

Welcome to the industrial relations masquerade ball!

Ken Phillips

Industrial relations is not what it appears to be on the surface, where most people think it's about unions and bosses having the occasional spat over wages and conditions. That is an obvious aspect of the game—but it's not what it's really about.

Industrial relations is, in fact, a complex process in which surprising amalgamations of players seek to control the way in which (mainly) big business is done in Australia. Industrial relations commissions are simply the masking institutions which hide the faces of the well-placed players who don't want their game of subterfuge known.

The truth is that industrial relations is like a continuous process of medieval, masquerade balls conducted at the courts of princes. The real game of deals and counter-deals is done by Machiavellian maestros with whispers and winks and graceful nods. When deals are struck, they are taken to a princely industrial commissioner with a flourish and fanfare requesting, with great humbleness, formal sanction.

In each princely court, however, the players, cultures and games vary and, of late, great change is afoot!

The key players are a raft of senior industrial relations and human resource professionals, consultants,

solicitors, employer association officials and union officers who all know the real game, how to network and how to seal deals.

If a business, whether private or public, wants to secure a major deal, say, to build and operate a factory or develop a gas field, the business development and operations managers hand the industrial relations deal-making across to the deal-makers who undertake a dance routine. A final deal will be struck and returned to the business managers on the basis of 'this was the best deal that could be done'.

In Sydney, the deal-making has traditionally operated with sophistication and effectiveness. Deals stick and operate like this. There is an intimate, almost seamless, connection between Sydney unions, the Australian Labor Party and major businesses. Sydney unions and the ALP operate almost as one, where deals and trade-offs are made inside and between the organizations—and then held tight.

This affects not only commercial business, but also every area of public undertaking—sometimes positively and sometimes negatively. For example, necessary reform to the crumbling Sydney rail system has long been stymied because rail unions control certain factions and block reform. But



when it came to running the transport system for the Sydney Olympics, the Labor faction system worked superbly to deliver results.

How things operate in Sydney (and, in particular, what new projects can occur) is always determined by internal Labor deals. The deal-making is a mystery to an outsider but has clear shapes and forms to the inside players. Industrial relations is central to the process—'smart' Sydney businesses know this and deals are formalized through the NSW industrial relations system.

There is nothing sinister about this. It's just a reality of politics. But for any large business to operate in Sydney it must connect closely with the Labor deal-making processes. This is why some Sydney-based industry associations cultivate close ties with unions and why Sydney business donates much more generously to the ALP than it does to the Liberals.

One thing that can be said for this

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Sydney deal-making system is that once a deal is struck, businesses can have great confidence that, for the period of any project, the deal will normally stick.

The same cannot be said of Melbourne. The relationship between Melbourne unions and any State government is always fractured and precarious. The internal Labor factional disciplines that are common in Sydney are thin at best in Melbourne and frequently crack. This can make doing business in Melbourne awkward.

Take the deal to build the Mitcham–Frankston tollway. When the tender winner was announced, a union enterprise agreement was barely in place. The Australian Workers Union moved quickly to secure an agreement favourable to the construction project. However, a rival union—the CFMEU—bristled, alleging that it had been screwed, and demanded entrée to the deal. The industrial agreement was renegotiated to involve both the AWU and the CFMEU, but on worse terms for the builder than the AWU agreement.

Further, the CFMEU is currently active in the worker recruitment process to place its operatives in key positions during construction. It's inevitable that the builder will need constantly to placate the CFMEU during construction on hundreds of small items. Melbourne deals are like this. They appear to be settled, but keep changing during the life of a project.

In Sydney, such an agreement would normally have been sealed behind the scenes at the time of the tender decision and could be expected to stick. This is not to say that Victorian governments are incompetent, it's just that they don't have the intimate and solid deal-making relationship with unions of the type that exists in Sydney.

The Sydney deal-making environment can, however, also work against business. NSW suffers unjust work safety laws under which managers hold high personal levels of liability

for work injuries and death—liabilities which can result in heavy personal fines and even jail. Employees face none of these liabilities. In this respect, justice has been defiled in NSW. Moreover, it is directly a result of policy trade-offs involving unions, the government and some industry associations. Justice was subverted to the political deal.

By comparison, Victoria has introduced new work safety laws that impose liabilities upon managers, employees and everyone in an equitable manner. The looser Victorian deal-making environment meant that good public and business policy was not rorted by factional deals.

Tasmania provides a surprising twist to this expected deals environment, where the ALP government is run by ex-union officials from the (normally perceived) radical union, the CFMEU. But Tasmania has become a special case outside the mainland norm.

From about the 1980s, the success of the Tasmanian Green movement had ensured a stifling of Tasmanian economic activity which turned the State into a haven for quiet retirees and despondent, unemployed welfare recipients. Tasmanian CFMEU and other union officials grabbed power in the local ALP and secured government. They turned the industrial relations deals process into a business-friendly and economic development-friendly one and created a new coalition of government, unions and business against the Greens' anti-economic growth campaigning.

As a result, Tasmania has overcome its once defunct economic malaise and is now driving to renewed prosperity. The only significant industrial relations threat to Tasmania is that, for future major projects, the control-obsessed unions in Victoria will seek to export their influence to the island. Victorian unions did this with the Tasmania–Victoria underwater power-cable link, causing great problems for the project. The recently

proposed paper pulp mill is likely to experience similar Victorian-induced problems.

The lesson from all these examples, the normal message for all big projects, is that Machiavellian, masquerade play is how serious business has been done in Australia for a long time. Nothing is ever what it seems, but business pays the players if required and moves on!

But now someone has gatecrashed the ball—the Prince of princes, the federal government, is proposing to stop the masquerade. All State industrial relations commissions face irrelevancy and probable closure over the next two years. The encouragement of individual work arrangements, both through individual employment contracts and through independent contracting, combined with simple sanctioning processes for collective agreements, threatens the existing and well-known game.

It's why the federal government has had difficulty achieving real support for their reforms from many industry associations, major businesses and the legal community. The players fear a different game, one they may not control!

It's why unions are committing such massive resources to opposing the reforms. They know they will have reduced game control!

And it's why State governments publicly oppose the changes, but privately hope they'll go through, not only to push economic growth but also to help them in the management of their own workforces.

What is clear is that the industrial relations masquerade that has been in play for such a long time in Australia is not yet over, but is about to undergo core change. If the known dance is to die, most current Machiavellian industrial relations players are pondering which new steps to learn.

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