

# New South Wales – Systemically Corrupt

**Ken Phillips**

[A presentation to the HR Nicholls 29th Conference, March 2009]

I've been asked to speak today as a follow-up to an article I had published in *The Australian* in November last year (2008). I've included the original article as part of this paper. It's an article many people have commented on—the most frequent comment being that I had pulled together a picture which was not previously clear to them. It is a picture of the state of New South Wales.

In this paper, I will first provide you with some snippets of information to give you the flavour of governance in NSW. These facts and events could appear as one-offs and unrelated—but as we shall see later, there are grounds for doubting that.

## **Scandal, Bribery and Corruption**

### Sex in Parliament

In November 2008, the former Minister for Aboriginal Affairs was jailed for almost 14 years on multiple child sex and drug offences. He had repeatedly abused and drugged young teenage boys in his ministerial offices. His electorate staffer, who assisted police and gave evidence against him, was sacked by the public service. She describes her life as being wrecked and has spent considerable time suing for damages.

Early in new Premier Rees's term, he sacked a minister for an 'underwear' incident during a staff party in ministerial offices.

### ICAC

NSW has an Independent Commission Against Corruption. It is effectively a standing royal commission, has around 110 staff and has just marked its 20<sup>th</sup> anniversary. During 2007-08, it conducted about 12 inquiries into corruption in NSW RailCorp, the Department of Housing, the Roads and Traffic Authority, and the NSW Fire Brigade to name just a few.

### Railcorp

ICAC has conducted at least 7 enquiries into RailCorp since 1992. ICAC describes Railcorp as having an endemic, systemic culture of corruption that is widely accepted internally as normal. No matter what ICAC uncovers, the organisation does not seem to change. Principally, ICAC has found repeated instances of contracts being awarded under fake tenders to shelf companies controlled by RailCorp executives or related parties. For example:

- A welding manager was found to have defrauded RailCorp of \$4.28m.
- An air-conditioning manager awarded \$700,000 in contracts to his mates.
- An additional \$22m in fraudulent contracts have been identified, with \$3m in kickbacks to RailCorp staff.

In addition, RailCorp spent almost \$300,000 in legal fees in a three-year battle against an employee who blew the whistle on corruption.

### Housing Commission

A Housing Commission officer was found to have taken bribes to let people jump public housing waiting lists. He also allowed drug dealers to use public housing for drug trading.

### Sex and money for planning and development approvals

There have been repeated investigations into property developers who paid bribes in order to secure planning and development approvals. Wollongong City Council has been the most high-profile case—not only because money changed hands for planning approvals, but because sexual dalliances were also involved. Exposure of the sex scandals created a NSW tabloid media frenzy. What is most instructive is that when some developers were interviewed about the payment of bribes, they were surprised that it was a big issue. As far as they were concerned that's the way business is done in NSW and everyone is aware of the fact.

### Fire safety

I've received private allegations of multi-story Sydney buildings being built with unsafe fire protection because certain public servants accepted bribes from developers.

These are just a small selection of bribery and corruption stories in NSW over the last few years.

### **Other stories**

#### Transport Workers Union

The now defunct Channel 9 Sunday programme and *The Australian*, in particular, have exposed details of a TWU training 'slush' fund. A labour hire firm supplying staff at Sydney Airport was paying 1% of its total payroll to the TWU fund and the allegation was that no training was being conducted. The TWU conducted an audit which exposed the extent of payments to the fund dating back to 2002. This included payments from Dairy Farmers of \$500,000, Manpower \$141,000, Advance Recruiting \$124,000, Adecco \$107,000, Linfox \$104,000, Blue Collar \$85,000, Action James \$71,000, Collex \$33,000, and Ausdoc \$15,000. The total amount was around \$1,180,000. The audit claims that training was done, but it was unable to be specific about the details.

The original allegations came from TWU member whistleblowers, most of whom have been removed from the union. The NSW TWU claims to have 40,000 members, which gives it a powerful vote on the NSW Labor executive, but its actual numbers are said to be closer to 16,000.

#### TWU Bluecard

To drive a truck on NSW roads, the WorkCover Authority requires drivers to carry a work safety 'Bluecard' showing that they have undertaken a safety course. NSW WorkCover

awarded the contract to control the Bluecard to a Western Australian company run, in part, by the sister of a WA Labor Senator, himself a former WA TWU official. In effect, the NSW TWU has been awarded a monopoly to conduct the training and received from the WorkCover Authority \$700,000 for the purpose. Coincidentally, the NSW TWU has given almost the same amount of money to the NSW ALP. The local NSW arm of the training programme seems to be controlled by a group called 'Concerned Families of Australian Truckies'. This is/was chaired by a Gosford City councillor whose husband (a TWU official) was campaign manager for an ALP Federal member who is the wife of a NSW minister. The political couple used to dine with their staff at a local Gosford restaurant called Iguanas.

### NSW Railways

In March this year, the NSW IRC ordered that railway station managers had no right to put themselves on weekend high-bonus shifts. This IRC order has been ignored by the station managers. RailCorp senior managers have said that station managers should be working Mondays to Fridays when 88% of passengers travel and 80% of services operate. Unions have insisted on rosters of 6 weekend days in every 19-day work cycle, thereby maximizing penalty rates.

### Desalination plant construction

Unions have been in constant dispute with the John Holland Group which is building the Sydney desalination plant. Unions want entry to the site, but JHG denies them access on the grounds that the unions have no legal right to enter. Last year the plant was 'raided' by the State Water Minister with a bevy of union officials running behind him. Somehow *The Australian* received word of the raid and had a photographer and reporter on hand to record the Minister's actions. The 'raid' resulted in major news headlines for the Minister.

### Sydney Ferries

New Premier Rees has rejected recommendations of an independent report and abolished the State-owned company that ran Sydney ferries and brought it back under political control. In February this year, the NSW IRC reinstated a ferry seaman who repeatedly swore at, and allegedly spat at, a ferry supervisor who was providing first aid to an elderly passenger who had fallen and cut himself.

### Judges who see themselves as above the law

In mid-March, retired NSW Justice of the Federal Court, Marcus Einfeld, was jailed for perjury after lying about a speeding incident in his car. Another senior retired judge was caught tampering with evidence when he was allegedly caught for drunk driving. In the Einfeld case it was interesting to listen to him explain his actions when interviewed on the ABC 4Corners show. He repeatedly referred to his perjury as a "mistake" even when he was reminded that the evidence showed he had a pattern of lying about speeding in statutory declarations going back several years. He insisted he is a good and moral man because he always fought for the underdog.

### Department of Public Prosecutions (DPP)

For some time before his sacking, Premier Iemma was at war with the NSW DPP following an Auditor-General's report which found that there were minimal checks on how the DPP spent its \$100 million budget. The NSW legal profession is rife with rumours that DPP lawyers on salaries of more than \$150,000 are refusing to take on more than one case at a time.

### **Normal problems?**

These events could all be one-offs. But to quote from my article:

*'Maybe there's just a lot of bad people doing bad things in NSW. Surely we can assume the system of government remains solid and honest? Unfortunately, this is not the case. The overload of scandal is in fact endemic and reflects the functioning of government itself.'*

Ted Mack is a retired North Shore political icon. He's now 75 years old. He spent 22 years in Sydney politics as a high-profile, fiercely independent representative at local, State and Federal levels. Last year, when referring to the NSW public service, he said that 'nepotism is rife and services are being destroyed because of the incompetence at the top'. Hospitals are run by 'regional boards with political appointments' overriding professional managers.

From my article again:

*The problem is bigger than just bad individuals. It's a problem created by the culture of the labour grouping that runs NSW. It's embedded in the institutions and processes that administer NSW. It's enforced by the laws of NSW.*

*It has taken total control of the administration of government in NSW, such that the parliamentary ALP is a government in name only. More significantly, the public service is controlled through a vast number of oversight committees on which only NSW Labor machine members sit.*

*The Labor committee and network process effectively controls the NSW government budget. Reforms to the transport, education and health systems are frozen because any reform threatens vested labor interests within the organisations.*

### **NSW state finances**

Lets' look at NSW finances.

The original NSW budget forecast for 2008–09 was a surplus of \$268m. In late 2008, after Premier Iemma and his Treasurer were effectively sacked by the NSW union movement, the new Premier revealed a revised deficit of almost \$1 billion. That's after implementing heavy spending cuts and tax increases. The revised figures were released before the full impact of

the global financial meltdown started to become apparent in other State budgets. I'd anticipate a further downward budget revision in NSW.

There's an additional story, though. All State budgets use an accrual accounting system for reporting. The Federal Government reports on a cash basis. I won't engage in a discussion on which system is more 'true'. But, on a cash basis, the NSW 2008-09 deficit (that is, before the downward review) was \$6.2 billion. A revised figure does not seem to be available. The accumulated cash deficit since 2004-05 is \$8.9 billion and the projected accumulated cash deficit to 2011-12 deficit was \$27 billion. These figures were largely calculated during the height of the financial boom and don't factor in the current financial crash. It's not unreasonable to assume that the NSW budget is in very significant trouble.

The NSW economy has been in long-term decline for a decade. In the 1990s, the State economy accounted for 34.9% of national GDP. Late last year, that figure had dropped to 31.8%. Based on retail sales and housing finance, NSW has been in recession since around mid-2008, again well before the global financial crisis affected the other States. In the last three quarters of 2008, NSW retail sales were in decline while the Australian average was marginally up. Late last year, NSW housing activity on a per capita basis was only just above Tasmania putting it second last on a list of all states.

### **Thesis**

The problem in NSW is not consistent with government functioning on the basis of authority granted to it by parliament. The government and parliament of NSW do not effectively govern NSW. Governance instead is managed by external arrangements run by the Labor tribe. At the centre of this arrangement is the NSW industrial relations system. From my article:

*The NSW industrial relations system is unique in Australia. Orders of the NSW Industrial Relations Commission cannot be appealed. It overrides the authority of the High Court and NSW civil and criminal courts. Unions are its authorised enforcers, with search, seizure and prosecution powers exceeding that of the police, tax and business regulation authorities. This is the law in NSW.*

*The legal powers are all reaching beyond normal industrial relations matters to controlling commercial prices in the transport sector, overriding commercial leases and dictating who can tender for government work. It controls construction work through agreement setting and links into town planning processes.*

*What is alleged to be an industrial relations system is in reality a legal mask for the delivery of power to NSW Labor. It's awesome in its reach.*

This legal structure is born from a moral arrogance, a belief amongst the people who are part of the NSW Labor tribe that they operate not within the law or under the law, but that they are the law. They pontificate their alleged moral superiority by claiming to be the defenders

of the underdog and the oppressed. In fact this is a cover for a naked adoration of the power they have secured. Einfield revealed this dominant NSW Labor mindset in his 4Corners interview. Even with the evidence of his own systemic criminal behaviour staring him in the face Einfield could only see good in himself. This perversion of morality explains the endemic corruption. It is dependent upon, grows out of and is supported by, the structure of the NSW industrial relations system.

And the NSW labor tribe willingly and regularly use this power they have to oppress against anyone they perceive as the enemy. To this end they persistently break principles of justice in a civil society and construct paradigms of justification if only to secure their own self-belief. No clearer example of this exists than the NSW work safety laws. In this and many other areas they are guilty of gross double standards. It is not surprising that from this cultural mindset and legal structure that governance through accountability lines to parliament has collapsed and that bad behaviour and blatant corruption grows and becomes endemic.

What is surprising is that so many people in NSW see this as normal. There is a suspension of belief in civil society in NSW. This is the state of NSW.

### **Going national**

This system is now going national. The Labor machine recognizes that the NSW ALP government is not likely to continue. It might survive the March 2011 election, but it's doubtful. The brains trusts' of the NSW Labor machine has moved to Canberra. The Fair Work Bill is substantially modelled on key aspects of the NSW IR Act, particularly in the way that it makes unions the enforcers of the law.

But there's a bigger game in play. The Labor movement has changed. For Labor, socialism has become a cheap slogan of little practical relevance. The advent of the industry super funds controlled by Labor operatives from both the union and employer association movements has turned Labor into the primary instrument of Australian capitalism. Labor is now the biggest and best coordinated player in the Australian finance sector. They have reinvented themselves as the political force of capital in Australia all the while pretending to be something they are not. The reconfiguration of the award system under the ALP will consolidate that position, locking in the dominant source of private savings in Australia under the Labor umbrella. This has and will continue to change the very structure of business in Australia, other than in the small business sector. But that's another story.

# Machine culture rotten to core

Ken Phillips | *November 21, 2008* Article from: [The Australian](#)

**IS the NSW Government totally dysfunctional or is it just suffering from a series of disconnected unfortunate events? The list of events is long and often reads like a series of episodes from a television soap drama.**

A minister is jailed for being a pedophile. He abused boys in his ministerial office yet his closest staff members deny any inkling of his behaviour. Another minister is stood down over allegations of abusing restaurant workers and another for abusing his staff.

These are just some stories emerging from the NSW Government at its highest level. Below this level, other stories constantly appear.

A transport union safety fund receives about \$700,000 from the Government. The transport union gives a similar amount to the Australian Labor Party.

A senior union official demands and receives from the Education Department lists of apprentices and employers in breach of privacy laws. The union then approaches employers demanding apprentices become union members. Senior judges caught for traffic offences pervert the course of justice to hide their offences.

At the local government level bribery and sexual favours determine who receives town planning approval for development projects. The developers see this as normal business requirements in NSW. Systemic bribery is revealed in a state transport department. People caught paying the bribes plead that if they didn't bribe, they wouldn't win jobs.

Maybe there's just a lot of bad people doing bad things in NSW. Surely we can assume the system of government remains solid and honest? Unfortunately, this is not the case. The overload of scandal is in fact endemic and reflects the functioning of government itself.

The problem is bigger than just bad individuals. It's a problem created by the culture of the labour grouping that runs NSW.

It's embedded in the institutions and processes that administer NSW. It's enforced by the laws of NSW. It affects everyone living in NSW. It's the factor causing NSW to descend into deepening economic recession when the rest of Australia is managing reasonably well.

Before the problem can be fixed, it needs to be understood.

NSW Labor is not just a political organisation. It's a bigger machine than the ALP and elected parliamentarians. It is a complex web of interconnecting, personal relationships built around families, friends and associates. Its obvious core membership comes from unions. But it extends to selected lawyers, academics, business representative bodies, investors and business people. It's a large but tight group.

Ordinarily, extended networks are the lifeblood of political groups in healthy democracies. But there's something special about how NSW Labor has institutionalised its network, which makes it uniquely powerful and corrupt.

First is the culture. NSW Labor networkers live in a time warp, obsessed with the idea of class warfare. They imagine that employers are evil by nature. They fantasise that they are the guardians of good against evil. This bonds them, giving them their justification for power.

They allow business to function but only those businesses that comply with the Labor machine. They relentlessly try to crush businesses that are defiant.

What makes this culture so powerful is that it's given legal sanction through the NSW industrial relations system, which is unique in Australia. Orders of the NSW Industrial Relations Commission cannot be appealed. It overrides the authority of the High Court and NSW civil and criminal courts. Unions are its authorised enforcers, with search, seizure and prosecution powers exceeding that of the police, tax and business regulation authorities. This is the law in NSW.

The legal powers are all reaching beyond normal industrial relations matters to controlling commercial prices in the transport sector, overriding commercial leases and dictating who can tender for government work. It controls construction work through agreement setting and links into town planning processes.

What is alleged to be an industrial relations system is in reality a legal mask for the delivery of power to NSW Labor. It's awesome in its reach. It's so powerful that it part-neuters Australia's competition watchdog, causing the competitive business environment in NSW to be corrupted. Normal business regulation is overridden by the necessity to conform to the Labor machine.

It has taken total control of the administration of government in NSW, such that the parliamentary ALP is a government in name only. This was demonstrated by the effective sackings of premier Morris Iemma and treasurer Michael Costa. More significantly, the public service is controlled through a vast number of oversight committees on which only NSW Labor machine members sit.

The Labor committee and network process effectively controls the NSW government budget. Reforms to the transport, education and health systems are frozen because any reform threatens vested labour interests within the organisations.

Great wealth has been delivered to some inside players. Important NSW-based businesses depend on the system for their market power. Individual fortunes have been built on it. It's a power frequently reflected in the arrogant behaviour and even swagger of those at the top of the system.

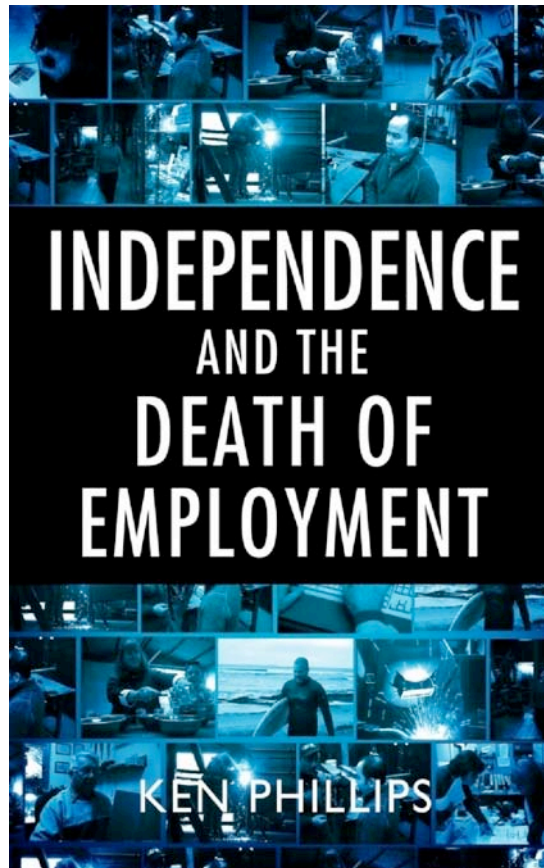
This was demonstrated by the recent union raid on the desalination plant construction site under the cover of ministerial inspection. Here the Labor machine is furious that a government-funded construction site is not NSW union controlled. The site is subject to federal, not NSW, industrial relations laws.

This entrenched and unelected power structure in NSW assaults the very fundamentals of good society. The failure to prosecute a union-owned labour hire company following the work-site deaths of three of its employees demonstrates how destructive of justice is this labour network.

What's happening in NSW is that many individual acts of corruption are being exposed. The state's Independent Commission Against Corruption is swamped with work. But the ICAC's powers do not extend to the systemic cause of the problem.

Corruption, dysfunctional government and the declining economy of NSW are all products of a Labor culture disconnected from normal moral reasoning. Its extreme power is made possible because it has a mask of legal authority.





What is your career? Who defines your work life?

What does it mean to manage or be managed?

What is the firm? How do organizations achieve their objectives and make profit? How are these things - and you - controlled and regulated?

These are just some of the questions which flow from this book. Professional managers, national and international policy makers, economists, labour lawyers and entrepreneurs will find much *Independence and the Death of Employment* of deep interest.

Ken Phillips is Director of the Institute of Public Affairs Work Reform Unit. He is also co-founder and Executive Director of Independent Contractors of Australia.

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