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Daily Media Overview



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PIPER-PAYING UNIONS ENSURE LABOR SINGS TO THE TUNE

Ensuring Integrity and Proper Use of Worker Benefits are sensible bills

JUDITH SLOAN

CONTRIBUTING ECONOMICS EDITOR

If you were in any doubt the Labor Party is a wholly owned subsidiary of the trade unions, the events of the past parliamentary week would have dispelled your doubts.

ACTU president Michele O'Neil was camped out in Parliament House, available for continuous media commentary and effectively issuing instructions to obedient Labor parliamentarians.

Note that O'Neil is a career unionist who ran the completely inconsequential Textiles, Clothing and Footwear Union of Australia, which is now part of the Construction Forestry Maritime Mining and Energy Union.

What is infuriating O'Neil and other union leaders is the Ensuring Integrity and Proper Use of Worker Benefits bills, which the government has introduced to the house. They are routinely

described by parts of the media as "union busting". Actually, these bills contain a series of sensible amendments that should become law as soon as possible.

Needless to say, Labor parliamentarians in general, and opposition industrial relations spokesman Tony Burke in particular, are toeing the union line by voicing their complete opposition to the bills.

When the name of John Setka of the CFMEU was mentioned this week, Burke batted the issue away by stating the new law would be prospective and so wouldn't affect him. Mind you, this assumes that Setka decides to abide by the law in the future.

Burke then used the silly example of nurses undertaking unprotected industrial action over patient-staff ratios as the basis for

the possible deregistration of the nurses union. Had he bothered to read the legislation, he would have learned the example he gave

would not constitute the basis for deregistration by the Federal Court.

By way of background, both bills are amendments to the Fair Work Act. They can be traced back to the Heydon Royal Commission into Trade Union Governance and Corruption's final report, which was issued in 2015.

Consider first the Ensuring Integrity Bill. It introduces a public interest test for amalgamations of registered organisations. Had this been in place before the proposed merger of the CFMEU, the Maritime Union of Australia and the TCFUA, it is unlikely the merger would have been approved.

The bill also provides for the Federal Court to prohibit officials from holding office in certain circumstances or if they are otherwise not a "fit and proper person". The decisions are all subject to appeal. There are also some new criminal offences that will lead to the automatic disqualification of officials.

Industrial Relations Minister, Christian Porter said "registered organisations (trade unions and employer associations) are there to look after their members' interests. When that objective is lost it is important that our courts have the powers they need to impose appropriate sanctions."

The trade unions' objections to the Ensuring Integrity Bill have come thick and fast, including the supposed abuse of human rights laws, the possible violation of international labour conventions and the purported uneven treatment of companies that breach the Corporations Act relative to the provisions contained in this bill.

The big picture here is the regulation of registered trade unions (and employer associations) is a matter of public policy interest because they need to be held

accountable to their members. The reality is this accountability is currently generally very weak.

Elections for the positions of union officials are often uncontested — the incumbents typically make it very difficult for rival candidates. And few sanctions for inappropriate behaviour by officials

exist in practice. Union members often have only two choices: stay with the union and put up with bad behaviour, or resign.

The law makes it nigh impossible for rival trade unions to set up because of the "conveniently belong to" rule.

What this means in practice is there is effectively no competition in the market for union membership that might otherwise induce more responsive and better standards of behaviour by union officials.

When it comes to the Proper Use of Workers Benefits Bill, there is also a very clear case for major reform to ensure the income from funds that are specifically established to meet redundancy, long-service leave and other worker benefits accrue to the members (the workers) and not the sponsoring bodies, most typically a trade union and employer association.

The issue of worker entitlement funds was covered in the Heydon royal commission where it was noted these funds are particularly common in the construction industry.

There are several funds, including the Building Employees Redundancy Trust in Queensland; Incolink, which operates several redundancy and sick leave funds for construction workers in Victoria and Tasmania; and the Protect scheme, which operates a redundancy fund for electricians in Victoria.

Protect has been in the news



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recently because the trustees decided to return virtually all the capital (\$30 million) to the Electrical Trades Union and the National Electrical and Communications Association. The ETU received the lion's share of the distribution.

The trustees claimed the threat of the Proper Use of Workers Benefits Bill becoming law was sufficient reason to distribute the capital, pointing out the ETU and

NECA had guaranteed that benefits to workers would be met.

The reality of most worker entitlement funds is that employers are effectively forced to pay into them on a basis specified in enterprise agreements, but the workers are entitled to receive in return only the money that is contributed on their behalf. The earnings of the funds are distributed to the sponsoring bodies, typically a trade union and employer body.

There are many problems associated with these funds, including the one noted above, but also that they are not subject to any mandatory disclosure. There is no requirement to disclose the commissions and other payments made to the sponsoring bodies. Workers are not even always made aware of their entitlements. There have been instances where entitlements have been denied to non-unionists.

What the Proper Use of Workers Benefits legislation seeks to do is ensure these worker entitlement funds are registered and are subject to proper standards of governance and disclosure.

It also will become illegal for

employers to be forced to contribute to particular funds.

It is completely understandable why trade unions (and some employer bodies) might oppose these new laws. Not only are there no effective breaks on standards of behaviour, there is also a great deal of money flowing under the table by virtue of the monopoly position of these worker entitlement funds.

Recall here that trade unions and employer bodies are both tax-exempt.

Labor may decide it's preferable to side with workers rather than protected union officials and vote for these bills.

But given the flow of funds from unions to the party — measured in many millions of dollars donated by the CFMEU — I won't be holding my breath.

And just on the topic of the underpayment of wages by certain employers, including high-end restaurants, a key question is: what were the unions doing to identify the problems and seek rectification?

Leaving it to a government agency tells you a lot about the priorities of the trade unions.

Members often have only two choices — stay with the union and put up with bad behaviour, or resign



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Lambie puts the screws on Setka

Peter Hartcher



The Morrison government is edging closer to winning the support it needs for two new laws to crack down on the trade union movement. If it succeeds, unions everywhere will be able to give credit to the ugly face of the trade union movement, John Setka, and his mates at the CFMMEU.

The behaviour of Setka and his clique over some years now is indefensible. Morrison's Attorney-General and Minister for Industrial Relations, Christian Porter, summarised Setka's criminal record in the House this week: "John Setka has, to this point, amassed about 59 court convictions for a multitude of offences, including: assault police, five times; assault by kicking, five times; wilful trespass, seven times; resisting arrest, five times; theft, attempted theft by deception and intent to coerce, nine times; coercion, 10 times."

And then there's his record of conduct that is not criminal but socially offensive, including his use of his young children to hold a sign telling the construction industry watchdog to "get f...ed".

Labor leader Anthony Albanese certainly isn't defending it – he's trying to have Setka expelled from the Labor Party. The final straw was Setka's reported comments that Rosie Batty's campaign against domestic violence had reduced men's rights. Setka said he was quoting lawyers and taken out of context but it didn't matter to the new Labor leader. After years of Bill Shorten tolerating Setka, Albanese was sending a strong signal when he announced: "I don't want him in the party I lead. It's that simple." Setka is now fighting him in the courts.

But the government is manoeuvring to put Albanese into the exquisitely awkward position of having to defend Setka. Because it's presenting its new

laws as an action to purge the militant thug from his post as Victorian secretary of the construction division of the giant CFMMEU, the Construction, Forestry, Maritime, Mining and Energy Union. And while Albanese wants to get Setka out of the party, he will oppose the government's proposed laws to get him out of the union. The deputy Nationals leader, Bridget McKenzie, this week previewed the attack: "I'm really looking forward to Anthony Albanese explaining" that he was "supporting the expulsion of Mr Setka from the Labor Party but not supporting legislation that would actually make it happen".

Of course, the government's bills are far bigger and broader than merely targeting Setka. The so-called Ensuring Integrity Bill would ease the way to removing miscreant union officials and deregistering entire unions. In other words, it would allow offending unions to be abolished. A drastic step? Yes, but it would not be the first time – the Hawke government supported deregistering a forerunner of the CFMMEU, the Builders Labourers Federation, in 1985 for consistent law-breaking and thuggish behaviour.

But today's Labor Party has closed ranks to protect the unions against the government. When Labor's parliamentary caucus met on Tuesday formally to decide its position, the recommendation to oppose all the government's proposed measures was accepted without any debate.

Porter will bring his bills to a vote in the House next week, applying maximum pressure on Albanese. The Labor leader has been criticised for yielding to the government on a range of proposals including tax cuts and terrorism laws, but this is one matter where Albanese dare not yield.

He will continue to demand Setka's expulsion, the sooner the better, but he will defend the rights of the CFMMEU and the wider union movement to the end. The union movement will not tolerate anything less from its

parliamentary wing.

Expect more rhetoric like this from the government: Albanese had decided that

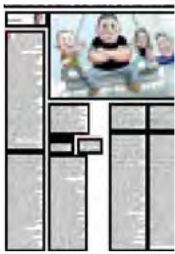
"militant unionist John Setka is not a fit and proper person to be a member of the Labor Party", said Porter this week, "but, interestingly, the same remarkable record of offending has not also given rise to a view from the Opposition Leader that it is not fit and proper for Labor to accept the \$1 million that John Setka sent to Labor as a Victorian branch secretary."

"What we have here is a situation where the character of John Setka is now rejected fulsomely by Labor, but his cash is still warmly accepted – as much of it that can flow as possible."

In the face of Labor opposition, the government will need the support of the crossbench senators in the upper house to get its way. The new Senate is much more manageable for the government than the old. Where Labor and the Greens join to block it, the government need win over only four of the crossbench. And it's tantalisingly close already. On its union bills, the government already counts the two votes of Pauline Hanson's One Nation, and the vote of Senator Cory Bernardi. That means it need convince only Tasmania's Jacqui Lambie to support it to make the bills law. Or one or both of the South Australian senators of the Centre Alliance, the legacy of Nick Xenophon.

Jacqui Lambie is disgusted by Setka's conduct and has told him so face-to-face. She wants him out of his leadership job at the CFMMEU and she's using this

opportunity to apply maximum pressure. She confirms the account that *The Financial Review's* Phil Coorey reported this week. That is, Lambie told the president of the peak union body, Michele O'Neil of the ACTU, that "you got a problem with the IR [industrial relations] bill and it's called John Setka". Lambie says that if Setka clings to his job at the CFMMEU, she will be "more likely" to



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vote in support of the government's bills. In other words, is Setka so determined to save his job that he's prepared to expose the entire union movement to a government jihad?

She takes the pressure further. "Every day John Setka is in the job is another day he's doing irreparable damage to the reputation of the union movement and its workers," she tells me. "I know people are worried about union-busting bills – so am I. But as long as he refuses to go and the leadership of the union continues to pussyfoot around without carrying out disciplinary action, we will see bill after union-busting bill and they will use John Setka as a battering ram. "There is a window of opportunity for John to put the interests of workers first but that window is closing fast."

Note Lambie's position is not a clear trade-off or a firm undertaking. It's a threat. She might yet jump either way. As Lambie herself has put it, "politics changes more than what you would change your undies". She might ultimately be swayed by the way that Labor negotiators plan to put it to her: "Are you prepared to sacrifice the interests of workers everywhere just to get John Setka?"

Another of the potentially pivotal votes in the Senate, the Centre Alliance's senator Rex Patrick, takes a more systemic approach. He's not targeting Setka, he says: "Setka is but one person and therefore we are not weighing that as a factor in our thinking. In all law, you want to target misconduct, not one person."

But it is clear that Centre Alliance is targeting the CFMMEU's extraordinary record of lawlessness. Patrick says: "We have certainly paid attention to the judicial rulings against

the CFMMEU and the remarks that judges have made in decisions.

"We don't want to bring heavy-handed penalties against union officials because we respect the work that they do. But when you have judicial officers saying that they have concerns that the CFMMEU considers that court fines are simply the cost of doing business, you have to make changes. We want unions to operate and perform the very good

function that they do, but they have to comply with the law when they do so."

The Liberal Party was traumatised by the Howard government's defeat at the 2007 election, which was partly due to Howard's disastrous overreach on WorkChoices laws. The Liberals have been very ginger in dealing with workplace law ever since.

Morrison and Porter are attempting to get beyond the post-Howard trauma and take the unions head-on. Setka gives them the morality play to set up their case. And the CFMMEU provides the bigger, institutional case study in demonstrating why action is needed.

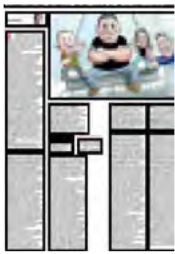
The Centre Alliance senators are not ideologues or rabid conservatives. They are responsible centrists. It's not just that Setka's conduct is intolerable. It's that a union would tolerate it. And that Setka's blatant disregard for the law is merely a subset of systematic lawlessness that is the CFMMEU.

"We are working closely with the government," Patrick says. Centre Alliance's main demand is that penalties to be imposed on unions and union officials are comparable to those imposed on corporations for similar misdeeds. Negotiations with the government turn on this comparison.

But while the government will get its bills through the House next week and press for a speedy vote in the Senate, Centre Alliance is not prepared to rush it. The bills have gone to a Senate committee for detailed work. "Our preference is that the committee run its course and we deal with this in October," Patrick concludes. In the meantime, the pressure will build. On Setka. On the CFMMEU. On the entire union movement. And on Albanese.

Peter Hartcher is political editor.

*Jacqui Lambie
is disgusted by
Setka's conduct.*



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