SUBMISSION TO THE ROYAL COMMISSION INTO TRADE UNION GOVERNANCE AND CORRUPTION

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THE LETTERS PATENT FOR THE ROYAL COMMISSION CANNOT DO THE JOB REQUIRED

The key aims of the Royal Commission appear appropriately broad, as outlined in the Letters Patent referred to in a recent advertisement in the press by the Office of the Royal Commission into Trade Union Governance and Corruption. The first is to establish an inquiry that '***relates to or is connected with the peace, order and good government of the Commonwealth and any public purpose or any power of the Commonwealth***'. The second is to make recommendations arising from the inquiry.

As demonstrated later, the concept of **'entity'**, addressed in the Letters Patent issued under the Royal Commission Act (1902) appears to assume a slave state, in that **a person** appears considered as an entity **(thing)**, the same as an **organization**, **funds**, **laws** or directions. These are presumably also given via a monarch's rule. The Letters Patent appear to be a poor beginning for any modern investigation from scientific, quality management or related regional planning and development perspectives. It is impossible to investigate potential corruption, for example, from a feudal but legal position which sees secrecy as protective of the state or broader public, as distinct from being protective of a warring individual or tool. From modern standards this is not a good or cheap start. These key problems are addressed later, with related directions in submissions attached.

The first recommendation is therefore that the Australian government should consult the Queen of England with a view to replacing the Royal Commission and related Letters Patent concept with a Constitutional Commission and related investigative process more relevant to the modern global era. This is an era in which policy is ideally made to dispense with feudal operations which hinder better operation of the Universal Declaration of Human Rights and related Conventions to which this state is a signatory. The Constitution should also note aborigines lived in Australia before whites.

RECOMMENDATION 1: THE ROYAL COMMISSION SHOULD BE REPLACED IN FUTURE WITH A MODERN CONSTITUTIONAL COMMISSION AND THE FACT THAT ABORIGINES LIVED IN AUSTRALIA PRIOR TO WHITE SETTLEMENT SHOULD ALSO BE RECOGNIZED IN THE CONSTITUTION

The NSW Parliament's Joint Standing Committee on Electoral Matters has apparently completed its report on its Inquiry into the 2012 Local Government elections, which is also addressed later.

This submission is also relevant, however, to the public hearings commencing on Monday 4th August 2014 relating to the Construction, Forestry, Mining and Energy Union (CFMEU) an employee association listed in Term of Reference (b)(ii) of the Letters Patent issued to the Royal Commission.

It relates also to the operations of other associations in the Term of Reference (b)(ii) which are:

- The Australian Workers Union
- The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
- The Health Services Union
- The Transport Workers Union of Australia

It is also relevant to the National Tertiary Education Union and many other associations or related service organizations. For comparative, administrative and related research purposes, (whether cooperative or competitive in nature), many approaches to service provision or to related funding matters appear ideally driven by the UN definition of **community** which is:

a. a group of people with common interests who interact with each other on a regular basis; and/or
b. a geographical, social or administrative unit

The above definition was agreed by the International Labour Office (ILO), the UN Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO) and the United Nations (UN). In 1994 the UN also helpfully defined community-based rehabilitation as:

> A strategy within community development for the rehabilitation, equalization of opportunities and social integration of all people with disabilities. Community Based Rehabilitation (CBR) is implemented through the combined efforts of disabled people themselves, their families and communities, and the appropriate health, education, vocational and social services (UN Social Development Division 2001: 1).

FROM THE ABOVE NATIONAL, INTERNATIONAL AND REGIONAL PERSPECTIVES, THE COMMISSION AND ITS COVERAGE REQUIRE A BROADER ANALYTIC FRAMEWORK THAN IT CAN GIVE TO ITSELF.

Key regional directions in attached submissions on planning and competition which are focused on delivery of more affordable housing and related services also act as recommendations in the current global, national and related regional and personal contexts. Also see www.Carolodonnell.com.au

For example, the attached submission to the Senate Standing Committee on Economics Inquiry into Affordable Housing addresses term of reference a. '**the role of all levels of government in facilitating affordable home ownership and affordable private rental'** particularly in regard to subsection (v) **the regulatory structures governing the roles of financial institutions and superannuation funds in the home lending and property sectors.** It states:

1. ***Understand the pioneering objectives, design and power of workers compensation, health care, and superannuation service models to deliver more affordable housing and other plans better***

2. ***Take planned regional development and place based routes to land and housing insurance and superannuation planning for fund stability, effective competition and reduced housing cost.***

3. ***Develop jointly owned state and community funds which call for competitive services to the place in the interests of key stakeholders and the broader public, so many service providers and advanced manufacturers may flourish.***

4. ***Democratic inclusion is required which also depends on open fund operation as secrecy is the same as ignorance for everybody else. (Then they may hate and call you corrupt.)***

The related submission attached to the NSW Parliament inquiry into 'Tenancy management in social housing' focuses on term of reference a. **The cost effectiveness of current tenancy arrangements in public housing, particularly compared to the private and community housing sectors.** The way forward is addressed as being through more broadly and openly related regional planning and risk management designed to benefit all Australians by comparison of profit and non-profit schemes.

Also see related discussion of the recent federal budget and a submission to the Senate Economics References Committee Inquiry into Australia's Innovation System and to the Australian Government Competition Policy Review for better ways forward. The Senate Committee seeks policy options to: *'attract, train and retain a research and innovation workforce; develop research pathways; ensure strategic international engagement; and support emerging industries'.* It points out why tertiary institutions and related others should support open regional and strategic planning before collegiate cultures, in open multicultural approaches based on global, national and regional directions.

RECOMMENDATION 2: FROM AUSTRALIAN GOVERNMENT PERSPECTIVES, AS DISCUSSED ATTACHED, MORE BROAD AND OPEN INVESTIGATION IS BETTER TO ACHIEVE KEY REGIONAL AND PERSONAL AIMS, WHICH ARE SOCIAL AND ENVIRONMENTAL AS WELL AS ECONOMIC IN NATURE.

FROM THE MODERN PERSPECTIVE OF THE COMMON DICTIONARY AND FROM RELATED SCIENTIFIC PERSPECTIVES, THE LETTERS PATENT SHOULD NOT DEFINE A TERM MERELY BE REPEATING IT

From the perspective of the common dictionary, the concept of 'entity' employed throughout the relevant Letter Patent appears confused and confusing. For example, *the common dictionary defines entity as: 'a thing's being or existence; reality; things having real existence'*. The concept of the 'thing' appears to be an inanimate object as distinct from a living person, thought or action product.

On the other hand, the Letters Patent of the Royal Commission, use the word 'entity' often in various contexts to mean, apparently, a thing which may include an ***organization, a living person, a fund, a law or related directions.*** For the purposes of modern inquiry this unexplained confusion between apparently separate concepts confuses all further issues. One naturally assumes that the use of the term 'entity' indicates that everything will always be reduced merely to a price.

For example, the Letters Patent state that the inquiry is required and authorised to inquire into the following matters, among others:

(a) the governance arrangements of **separate entities** established by employee associations or their officers (**relevant entities**)(sic.), with particular regard to:

    (i) the financial arrangements of **relevant entities;** and
    (ii) the adequacy of existing laws as they relate to **relevant entities** with respect to:
        (a) the integrity of financial arrangement; and
        (b) the accountability of officers of employee associations to their members in respect of the use of funds or other assets in relation to **relevant entities**; and
    (iii) whether **relevant entities** are used, or have been used for any form of unlawful purpose; and
    (iv) The use of funds solicited in the name of **relevant entities**, for the purpose of furthering the interests of:
        (A) An employee association; or (B) an officer of an employee association; or (C) a member of an employee association or (D) any other person or organization

The letters patent do not provide a definition of patent, other than in the useless repetition of the term in what inadequately poses as a related definition. For example, the Letters Patent state that:

Separate entity means an **entity** that is, or was at any time:

(a) A fund, organization, account or other financial arrangement; and
(b) Established for, or purportedly for, an industrial purpose or the welfare of members of an employee association; and
(c) A separate **legal entity** from any employee association

Thus the use of the term 'entity' appears inevitably to support the traditional feudal view that organizations, funds and people remain equally subject to the rule of a monarch over his or her supposed lands, in contradiction of later and more relevant analytic and related inquiry developments exemplified in ILO, UN and related regional directions. I guess the lawyers also think that separating entities to rule them in secret from each other and beyond is naturally protective. However this is wrong and cannot provide an effective framework to achieve ***the peace, order and good government*** that the Royal Commission superficially appears to seek.

Feudal law often appears to assume secrecy is protective of the public and ignorance is bliss. From any broader and more logical perspective than a man and his lawyer this is false. From any scientific and related health perspective privacy cannot protect the public. It can only protect the individual and is ignorance of his affairs for everybody else. The perfect market requires perfect information and so does perfect risk control, which one may also find in immobility and death. Informed, experienced and open action to achieve social, environmental and economic goals will protect the public better from risks which are ideally sought in modified forms to grow and overcome them and to learn and carry on. Open operation is also the best and cheapest way to prevent corruption.

In general, increasingly broad, varied and deep knowledge and expression are concomitant with the march of history, science, imagination and democratic wellbeing. More honest information provision is what good communication is about. Lawyers cannot deal well with this.

RECOMMENDATION 3: THE CHEAPER, FAIRER, MORE REASONABLE AND FLEXIBLE WAY TO AVOID CORRUPTION IS FOR MORE EVIDENCE GATHERING, ACTION AND RELATED EXPLANATION WHICH IS ALSO MORE BROADLY OPEN TO JUDGMENT. THIS PROCESS MAY OR MAY NOT BE RELATED TO CATEGORIES IDEALLY ESTABLISHED FOR SCIENTIFIC AND/OR QUALITY MANAGEMENT PURPOSES AIMED AT ACHIEVING SOCIAL AND ENVIRONMENTAL GOALS AS WELL AS ECONOMIC ONES.

LEGAL PRIVILEGE HINDERS BETTER INVESTIGATION

Open operation is increasingly required of government, while the private sector clings to secret operations justified by law with wrong assumptions from any scientific or related position which is protective of a broader group or public interest. Such feudal operation is hugely expensive, makes any hearing or protection of others besides the lawyered individual hard and also frustrates fairer, more effective service competition on comparatively level playing fields.

For example, according to the Australian Law Reform Commission discussion paper on Client Legal Privilege and Federal Investigatory Bodies (ALRC 2007), '*a privilege is a right to resist disclosing information that would otherwise be ordered to be disclosed. It commonly covers the confidential communications passing between a client and his lawyer in civil or criminal courts, but is applied far more widely throughout Australian society*. In chapter 2, the ALRC presents the underlying rationale for client legal privilege, which is *'the protection of the confidentiality of communications between a lawyer and a client facilitates compliance with the law and access to a fair hearing in curial and non-curial contexts, thereby serving the broad public interest in the effective administration of justice'*.

This first premise appears to be highly contested in the ALRC discussion of to and fro legal opinion. This is not a good sign for advance. Views about whether the requirements of client legal privilege are protective or destructive for society and the individual appear split and do not appear to be testable, because of the privilege itself and all the attached and related feudal behaviours of the court. The existence of client legal privilege gives lawyers the duty and authority to hide key truths from the court and all those beyond it. Rational judgment cannot be arrived at on this basis.

One assumes the reverse of the ALRC position, and believes that '*the protection of the confidentiality of communications between a lawyer and a client mainly facilitates non-compliance with law, thereby undermining the public interest in effective administration to obtain the goals of society and individuals, while instead increasing complex inconsistency, opacity, tardiness, opportunity for wrongdoing, and all related costs'.* The most obvious indication of this is that almost none of the supposed economic experts predicted the global financial crisis of 2008. This is a hopeless situation from which to address corruption as well as for the stable and cost-effective conduct of any business.

Like the economist, one assumes individuals are normally driven to maximise their pecuniary interest which is often related to enjoyment and social status. Like the economist, one believes perfect information is necessary for perfect competition, and assumes legislated secrecy inherent in the

concept of client legal privilege hinders this. One claims this premise is more logical than the ALRC alternative and that those who seek freer markets should logically adopt this premise, rather than the ALRC reverse. Openly seeking truth rather than opportunities for secrecy and lies, provide the natural support for regional goals and action. Compare and test these premises and related outcomes.

RECOMMENDATION 4: CONSIDER THE NSW PARLIAMENT'S JOINT STANDING COMMITTEE ON ELECTORAL MATTERS TO ASSESS WHETHERS ITS RECOMMENDATIONS WILL CONTRIBUTE TO THE PEACE, ORDER AND GOOD GOVERNMENT OF THE COMMONWEALTH AND ANY PUBLIC PURPOSE OR ANY POWER OF THE COMMONWEALTH

In response to a communication from the NSW Premier on the subject of Business voting in City of Sydney Elections, I pointed out that the average person, such as myself, has little or no idea of the pros and cons of businesses (rather than residents) voting in City of Sydney or related local council elections. How does this help anybody?

The Parliamentary Secretary to the Premier, Mr David Elliott MP, pointed out in response (Ref. CMU 14-10028) that the NSW Parliament's Joint Standing Committee on Electoral Matters has recently completed its report on its Inquiry into the 2012 Local Government elections. I could not find this on the website he refers to, or elsewhere. He notes key recommendations from this inquiry designed to address barriers to business participation in local government elections include:

- Making non-residential rolls permanent for all NSW councils so that non-residential electors, including business owners, are not required to re-apply for inclusion prior to each election, and
- Introducing a system of automatic enrolment to non-residential electors for the City of Sydney based on the model used by the City of Melbourne.

This apparently important matter does not appear to be available for public perusal and debate. One recalls the Thatcher government tried and failed to introduce a British poll tax, to point out that all individuals use taxpayer funded services in the regions they inhabit, and so all will logically also have the right as adults to vote for those who lead the nation. However, it is not clear why non-residential electors, including business owners, should vote in the City of Sydney. Business operation appears to be a separate matter ideally related to open and informed regional and strategic planning rather than comparatively ignorant voting. The response I received from the NSW Premier also indicates the Community Building Partnership Program is related to this debate. We need more information.

Thank you for the opportunity to make this submission. Yours truly,

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