

NSW is Criminalising Workers

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KEN PHILLIPS

Work safety laws in NSW are facing an unexpected legal challenge, which has major national implications including core justice issues that will directly or indirectly affect each of us.

Consider this; if a friend asked to borrow your car, drove it, had an accident and died you would be hugely upset, most probably traumatised. The emotional pain you felt would soon turn to dismay if you suddenly found yourself being charged with a criminal offence. "Surely I've done nothing wrong?" you'd ask. The car was in perfect working order and you were nowhere near it when the accident happened.

You'd be shocked if you were declared guilty, not because of anything you did but simply because the accident happened. How can you be a criminal for an event over which you had no control?

Stop and understand however, that this is how the (so called) work safety laws are designed and operate in NSW. People are routinely declared to be criminals for events over which they have no control.

Work safety laws are criminal matters. All other states operate under the usual and civilised common law justice principles where there is presumption of innocence, rights to appeal and so on. These justice principles are in fact cornerstone human rights. But that's not the case in NSW, the 'injustice state'.

NSW work safety laws have presumption of guilt instead of innocence, prosecutions by unions where unions receive half of the fines, no trial by jury, trial in the NSW industrial relations jurisdiction instead of criminal courts and no rights to appeal against final Industrial Relations Commission (IRC) decisions.

The NSW laws, and the grubby nature of NSW Labor politics that created and supports them, is the big blockage to the achievement of nationally harmonised work safety laws. Here's the national issue.

In May this year I wrote that there had been a big win for the prospect of quality nationally harmonised work safety laws. The Rudd government made an election commitment to do this. The Deputy Prime Minister, Julia Gillard is in charge of the achieving this. She commissioned a review. It recommended national work safety laws that broadly secured the principles of criminal justice expected in a decent society. All the state ministers (including NSW) signed up to the principles of the new laws.

We are now waiting for the legislation. There are signals, however, that internal Labor politics is moving against the recommendations and that the NSW Labor machine is persistent in its determination to have the NSW injustice model go national. The power of this NSW push should not be underestimated. They have the capacity to win the political battle over Gillard.

Something new has suddenly emerged. The High Court has granted special leave to an appeal against the NSW laws. The 'Kirk case' involves a farmer who has a NSW work safety criminal conviction against him, for the death of a manager in a vehicle accident on his farm. The farmer says he had no practical control over the accident and in appealing to the High Court, claims the NSW laws deny him normal justice.

The application to the High Court asks the Court to consider that the NSW law, "...renders the criminal duty upon the citizens of New South Wales ... impossible of compliance ... (and) ... inevitably results in the duty being plainly incapable of being complied with." Further, "In so far as the obligation imposed is one incapable of being met, it is contrary to the rule of law and accordingly contrary to the Australian constitution."

Several people have tried to challenge the NSW laws in the NSW Supreme Court. All have failed. This Leave to Appeal was granted relatively quickly by the High Court and three hearing days have been set. It's a big case being run by a lone and elderly farmer but with major national implications.

If the High Court rules against the NSW laws, it will infuriate the class warfare driven types in the NSW Labor movement. It could, however, save Rudd and Gillard from the complex internal Labor machine battle over the issue. It could give them the trigger they need to push ahead with the planned national harmonisation laws.

The High Court is not concerned with the politics of the issue. The Court is being asked to consider higher issues, namely the nature and application of criminal justice in NSW. The politics determines that the High Court's ruling will have implications for all Australians.

<http://www.businessspectator.com.au/bs.nsf/Article/NSW-pd20090825-V8SS2>

Ken Phillips is executive director of Independent Contractors of Australia.

www.contractworld.com.au

He is the author of Independence and the Death of Employment.