

THIS IS THE PRODUCTIVE SPINE OF AUSTRALIA? MY GENES TRIPPED ME UP.

COMMENTS ON LAW REFORM RECOMMENDATIONS OF THE ROYAL COMMISSION INTO TRADE UNION GOVERNANCE AND CORRUPTION

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Openly go down to the land and its state to identify and treat corruption in the region and on site

The Law Reform Recommendations of the Royal Commission (RC) into Trade Union Governance and Corruption, appear to refer primarily to leading Commonwealth laws and awards, as first dealt with in the **Fair Work (Registered Organizations) Act 2009**. **Rec. 1** calls for Commonwealth and State governments to adopt a national regulator for the **'registration, deregistration and regulation of employee and employer organizations'**.

Why one would start a discussion of governance and corruption anywhere in Australia, with the **Fair Work (Registered Organizations) Act** is easier to see politically and partially than in the regional public and personal interest. The **operational structure** the RC recommends is unclear and costly with remote, confusing and closed professional and related occupational troughs. (Ask some little dolly in the typing pool to write it down and make sense of it.)

Key RC Recommendations for Law Reform are addressed later in this primary and partial occupational and organizational context of RC discussion of governance and corruption prevention. **Rec. 2** appears to seek a nationally consistent regulatory approach with states. However, governance and corruption appear partially and unclearly related to management of key funds and people in the RC recommendations. One also thinks more broadly here of state laws and awards, including those related to land, construction and insurance. The RC takes insufficiently broad, open, regional and grounded approaches to fund management which also increases our confusion. As they say in the comics, 'Who is plucking this duck?'

How does any concept of a state or national Independent Commission Against Corruption (ICAC) fit with this direction, for example? How does this RC direction also relate to that of the Clean Energy Regulator which is currently taking market soundings under the emissions direct reduction fund? The RC operational approach requires more regional perspectives opening it up. (See attached discussion of breeding, habitat, tours and land management in North Queensland.)

Rec. 3 crucially seeks to establish the **Fair Work Commission** under a new **Registered Organizations Commission**. This is ideally to be an independent **'stand-alone'** national regulator. The key RC direction is legally driven further in linking the powers of the Fair Work (Registered Organizations) Act 2009 with the following related acts:

The Corporations Act 2001; The Fair Work Act 2009; Legislation of the Australian Securities and Investment Commission (ASIC); The Competition and Consumer Act 2010.

In Rec. 45 the above regulatory approaches provide for registration of 'worker entitlement funds' with ASIC. Rec. 46 refers to the Fringe Benefits Tax Assessment Act 1986. Rec. 51 amends the Superannuation Guarantee (Administration) Act 1992. *Related links refer to the Work Health and Safety Act 2011 and the Fair Work (Building Industry) Act 2012.* Give us a better picture of how this is supposed to work because it appears to add confusion and cost.

Women and caring communities want something broader and more imaginative than this tired old boys spend of ripping up parks to plonk in giant new freezing cold empty buildings. Rehabilitate **name withheld** and call him a top bloke? No. We like open nature and history. Think of me as an old woman and you think of David Walliams in slimmer days in 'Little Britain', yearning for more intelligent conversation along with Emily, Anne, Carol and Linda. Let us return, however, to these RC Recommendations which it appears can only address organisational and occupational corruption in the oblique formats of closed associations. Then lawyers smooch it over so nobody else can ever understand the land and property so feel they have no choice but to follow lawyers up. No worries. They are on a giant screw.

In Chapter 5 entitled 'Regulation of Relevant Entities' and Chapter 6 entitled 'Enterprise Agreements', Recs. 47-51 refer to ***insurance; registered worker entitlement funds providing for the payment of 'employee entitlements, training and welfare'; registered charities and superannuation.*** Competition is dealt with in this unclear regulatory and funding context, apparently to get better governance without corruption. I can't see how it will happen in requirements for even more professionally closed shops increasing the costs of operation. Have this debate regionally with government institutions logically backing openness and freedom of information rather than the reverse as usual in feudal financial operations.

Governance and corruption are concepts with which all are ideally prepared to come to terms, in the broader public interest. Open regional planning not more occupational and organizational closed, blinkered shops are needed. RC goals and operations ignore a lot.

The site history and examination should take a place above the remote application of the particular law or standard in related national and regional court and development contexts. Open production up more rationally for improved production and wellbeing. Arbitrate openly.

The RC recommendations are mainly flawed in taking partial organization and occupational approaches to championing management which is irrationally closed from the perspective of the welfare state. Good doctors, engineers, and taxpayers, for example, have reason to support more open practice because they may otherwise carry the can for others more financially inclined and driven. Conceptual differences between governance and management in the RC recommendations are unclear. For lawyers, behaviour and money turn on partial and confusing words which keep on expanding in occupational closures. They like to keep their secrets for the initiates and courts so resist plain English glossaries.

The RC puts court operations and the 'Competition and Consumer Act 2010 Cwth at the pinnacle of its recommended national operations, having further perverted Hilmer's more grounded approach in National Competition Policy (1993) to increasing legal cost. Hilmer's more honest view of competition, that it need not necessarily be just for money, was then adopted by all Australian governments. Lawyers then wound this insight back to feudally closed commercial logic, as if the welfare state has no good power to lead and define direction and related competition. Such competition may be conducted regionally, for example, with plant breeders' rights approaches to breeding and habitat, as discussed in the Productivity Commission report on Intellectual Property (2016) and in Queensland attached.

The partial RC approach to governance and corruption, which drags on state foundations or leaves them untouched, is wrong and confusing. In Sydney, for example, the Greens state MP, Jamie Parker, recently introduced a Clean Politics Charter to NSW residents. Surely any such requirements ideally relates also to the Recommendations on Law Reform of the RC into Trade Union Governance and Corruption. Otherwise all too easily become increasingly mired in the particular laws, rather than in increasing general understanding of the varying situations on the ground and how to approach them more productively for all involved.

Australia is a democracy where politics is not normally thought of as a hereditary occupation connected to a particular family or its related interest groups. This is a nation which should play to its comparatively unusual strengths which principally include comparatively open universal and reliable broadcasting, health, education and related communication systems. This democratic wealth is due mainly to the state. Ideally governments may support private and related community sector operations openly, rather than being driven by them in competitive cost shifting in organizational or occupational races to the bottom. These state driven approaches may increasingly support good governance and avoidance of corruption by open content mandates and local choice, for example. This is pioneered in approaches to data gathering in health services. The RC champions the normal secret occupations. It appears wedded to self-imposed blinkers. It should get rid of lucrative feudal suppositions.

As Szasz pointed out, education and training are vague **socially positive words**, applied and dependant on the social context. What is here deemed righteous learning, may somewhere else be seen as poor or corrupted knowledge or behaviour. We must try to find out what is happening on broader ground and in practice to know what is going on. The RC appears to differ in preferring the occupational, closed, legal direction. This makes a top fetish of competition in a context which does not challenge any of the current opaque and expensive professional closures. Multiskilling, recognition of the importance of experience and practice, and confidence in the validity of credentials are highly suspect in RC approaches.

For example, Chapter 7 of the RC Recommendations is entitled **Competition Issues**. I have no idea of the meaning or implications of Recommendations **52-58** inclusive. They are totally incomprehensible to anybody I guess, whether or not they have access to the relevant sections in the relevant range of legislation to which these recommendations refer. This appears on the page as a load of rubbish. What kind of basis is that for a mandate?

Competition is ideally treated as an aspect of fair trading, rather than the reverse. Open and questionable practice are most necessary to define and arrest corruption cheaply. Open practice is a greater, less well remunerated or free teacher. The RC zips its lips and seemingly hands over to the Australian Competition and Consumer Commission at the top.

RC legal reform recommendations should not be copied by the states in a national approach but amended in related state land and regulatory contexts, in open cooperation with others. All development and any concept of governance (management?) or corruption depends fundamentally on local treatment of land and related communities, including individuals and organizations. Governance and corruption appear necessarily attached to analyses of the interactions of persons and places in time, as in their related historical, institutional, demographic, scientific, statistical and other analyses. Open operation is in the democratic public interest. Lawyers, political and occupational associations may prefer closed dealings. The RC naturally doesn't like to think or address rude thoughts so the result is lack of clarity. This case is made in the particular address below. A key regional way forward is attached.

KEY LAW REFORM RECS. OF RC CHAPTERS ON TRADE UNION GOVERNANCE AND CORRUPTION

CHAPTER 2: is entitled **REGULATION OF UNIONS** and contains **Recommendations 1-24**.

Recommendation 1 calls for Commonwealth and State governments to adopt a national regulator for the '**registration, deregistration and regulation of employee and employer organizations**'. This sets such organizations apart from state, investor, employer, self-employed, resident and related governance and corruption treatments. This appears to drive unclear, unfair and inconsistent legal treatment at work based on organizational and occupational treatment which is comparatively closed and so blindly uncompetitive. This

cannot support state concerns well, such as good welfare and insurance treatment of a region and particular place, including any relevant construction, other service production, data gathering, and research. Health and rehabilitation of land, building and people are not served effectively by the RC approach. Good insurance treatment of particular regions and places is central to healthy development. In NSW it is ideally first based, perhaps, on land valuation and council rating principles and methods such as those in the July 2016 NSW Valuer General's Newsletter. (I have absolutely no idea and the RC start is just confusing.)

Recommendation 2 suggests State government consider the **Fair Work (Registered Organizations) Act 2009** in regard to a consistent treatment of state law and awards.

This Act appears to have the partially reasonable aim of consistent national treatment of governance and corruption. However, this must surely yield to particular conditions of the ground on which they rest, or we are fools driven merely by lawyers' words and money. Legal **definitions** are problematic because they often refer one back to the relevant act or acts, without a clear glossary approach based on the common dictionary, which everybody will naturally understand better. Chapter 7 on Competition Issues is incomprehensible, for example. Plain and direct English may reveal positions and also more easily reveal feudal logic for reform. It is stupid to let a judge or lawyer constantly rule strangely on the meaning of words. Adding to the lists of things to which a particular '*definition*' refers in law, (e.g. listing what the term '*office*' may cover) makes for poor, confusing and partial management.

Recommendation 3: seeks to establish the **Fair Work Commission** under a new **Registered Organizations Commission**. This is to be an independent 'stand-alone' national regulator. The **Australian Securities and Investment Commission (ASIC)** is suggested as a model.

I note that the ASIC website refers to the rules for **Business: Finance Professionals and Consumers**. One wonders how investment, self-employment and other associations (e.g. charitable or political) are expected to relate to this to promote good governance and avoid corruption. I have argued the legal system is corrupt to the extent that it favours secrecy in the sectional interest, supported by the top monopolies of rich and partial lawyers. When one also takes into account recent NSW moves at the state level, related to housing, work and insurance practice, one fears this will increase confusion, business volatility and cost. How are these apparently distinct Commonwealth and state directions expected to align? Is the NSW ICAC seeking some related direction? All the cards seem thrown into the air.

Recommendation 5: relates to the **officers or employees** that may have a **direct or indirect effect** on the **finances or financial administration of a reporting unit**. Are these people managers? Why does the RC set up strange new word categories? Don't we have enough?

For good administration, research and insurance practice, a financial administration and **reporting unit** surely should have a defined geographic and community location to make this management approach consistent with research, rehabilitation and fund management. Medicare or state laws such as occupational health and safety and insurance acts were models. The particular regional land and building (home or workplace, etc.) upon it are addressed for related rating and insurance purposes. This is ideally consistent with Medicare and related approaches to quality service to people, including more stable business operation with more stable, fair, cost-effective premium setting and no brokerage cost. I mainly thank NSW State Liberal government for pointing this out to me. I don't understand what is now going on at state or Commonwealth level. I almost totally give up.

Recommendation 7 refers to **breaches of rules by persons other than a reporting unit** (sic.) under ss. 336(1) and 336(2) (a) of the Fair Work (Registered Organizations Act 2009) and to **'enforceable undertakings'**.

I have no idea what this means or how a 'reporting unit' is treated as if a person. The key definition and treatment of a 'reporting unit' appears crucial for good governance and avoidance of corruption so 7 and related recommendations should be clearer. One wonders if 'enforceable undertakings' relates to some oblique legal statement that managers should be held accountable for the money they manage. When one considers this from the perspective of an owners' corporation under strata title that makes good sense and we have a reasonable go at St James Court, using the email and that. I wish I could say the same about 2008/9, when one often felt dragged along secretly, roughly and blindly by lots of fat blokes. One did not know where we were going, to put it mildly. That frightens me most.

Recommendation 8 appears to treat **'approved training'** as if primarily related to the management of some associated 'fund'. In Rec. 8 the RC appears to have glossed over a key issue it was set up to investigate. This was that money supposedly to be used for training was used as a slush fund for union election or for related personal perks instead.

What is 'approved training' expected to be and who is expected to deliver it to whom?

This is a good question. When I was a comparatively young public servant in the 1980s, I fought vainly and often for managers and staff or other workers to be trained together in the management approaches in new state occupational health and safety acts. I had no idea at the time of the extent to which education budgets easily support the perks of office in any of the occupational worlds driven by men and their adversarial and competitive secrets, lies and gifts. They often look up to lawyers for indication of the life-style they should have if life was just. Baby, why wouldn't you? The system encourages ambition and if it isn't love it doesn't want to know. (Think of poor old Michael Lawler and his dad.)

Regional activity should occur in many regional seats to openly integrate strategic planning directions more effectively. For example, Sydney University's [2016-20 Strategic Plan](#), details a tripling of the University's investment in research by 2020, a move Vice-Chancellor Dr Michael Spence said would significantly lift the quality and impact of the University's research. He said students who receive an undergraduate degree from the University of Sydney will possess deep disciplinary expertise, and will also have undertaken courses that equip them with the skills employers tell us they need: **digital literacy, cultural competence, ethics and the ability to understand and translate data**. But what are they actually expected to **do**? (I always ask this.)

The above seems a well- chosen skill set for greater personal health and fitness in more open regional cooperation and competition to improve the natural and cultural environment on which tourism and jobs around it rest. Ideally, the Youth Jobs PaTH design outlined in the last budget reports, overcomes the problem of the industrial relations status of a young person – e.g. as a student, unemployed, disabled, supporting parent, other carer or as another kind of beneficiary or entitlement recipient, from whatever source. Health and fitness related to open exercise and judgment appear good indicators for putting particular people in particular jobs in particular environments, whatever they are, and whether the potential occupants are seen in any way as sick, disabled, stigmatized, or just like us. The Baird government in NSW has recently introduced a Youth Private Rental subsidy which may help young people stay or leave for work and/or study elsewhere.

Recommendation 9 makes apparently sensible suggestions about the need for proper administrative (business) procedures for receipting money, for levels of authorisation of expenditure, credit cards, procurement, hospitality and gifts, the establishment, operation and governance of related entities and any other matters prescribed by regulations. This seems vital as family and friends are by nature sloppy operators, given the mutual respect.

The lawyer, on the other hand, encourages a fetish of prescriptions and growing lists in law, against which operations are to be ticked-off. This is not good for critical thinking in relation to the particular ground and its operations. Put issues into clear accounting, written, film or audio form as relevant in management practices centred round open explanatory recording of speech, accounts, other papers and pictures. This is straightforward via email and other account management practice, assisted by reliable direction on government and related websites and media. One speaks as a member of an owners' corporation at St James Court. We have worked with the same strata manager for years as she knows us and the place.

Recommendation 10: relates to '**replacing and strengthening provisions concerning financial disclosure** under the Fair Work (Registered Organizations) Act.

The concepts of 'reportable units' (sic.) and 'reporting units' remain unclear in this recommendation and later.

I fear this combination merely adds the costs of an auditor to the normal commercial in confidence business procedures which appear insufficiently questioned. The regime would require 'reporting units' to lodge audited financial disclosure statements with the registered organizations regulator on discrete topics, including (a) loans, grants and donations by the reporting unit (b) remuneration of officers and (c) credit card expenditure.

Recommendation 13 relates to registration of auditors of reporting units. A person is entitled to be registered if the person is either:

- (a) a registered company auditor or (b) if the registered organizations regulator is satisfied that the person has the required accounting qualifications and is a fit and proper person.

Auditors and ratings agencies add to business costs yet did nothing to protect organisations against the global financial crisis in 2008. Openness rather than closure is the most effective and cheapest method of preventing loss or corruption as anybody may more easily see and learn from or openly object and challenge what is going on. This is the essence of learning. Its practice is embodied in clear accounts. This is what democracy and inclusion are about. The fear is the RC may merely be establishing another privileged, closed, profession, leaving the edifice of cost and corruption based on legally closed occupational drivers untouched.

This recommendation and later ones relating to auditors are unclear to me, for example, in regard to '*conflict of interest*' situations, in **Rec. 14**. The idea that a person who has personal knowledge and interest in a matter should leave the room rather than enter into open discussion appears wrong. More openly informed and recorded judgments are usually better but law often equates ignorance with unbiased judgement. This is just stupid.

Recommendation 16 relates mainly to **keeping minutes**. The Royal Commission states: **The minutes and associated documents be available upon request by members of the organization free of charge.**

Rec. 16 is vital for informed understanding and direction. As a shorthand typist since the age of fifteen I find it hard to overstress the importance of clear minutes provided as soon as possible after a meeting, so those present may check their view of its key happenings, before the memory quickly fades, to be replaced by more immediate things like lunch.

However, Rec. 16 is comparatively coy about the importance of writing things down to provide a clearer historical record. Email provides an ideally related accounts record, including impressionistic thought, debate and direction, which may become more broadly or deeply informed through related interaction. I have often taken notes at meetings and will provide them to anybody who asks for them or whoever I like. I've given my intellectual

property away since I was a young girl. The view that I should suppress my view of events because of voting somewhere appears immoral to me. Equally, I expect organizational minutes to reflect my dissent, not cover it up as if it never happened. These are important issues both for intelligent management and avoidance of corruption in secret. We face these issues, for example, as members of an owners' corporation in strata management.

(Any discussion of governance and corruption has to grasp the idiocy of secret and partial operations. You don't know what is going on. Don't the RC crew ever go to the movies?)

Recommendation 18 relates to the **categories of persons who can make a 'protected disclosure'**. Protected disclosure laws rest on the view that secret business operation is ideal but those who rightly depart from the secrecy protecting their organization to report some corruption, should get state protection. Freedom of information laws, on the other hand, seek the opposite approach, which is that the information collected by the state ideally belongs to its people. Neither law works well if feudal producer interests drive.

In popular parlance the person who makes a **'protected disclosure'** (i.e. a disclosure protected under law which normally expects that business operations should be closed) is called a 'whistleblower'. Such a person is often made to suffer in silence, without incentive to tell any apparently inconvenient truth, mistaken or not. A spouse in court is a comparable example. Economic law also assumes the sanctity of the marital relations.

The concept of duty of care, is ideally related to the concept of duty to inform. Legal business practice has interpreted this as the provision of increasing reams of specialised product information, often to obscure, rather than to produce clearer, simpler, thought.

The truth is that anybody can point out what they think is corruption if they come across it, and will suffer the consequences depending upon the prevailing powers, in court or not. As an Australian woman I have no hesitation in the belief that knowing more, not less, protects us. I want the government funding operations to reflect democratic and inclusive logic as cheaply as possible, not by increasing the quota of legal snouts in the trough, public or not.

The question of the definition of a **'proscribed offence'** in **Rec. 21** is noted in this context.

Recommendation 23 refers to **prohibition on using organizational funds to assist election to office**. (The multiple uses available under the term 'office' in these recommendations is strangely confusing. It reminds me of the economists' equally confusing use of the word

'stock' in regard to fishing.) This appears designed to reduce all below financial operations and the confusion of numbers, in court if necessary, rather than in broader, clearer speech.

The above concerns relate also to **CHAPTER 3** entitled **REGULATION OF UNION Officials**. Note that concepts of dishonesty and its treatment ideally refer also to sections of the Corporations Act in this chapter. (See Recs. 29, 30, 32 and 33 for example. Recs. 32 and 33 appear to award driving powers to State Supreme and Federal Courts. Recs. 33-36 refer to court orders and raise the question of the definition of a proscribed offence. An offence should not need to be proscribed in law to give offence. If I insult a man for being a lawyer and he feels offended, for example, should he not logically have the same rights as any aborigine, Muslim or US citizen who takes offence under the heads of Australian anti-discrimination legislation? Such legislation works mainly for the rich who usually consider themselves above such nonsense unless they are key lawyers and their related acolytes. Try more open and honest media related approaches to any problems on the ground instead. To link a problem to a particular law and it's prescriptions to deal with it is to lie remotely.

CHAPTER 4 is entitled **CORRUPTING BENEFITS**. This is unclear and its insertion into law is unlikely to make it clearer. The title '**key administrative procedures to avoid corruption,**' would have lent itself to more clear and more open behavioural requirements and to related regional points of action, in order to come to some judgment on troubling matters. The identification and treatment of a '**prohibited benefit**' is ideally conducted in this more broadly informed context on the particular and related key grounds. The title and approach in this chapter should demonstrate the public or other interest in any action or proposed action, rather than attempting to label and rate benefits as corrupting to some degree, according to some standards, through references with totally opaque meanings and effects.

CHAPTER 5 entitled **REGULATION OF RELEVANT ENTITIES** *appears crucial in differentiating between funds which an employer may have paid towards an election fund and the proposed requirements for national registration of 'worker entitlement funds' with ASIC.* The Fair Work (Registered Organizations Act 2009, the Fair Work Act 2009, the Fringe Benefits Tax Assessment Act 1986 and the Corporations Act 2001 are referred to in this key context. Recommendation 47 also refers to insurance. Is this a state regulated matter?

CHAPTER 6 entitled **ENTERPRISE AGREEMENTS** suggests in **Rec. 48** that the Fair Work Act 2009 should require an organization that is a '**bargaining representative**' (?) to disclose financial benefits as a consequence of the operation of the terms of a proposed enterprise agreement. **Rec. 49** forbids an enterprise agreement '*requiring or permitting contributions for the benefit of an employee to be made to any fund (other than a superannuation fund) providing for, or for the payment of, employee entitlements, training or welfare unless the*

fund is a registered worker entitlement fund or a registered charity'. Rec. 51 suggests repeal of certain sections of the Superannuation Guarantee Administration Act (1992). So what?

As noted earlier, **CHAPTER 7** entitled **COMPETITION ISSUES** is a total mystery to me and I won't be alone in this. **CHAPTER 8** is entitled **BUILDING AND CONSTRUCTION INDUSTRY**. **Rec. 61** calls for a building and construction industry regulator separate from the Office of the Fair Work Ombudsman, with the role of investigating and enforcing the Fair Work Act 2009 and other relevant industrial laws in connection with building industry participants. **CHAPTER 9** deals with **RIGHTS OF ENTRY** and **CHAPTER 10** with the Royal Commission Act.

This appears to be a comparatively unclear, closed, expensive and insufficiently grounded approach to any welfare and development, including issues of governance and corruption. What do others who are not lawyers think about it? (You won't find many at upper levels.)

Cheers, Carol O'Donnell