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SHADOW MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS  
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TO THE H.R. NICHOLLS SOCIETY  
ANNUAL DINNER  
SATURDAY 17<sup>TH</sup> APRIL 2010

**“FAIRNESS FOR ALL – THROUGH COMMONSENSE AND FLEXIBILITY”**

It is a great honour to be invited to provide this year’s dinner address to the H.R. Nicholls Society.

As a Tasmanian I am delighted to be able to make a small contribution to also honour the name of H.R. Nicholls a former editor of the “Hobart Mercury”- my local paper.

A paper which today breathlessly gives page one coverage to a left wing trade union official seeking Labor endorsement for the State election and relegates the bid by a Tasmanian Liberal Senator to become Leader of the Liberals in the Senate to a page 7 story.

The union official of course was never described as “left wing” even though he had invited that great exemplar of all things democratic to visit our country. You’ve guessed - yes it was Hugo Chavez - that frothing Marxist President of Venezuela.

On the other hand yours truly is continually described as “extreme right” because he associates with the likes of the H.R. Nicholls Society – a Society that is so extreme in

its right wing thinking that it opposed many aspects of Work Choices – oh that we had listened!

Usually when I rise to my feet to give a speech I am not overawed by the intellectual prowess of those looking at me. Yes, I give most of my speeches in Parliament and look directly at Labor Senators.

Tonight is different, very different and allows me to recognise you all and the role of the Society in providing a robust intellectual framework against which much of latter-day industrial/workplace relations debate has been based.

The change is marked. Even with the current claw back the parameters have been changed forever. And it was the courage of many of you in this room – like H.R. Nicholls – the courage to take a stand that has seen change for the good.

H.R. Nicholls had the courage to take on the group think of his era. His criticism of Justice Higgins (and isn't it a delicious irony that the Liberal Party and the likes of Peter Costello and Kelly O'Dwyer are now the traditional owners of the seat that bears his name) for his singularly inept attempt to protect the Labor Government from criticism – the Government that appointed him – was not only an important contribution to our common law. It also exposed the hypocrisy which is still rife today. You see Higgins was renowned for savaging employers and others from the bench – but woe betide to those who sought to return the compliment no matter how proper and polite. Some things just don't change.

In short can I salute the endeavours of the Society over the past 24 years – and the publication of the presentations made to it including one in 1992 provided by a young

lawyer who at the time never thought he might one day address the annual dinner as the Opposition Spokesman on Workplace Relations.

Certain snippets of that speech are quoted from time to time by those intellectual giants that today pass as columnists in the 21<sup>st</sup> Century version of the Mercury newspaper.

I wait with anticipation the coverage tonight's offering might receive.

Talking of the media - One of the most highly unionised workforces is in fact the media. Many journalists are members of their Union – a Union which campaigned heavily and donated heavily to Labor as acknowledged by the new thankful Labor Members in their maiden speeches after the 2007 election.

How often has a by-line or an interviewer acknowledged his or her membership of a Union to which they knowingly contribute because it helps the ALP at election time?

Yet they ask us to consider them as ethical professionals. It would be somewhat easier to consider them as “ethical professionals” if they willingly made such disclosures – especially when they dealt in matters Workplace Relations.

Now, for some reason workplace discussions always seem to centre around organisations. Like the Unions – who represent 20% of workers, or AiG or ACCI who would be lucky to have a similar coverage. Now Mr Rudd and Labor have made it clear they are only interested in big Unions and big business.

But who speaks for the 80% of workers and business people who have made a decision not to join a particular organisation. I see that as my challenge to ensure that the Coalition is their voice in the Workplace Relations space.

Now don't get me wrong the ACTU has an important and legitimate role to play. But it does itself no favours when it uses members' money to run advertising against a yet unannounced policy. The arrogance and contempt for members and their funds is astounding. Especially when it is acknowledged there is a substantial overlap between trade Union membership and Liberal Party voters.

Pre the 2007 election the Unions polled their own members and discovered that in sectors such as Finance and Nursing well over 50% voted for the Coalition in 2004. So how does a body that has a majority of its members voting Liberal donate solely to Labor? Well that's a topic for another day.

Business organizations also have an important role to play. But how on earth is it in their members' interests to call on the Opposition to roll over and pass Labor's attempts to emasculate the Australian Building and Construction Commission? That's a topic for another day as well.

Suffice to say – the big organizations while playing an important role are sometimes disconnected from their membership let alone the 80% of their potential membership which don't even join.

My aim for Coalition Policy is to put people first – especially “the forgotten people” to borrow a phrase.

Those people whose organizations ignore their best interests. Those 80% who don't even bother joining. And they all – workers and business operators alike want a workplace relations scheme that actually serves their interests.

Now, it is standard practice for parliamentarians, when being asked to address an auspicious occasion such as this, to research the words spoken by former speakers

especially from one's own side of politics. This is to ensure we don't say something that has already been said before.

So, when undertaking this task in preparation for tonight's address, I noticed that the Leader of the Opposition, Tony Abbott, has previously addressed the Society.

In the interests of ensuring the future of my own personal employment relationship, I thought it prudent to study his contributions. And, for the record, they were outstanding and soundly constructed efforts! (I've asked my staff to send Tony a copy of my speech).

One particular passage in a speech the Leader delivered in 2001 stood out significantly. It is, when contemplated for even a short length of time, remarkably insightful and has turned out to be eerily prescient.

This is what he said: *"When union officials such as Sharan Burrow talk about "good faith" bargaining and partnerships in the workplace, they mean cooperation between bosses and unions, not between managers and individual workers... This generation of union officials are bureaucrats rather than activists and would far rather legislate for de-facto compulsory unionism than do the hard yards "selling" the benefits of membership. Under these circumstances, the HR Nicholls Society would not be concerned about the slow progress of reform but with workplace relations rollback."*<sup>1</sup>

This was from 2001 and, notwithstanding the great deal of legislative water that has flowed under the industrial relations bridge since that time, it is startlingly accurate.

Tonight I would like to use my Leader's passage as the basis for making some observations about the current state of the workplace relations system and the debates surrounding it. Before I start though I should indicate that although I have

had some passing involvement in workplace relations legislation, I am nowhere near attaining the depth of knowledge held by many of you in this room.

I am learning but remain bemused when some people fall into what I call “IR speak”. For example when I asked a stakeholder recently when they first practised in the IR field, they said “that was back when you could still do a 170LK.” I was oblivious to the fact that time can be measured by references to a legislative provision. And don’t ask what a 170LK was – I figure it’s no longer relevant.

Or during a recent trip to NSW, I discovered that you can categorise the behaviour of a person using the phrase “181(2) (c)” which, as I now understand, means actions that are frivolous and vexatious. I am therefore doing my best not to become fluent in the language, but at least to understand it.

But back to those thoughts with reference to legislating for de-facto compulsory unionism.

It is clear that this is exactly what the *Fair Work Act* seeks to do. It is obvious to all as to how this legislation goes about doing this.

The privileged seat at the bargaining table - given to unions. Along with expanded rights of entry, and the automatic right of appearance before Fair Work Australia are just a few examples. Trade unions, their rights and future prosperity, are front and centre of this Act.

The Australian Industry Group has noted that the new laws contained over 60 new rights for unions and virtually none for employers.<sup>ii</sup>

So the question I ask is - why has the Government done this? Is it its commitment to “fairness”? Or is it because the trade unions not only fund Labor, but act as its de

facto pre-school providing a pathway to safe political tenure after completion of the required training? Unions and Labor depend on each other to survive. And like any relationship of dependency, there is an inevitable cost.

One cost is the narrow range of individuals that come to make up Labor governments. Even the most casual observer of politics must be startled by the union-dominated composition of the Rudd Labor cabinet.

Compare that with the Liberal party: a genuine people's movement which has no primordial links to any group. We receive no special funding from any group. The popular notion that we are bankrolled by big business is false. Our only trumps are logic, decency and the national interest; but regrettably these are sometimes weaker weapons in the short term against the spin machine of Labor. Our concern is for Australians to obtain, and keep rewarding employment.

To achieve this you need men and women willing to employ. And under the Coalition those most willing to employ were the men and women in micro business.

You might be surprised to learn that in recent times business growth was highest in the micro-business sector than in any other sector by a margin of over 15% - some 162, 910 new employing entities were created.<sup>iii</sup> New entities that create jobs and provide opportunities.

And these micro business people since 2007, can genuinely lay claim to being considered the "forgotten sector." They have been ignored by Labor in every decision and especially in workplace relations policy.

Tony Abbott also predicted in 2001 that Labor would promote deals between unions and bosses, not workers and managers. He was wrong. It actually promotes deals

between big business and big unions. Just witness the recent *Bupa Case*. 1600 workers and two health unions together with the employer had their agreement refused by Fair Work Australia – to the delight of the ACTU.

The men and women that employ Australians have now been saddled with the 1970's styled regulation of workplaces that has been re-introduced by so-called 'modern' awards. The 9 to 5 "one size fits all" approach that these instruments promote, encourage and reward, are exactly anathema to the attitude and principles of the small business men and women that create the employment opportunities for our fellow Australians.

And workers in these types of businesses, particularly micro businesses, know how the real world works. Because they are literally working alongside the owner at the café, or in the trenches digging the same ditch, or at the office stuffing envelopes with them.

The relationship that small business people and their workers have is not your traditional employment relationship – it is a collegial relationship – where they realise that the boss is really a co-worker and a colleague.

And its people in this forgotten sector which complain most fiercely about Labor's workplace laws. The message that they give me on a daily basis is simple. They tell me that:

- They are tired – tired of being saddled with laws that reward mediocrity and punish innovation;
- They are genuinely worried – in fear that their right to engage and work cooperatively with their own staff is being eroded;

- And they are sad – sad that the spirit of enterprise and innovation is being discouraged.

And Labor's so-called Fair Work Act and so-called Modern Awards makes it all the more difficult. Let's look at so-called Modern Awards.

They are a prescriptive throw back with a rigid "one size fits all" approach. \

Dental workers are thrown in with art therapists. Only the dullest of us would not immediately recognise the overwhelming overlap of common interest between the dentist and art therapist.

I'm sure we've all at least once in our life stumbled out of bed in the early morning hoping that the art therapist is open. And for all those art therapists that run a dental clinic as a side line the new award will be of great assistance and stream line their operation.

But more seriously – do health insurance companies provide a greater rebate for a tooth drilled on a Saturday or a Monday? But the staff will now get paid significantly more for working on a Saturday – even if working Saturday morning suits their family and work life balance. Which means the dentist actually gets paid significantly less because he gets what is left over. So rather than expanding clinic hours as requested by the Government dentists will be closing because in the new equation the only person worse off is the dentist – the small business person.

Now, they tell me dentists get paid relatively well and the sympathy stocks might not be that high.

So let's turn to the so-called modern building award. You will be pleased to learn that Clause 15.3(b) says "No apprentice under the age of 18 years will be required to work overtime...unless they so desire."

And if the apprentice is over 18? Then only "to enable requirements of the training plan to be met" – 15.3(a)

This is undoubtedly designed to acclimatise them to the rigours and realities of the sector.

But to really highlight the modernity of these awards and their desire to drive innovation with the use of the latest technology there is a requirement that pneumatic rubber tyred wheelbarrows be provided for workers moving bricks and materials if there is an absence of adequate natural ventilation. See CI 21.1 (c)(iv).

And the health and well being of our building workers has not been forgotten either. So bricklayers working in a tuberculosis hospital are entitled at employer expense to have an x-ray every 6 months during work hours and be paid for it.

The great intellects of the Commission did not require that the x-ray be of the chest. So possibly if you did your back in at home you could go for an x-ray at the boss' cost?

More seriously on reading this part of the Award I thought I would research and find out how many TB hospitals still exist.

I confess I thought I knew the answer. And the Parliamentary Library believes that the last dedicated TB Ward was closed – even before the H.R. Nicholls Society was founded – in 1981. So here we are padding out Awards with this specificity that has only been irrelevant for shy of three decades.

Albeit they may have been showing foresight given that last year saw the highest notification of TB cases in the past two decades. I wonder whether that might be related to another policy failure. But I digress. And if you use a pneumatic tool as a stonemason for even five minutes on a particular day you are entitled to be paid the whole days wages with a 17.6% loading.

The Modern Awards have left many workers worse off – just witness the concerns of the Unions representing the Club workers, Aged Care sector, Child Care sector and Nurses.

Having promised no worker will be worse off – tens of thousands are worse off.

Having promised employers won't be worse off – tens of thousands are worse off.

And Ms Gillard just stands there smiling.

For workers who are worse off monetarily - they are able to claw back their loss with a take home pay order. I wonder why that was necessary if no one was going to be worse off?

But the employment package is not only about money. It's also about conditions.

Workers balancing family and work had negotiated in one sector 25 personal leave days per annum with a lower pay because for them being at home when Jim was sick was more important than a fatter pay packet. The 25 days are now reduced to 10. These mums especially believe they are worse off.

And spare a thought for the existing employer dealing with a take home pay order.

How does he compete with the new entrant in the field with no existing employees who can pay the lower Modern Award Rate and undercut the existing operator? We all know the answer.

The most public example of the award system hurting workers was Matthew Spencer and his co-worker Letitia Harrison working in a hardware store in Terang. The Award says they must be employed for a 3 hour minimum. But neither the students nor the shop were open to accommodate this requirement.

Last week, Alan Jones on Radio 2GB interviewed Matthew and Letitia about their experience. Letitia was asked what she thought of the events surrounding the loss of her job.

*She said: "Ridiculous like I understand that for people that are out there and are getting called in and were only working that hour but for us the circumstances were different. I mean we got out of school and we had that little break and then we went to work and we worked and we finished at a good time where we could go home and we could do our homework and we had that routine."<sup>iv</sup>*

Likewise, Matthew Spencer said: *"Yeah well I think it's just stupid, it contradicts itself, like you want young people to work because it gets us a taste of the workforce and gives us skills and confidence and independence."*

And later: *"Yeah well Kevin Rudd said with the new IR law, no person or family would be disadvantaged by these changes but we've been disadvantaged."*

I agree with the comments of Alan Jones at the end of the interview when he said: *"What are we doing, what cynicism are we inculcating in young people when we betray them in that way?"*

And let's remember the paper boys. Their so-called safety net is the Transport Award. Minimum hours of engagement – 4.

So how does this work?

Do we really want our children to work four hours before they start their full school day?

Given that newsagents are contractually obliged to the newspapers to have the paper at our doors by 6:30am do we expect the children to start at 2:30am – getting out of bed at 2:00am?

But we have a further problem – the papers don't arrive at the newsagent until about 4:00am.

So the window of opportunity to deliver is at best 2 hours.

Surely common sense should be allowed a seat at the award making table. Julia Gillard and Labor have managed to anger both the workers and the employers. Something that Peter Anderson from ACCI described as "*quite a feat*"<sup>v</sup>.

But it is these actions, this type of law we have come to expect from Labor, that is a direct attack on people's spirit of independence and desire to get ahead. It is Labor directly saying to students that they are better off sitting at home with no job, than going to work and trying to get some life experience. Waiting for handouts is a better approach than doing something to help yourself.

Because the Coalition enjoys consistency of principle, it follows that our election policies this year will be drafted in the interests of workers and small business. We will give commonsense a seat at the table. And commonsense would dictate flexibility and reject the centralised one size fits all strait-jacket from Labor.

We will pursue Fairness through Commonsense and Flexibility.

Fairness through Commonsense and Flexibility – to allow Matthew and Letita to get their jobs back.

Fairness through Commonsense and Flexibility – to allow the deal struck by 1600 workers, their unions and employer to stand.

Fairness through Commonsense and Flexibility – to allow the women who traded pay for extra personal leave days to put their family first.

Fairness through Commonsense and Flexibility will give each Australian worker and each man or woman employing Australians a genuine say in their personal future and that is as it should be.

And that is my goal.

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<sup>i</sup> Abbott AJ, *Reflections of a New Boy* – Speech to HR Nicholls Society – Saturday 24<sup>th</sup> March 2001

<sup>ii</sup> Ridout, H CEO AiGroup *Hearings of the Senate Employment Committee inquiring into the Fair Work Bill 2008*, Sydney, Wednesday, 18 February 2009

<sup>iii</sup> ABS, *Counts of Australian Businesses, Including Entries and Exits, June 2003 to June 2007*, Cat No. 8165.

<sup>iv</sup> Transcript of 2GB (Sydney) Breakfast - 14/04/2010 - 07:49 AM – Alan Jones