GROCON/CFMEU DISPUTE HERALDS DISTURBING TREND

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By Ian Hanke

Amidst the clangour and tumult of the CFMEU's illegal blockade of Grocon's building sites a disturbing trend has become apparent in the manner in which the federal government approaches workplace relations – and it bodes ill.

First we have seen the Minister for Workplace Relations put himself at the centre of the dispute, channelling his inner Hawkeian self, Mr Shorten has cast himself as a saviour.

This is not the first time Mr Shorten has done this, earlier he has involved himself in the MUA Patricks dispute in Western Australia and he was front and centre in the Qantas dispute.

This raises serious concerns for the conduct of workplace relations.

For decades governments have stepped back from a direct role in industrial disputes, but now we are seeing a reversal of form with the intervention by Minister Shorten.

Mr Shorten admitted last week that he had organised mediation to be conducted by Mr Justice Ross of Fair Work Australia and that he had been on the phone to both parties urging them to enter into negotiations.

I wouldn't have thought it the role of a minister of the crown to advise a quasi judicial body on a course of action, but that is what this minister has done.

Mr Justice Ross happily acceded to the Minister's request and the parties attended the mediation and unsurprisingly Grocon rejected Justice Ross's recommendations.

These recommendations themselves are disturbing.

Basically Justice Ross recommended that Grocon adjourn court action against the CFMEU, take no further steps in any such proceedings and not initiate any new proceedings.

The CFMEU for its part would lift its illegal blockade for two weeks while negotiations were conducted.

This to me is extraordinary. The Supreme Court of Victoria has already found the union was acting illegally and union officials had admitted this to be the case.

Yet Justice Ross instead of asking the union to abide by the law and the orders of the Supreme Court and permanently lift its illegal blockade offered a two week hiatus

before the illegal blockade would recommence while Grocon would have its hands tied.

To me it is extraordinary that a quasi judicial body such as FWA did not support the orders of a superior court.

In German there is a word “machtpolitick” which can be loosely translated to mean “negotiations conducted under the threat of violence.”

This in effect would have been what occurred if Grocon had acceded to Justice Ross’s proposals.

That makes it very surprising that the minister had the gall to actually attack Grocon for refusing to abide by Justice Ross’s recommendation.

The minister throughout the course of this dispute has been almost chronically incapable of outright condemnation of the CFMEU.

Hardly surprising as the minister has done the unions’ bidding by abolishing the ABCC, watering down fines and penalties for illegal behaviour and legislating for the Fair Work Building Commission to ignore illegality.

Mr Shorten’s equivocation is clear in the media release he issued on August 31 where in the space of two paragraphs sends contradictory messages.

“The Government believes the recommendations of President Ross of Fair Work Australia (which are attached) would have allowed a way for the parties to work through the issues in dispute. The Government strongly urges that both parties accept the President’s recommendations as the most sensible path towards lasting resolution.”

This means Grocon, according to the recommendations of Justice Ross, would have to ignore the illegality of the CFMEU and the damage it has done to its business.

Yet bizarrely in the next paragraph Mr Shorten says the government condemns this very illegality and lawlessness!

”From the outset the Government and Minister Shorten have condemned illegal conduct and have stated firmly the view that the rule of law should be upheld and that violence, intimidation and thuggery have no place in the Australian building industry.”

This is breathtaking, but unsurprising as the government seems to approach workplace relations law from the aspect that it is separate to criminal and civil law and should be conducted without regard to the decisions of other courts.

The manner in which the government has gone about handling disputes reveals just how retrograde the Fair Work Act is and just how emasculated the FWBC is.

But it also reveals the nature of the workplace relations system that is preferred by the government and that is an interventionist model with third parties such the Fair Work Australia mediating disputes with the Minister front and centre to direct them publicly.

It is a return to an era that was believed to have been consigned to history – that of the IR Club, where the minister was front and centre, the industrial commission acted as a broker and the law was blithely ignored.