrial relations more generally. If Shorten can rationalise the below-award Cleanevent agreement on the basis that none of the operators in the industry observed the award, it raises issues about the commercial logic of the award as well as its enforcement.

And why would a company pay a union to keep the peace when, under the Fair Work Act, industrial action is only permitted during defined protected periods? This suggests another weakness in the law.

A final issue relates to the anti-competitive elements in the current arrangements, something to which the Australian Competititon & Consumer Commission just turns a blind eye. In the agreements that the AWU (and other unions) negotiate, there is one superannuation fund nominated to which the union is aligned. There is mandated income-protection insurance to be purchased from a company to which the union is aligned. There is sometimes provision for the engagement of workers from a labour-hire company to which the union is aligned.

These provide handy extra sources of revenue to the union apart from dues. And then there is the exclusion of some employers from accessing favourable deals from unions because a prior deal has been done with their competitors. The shoppies and the construction union are past masters at this profoundly anti-competitive trick.

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