



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**PROOF**

**BILLS**

**Fair Work Amendment  
(Corrupting Benefits) Bill 2017**

**Second Reading**

**SPEECH**

**Thursday, 30 March 2017**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

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| <p><b>Date</b> Thursday, 30 March 2017<br/> <b>Page</b> 40<br/> <b>Questioner</b><br/> <b>Speaker</b> O'Brien, Ted, MP</p> | <p><b>Source</b> House<br/> <b>Proof</b> Yes<br/> <b>Responder</b><br/> <b>Question No.</b></p> |
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**Mr TED O'BRIEN** (Fairfax) (13:13): Typically at times like now I would make some comments about the previous speaker's points. However, the previous speaker, the member for Bendigo, did not seem to want to talk about the bill at hand. Instead, she focused her address on something else. At the end of the day, we are talking, in the Fair Work Amendment (Corrupting Benefits) Bill 2017, about corrupting benefits. The fact that the Labor Party do not wish to address the topic probably provides some degree of insight into the extent to which they know there is a problem, and it is a rotten problem indeed.

When most people think of crime their minds likely turn to murder or robbery or some random act of violence, but one of the most insidious forms of crime, one that directly threatens our efforts to revive a civil society in Australia, is corruption. It is a very specific, chronic form of potential workplace corruption that this bill seeks to address. This bill aims to put an end to potentially corrupt secret payments that are too often exchanged between employers and unions to scratch each other's backs at great cost to workers, to the public and to efforts to retain the settings of our civil society.

The payments take many forms in many industries and have been in play for many years. The Winneke royal commission warned of the practice as long ago as 1982, but the Winneke findings were largely swept under the carpet by the Labor government that came into power in 1983, a government that was dominated then, as the Labor opposition is today, by the unions. The Gyles royal commission of 1992 made similar findings, but that inquiry reported under a Labor government just as beholden to unions and again nothing happened. It was not until the Cole royal commission 2003, when the Howard coalition government was in office, that finally there was some action. The Australian Building and Construction Commission was established in 2005 and tackled the issue in the construction sector, where the various commissions made clear the practice of secret payments to trade unions was most rampant.

But, once again, the flame of reform was snuffed out when, in 2012, the Labor Prime Minister, Julia Gillard, at the behest of her union masters, killed the Building and Construction Commission, striking a desperate deal with union bosses and Labor members beholden to those unions, people who she hoped would help check the second coming of Kevin by following orders in any future leadership ballot. Thankfully, late last year this parliament, the 45th Parliament, reinstated the ABCC with significant enhancements to its investigative powers to match those wielded by ASIC and the ACCC. It is now an agency that packs a punch and it is back on the beat. This bill is simply an extension of a very determined interlocking effort involving complementary measures from the coalition to restore the rule of law not just to the construction sector but also to the relationship between employers and unions, wherever and however they may operate. It is firmly based on key recommendations in the final report of the Royal Commission into Trade Union Governance and Corruption, known as the Heydon royal commission, which reported in 2015 and which made it very clear that the problem of these corrupt payments was occurring in industries right across the board.

This bill is very serious and makes it a criminal offence to give a registered organisation or a person associated with a registered organisation a potentially corrupting benefit. This bill makes it unambiguous that it is a criminal offence to receive or solicit a corrupting payment or benefit. It becomes a criminal offence for a national system employer other than an employee organisation to provide, offer or promise to provide any cash or in-kind payment other than certain payments to an employee organisation or its prohibited beneficiaries. It makes it a criminal offence to solicit, receive, obtain or agree to obtain any such prohibited payment and it requires representatives in any negotiation for a proposed enterprise agreement—which includes employers, employer organisations and unions—to disclose any financial benefits that such representatives would or could be expected to derive because of a term in the said proposed agreement. Very substantial penalties will now give real teeth to new limits on corruption in the workplace. The maximum jail term is 10 years. The maximum fines are \$900,000 for an individual and \$4½ million dollars for a company.

Labor of course sees this—as we heard from the previous speaker—as union bashing, but the reality is that this bill directly tackles employers who engage in secret corrupt payments to unions with just as much vigour as it does union officials. Take, for example, the Leader of the Opposition in a former guise. His Australian Workers Union turned this sort of corruption-type activity into an art form. He was a consummate artist indeed, a true Rembrandt, if you like, of the dodgy deals—deals that came at great cost to members and great benefit to the AWU. Thiess John Holland paid the AWU Victoria, the Leader of the Opposition's old outfit, \$300,000 plus GST while it was building the EastLink, disguised as payments for training, back pain research, forum tickets and conference sponsorships—except there was no training, there was no back pain research, there were no forums and there were no conferences. It was all completely bogus, it was hidden and it was corrupt—corrupt on the part of the employer and corrupt on behalf of the union. Thiess Holland got industrial peace while the AWU got 300 grand. I call that extortion, pure and simple.

ACI Operations paid the AWU in Victoria—again, the Leader of the Opposition's old stomping ground—approximately \$500,000 while they laid off workers at their Spotswood glass factory. That was invoiced by the union as—wait for it—paid education leave. It comes as no surprise that the money was never paid for education leave. Actually—and you may not believe this—the funds were mostly used to offset a loan for renovations to the AWU's head office. So, at the end of the day, the company had the benefit of a quiet, compliant union, and the AWU had a nice, freshly renovated office. Oh, and what did the workers get? Well, the workers got absolutely nothing—naturally. That is how these deals have worked.

There is also the infamous Clean Event episode, with a direct starring role for the now Leader of the Opposition. Clean Event paid AWU Victoria \$75,000 to maintain an enterprise agreement that paid cleaning workers well below award rates and that stripped them of penalty, overtime and shift loadings.

**Mr Perrett:** Signed off by the independent umpire—are you saying they got it wrong?

**Mr TED O'BRIEN:** In case you do not hear, Deputy Speaker, over the noise from the opposition, who clearly did not want this to be heard, let me repeat that: Clean Event paid AWU Victoria \$75,000 to maintain an enterprise agreement that paid cleaning workers well below award rates and that stripped them of penalty, overtime and shift loadings. This dirty deal was done via secret correspondence and was of course never disclosed to Clean Event workers—some of the lowest paid people in the entire workforce. In fact, a Clean Event level 1 casual worker would have been entitled to 176 per cent more per hour under the industry award than under the dirty deal done by the AWU with their employer, Clean Event.

Nothing could better explain the dire need for this bill than the Clean Event episode, for this bill requires that, whenever there is an exchange of money between one party and another, there has to be full disclosure, and that disclosure, which includes to workers, has to be made to them before they vote to accept an enterprise agreement negotiated by the union. Sometimes payments may be reasonable and appropriate and will add value to the deal for workers—no doubt. If the payment from an employer to a union is for training that is actually provided or for back pain research that is actually undertaken, then workers can take that into account when they cast their vote, and workplace authorities will also be in a position, on behalf of the workers, to ensure that all services are in fact provided. That level of transparency is obviously needed to also catch the other sorts of payments, like the dodgy deals already mentioned, or perhaps other deals, where benefits are paid not to union head office but to individuals for personal gain.

In one notorious Queensland case, for example, Dave Hanna, CFMEU official and former major office holder in the Australian Labor Party, used a corrupt payment from a builder for home renovations, in much the same way Bruce Wilson used a corrupt payment for renovations on Julia Gillard's Melbourne house. Full transparency around such payments is obviously crucial and must be legislated. It could save some people a lot of embarrassment, maybe. It could save other people a lot of money. Nine-hundred thousand dollars is a stiff fine for an individual, just as \$4½ million is for a company, let alone the costs associated with the publicity such a conviction would bring. Ten years in jail is a long time, but it is clear from the long and sordid history of this issue that only very real disincentives will work.

Finally, it is indeed ironic that this problem, so well documented since at least the 1980s, is still a problem on the scale that it is, and the incidence of these corrupt benefits appears to be growing. Union membership in the private sector is now around 12 per cent. Only entrenched unionism in public services gets it up overall to around 15 per cent. This is, in historical terms, an embarrassingly small sample of the Australian workforce. These sorts

of crimes of corruption ought therefore be diminishing, not growing, but of course that does not take account of the emerging shift in the politics of the Left in this country. The union movement, and especially the union movement at the Left of the spectrum, is now in full-scale tilt at taking over the Australian Labor Party. The union movement always has been a big influence, but now it is going for broke. The militant unions are going for total control. Troy Bramston, who writes for *The Australian* and commentates for Sky News, has worked for Labor and is a Labor historian of increasing note, and he has been saying much the same thing for a very long time—that the Left is taking over the Labor Party and its strongest players are from the Left unions.

At the end of the day, one only has to look to the CFMEU in particular to see not just the damage being done by the union movement but indeed when the Labor Party seeks to have their back, seeks to provide them coverage, by opposing bills such as that which is before the House today. At the end of the day, this bill will provide reliable transparency to protect the interests of workers—and it is the workers who have been the meat in the sandwich in this internal Labor battle. Thank God the coalition will protect them.