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Unions poised to control Victoria

HENRY ERGAS THE AUSTRALIAN NOVEMBER 10, 2014 12:00AM



Illustration: Eric Lobbecke Source: Supplied

ACCORDING to the polls, the next premier of Victoria will be a man with close links to criminals. Not that Labor leader Daniel Andrews shows any embarrassment about his relationship with Victorian Construction, Forestry, Mining and Energy Union secretary John Setka, who, Andrews claims, “has the confidence of his members”.

That Setka has dozens of convictions for offences that include assault, criminal damage and theft does not seem to trouble Andrews; nor do the submissions made by Jeremy Stoljar SC, counsel assisting the Royal Commission into Trade Union Governance and Corruption, that Setka and the Victorian CFMEU engage in blackmail and extortion.

As for Stoljar’s submission that the governance of a company operated by the union, Building Industry 2000 Plus Ltd, is “abysmal”, with its directors repeatedly breaching their fiduciary duties, it has not led Andrews to change his view that the donations Labor has received are not “dirty money”.

Indeed, Andrews hasn’t batted an eyelid over the union’s ties with Mick Gatto and senior Rebels bikie Abuzar Sultani — ties that extend to George Alex, who was charged in September with threatening to kill a woman and her family and, it has been claimed, employed now Islamic State terrorist Khaled Sharrouf as a debt collector.

Unfortunately, Andrews’ tolerance of lawlessness is the not-so-new normal for Labor. After all, the most telling moment in Julia Gillard’s September 1995 exit interview with Slater & Gordon is when she says

that the so-called “AWU Workplace Reform Association” was actually a “a re-election fund, slush fund, whatever”.

That “whatever”, with its connotation that these are just quibbles, was not accidental; for those funds, she maintained, are “common practice, indeed every union has (one)”. It is, in other words, perfectly acceptable for unions to claim entities are for one purpose when they are really for another.

Gillard’s statement suggests an absence of moral compass. But she is hardly ignorant of everyday ethics. Rather, her conduct betrays a belief that the standards that apply to unions differ from those relevant elsewhere. In that special world, conduct can be tolerated that otherwise would not be; and while associating with run-of-the-mill criminals would be reprehensible, unionists’ crimes are mere peccadilloes, as the class struggle elevates thieves, frauds and felons into freedom fighters.

Nor has Bill Shorten done anything to break that mould, despite his repeated commitment to “honesty and integrity” in the union movement. While he proclaims, Jack Horner-like, “what a good boy am I!”, the plum he has pulled out of the Christmas pie is that of blocking the government’s reforms to the Fair Work (Registered Organisations) Act, which regulates the functioning of unions and employers associations. Those reforms would better align the responsibilities of union officials with company directors’.

A company director, for example, must “act in good faith in the best interests of the corporation”. A union official, however, is only obliged to act in “what he or she believes to be” the union’s best interests, which could include facilitating that official’s re-election. And to breach that obligation, a union official must deliberately act in the knowledge that the action is not in the union’s best interest, a higher threshold than applies to company directors.

To make matters worse, despite cosmetic changes Gillard made in the throes of the Craig Thomson scandal, the penalties a union official faces for misconduct bear no comparison to those hanging over company directors. Not only are the fines substantially lower, but while the corporations law contains specific criminal provisions for directors who seriously breach their duties, the Registered Organisations Act does not. As a result, offences committed by a union official can only be dealt with under the states’ general criminal law, whose provisions very imperfectly capture the conduct uncovered by the royal commission. Compounding the difference, while the corporations law provides an express power for an individual to be disqualified from acting as an officer of a company, the Registered Organisations Act does not, permitting offenders such as Setka to remain in their roles.

Yet the Fair Work Act confers far greater privileges on unions than the corporations law grants companies — privileges that, if they must persist, should be matched by correspondingly stronger safeguards.

That the FWA shelters existing unions from competition, entrenching their monopoly over the rents it allows them to extract, makes that even more important, as it ensures seizing control of unions is extremely profitable, attracting goons and inducing them to divert members’ funds into perpetuating their control. With the Fair Work Commission showing no signs of enforcing even the current regulations, thugs are thereby given open slather at the community’s expense.

None of that, however, sways the ACTU. Although it regularly demonises company directors, it has advanced the absurd argument that because “the vast majority of union officials are law abiding”, criminal provisions would “needlessly clutter the statute books”. It’s as if the fact that very few Australians murder their neighbours makes it undesirable to effectively prosecute those who do.

Nor does federal Labor seem at all uneasy about the legacy it has left behind. Rather, as Gillard put it, the IR laws are a case of “promises made, promises delivered”, not least to the CFMEU; and just as the Hawke government ignored the Costigan royal commission, allowing the union criminality it uncovered to thrive, so a Shorten government would let the current royal commission’s recommendations vanish into the night and fog.

Andrews would be even worse, reversing the current Victorian government’s attempts to clean up the construction industry and opening new opportunities for the donors on whom he depends. That is why the CFMEU is backing him so strongly; and why Victorians, before voting Andrews to power, should think twice, and then think again.

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