

Royal commission report: Build support for real reform of whole union system

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By Adam Bisits

Royal commission We now have facts to warrant change in the governance of unions, but broader IR reform will require more work.



Opposition Leader Bill Shorten after his appearance at the Royal Commission into Trade Unions.
Dominic Lorrimer

It is not enough to sense that industrial relations in Australia should change. You need the facts to warrant change. We now have from last week's report by the Trade Union (Heydon) Royal Commission (TURC) the facts warranting change in one segment of IR, namely the financial and administrative organisation of unions. Recommendations include that oversight be moved from the Fair Work Commission to a more independent and better resourced body, for freedom of choice of superannuation fund, for the building industry regulator to be continued and augmented with compulsory investigatory powers and – incredibly for this traditional right of union officials – that they be trained in "right of entry".

The need for facts before you act in IR was demonstrated by the Gyles royal commission of 1990 and the Cole royal commission of 2001 into building industry thuggery, both of which led to more serious enforcement of industrial relations in construction, including in 2005 by the Australian Building and Construction Commission.

The folly of not ascertaining the facts is demonstrated by both the Work Choices and Fair Work regimes, neither of which was preceded by any analysis of existing defects or of costs and benefits of regimes proposed, which would have brought public opinion on side. In fact in January 2005 a letter organised by the HR Nicholls Society urged then prime minister John Howard to hold a wide-ranging inquiry into the labour market and the reforms required. The government's response was that it knew what it was doing!

Former prime minister Tony Abbott correctly acted on the need for facts as to trade union governance and corruption and this has resulted in the TURC report, which his successor has said will be studied and implemented.

However the report on the rest of the IR system, Workplace Relations Framework Final Report, by the Productivity Commission (PC), (released on December 21) has received only limited government support.

Will the report bring public opinion on side? It seems doubtful. At 1173 pages, eight times the length of TURC's, the PC's report is impossibly long, certainly for workers and employers.

Productivity Commission disadvantages

Was it fair to even ask the PC to investigate the Fair Work regime? Hardly.

The terms of reference were too wide and waffling, eg, how was the Productivity Commission to link the "workplace relations framework" to "wellbeing, productivity and competitiveness", as it was required?

The PC is generalist, whereas the royal commissions show you need specialists, eg TURC used two senior counsel, a team from a large law firm and others. TURC's budget was \$45.9 million, whereas the PC's may be calculated as plus or minus \$5 million (one-sixth of a total PC budget of \$30.9 million) for the much larger task of examining the whole Fair Work Act and the Fair Work Commission. The PC's financial resources were quite inadequate.

The PC's style is academic, adjudicative and macro, and it relies on information from submissions rather than from its own inquiries. However TURC used case studies to establish misconduct. The PC waded into unfair dismissal and underpayment of migrant workers without examining basic facts, as would have been possible by case studies or by inexpensive and obvious research of the Fairfax and ABC kind shown in their exposé last August of exploitation of migrant workers at 7 Eleven.

Thus the facts as to the bulk of the IR system, which affects employers and employees directly and through them the public, remain to be more comprehensively established. This does not mean another big inquiry. To some extent the PC has pointed the way, for it has recommended (sec 5.1) that the "wage regulator ... consider claims (by employers) of incapacity to pay". If incapacity to pay is an issue for the future it is also one now. Now is the time to hear directly from employers and employees on the system they want, as can be done by the government forming a group to report for this purpose.

Another way of establishing the facts for change is by a careful consideration of wage setting in successful countries. Germany is the obvious example, and the lectures in Australia last February by Professor Bernd Fitzenberger on the recent evolution of decentralised wage agreements in Germany without statutory intervention are a start. (The PC's report did extend to overseas comparisons but relied merely on a five-year-old text book, which is risky; and it was inaccurate as to the German system.) It is also instructive for Australia that Germany changed in response to an economic crisis.

A further way of deciding on change is by trialling alternatives, free of the Fair Work Commission, as long advocated by Senator Bob Day.

The TURC report gives Prime Minister Malcolm Turnbull and Employment Minister Michaelia Cash the facts to change union governance and oversight. With a little more work of the kind suggested, and building on the PC report, the facts will also be established for the other IR changes Australia needs.

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