

Time for the Minister to let the OWS stand

by Paddy Gourley *The Canberra Times*, Page 6 (Tue 5 Sep 2006)

In the continuing public controversy over the Howard Government's new industrial relations laws, the reputations of public agencies responsible for their administration is being bespattered. You could feel sorry for them, given the manifest flaws in the governance arrangements with which these organisations have been saddled.

They are also not assisted by the continuing fib-based campaign of Minister Kevin Andrews in his wooden and thus far unsuccessful efforts to persuade the country that the so-called WorkChoices laws will do it a power of good.

And now Minister Hockey has been summoned to assist. What on earth could the Prime Minister been thinking when he made so befuddling an appointment? Unhappily, some of the IR agencies are struggling to help themselves. For example, it's recently been reported that neither Professor Ian Harper nor any of his colleagues turned up to a community consultation session arranged by the *Fair Pay Commission* in Wollongong.

In an exercise of prodigious imagination, the professor outsourced the conduct of the session to PR consultants! It's to be hoped that other quasi-judicial agencies are not tempted to subvert public confidence in their fair operation by imitating this disgraceful wheeze. Indeed, Minister Andrews should be making it clear to Professor Harper that, even by his standards, this is just not good enough.

The truth about the Office of Workplace Services

The minister's claim about the OWS is notably grotesque, as his WorkChoices legislation brings about what is undoubtedly the greatest reduction in the powers and protections of employees the country has ever seen.

And so we come to the Office of Workplace Services (OWS), an agency responsible for ensuring compliance with the Workplace Relations Act.

In March 2006 Minister Andrews said that the OWS had been established "as an independent agency". As Andrew MacIntosh has pointed out in *The Canberra Times*, this is not true. It's a fib.

The OWS, which previously had been housed within the Department of Employment and Workplace Relations (DEWR), has been created as a separate executive agency,

but the performance of its functions has been made no more independent as a consequence.

As Section 66(3) of the Public Service Act makes plain, "The Head of an Executive Agency is accountable to the Government, the Parliament and the public in the same way as the Secretary

of a Department." That is, the OWS is subordinate to the minister. Indeed, as a separate agency whose head is now appointed by the minister, its functions are more susceptible to ministerial direction, and so less independent, than when it was within DEWR.

Minister Andrews' statement in March this year also claimed that the creation of the OWS and its resourcing provided "the most significant boost to employee protection ever undertaken by a government in Australia". That also is not true. It's another fib.

When fully staffed, the OWS will have 260 staff for an Australian workforce of around 10 million. In 1980, the Fraser Government's Industrial Relations Bureau (performing probably a broader range of functions than the OWS) had 210 staff for workforce of about 6 million, and the bureau was a fair dinkum independent statutory authority. That is, the OWS packs much less of a punch than the late IRB.

Moreover, any consideration of the projected OWS staffing level needs to take into account that the Commonwealth has now withdrawn from longstanding arrangements whereby some workplace inspections were undertaken on its behalf by state authorities.

The minister's claim about the OWS is notably grotesque, as his WorkChoices legislation brings about what is undoubtedly the greatest reduction in the powers and protections of employees the country has ever seen. It is self-evidently absurd to say that the OWS is a more significant "boost to employee protection" than the creation of the conciliation and arbitration system.

Give us a break, Kev. Now enter *The Daily Telegraph* (Sydney version). On July 26, 2006, it reported, "The stars of a union [ACTU] ad campaign attacking the Federal Government workplace laws have nobody to blame but themselves ...

Now the findings of an investigation by the OWS - obtained by *The Daily Telegraph* - reveal most of the workers [in the ads] would have lost their jobs even before the new industrial laws were introduced." The article provided names of the people in the ads and revealed their alleged circumstances. Immediately the head of the OWS said, "The OWS did not conduct a specific investigation into the ACTU advertising campaign.

The majority of the individual cases identified in the campaign were already being considered by the OWS prior to the ACTU publicising these." An officer of the OWS said "There was no single report as such." Nevertheless, Minister Andrews gleefully received *The Daily Telegraph* revelations.

He said, "The media and the ACTU and others were saying: these are cases in which the workplace relations system is failing workers. The independent [sic] body charged with compliance went out and investigated. There was a report provided ...

Those findings were then provided to the media" and the OWS has "exposed a phoney political campaign on the part of the ACTU". As the OWS and the minister's versions of these events diverge at various points, this column asked the OWS a number of questions about the nature of its investigations of the ACTU advertisement cases, the process followed, whether a report was provided to Minister Andrews, whether the OWS intends to make a copy of its report available and so on. The OWS declined to answer the questions because it said that they raised "matters of political controversy ...

To do so would be contrary to the APS Values which safeguard the professionalism, integrity and impartiality of the Public Service. "This is an ingenious excuse, especially for a claimed "independent" agency, and it's absolutely phoney, to borrow a vogue word, as the Public Service Commission would attest.

Imagine, for example, if those military staff and public servants involved in the children-overboard saga refused to account for their actions because they went to "matters of political controversy"? It will be interesting to see how the OWS's evasive tactics work in the relevant forthcoming Senate Estimates Committee.

Minister Andrews needs to enlighten us...

In the meantime, being a member of the most accountable government in the history of the federation according to the Prime Minister, Mr Andrews might like to enlighten us on the following:

Did he request a report from the OWS on the circumstances of those in the ACTU advertising campaign or did the office offer it?

What methodology was used in preparing the report (which the minister says exists)? For example, were those in the advertisements consulted and given an opportunity to comment on any information adverse to them?

Did the minister or anyone in his office or department or anyone in the OWS provide the report or related information to *The Daily Telegraph*? If not, is an investigation being conducted on how the information was disclosed?

Has the minister directed or requested the OWS not to answer any questions on its investigations of the ACTU advertisements or has this been done entirely at the discretion of the OWS?

Pending further explanation, it looks very much as if the minister has used the OWS for political purposes and the OWS's refusal adequately to explain itself makes such a speculation more credible. That is to say, the OWS's ministerially or self-imposed silence is promoting the very reputation it says it wants to avoid. The OWS has serious work to do but in present circumstances it is unlikely to be able to cope satisfactorily.

OWS is no independent umpire

It should be set up as a truly independent statutory authority, free from its present direct ministerial supervision and free to explain openly the results of its investigations and their supporting reasons.

For the moment it is not an "independent umpire"; it's an agency under the minister's thumb. Minister Andrews should realise that he'll make more progress in advancing the cause of his IR laws by speaking more truthfully.

IR's political drag is obvious enough at the Commonwealth and state levels. Fibs, cliches, selective disclosures of information and getting Hockey on the job won't help.

Paddy Gourley is a former senior public servant.