QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
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Industrial Relations (Transparency & Accountability of Industrial Organisations) Submission 019

The Legal Affairs and Community Safety Committee
Parliament House

By Email: lacsc@parliament.qld.gov.au

Dear Madam/Sir

Industrial Relations (Transparency and Accountability of Industrial Organisations) and other Acts Amendment Bill

Thank you for the opportunity to put in a late submission in relation to this Bill.

The Council for Civil Liberties is a voluntary organisation founded in 1967 with the object of implementing in Queensland the Universal Declaration of Human Rights.

Article 19 provides:

> "Every person has the right to freedom of opinion and expression"

Article 20 says:

> "(1) Everyone has the right to freedom of peaceful assembly and association.
> (2) No one may be compelled to belong to an Association."

The provisions in the Bill requiring an Industrial Organisation to ballot its members every time it wants to spend more than $10,000.00 on any "political purpose" bring into play those rights.

We would accept that a person should not be compelled by the State to provide financial support for the political views of other people. However it seems to us that the fundamental flaw in this legislation is that it rests on the presumption of compulsory unionism. Compulsory unionism is long since dead. This is a point reinforced by the fact that it applies not only to Unions of employees but also to Unions of employers. It is interesting to note in this regard that one of the most effective Union of employers in the State, the Electrical Contractors Association, has put in a submission to this Committee opposing this proposal.

Both sides of politics draw their tactics, and increasingly their policies, from the United States. On this basis one presumes that part of the impetus for this legislation comes from the fact that in the United States there are laws which prohibit Unions from spending any individual member's dues on politics if those individuals object to such use. That constitutional principle is quite clearly rooted in the American system of compulsory collective bargaining.

A fundamental tenet of US labour law is that a union, once elected to represent a group of workers, enjoys the benefit of being the exclusive bargaining representative of the workers it represents. As such, the union is the sole entity that may negotiate with the employer over wages and conditions of employment.

The exclusive status offers unions significant monopolistic advantages. The employer of unionized employees is required to deal exclusively with the designated union. Workers who object to union representation are left with few choices.

We refer in this regard to the comments of Justice Black[1] in *International Association of Machinists et al v Street* 367 US 740 at 789 where His Honour made the following comment:

> "The Federally sanctioned Union Shop Contract, here, as it usually works, takes a part of the earnings of some men and turns it over to others to spend a substantial part of the funds so received in efforts to thwart the political economic and ideological hopes of those whose money has been forced from them under the authority of law. This injects federal compulsion into the political and ideological processes, a result which I have supposed everyone would agree the First Amendment was particularly intended to prevent."

However, on the previous page Justice Black had made the following comment:

> "There is of course no constitutional reason why a Union or other private group may not spend its funds for political or ideological purposes if its members voluntarily join it and can voluntarily get out of it."

The same principle quite clearly applies in Queensland circumstances. There is no longer compulsory unionism in this country. There are already democratic structures at work in Unions of employers and employees pursuant to which members can control the expenditure by the Union of their dues. Now that union membership is no longer compulsory members who object to the political activities of the Union can simply leave.

It might be suggested that individuals might be compelled to join Unions by other means. We would point out that physical or similar types of coercion are already an offence by virtue of the criminal law. Section 772 of the *Fair Work Act* prohibits a person from being dismissed on the basis that they are or are not a member of a Union. Similar protections are found in Sections 73, 105 and 107 of the *Industrial Relations Act (Qld)*. Finally, it may be suggested that there may be some economic compulsion to join a Union, the QCCL would point out that we do not normally set aside contracts including employment contracts on the basis that they have been made by reason of economic necessity.

On its face then this legislation is an intervention in the right to freedom of association. It will no doubt be said that it is done with the purpose of improving the rights of the members of industrial organisations and is justifiable on this basis. That case might be accepted if there were evidence that members of industrial organisations consider that their current rights are inadequate. Even if there were some members who were discontented it would be necessary to show that their angst is something more than that of a discontented minority that has lost a fair political contest, as they have the right to simply leave the organisation. The question would also have to be asked why similar changes are not being made to the *Associations Incorporation Act* which

[1] Hugo Black was one of strongest proponents of free speech ever to sit on the US Supreme Court. Accordingly his views on this topic must be treated with respect.

prescribes a similar majority governance structure to that applied to industrial organisations. The fact that is not happening must raise questions about the motivation of the proposals.

Even if this position is rejected, it would be our submission that the model proposed in this legislation is entirely inappropriate. It will place substantial unnecessary burdens on the industrial organisations.

The better model would in fact be that introduced in the United Kingdom where the *Companies Act* requires publicly traded companies to obtain shareholder consent for corporate political spending over £5,000.00 before the company can spend the money. If the shareholders do not approve a given political donation resolution the company cannot make the contribution during the relevant period which is currently four years.[2] The effect of the UK legislation is that every four years a motion is put to a shareholders' meeting which requests an authorisation for a particular amount to be spent over the next four years.[3]

This seems to us to be an administratively simple and cheap methodology of ensuring control by shareholders over companies which could be applied to industrial organisations.

The alternative method is that which applies in the United States to Trade Unions pursuant to which[4] the following rules apply:

1. Employees are entitled to object to the use of their dues for political purposes in general.
2. Employees who object to the political use of their dues must be provided with a refund in an amount proportional to the share of the Union's overall budget that goes to politics.
3. Members must be provided with information that explains how the reduction was calculated along with an opportunity to challenge the amount of the refund.

The QCCL's final objection to this proposal is that it imposes an entirely unjustifiable burden on one set of political actors, namely industrial organisations, which does not apply to other political actors, namely corporations. Both industrial organisations and corporations are economic actors pursuing their economic interests in the economic market and the political market.

The interests of shareholders and the members of industrial organisations are in this regard indistinguishable from one another. There is no legitimate basis for subjecting one set to a series of burdens and controls which do not apply to others. Or to put it in a positive way, there is no reason why one set of individuals, that is members of industrial organisations, should have more rights than shareholders.

In short then, this proposal, far from being a blow for freedom of speech and freedom of association, is in fact quite the opposite. It is an entirely unjustified interference in the political activities of voluntary associations.

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[2] *Torres-Spelliscy and Fogel "Shareholder authorised corporate political spending in the United Kingdom"* Stetson University College of Law Legal Studies Research Paper Series, Research Paper No. 2012-8 at pages 544 to 545

[3] Ibid pages 546 to 547

[4] Sachs *Unions, Corporations, and Political Opt Out Rights after Citizens United* 112 Columbia Law Review 800 at 818

If it is to proceed a less burdensome method of regulation needs to be found. We would suggest the UK model. Furthermore, that model should be applied not only to the members of industrial organisations but also the rights should be afforded to shareholders in ordinary corporations. To the extent that this Parliament cannot achieve the latter objective the legislation should not proceed.

We trust this is of assistance to you in your deliberations.

Yours faithfully

Michael Cope
Executive Member
For and on behalf the
Queensland Council for Civil Liberties
16 May 2013