



Incorporated Victoria No A0050004U
ABN: 54 403 453 626
www.independentcontractors.net.au
PO Box 13103 Law Courts 8010 Vic

Subject: Submission on recommending finding Independent Contractors Australia

Date: 27 October 2015 5:30:49 pm AEDT

To: TradeUnion@turc.gov.au

Dear Justice Heydon

Now that the investigations and hearings of your Commission are near being finalized and you are turning your mind to your report we make the following submission to you in relation to what we ask you to consider should be your core finding and recommendation.

The evidence is that your Commission has uncovered widespread corruption within unions and by union officials. However it has also uncovered major involvement in that corruption by businesses and their managers. Corruption, namely the payment of monies or delivery of benefits, always requires two players, the payer and receiver. The two players undertake the transactions based on mutual benefit. We submit that for unions the benefit is cash and/or power, political or otherwise. For companies and their managers the benefit is primarily the suppression or limitation of competition.

We ask that you consider your core finding to be that union corruption is a process involving two players, the unions/officials in receipt of benefits and the companies/managers that pay or deliver the benefits. This has the primary outcome of manipulating, damaging and limiting competition in the economy.

We ask that your core recommendation be that it be made illegal for a business/manager to make a payment to a union/official of any sort under any circumstances or for a union/official to receive such payments.

Gyles

In support of our submission we quote from Roger Gyles AO QC who held the first Royal Commission into problems in the construction sector (NSW 1990). In May 2014 reflecting on his inquiry and report he stated <http://hrnicholls.com.au/?p=690>

“Much illegal behaviour was detected. The headings of the final report of the Commission in this respect included the following: Physical violence and intimidation; Corrupt commissions ;improper and irregular payments; Fraudulent conduct; Theft; Extortion; Engagement of reputed professional criminals. That kind of illegal conduct was by no means the sole province of

the unions. Furthermore, a number of major contractors were found to have engaged in systematic collusive tendering.”

It would seem that nothing has changed and that your Commission has discovered and exposed what Gyles discovered and exposed. Nothing much has changed other than the personalities involved.

Productivity Commission

Further in support of our request to you, we ask you to consider our submission to the Productive Commission Inquiry into Public Infrastructure (February 2014 attached)

In our submission (Page 11 - 3.1.1) we commented on the Cole Royal Commission’s findings on construction union corruption. We stated;

“Cole’s description states the standard view. That is, that

a) Unions behave unlawfully b) Construction companies should not cave in to union intimidation because it is in their commercial interest and in the national interest not to do so.

However, Commissioner Cole’s analysis misses the key points being made in this submission, namely that:

a) Construction companies are not motivated by the national interest. Their interest lies in securing work and locking in margins to make profit. b) Construction companies will and do collude with unions to make life difficult for their actual or potential competitors, thus limiting competition. c) Major construction corporations have a vested interest in preventing small contractors and other construction companies from having a price or productivity advantage in the utilization of labour. By eliminating the labour issue as a competitive item, the major contractors are able to dominate the sector by using their natural advantages of size, scope, technological development and access to finance to lock in their market dominance.

The real outcome of the industrial relations processes in commercial construction is the limitation of competition to favour the major players.”

We also said (At 4 – page 19)

“This submission argues that in fact there is willing, intentional, collusive behaviour between unions and major construction firms. Further that the union violence and intimidation is used to help frame an anti-competitive market favouring major construction firms. Through industrial relations laws, institutions and practices this collusive behaviour is made legal. Much of what occurs in the relationships between unions and major construction firms would, in other contexts, be considered criminal manipulation of a market. This includes obvious criminal activity such as secret commissions, bribery and so

on.”

And we recommended

“4.1 Make payments in any form from construction companies to unions illegal and criminal

Through their managers, construction firms regularly make payments to construction unions or union-controlled funds such as Incolink. All such payments should be illegal unless directly required under legislation. Payments made as a result of an industrial agreement should not be allowed and should specifically be illegal. The provision of services such as life or income insurance or training through entities directly or indirectly associated with unions or their officers should be outlawed. The sanction for such payments should be brought to bear against the construction firms and the individual managers who authorise, are a party to and/or make the payments, as well as against unions and union officials who receive the payments. Such sanctions should be criminal in nature. Company executives, managers and owners, and union officials should know that they face the prospect of jail if they are involved in such payments.

Illegal payments should include

- 1. Direct cash of any kind or ‘in kind’ payments, including the provision of holidays, travel, accommodation, cheap housing, ‘personal’ services or any other.*
- 2. Contributions to union funds, such as ‘Christmas’, union BBQ, training, long service leave (controlled by unions fully or in part) redundancy and so on.*
- 3. Contributions to undisclosed ‘slush’ funds of any nature.*
- 4. Commissions—either secret or disclosed.*

All such contributions should be seen through the prism of corruption and treated as bribery payments.

Many of these sorts of payments are currently sanctioned through FWA endorsement of industrial relations agreements. The ‘normal’ solution, therefore, would be to amend industrial relations laws to prevent such payments. This is one approach but it is not enough. The only way to permanently stop such payments is to make the payer (construction firms and their managers/executives) personally criminally liable for making such payments. With this in place they will stop quickly.”

With thanks

Ken Phillips

Executive Director
Independent Contractors Australia