

## Industrial Relations Reform in the NSW Public Sector

Thank you for inviting me to present this paper at the Society's 28<sup>th</sup> Conference.

Some may say that the title of this paper: '*Industrial Relations Reform in the NSW Public Sector*' is an oxymoron! Ever since the election of the Carr Labor Government in 1995, the NSW unions have flexed their muscles and showed it is they who hold the real power in the NSW Labor Party.

The first real display of this was in 1997 when Mr Carr and his Treasurer, Michael Egan, proposed the privatisation of the electricity industry; only for the NSW Labor Council (as Unions NSW was then known) – and in particular the Electrical Trades Union (ETU), whose Secretary, Bernie Riordan, is now the President of the ALP – to run a vicious campaign against it. The unions won... and proposed privatisation of anything in NSW has not seen the light of day since.

Messrs Carr and Egan meanwhile have moved on from politics, and Morris Iemma, who was handpicked by Sussex Street to take the premiership despite being unknown by 99% of the population, would have been expected to simply tow the Party line. Indeed, he promised during the March 2007 State Election that a Labor Government would not reverse its policy on privatisations, and as of October 2007, it is estimated that there are close to 1 million persons (approximately 10% of the labour force) is on the public payroll in NSW. That's an awful lot of taxes which are therefore needed to pay these employees.

So given that the unions control the government and have made sure that State entities have been shielded from commercial realities, it goes without saying that good industrial relations practices also few and far between.

I looked at a sample of public sector enterprise agreements and Awards on the NSW Industrial Relations Commission (NSWIRC) website recently, and even a cynic like I was surprised by just how bad the situation has become.

The *Energy Australia Award 2004* provides for a 36 hour week, up to 20 days sick leave per annum, 50% additional long service leave, accident pay (which discourages returning to work from injury), 12 weeks paid parental leave (with a right to request up to 24 months unpaid leave) and a right to 12 month sabbaticals (career breaks). Worst of all, the average salary level under this Award is \$80,000 with ranges up to \$120,000. Compare this with average salaries in the private sector for electrical contracting, where the best salaries for field staff in Sydney are in the range of \$75,000-\$85,000.

This ludicrously generous pay structure is also reflected in the apprentice wages which are approximately 30% higher than would be expected in the market.

Interestingly, this Award requires Energy Australia (a electricity retailer in NSW) to make its superannuation payments into the Electrical Industry Super Scheme (EISS) which looks and sounds just like any other industry fund. However, on closer inspection, things actually look far more sinister. The board of EISS is comprised 50% of representatives of the ETU and 50% from the electricity utilities. Remembering that the utilities are all NSW Government controlled, the practical outcome is that the board of EISS is completely controlled by the ETU.

Unsurprisingly, the fund reinvests its members' funds into a master fund managed by Chifley Financial Services, which takes a cut of the interest earned on behalf of members (just like any funds manager does). However, Chifley is a wholly owned entity of the NSW ALP!

So if Chifley had only \$1 billion under management (which is not very much by Australian superannuation standards) and took just a 2% cut on annual earning, it would be raising approximately \$1 million per annum for the ALP. Chifley undoubtedly though makes much more than this though.

No wonder the Liberal Party complains that it gets outspent 4-to-1 by the ALP during election campaigns!

This is a separate scandal in itself and is a sidetrack from the central thesis of this paper, but it is an interesting point to note nonetheless that the system of enterprise bargaining in the NSW public sector has become so institutionalised and so corrupted that the system doesn't even try to hide anymore that they are diverting people's life savings to fund their political campaigns, and almost none of the individuals affected know; and even if they did, there's almost nothing they can do about it.

But back to the topic: the Energy Australia Award is just the first of many examples of the bloated and overpaid public service that exists in NSW. I was simply astounded by how many more such examples I found.

The Integral Energy and Country Energy – the other two State electricity retailers – had almost identical enterprise awards to the Energy Australia one. There are also the electricity generators: Eraring Electricity, for example, prescribes a 35 hour working week.

Then there is Sydney Ferries, whose enterprise agreement provides for five weeks annual leave and five additional weeks of 'Leisure/Maritime Leave' (whatever that means.) That's effectively 10 weeks of holidays in total per year! Yet despite all this leave, a trainee wharf hand will earn an annual salary of \$32,000 before overtime. Compare that with an apprentice plumber, who earns approximately \$15,000 in their first year – and that's in a skilled trade. A fully qualified wharf hand can expect up to \$75,000.

Perhaps you are thinking that these rates are particularly high because of the cost of living in Sydney. Well, the Newcastle State Transit Authority Ferries agreement pays similar or the same rates too. So in a place like Newcastle, where one can still buy a three-bedroom house for under \$400,000, you can earn \$75,000 just for throwing a bit of rope onto a pylon.

A further example is Hunter Water. Again, this entity covers the Newcastle region, and again, the employees are only required to work a 35 hour week. Hunter Water's electricians earn \$75,000 (before allowances and overtime) which places them at the top of the pay scale for electricians in the Hunter region private sector. Even unskilled warehouse labourers are on up to \$50,000, which is more than the median average Australian income.

This analysis is based solely on those agreements and awards which are publicly available. Worse still is the knowledge that there are hundreds of management employees at all these entities who are on similarly ludicrous wages, yet information on their pay and conditions is beyond the reach of anyone outside the Parliamentary chambers.

The problem with all this extravagance is firstly, the waste to ordinary taxpayers. This means the NSW Government has to raise taxes (which they have been very good at) to fund the extravagance. A higher comparative tax burden naturally leads business to either move to other states or overseas, and this further worsens the tax/spend spiral as jobs are lost and welfare is needed.

Secondly, just as governments that run budget deficits crowd-out private investment because they create a shortage of liquidity, similarly government who overpay their employees cause a crowding-out in the labour market.

I would be a millionaire if I got a dollar for every employer I have met who complains how hard it is for them to keep their best skilled employees when those employees can work for a public entity for the same money and less hours.

As we all know from the world's experience with communism, the state can and does cause a great deal of damage to the entrepreneurial spirit – a spirit which is ultimately the chief driver of increased living standards.

Of course, most unions and unionists do not understand this. Almost none have ever worked in the real world and fewer still have ever actually been involved in running or owning a business. Many also sadly came to the union movement from deeply held ideological convictions rooted in the Marxist-Leninist-Stalinist tradition, so their eyes are total closed to the truth. It therefore comes as no surprise that we have finally reached crisis point for public infrastructure in NSW. After twelve years of zero investment, hidden by creative accounting and necessitated by an unwillingness to cut spending to balance the budget, it has become apparent to all and sundry that nothing in NSW works anymore.

In the wake of this year's State Election – in which Labor was returned with a barely dented majority – the government was suddenly forced to start facing the facts.

On 11 July 2007, the *Sydney Morning Herald* reported that Bret Walker SC has been appointed to hold an enquiry into why Sydney Ferries had lost 1 million passengers since 2001. That's right! Sydney Ferries has been in decline for six years, but nothing has been done until now. The Herald report continued that costs at Sydney Ferries had ballooned by 46% since 2001, causing them to skimp on maintenance and delay the introduction of newer, more comfortable vessels.

What a surprise! The State-owned corporation that gives all its employees 10 weeks of annual leave and pays some wharf hands \$75,000 has had its costs blow out by 46%. Shock horror. Do they really need to pay Mr Walker SC to investigate why?

This story seemed to set off a chain reaction of debate over the following weeks and months, directed towards the state of all public assets in NSW. Following yet another train derailment – this time in the middle of the Harbour Bridge – in which it took emergency crews four hours to rescue a wheelchair bound passenger, RailCorp Chief Executive, Vince Graham, hit out at the "lack of a proper maintenance culture" that was undermining his organisation. Mr Graham directly blamed the unions and his maintenance staff and prescribed privatisation as the only long-term solution.

For his efforts, Mr Graham was criticised by the Minister for Transport, John Watkins MP, and the usual coterie of union officials. The State Secretary of the AMWU, Paul Bastion, said that Mr Graham has a management style that is "too aggressive", as though this is a bad thing.

The following day an amazing thing happened: the *Daily Telegraph* ran a story claiming that the Lemma Government had a secret plan to privatise the maintenance of RailCorp. Not only was it amazing that a Labor Government proposed such a course of action, but the alleged architect of the plan was the new Treasurer, Michael Costa MLC, who was a Trotskyist in his university days.

The fact that this was being proposed shows that even the ALP has come to realise that their system is totally rotten to the core. On 16 July, just four days after Mr Watkins had rebuked Mr Graham from daring to suggest the maintenance should be privatised, Mr lemma went public in support of this plan by saying this was now “the last chance” for the unions to discuss the privatisation plans before he would be implementing them. But still, the Rail, Bus & Tram Union (RBTU) and AMWU threatened war if they did not get their way.

The Australia Services Union (ASU) and Maritime Workers Union (MUA) followed suit the following week over suggestions that privatisations may spread to Ferries. The same day, the United Services Union (USU) and ETU also joined the fray; curiously claiming that 900 call centre jobs in Western Sydney would be lost if the electricity supply was privatised and threatened sympathy strikes at Integral Energy.

In other words, the message coming from Unions NSW was loud and clear: “press on and we’ll shut down the state in the middle of winter”.

But what was particularly curious about this was that it the first time electricity privatisation had been mentioned (even in passing) since the great Carr failure of the ‘90s, even though NSW remains the only State without private utilities within the National Energy Market (i.e. all states except WA).

This was followed on 19 August with a story by Linda Simalis of the *Daily Telegraph* outlining how privatisation in Victoria had resulted in lower prices for consumers. Clearly the Government was using the media to sugar-coat an announcement on electricity privatisation which the unions must have been aware was coming.

Sure enough, within days the NSW Government released a report prepared by Professor Anthony Owen, an engineer from Newcastle University, which recommended the complete ‘privatisation’ of all State-owned generation and distribution assets. This report was politically perfect for the Government. Prof. Owen even suggested how lemma could reconcile this with his election promise not to privatise –the assets would instead be ‘sold’ as 99 year leases –and specifically did not recommend any change to the current arrangements for power transmission, i.e. the poles and wires would stay in State hands.

So far, so good. lemma now seems to be ‘talking the talk’, but will he be able to do the walking? The pressure the unions will bring to bear may yet prove irresistible. The day after the release of the Owen Report, Unions NSW leaked data to the media which claimed that the ALP would have lost the March election had it been more honest about its privatisation agenda. This was then followed up with memo issued by the Premier’s Department in September ordering a ban on all pay rises beyond 2.5% and a crackdown on the use of flexi-time. John Robertson, Secretary of Unions NSW, said that the Government would have a “war on its hands” if it continued down this path.

I have focused a lot on this paper on the need for privatisation in NSW, which many may think has little to do with industrial relations reform. But this view is not accurate. On the contrary, I would argue that privatisation is crucial to industrial relations reform, as only privatisation can now deliver productivity gains to the NSW public sector as the Government has proven that it is incapable of otherwise extracting anything worthwhile from the same.

Not only have I already displayed the incredulous wages bill which public servants have been feasting off silently for some time now, but the NSW Industrial Relations system is now even more of a closed union shop than it ever was before.

We have talked *ad nauseam* at HR Nicholls Society conferences for years now about the disgraceful Occupational Health & Safety (OH&S) laws which operate in NSW that treat

employers like criminals and allow unions to profit from prosecutions which they cannot possibly lose – another example of a racket, similar to the one I previously discussed with superannuation. In a move to buy the silence of industry in the lead-up to the March election, Minister for Industrial Relations, John Della-Bosca MLC, commissioned Justice Stein to investigate the OH&S Act and report on any recommended changes. Employer hopes were high that reform was at last on the way and His Honour duly reported back to the Minister in February 2007. Yet as of the date of this paper, Mr Della Bosca still refuses to release the report.

It is now clear that the ALP never had any intention of changing the Act, despite the fact that the Act was amended to exempt emergency services workers – evidence that it knows how impractical its laws are.

Even before Work Choices, the NSW Industrial Relations Act was a disgrace. It was virtually impossible to make an enterprise agreement directly with employees without union interference. Now that, under Work Choices, all non-constitutional corporations are captured by the State system by default, a whole sector of the economy – primarily small, family businesses – have been locked away from the ability to make registered agreements. But even if they could, there is no ability to individually bargain.

The introduction of Work Choices saw the lemma Government suddenly find the vigour to make the system even worse still. Laws were passed in 2005 and 2006 to remove all State-owned Enterprises (SOEs) from the Federal system; in other words, shield them from the real world where under Work Choices there would be restrictions on the content that unions could bargain on and circumstances in which they could strike.

But of course all these changes have been deliberately framed to impact on Federal system employers via nefarious means. The *Industrial Relations Further Amendment Act*, which commenced on 1 December 2006, amended the OHS Act to make it a breach of OHS law to dismiss an employee because of injury or if the termination would amount to victimisation. The effect of this has been to reopen the door to unfair dismissal claims for employees who have otherwise been closed-off by Work Choices.

At the same time, the *Industrial Relations (Child Employment) Act* was enacted. This law is designed to find a way around Work Choices through the exemption contained in Section 16 of the same for any laws dealing with “child labour” to continue to be prescribed by the states. This was meant by the drafters of Work Choices to refer only to minimum working ages, such as Victoria’s restrictions on children below a certain age (13) performing any work, however NSW has used this loophole to pass laws dealing with employment of any person under the age of 18. The effect of this has been to require all Federal system employers to comply with any applicable State Awards in addition to the currently applicable Federal instruments. In some instances, these employers were never even bound by State Awards.

This has been a recipe for complete confusion and compliance nightmares. Employers now have to compare terms and conditions in both State and Federal awards, work out what is the more beneficial and apply those. As the legislation is retrospective to 27 March 2006 (the commencement of Work Choices), any ‘underpayments’ will need to be addressed and may well be quite substantial. The Master Builders in NSW recently told me that this backpay issue had cost their Group Training Organisation over \$500,000 – none of which can now be passed on their customers after such a long passage of time. One just wonders how great the liability of employers of large volumes of juniors, such as KFC or McDonalds, may have been.

If you thought Work Choices was complex, well now its twice as bad in NSW! It is no wonder that so many employers are crying out about the cost of compliance in the present IR system(s). I know that there are more employers who are not even aware of the dual obligations in NSW than are aware. Penalties will undoubtedly be harsh when they are caught out.

The great problem with all this, of course, is who wants to employ juniors anymore? Youth unemployment in NSW will only get worse, putting yet further strain on the NSW taxpayer and causing business to flee interstate or overseas.

NSW is a mess. Infrastructure is lacking. Nothing works. Trains regularly derail. Ferries have less passengers than OJ Simpson has friends, and virtually all public servants are massively overpaid non-performers.

The ALP appears to understand this and is belatedly 'dipping its toes in the waters' of reform, but it may be too little, too late if the ALP will not accelerate the pace of change. Sadly, its deep connections with the union movement – don't forget, the ETU State Secretary is also the ALP State President – may well limit reform to only the smallest of changes. It is completely unwilling to tackle the problem head-on by changing the IR and OHS acts for the better.

With the NSW Liberal Opposition being so completely hopeless and invisible, they cannot be relied upon to press for any gains. The task then is for us to convince the public of the case for reform and cause the media to press the lemma Government for change. No one else will do it.

The formulation is simple. Privatised more assets now and deregulate the labour market. The easiest way, whether we like it or not, is for lemma to submit and lay down in the path of Work Choices. This is required so that employers and employees alike have certainty, consistency and uniformity. However we all know this will not happen. Sadly NSW therefore seems destined to lag behind the other states for many years to come.

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