



QUEENSLAND BRANCH NEWS

NEWSLETTER of the QLD Branch of the MARITIME UNION of AUSTRALIA

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To be truly radical is to make hope possible, rather than despair convincing - Raymond Williams No. 114 – 18 January 2018

**Legal Eagle, Access to Justice – Survival Day – Patricks Dispute 20th Year Anniversary Date Saver
Decline in Trade Union Membership Article Continued**

Legal Eagle

By David Greene

Access to Justice in Queensland



Access to Justice (AtJ) is a core pillar of the Rule of Law principle which holds that law should govern a nation, rather than the arbitrary whim of a decision maker. AtJ has long been recognised as a basic human right which is essential to the proper functioning of any system of justice. The principle is simple: if a person cannot enforce a right through the justice system, the right becomes worthless.

AtJ is a significant issue for low and middle-income Australians. In my former life as a solicitor with one of Australia's largest plaintiff law firms, I used to encounter clients who had decent legal claims, but not the resources to pursue such claims through the Courts.

Lawyers talk about achieving outcomes which are "commercially sensible", but in the case of low and middle-income Australians, that can often be doublespeak meaning the cost of pursuing a legal claim is out of step with the outcome to be achieved, regardless of the importance to the client of the right or remedy to be enforced.

For example, I once had a client in Western Queensland who was in the business of machinery hire. They entered a contract with a construction contractor, and came to me being owed tens of thousands of dollars which the contractor refused to pay. However, the client couldn't afford to pay legal fees to pursue their loss through the Courts, and had to accept the loss as a bad debt. So large was the debt relative to the business, there was doubt about whether the business would survive.

It is against this backdrop that the Victorian Government has commissioned an Access to Justice review. The Law Institute of Victoria (LIV) has made a detailed submission to the review, proposing a raft of initiatives to improve AtJ.

Some of the noteworthy suggestions include:

- a) Legal Expense Insurance; and
- b) a Legal Expenses Contribution Scheme (like HECS, but for legal fees).

Queensland is crying out for urgent reform in this area.

The Queensland Government should conduct a review into Access to Justice in this State. Nothing should be off the table in such a review – including fees charged by lawyers.

The Rule of Law and our system of justice depend on people having access to enforce their rights and seek remedies where available. A system which is completely out of reach from low and middle-income Australians undermines our entire system of laws and our understanding of how the system is supposed to operate.

In the coming months, the Branch will be putting together a list of policy and law reform demands for the State Government, and achieving real reform on Access to Justice will be at the heart of those proposals.

MUA Monthly Members Meeting

Tuesday 30th January
All branches



All members requested to attend

Hear an update on the work of your union
Get involved and have your say.

26 January 2018 – Survival Day

MEETING AT 10.00AM at Parliament House, Brisbane's Warriors of the Aboriginal Resistance (WARA) will be rallying to draw attention to the many legitimate concerns that come with Australia's national day of celebration. After speeches on George Street, the rally will march to Musgrave Park in West End to light the sacred fire, enjoy food and enjoy live music.

Authorised by Bob Carnegie, Maritime Union of Australia (MUA) Queensland Branch Secretary

73 Southgate Avenue, Cannon Hill QLD 4170

Everyone is welcome.

The **MUA Queensland Branch** will be proudly marching with the First Australians on Survival Day 2018.

Please contact Paul Petersen 0404453869 if you'd like to join us.



Things you probably didn't know about Australia Day. Let's travel through time and discover a few myths and facts about January 26 you might not know: **Captain**

Arthur Phillip didn't land in Australia on 26 January. He first landed in Australia between the 18th and 20th of January 1788 in Botany Bay. But because he couldn't find fresh water there, he sailed into Sydney Cove on the 26th where he found Tank Stream—problem solved.

- **26 January 1824: The first mixed-race marriage.** The first sanctioned marriage between an Aboriginal person and a convict occurred, by chance, on the 26th January 1824. Maria was the sister of Colebee who was captured, along with Bennelong, in 1789. She married Robert Lock, an illiterate, convict carpenter from England. This was the first legal Aboriginal-British marriage in the colony. She was survived by nine children.
- **1888: The Premier who knew.** When Henry Parkes, the then-Premier of NSW, was planning the upcoming 1888 Centenary celebrations, he was asked what - if anything - was being planned for Aboriginal people, to which Parkes retorted, "Remind them that we have robbed them?" His harsh, but truthful response came almost 100 years before Prime Minister Paul Keating's Redfern Speech, another rare, honest statement by a politician.
- **Day of Mourning.** On 26 January 1938, Aboriginal people protested against Australia Day and called it a 'Day of Mourning'.
- **A forced reenactment.** For the 150th Anniversary, Aboriginal people were forced to participate in a reenactment of the landing of the First Fleet under Captain Arthur Phillip. Aboriginal people living in Sydney had refused to take part so organisers brought in men from Menindee, in western NSW, and kept them

locked up at the Redfern Police Barracks stables until the re-enactment took place. On the day itself, they were made to run up the beach away from the British – an inaccurate version of events.

- **26 January 1972: The Aboriginal Tent Embassy is established.** Four Aboriginal men (Michael Anderson, Billie Craigie, Bert Williams and Tony Coorey) set up a beach umbrella on the lawns opposite Parliament House in Canberra in protest against the alienation of Aboriginal people by the government.
- **Harbour Bridge march.** On 26 January 1988, up to 40,000 Aboriginal people (from as far away as Arnhem Land in the NT) and their supporters marched from Redfern Park to a public rally at Hyde Park and then on to Sydney Harbour to mark the 200th anniversary of invasion. It was the largest protest since the 1970s.
- **All of Australia celebrated Australia Day from 1994.** Australia Day was **not** consistently celebrated on the 26th of January as a public holiday in all states and territories until 1994, even though the name 'Australia Day' dating back to the early 1900s.
- **The Aboriginal flag on the Sydney Harbour Bridge.** It wasn't until 2013 that the Aboriginal flag and the Australian flag were raised together on Sydney Harbour Bridge for Australia Day.

Decline in Trade Union Membership Continued...

From the "organising agenda" to the "democracy and solidarity agenda"
By: Martin Thomas and Bob Carnegie

THE CAPACITY TO recover from defeat is inbuilt in the condition of the working class within capitalism. However big capital's victories, it still has to recruit and concentrate new armies of workers, and in that process to give unions scope to rebuild.

In Australia, too, changes in industrial relations law, notably the shift to enterprise bargaining in the early 90s, have shifted the terrain. But those do not explain it all, either. Industrial relations law has changed little in many countries where union density has declined.

Unlike in previous eras of trade-union setbacks, over the recent decades there have been few attempts by governments to ban unions outright, or replace them by state agencies having the name "trade union" but none of the reality. In the era when the German labour movement established itself as the world's best-organised, before 1914, state employees were banned by law from joining the main unions (linked to the Social-Democratic Party, SPD), attending SPD meetings, or subscribing to SPD publications. Today, by contrast, in most countries unions are stronger in the public sector: governments have pushed down union density in their direct workforces less than private bosses have in theirs.

There have not even been many battles where private bosses have sought to de-recognise unions completely,

rather than taming them or bypassing them by greenfield operations. (In Britain, there have been some, but as one analyst writes, "instances of actual de-recognition... have in fact been limited. Examples are mostly concentrated in newspaper publishing and coastal shipping...")

And adverse laws can be changed. After 1900 British unions, though then weak and with the Labour Party only an infant junior partner of the Liberals, managed to get the Taff Vale Judgement (where a judge effectively changed the law, by making unions liable to repay the costs to bosses of industrial disputes) reversed within six years by political campaigning. In 1997 the British unions got a government formed by the Labour Party, in whose conferences they had a majority vote. And yet they did not press that government to reverse the multiple laws against trade-union

action between 1979

and 1992; they

contented themselves

with some minor

legal changes

facilitating union

recognition, the chief

fruit of which was a

number of

"sweetheart deals"

getting unions

recognition in return

for smothering

workforce resistance,

like Usdaw's deal in Tesco, not very different from the

SDA's accord with Coles and Woolworths.

In 2007 the Australian unions obtained - partly thanks to their own campaigning against the Howard government's more drastic WorkChoices law - a Labor government. The unions had a written policy for a big list of workers' rights, including a right to strike. And yet once Labor was elected, the unions settled with scarcely a murmur for replacement of WorkChoices by a WorkChoices-lite which bans industrial action except in certain circumstances when unions are negotiating on an enterprise agreement.

Even more telling was the 2016 Labour manifesto in Britain. Labour now had a left-wing leadership which was keen to, and did, put union demands into its manifesto. Yet somehow the manifesto proposed only repeal of the most recent Tory anti-union legislation, of 2016, and not repeal of the far more wide-ranging laws introduced between 1979 and 1992. Activists suspect that the union leaders did not ask for the wider repeal, or even advised against it. Being able to tell members that the law prohibits effective action is often a comfortable let-out for cautious union leaders.

In short, the continuation of legislation which restricts trade-union activity, and the failure to reverse the big industrial defeats which neoliberal regimes imposed in order to make their first decisive inroads, are as much

effects of diminished union vitality as causes, or more so.

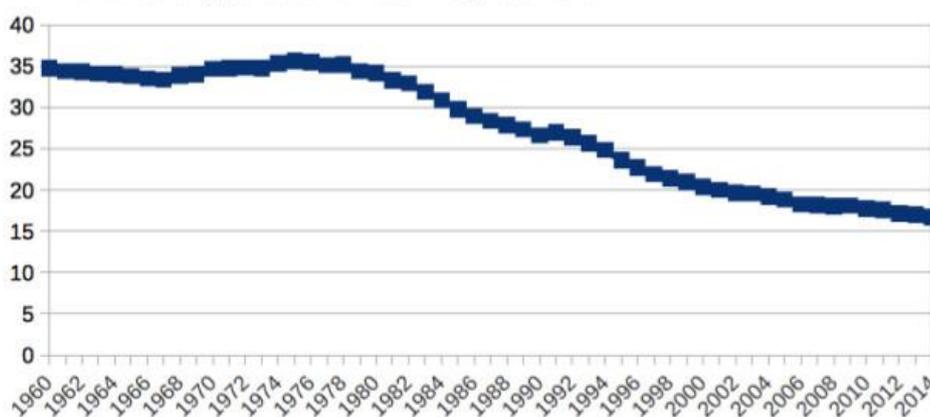
Leon Trotsky, as well as being a leader of the Russian revolution had observed and worked closely with labour movements in many European countries and the USA. In 1938 he wrote the following, not in a casual article, but in a major document summarising his conclusions from decades of activity:

"The workers now more than ever before need mass organisations, principally trade unions. [Life refutes] the preachments of those ultra-left doctrinaires who have been teaching that trade unions have 'outlived their usefulness'.

"[Yet] trade unions, even the most powerful, embrace no more than 20 to 25 percent of the working class, and at that, predominantly the more skilled and better paid

layers. The more oppressed majority of the working class is drawn only episodically into the struggle, during a period of exceptional upsurges in the labor movement. "As organisations expressive of the top layers of the proletariat, trade

Union density across OECD countries, 1960 to 2014



unions, as witnessed by all past historical experience [have] developed powerful tendencies toward compromise with the bourgeois-democratic regime".

There were some countries even then - Sweden and others, including Australia - where union density was above Trotsky's "20 to 25%" figure. Trotsky would have been aware of that: his point was that those were exceptions.

The much higher union densities in a number of better-off capitalist countries between the 1940s and the 1970s were also exceptions, historical exceptions, achieved on the basis of unprecedentedly rapid and (relatively) smooth expansion of capital, and union movements strongly committed to all-round compromise.

Karl Marx's words from *Capital* were relevant: Under the conditions of smooth expansion of capital, workers' "dependence upon capital takes on a form endurable or 'easy and liberal'... They can extend the circle of their enjoyments; can make some additions to their consumption-fund of clothes, furniture, etc., and can lay by small reserve funds of money. But just as little as better clothing, food, and treatment, and a larger peculium, do away with the exploitation of the slave, so little do they set aside that of the wage worker. A rise in the price of labour, as a consequence of accumulation of capital, only means, in fact, that the length and weight of the golden chain the wage worker has already forged for

himself, allow of a relaxation of the tension of it". Unions prospered as experts in relaxing that tension. Governments and most big employers found that affordable.

Closer to the capitalist norm were the conditions which Vladimir Lenin wrote about in 1917: "the [German] Social-Democrats were able to achieve far more than in other countries in the way of 'utilising legality', and organized a larger proportion of the workers into a political party than anywhere else in the world.

"What is this largest proportion of politically conscious and active wage-slaves that has so far been recorded in capitalist society? One million members of the Social-Democratic Party - out of 15 million wage-workers! Three million organised in trade unions - out of 15 million [and a total population of 68 million]!...

"If we look more closely into the machinery of capitalist democracy, we see everywhere, in the 'petty'... details of the suffrage... in the technique of the representative institutions, in the actual obstacles to the right of assembly (public buildings are not for 'paupers!'), in the purely capitalist organisation of the daily press, etc., etc. - we see restriction after restriction upon democracy... In their sum total these restrictions exclude and squeeze out the poor from politics, from active participation in democracy".

The decline in union density over the last era is not a change of capitalism towards a regime impossibly hostile for unions, but a return to the capitalist norm, in an era more closely approximating "pure capitalism", worsened by failure by unions to respond to stormier, more difficult times after decades of relative ease.

The decline of union density in OECD countries (mostly older-industrialised countries) is not the whole picture. In many countries, in Eastern Europe, in Russia, in Latin America, in Spain and Portugal, where in the 1970s trade unions were repressed by military dictatorships or suppressed in favour of state agencies which were "trade unions" only in name, there are now real and autonomous, though usually weak and unmilitant, trade unions.

The working class has grown enormously world-wide, and in recent years has probably become for the first time the biggest social class in the world, outnumbering the peasantry. In China (and some other countries, notably Vietnam) where industry has grown rapidly, there are still no real legal trade unions, but the swelling numbers of strikes indicate that manifold proto-union forms of worker organisation must exist underground.

To get good figures for world-wide union membership is difficult, but today the International Trade Union Confederation (headed by former ACTU president Sharan Burrow) claims to represent 181 million workers in 163 countries. Discount a lot for inflated returns, and that is still a large number. In 1945, the World Federation of Trade Unions claimed 60 million. That smaller figure was definitely inflated by including tens of millions from

the USSR's official "trade unions", which were so much organs of the government and management that in 1967 Alexandr Shelepin was appointed to head the "trade unions" as a demotion and career shift after nine years of heading first the political police, the KGB, then the Central Committee department overseeing the KGB.

By comparison with what we have had in the past, the trade union movement is very far from being without resources, or facing impossibly hostile odds. The question is whether and how to mobilise the resources, and whether or how to try to beat the odds.

Dan Gallin, former general secretary of the International Union of Foodworkers, sums up the story: after 1945, "the trade unions... developed an over-reliance on the state. No longer was there any aspiration to represent an alternative society. Amidst the newfound peace and prosperity, the labour movement had disarmed ideologically and politically...

"Decades of complacency... diluted and trivialised its ideological and political heritage... Still powerful trade-union organisations were led, far too often, by blinkered and politically ignorant leaderships, geared to administering gains of earlier struggles rather than to organising and engaging in new struggles, generally unquestioning in their acceptance of social partnership... "While the labour movement was asleep, the world changed dramatically... [with] new communications and transport technologies...

"The real crisis of the labour movement is a crisis of identity and perspective, and... this is the crisis we need to resolve in order to become capable of organising the world's working class... [We need] the vision of freedom, justice, and equality that inspired [the labour movement] at its origins and made it the greatest mass movement in history".

Date Saver – 20th Anniversary of the Patricks Dispute

ON FRIDAY 6 APRIL 2018 the Branch will be hosting a function for the 20th year anniversary of the Patricks Dispute.

The function will be held at the Union rooms. More details will follow.

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