

The Heydon inquiry into trade unions has been a great success

Judith Sloan, The Australian, August 22, 2015

The trade unions and the Labor Party have been looking for a unicorn (look over there) ever since the Royal Commission into Trade Union Governance and Corruption was first announced.

Calling it a witch-hunt was not proving particularly helpful as story after story emerged of union officials ripping off members, accepting secret side-payments from employers and engaging in thug-gery, bribery and extortion.

While the content of last year's proceedings was damaging enough, many of the stories were old and known to the public. Think about the case of the AWU Workplace Reform Association — aka slush fund — set up by Bruce Wilson, former partner of former prime minister Julia Gillard, in the 1990s.

Also think about the financial shenanigans at the Health Services Union and the theft of the members' funds by various officials, including former Labor Party president Michael Williamson, who is now in jail. Both Craig Thomson and Kathy Jackson were household names before the royal commission got under way.

It was a close-run proposition as to whether the royal commission would be extended into this year. But the evidence presented in the past several months has related to more recent events and, in many ways, has been more breathtaking. The scale and scope of the reported misbehaviour have reinforced the view that inappropriate behaviour by union officials is neither exceptional nor confined to a few bad apples.

This is the exact opposite of the result the unions and Labor were seeking, short of the commission not going ahead in the first place. Highly infrequent and unusual cases of misconduct could be discounted on the basis that these occurred in all organisations and the people were no longer employed by the unions.

The evidence from the royal commission this year has demonstrated an ongoing and widespread pattern of inappropriate behaviour by union officials, most of whom continue to hold positions with the unions or are now parliamentarians.

In the ACT, for instance, it is obvious that cartels controlled by the Construction Forestry Mining and Energy Union dominate all large-scale construction and civil-engineering work and involve price-fixing, contract-rigging, blackmail, extortion, threats of violence — the list goes on.

The arrival of the unicorn in the form of commissioner Dyson Heydon's initial acceptance to give the Sir Garfield Barwick's lecture, an event organised by the Liberal Party of NSW, has been a blessing for both the unions and Labor. With little to lose, the ACTU has now applied for the commissioner to stand aside.

The reality is that we have already learned a great deal from the royal commission. And if the leadership of the trade unions was half-smart, it would also be taking away some important lessons as the proportion of workers who belong to unions continues to decline.

So what has the royal commission revealed? It is clear certain underlying conditions are particularly conducive to inappropriate and corrupt conduct on the part of trade unions. If one party can impose a cost on the other, without much fear of legal retribution, there is scope for the potentially damaged party secretly to pay a price to avoid the damage — protection money, in effect. Think money for bogus slush funds, direct payments, compulsory union membership and insisting on union-approved deals with third parties.

It is hardly surprising the CFMEU figures so prominently in terms of the adverse findings of the royal commission. The harm caused by disrupting building sites run by contractors who must meet fixed

budgets and set completion dates is potentially substantial. What is more surprising are the revelations of union misconduct that do not fit the typical profile of corruption.

Take the stories involving the Australian Workers Union. There was very little likelihood the AWU was in a position to bring on a strike, in part because the workers would have refused to take part but also because damaging employing companies facing highly competitive conditions makes little sense. To understand the modus operandi of the AWU, it is important to acknowledge the stranglehold unions have in relation to achieving the easy ratification of enterprise bargaining agreements and the scope this confers on unions to receive secret side payments and other benefits (phantom members, for instance) from employers. By offering flexibility of pay and conditions to employers — think the labour hire cleaning company Cleanevent and Chiquita Mushrooms, in particular — the AWU was able to cut deals that saw workers technically worse off than the award but potentially better off in terms of guaranteed weekly pay, at least for permanent workers.

But the key was the ability of the AWU to make these flexible arrangements legal by dint of an obliging regulator that waves through union EBAs and simply takes the union's word on face value in relation to any undertakings. Any other agent of the workers could have cut similar deals — and probably for much less than the AWU implicitly charged — but there could be no guarantee the regulator wouldn't object, even if the terms were pretty much in line with the AWU agreements. The point is that there are numerous actors who have to play their required roles to enable the unions to dud their members, but feather their own nests at the same time.

The third scenario is the straightforward ripping off of members — the case of the HSU. By and large, there is little scope for this union to extract payments from employers, in part because many of the employers are in the public sector. To be sure, former HSU national secretary Jackson pocketed an ex gratia payment made by a cancer hospital to cover the union's cost of sorting out a long-running dispute about overtime payments. But a handful of HSU officials simply stole money from the members by inflating their salaries and using members' money to pay for private expenses.

These shady and dishonest arrangements came to light because former HSU national secretary Thomson sued Fairfax Media for defamation and Jackson doxed in factional enemy Williamson, former HSU national president.

There had been many signs of financial mismanagement at the HSU before these revelations, as indicated by the incredibly weak regulatory efforts of the Fair Work Commission to compel the HSU to meet its financial reporting requirements. But nothing really came of the odd letter or two.

It was only when the information about Thomson's inappropriate spending became public that the FWC commissioned its own drawn-out (and pointless) inquiry.

So what are the lessons we can already draw from the royal commission? There are some industries, most notably large-scale construction, that are particularly susceptible to shady, cartel-like behaviour by unions and employers. There is a strong argument for separate regulation; hence, the strong case for the reinstatement of the Australian Building and Construction Commission, which is akin to a standing royal commission.

The second lesson is the need for much greater transparency on the part of registered unions. Members must be given access to meaningful, up-to-date financial statements to prevent a further case similar to the HSU. (There could be other cases along HSU lines but we simply don't know about them.) The present arrangements are grossly deficient but we know the FWC will never regulate - unions adequately.

The third lesson is that competitive unionism would do a great deal to root out misconduct and corrupt behaviour by unions. Were workers able to join alternative unions, these unions would not only be spruiking the benefits of membership but checking on the behaviour of their competitors.

The legislation requires only minor tweaking to achieve this outcome; it would be a big call for unions to reject the case for greater choice for workers.

After all, unicorns don't really exist.

×