

## Keelia Fitzpatrick speaking notes- AIER debate 'Freedom of Association' 6/10/15

### *Cherry-picking of rights*

UK Trade Union Bill (2015):

- stands to increase thresholds of voter turnout required for a legal strike ballot
- require longer notice to employers of impending action (14 rather than seven days)
- Unions will have to publish, 14 days in advance, a written plan of any intended protest and specific details about it, including social media use.

*"I agree with most of the trade union bill. I think it's very sensible ... but there are bits of it which look OTT, like requiring pickets to give their names to the police force. What is this? This isn't Franco's Britain, this is Queen Elizabeth II's Britain."-- Conservative MP David Davis (September 2015)*

Illustrates the tendency of trade union opponents to be selective about which rights are 'core' and those that aren't and therefore need to be 'modernised'. Davis, a civil libertarian, doesn't mind restricting how organised labour can effectively organise, but won't stand by and watch Britons being stopped from freely taking to the streets to march. Freedom of assembly is seen as more important than freedom of association (FOA).

Cherry-picking of what are core/ universal rights, and those that are out of date and need to be modernised. This can also be seen in the ALRC's rights inquiry, which although it includes FOA doesn't include and economic and social rights prescribed in international law.

Cherry-picking is a habit that many politicians, academics and others have in treating 'rights' which require collective enforcement to be realised as rights that need to be modernised. This cherry-picking can be seen within international labour rights as well: International labour code, 3 categories:

- 'employment-related rights', including the right to freedom from slavery, forced and compulsory labour.
- employment derivative rights: which include legislative provisions that control hours worked, break times and rest periods, minimum wages and occupational health and safety rules. These rights seeks to rewrite the substantive deal (employment contract) to secure justice, and apply to individual workers.

- Finally procedural labour rights, which are the ‘instruments’ that are conducive to a fair bargaining process: the right to FOA and free collective bargaining, the right to strike. They are exercised collectively, but facilitate procedures which act as the custodians for individual rights. They are pivotal to the application of the underpinning individual rights at hand. In Australia, it is these rights that have been subject to limitations and ‘watering down’.
- These procedural labour rights are just as pivotal to securing justice in the employment contract as the underlying individual employment rights that we accept in most developed countries as fundamental. We must be incredibly wary of legislative or rhetorical attempts to disregard procedural labour rights as being less important.

*What does this mean for Australian workers today?*

The debate discussion paper outlines the erosions to FOA in Australian legislation in recent decades, whereby governments have treated FOA as a ‘non-core’ right and therefore introduced:

- Enterprise level bargaining
- Restrictive process for strike action under FWA.
- Complicated rules round union representation, right of entry.

These have combined with labour market trends like casualization and uberisation, as well as other changes to corporate structures e.g. labour hire, franchises, to further limit the realisation of the right to freedom of association.

The cumulative and generational impacts of this decline in FOA is that entire industries and groups of workers are denied the employment derivative rights that procedural labour rights act as the custodian for. We can see that the watering down of procedural rights will lead to a watering down of other rights:

- union density amongst young people is around 8%
- young workers entering a job are 21% more likely to be injured at work and require hospitalisation
- are more likely to be bullied
- 25% of young workers are in black market jobs and don’t receive the minimum employment conditions

This is worse for groups of young workers who are marginalised in other ways, for e.g. temporary foreign workers:

- alarming stories about the wide scale wage fraud against 7 Eleven employees,
- black economy hiring temporary foreign workers like international students and backpackers who are illegally exploited and underpaid in restaurants and on farms.

➔ This exploitation is happening in industries where unions aren't strong, where the cumulative effect of rounds of restrictions on FOA has led to industries and where not even the minimum, legal floor is adhered to. FOA is as important as ever, but it won't necessary look like it used to in this new world of work which is insecure, transient and uberised.

Two examples of efforts being made to reimagine FOA in this new world of work:

- Young Workers Centre (Victoria): Providing community union membership and industrial and legal assistance to young people without an active union in their workplace.
- Media Entertainment Arts Alliance (MEAA): Making effort to organise freelance journalists by introducing a new membership offer called 'Freelance Pro' which provides professional indemnity and public liability insurance, contract advice, training. Also exploring ideas to create an 'ethical freelancers standard'.