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If unions need to be clean, support the government

HENRY ERGAS THE AUSTRALIAN JUNE 22, 2015 12:00AM

That Cleanevent and the EastLink consortium did very well out of their agreements with the AWU is beyond question.

So, one imagines, did the many other employers who donated the more than \$1 million in largely unexplained cash that flowed into the union's Victorian branch between January 2004 and late 2007, when Bill Shorten was either state or federal secretary.

What is striking, however, is how little the AWU sought in return. The precise amounts are clouded in dubious bookkeeping, which is surely telling: the dodgier a transaction, the greater the parties' interest in covering it up.

But even accepting the uncertainties shady accounting creates, it seems Cleanevent donated \$25,000 a year to the AWU, along with a one-off donation by the Liberman family of \$50,000 to GetUp! (of which Shorten had been a director), while Thiess John Holland (which was under contract to build EastLink) gave the AWU some \$200,000.

Since the gains to Cleanevent were in the order of \$70m, while those to the EastLink consortium were of no less than \$6m and may well have been closer to \$50m, the payoff to the union was, in each case, a fraction of 1 per cent.

Those amounts look derisory: in most agreements, benefits and consideration are more evenly balanced. But there is a well-documented exception to that rule: corruption.

In the Wollongong city council case, for example, the \$20,000 each councillor allegedly demanded from developer Frank Vellar amounted to less than 1 per cent of the profit Vellar hoped to obtain. That is unsurprising: the councillors were competing for business, and with Vellar having few ways of enforcing any deal he might have made, he risked being double-crossed, all the more so given the people involved.

As Harry Jones explained to Philip Marlowe in Raymond Chandler's *The Big Sleep*, the trouble, when you're working with low lives, is that "she's a grifter, I'm a grifter, we're all grifters: so we sell each other for a nickel".

And large payments have another drawback too: they are harder to conceal. Bribe givers, as Sir George Hastings said of his way of bringing a bribe to Francis Bacon, struggle to find subterfuges through which to deliver the payments in "as cleanly a manner as possible".

Corruption is therefore rarely straightforward. But our industrial relations system alleviates many of the problems which bedevil ordinary graft.

It ensures agreements are binding, giving the parties some assurance they will get what they bargained for. And thanks to the myriad side-payments it allows — for instance, for "training" services — disguising illicit transactions is a relatively simple task.

All that creates opportunities for union officials to act in ways contrary to the interests of their members and of the community more broadly; but the system has few measures which can prevent abuses from occurring.

That is not because abuses that cry out for effective action have not arisen. Rather, it is because each and every time corrupt behaviour has occurred, Labor has acted to prevent effective safeguards from being put in place.

The Hawke government, for example, brushed aside the reforms proposed by the Costigan Royal Commission into the Ship Painters and Dockers union, and repealed those the Fraser government had implemented. As for the recommendations that came out of the Winneke Royal Commission into the Builders Labourers Federation, Labor had promised to ignore them well before they were released: and ignore them it did.

But that didn't mean Labor could simply turn a blind eye to conduct such as Norm Gallagher's. Like the mafia bosses the sociologist Diego Gambetta studied, who punished crooks whose greed reached levels that were "dishonourable", so Labor has tried to discipline those offenders whose actions threatened to bring the entire system into disrepute.

The demise of Gallagher's BLF is a case in point. While Costigan and Winneke advocated reforms which would tighten scrutiny of unions more broadly, the Hawke government enacted legislation narrowly aimed at eliminating the deeply embarrassing BLF. The message it sent unions was clear: abuse, but in moderation. The result was to invite misconduct, so long as it remained within reasonable bounds. Little wonder that abuse happened. And the AWU was never far from the action.

Already in the 1980s, the AWU had given the Hawke government's campaign against the BLF crucial support, as it tried to restore its fortunes, and its clout in the ALP, by expanding into construction. Offering employers a 'moderate' alternative to the BLF, the AWU's expansion strategy triggered violent demarcation disputes with the BLF at Loy Yang and the MCG in Victoria, as well as at Tomago, Koorangang Island, the Bayswater Power Station and ICI petrochemicals in NSW.

But although the BLF derided it as "Australia's Weakest Union", the AWU was never a cleanskin. For sure, its side-payments were usually substantially smaller than those the BLF demanded; but they seemed more clearly designed to benefit the AWU's officials, rather than its members.

And by earning a reputation for being 'moderate', the AWU could capture market share while keeping the questionable side-payments flowing. Since then, nothing has changed. Except this: Labor is even more strongly opposed to reform than it was in the past. Despite one scandal after the other, it is now blocking any change which would force unions to be more transparent.

So here's a challenge for Shorten. He says illicit payments are unacceptable and that unions should be fully accountable. Well, let him support the government's legislation which would stamp them out. Until he does, both his union's members and the electorate will have every reason to doubt his motives and his conduct.

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