

HR Nicholls Annual Conference, November 2015

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An intriguing speaker at this year's HR Nicholls Conference was Gerard Phillips, a partner from K & L Gates in Sydney. Gerard spoke about whether Australia should adopt the United States' RICO legislation for dealing with corrupt trade unions. Much of this year's conference was centered on the findings of the Heydon Royal Commission and the results of the Productivity Commission report. Many speakers suggested that although the findings in these reports were interesting, the terms of reference were too broad and that it is unlikely that acting on these reports would lead to dramatic changes in Australian industrial relations law. Many reasons were cited, perhaps the most significant being an inevitable political backlash reminiscent of the ACTU's anti-work choices campaign. Most assume that attempts to reign in union corruption would spell political suicide.

Gerard's speech provided a possible solution to this political difficulty. He outlined that in 1970 the US enacted the RICO Act (Racketeer Influenced and Corrupt Organizations Act), an act that provides for extended criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization. Laws of a similar nature could be very beneficial to Australia. The RICO Act prohibits groups of people with a common goal to commit any of a long list of crimes. This includes unions. It also enables anyone to take civil action against an enterprise (even a competitor can sue another company for unlawful behaviour). The appeal of the Act is that although it acts as a check on union corruption, it doesn't explicitly target unions, it prescribes criminal penalties for ALL organisations. By doing so it shifts the focus from targeting unions to punishing behaviour, leading to a less politically sensitive solution for targeting union corruption.

Gems of the Fair Work Commission

One of the more humorous, yet alarming features of this years HR Nicholls conference was Kyle Kutasi's speech about the Gems of the Fair Work Commission. The speech outlined a trend of fascinating decisions made by the Fair Work Commission over the last few years. The most notable being the decision made in *Mrs Rachael Roberts v VIEW Launceston Pty Ltd* where Mrs Roberts' workplace was ordered to 'stop bullying' her. The reasons being that Mrs Roberts wasn't able to control the air conditioner, she was forced to wear a uniform, and her boss had told her that the area she lived in 'wasn't very nice', didn't say 'hi' to her in the morning, and deleted her on Facebook. If this isn't an alarming abuse of power, I don't know what is.