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Daily Media Overview

Australian Government
Attorney-General's Department

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Albanese out manoeuvred by Setka

Australian Financial Review, Australia, General News, Jennifer Hewett 23 Jul 2019

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View original - Full text: 921 word(s), ~3 mins

Audience

38,015 CIRCULATION

Keywords

Attorney-General(1),Christian Porter(1)

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Showdown brewing over union ban laws

The Australian, Australia, General News, Ewin Hannan 23 Jul 2019

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Australian Financial Review, Australia

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Page Two Jennifer Hewett

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But what's really going to cause Labor grief is the restoration of the "ensuring integrity" bill aimed at cracking down on rogue union officials, lowering the threshold for union registration and imposing a public interest test on proposed union mergers.

The most obvious target is the Construction, Forestry, Mining, Maritime and Energy Union. The other big target is Labor.

Anthony Albanese and Scott Morrison are actually in vehement agreement about the egregious behaviour of John Setka, secretary of the Victorian branch of the CFMEU.

Setka is the most notorious union official in the country due to his intimidating tactics and regular convictions for illegal behaviour by the militant building division.

One of Albanese's first acts as Labor leader was the attempt to immediately force Setka out of the Labor Party.

Yet not only has Albanese's move to expel Setka been foiled, perhaps permanently, Setka's power in the CFMEU has only been strengthened since the election.

"He's back - better and badder than ever," says one ALP figure. That's despite calls from the ACTU secretary Sally McManus last month for Setka to stand down from his union position in the interests of the broader union movement.

There are even suggestions Setka's support is such he could end up forcing out Michael O'Connor as national secretary of the powerful CFMEU in favour of a more reliable ally.

This might not lead anywhere, but O'Connor's dominance is much weaker as he faces internal assault and union tensions.

As a firm backer of Bill Shorten, O'Connor provided big money for the ALP and numbers at national conference.

But his continued power was highly reliant on the advent of a Shorten government and the promised abolition of the Australian Building and Construction Commission.

Labor's election drubbing has radically changed internal union politics, compounded by the fading numbers and influence of the forestry division that is O'Connor's base.

Former builder's labourer Setka, in contrast, can rely on strong support from the members of the construction division in Victoria.

Some in the union are arguing for the folding of the forestry division into construction by year end. Labor insiders are also being warned there will be no more CFMEU money for the party while Albanese is leader.

Last month's resignation of Setka's former deputy, Shaun Reardon, has also backfired in terms of any pressure on Setka's leadership – along with Albanese's ambitions.

The trigger for the internal implosion and Albanese's move was media coverage of disputed comments Setka was said to have made, suggesting the impact of anti-domestic-violence campaigner Rosie Batty had reduced men's rights.

Setka insisted his comments to the CFMEU national executive were taken out of context but at the time he was also about to plead guilty to charges of harassing a woman, his wife, Emma Walters.

Albanese, keen to differentiate himself from Shorten's leadership and constant Coalition attacks on Labor's willingness to do CFMEU bidding, seized on this.

The ALP leader then expanded his rationale for ousting Setka to include his history of law breaking and threats of violence "bringing the party into disrepute" over many years.

But the broader union leadership split over the ACTU demand for Setka to step down.

Albanese's adamant assertion in late June that Setka would be "gone on July 5" in an "open and shut case" now looks a massive error of judgment – or at least of shifting union allegiances in the wake of Labor's loss.

It was based on initial legal advice that Labor's national executive (which includes Michael O'Connor) had the ability to expel Setka, underpinned by the informal expectation Setka would not fight anyway.

None of this went according to plan. Setka declared his intention to challenge his expulsion in court, his wife publicly and passionately backed her husband after his guilty plea, while Labor received confidential new legal advice raising doubts about the authority of the national executive to force him out.

This not only leaves Albanese in a political pickle. It reveals the weakness of the ACTU and its secretary in countering the wishes of a powerful union and a "rogue" union leader.

And it makes Setka the symbol the Coalition will rely on to bolster support for its bill and criticisms of Labor for its association with "the ugly face of union thuggery".

The new bill is a revised version of changes the Coalition government has been trying to get passed for two years to deal with repeat offenders in the union movement and insert a public interest test in future union amalgamations.

Despite the urging of employer bodies like the AMMA resources and energy group, the Coalition did not test the numbers in the Senate in 2017.

This allowed the merger of the CFMEU and the Maritime Union of

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But Attorney-General Christian Porter is intent on securing the bill's passage in the new Senate after changes to equate the treatment of unions and officials with rules applying to employer groups, corporations and directors.

The bill has gone to a Senate committee for review until October. Albanese's dilemma over the staying power of John Setka will take much longer to fix. The moral, according to one Labor insider? Don't wound what you can't kill.

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Showdown brewing over union ban laws

EWIN HANNAN
WORKPLACE EDITOR

Attorney-General Christian Porter has backed the most contentious elements of proposed laws to make it easier to ban union officials, as the ACTU considers complaining to the International Labour Organisation.

Unions have attacked a provision of the Ensuring Integrity Bill which allows any person with a sufficient interest to apply to the Federal Court to have a union official disqualified.

ACTU president Michele O'Neil said the bill would allow "disgruntled employers, lobbyists and politicians to seek to deregister unions and disqualify mostly volunteer office holders for even minor civil breaches".

But Mr Porter backed the provision: "We're open to engagement but that seems an entirely reasonable provision. What we are establishing is that people with serious criminal offending and serious repetitious breaches of the very industrial law they are meant to observe should not be able to be elected officials of a registered organisation. That, to me, seems a complete no-brainer."

Research for the ACTU prepared by the International Centre for Trade Union Rights found the bill created sweeping powers for interfering in trade unions, laws which were incompatible with Australia's commitments under the ILO's Freedom of Association and Protection of the Right to Organise Convention and the Right to Organise and Collective Bargaining Convention.

Maurice Blackburn employment lawyer Kamal Farouque said the "extraordinary" bill imposed onerous obligations on unions, contrary to ILO conventions.

"It seems inevitable, if this became law, it would be the subject of a complaint to the ILO," he said

"The government's position might be it just doesn't care about that kind of scrutiny but I would have thought it's important for Australia to be compliant with international standards."

Union sources said the ACTU was likely to pursue an ILO complaint. The bill would also be subject to a Senate inquiry.

Mr Porter said the bill was consistent with Australia's international obligations and did not contain provisions that would detract from the ability of unions to represent workers: "What they're arguing is it interferes unreasonably with internal democratic processes of a union ie putting limitations around who they can or can't elect as a public official.

"If someone with the track record of offending such as John Setka offended in such a way in the future, and any government had a reasonable law to say that person is not a fit and proper person, it can't reasonably be considered that interferes with the internal democratic processes of a union."

The bill is expected to be debated in the Lower House tomorrow.

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EDITORIAL

Who really needs to be protected?

WHO would have thought a celebrity chef could inadvertently throw a bucket of cold water over the Coalition's bid to ram through the most comprehensive suite of industrial reforms since WorkChoices?

That's what happened last week when it was revealed *MasterChef's* George Calombaris underpaid 515 employees more than $7.83 million between 2011 and 2017.

The case refocused attention on the many instances of serious wage theft in the past decade. Recent offenders include 7-11, Pizza Hut, Domino's, Red Rooster, Caltex and Baiada. The power imbalance between employers and their victims was highlighted in an ACTU submission to a Queensland government wage theft inquiry in 2018. It said 25 per cent of all international students earned $12 an hour or less and 79 per cent of hospitality employers in Victoria did not pay award wages between 2013 and 2016.

Sham contracting, unpaid superannuation contributions and the denial of overtime payments, shift allowances and other loadings were just some ways workers were being ripped off.

While none of this comes as news to anybody who takes an interest in workers' rights and welfare, the re-ignition of this debate is the last thing Scott Morrison and his Industrial Relations Minister, Christian Porter, need while they are trying to drum-up crossbench support for their "Ensuring Integrity Bill". The bill has been roundly attacked as yet another attempt by the LNP to indulge in some serious union busting.

The bill would allow for the automatic disqualification of union officials charged (but not yet convicted) with serious criminal offences punishable by five or more years in prison. It would also allow the Fair Work Commission to block union mergers and make it possible for the government to cancel a union's registration on the basis of alleged improper conduct. The exposure of what appears to be systematic underpayment by employers makes it hard for employer groups, and the Coalition, to plausibly suggest corporate Australia needs extra protection against organised labour. Cases such as these raise questions about who needs to be protected from whom.

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