

Clarrie O'Shea

50th Anniversary of the Defeat of the Penal Powers



By Michael Williss

This is the text of a speech by Michael Williss, a former teacher, a researcher for the Australian Education Union South Australia and a friend and comrade of Clarrie O'Shea in the years after 1969. Michael is a leading member of the Communist Party of Australia (Marxist-Leninist) of which Clarrie O'Shea was Vice-Chairperson at the time of the 1969 Penal Powers' dispute. Michael delivered the speech to the South Australian Branch of the Australian Society for the Study of Labour History on April 24 2019 and at a Spirit of Eureka function at SA Unions on May 25 2019. In some places quotations are not acknowledged here, but all are from the four sources listed below.

To begin...



On the 21st May, 1969, the heavy black gates of Pentridge Gaol swung open, and a broadly smiling white-haired Clarrie O'Shea walked to freedom.

He had been inside for 6 days, but it could have been 6 weeks, 6 months or 6 years, because he was determined not to purge his contempt of the court which he had defied in protecting the funds of his Tramways Union members.

O'Shea was jubilant because it was the fighting spirit of the working class Australia-wide that had forced his release, and with it, the defeat of the hated penal powers of the Arbitration Act.

What sort of a person was Clarrie O'Shea?

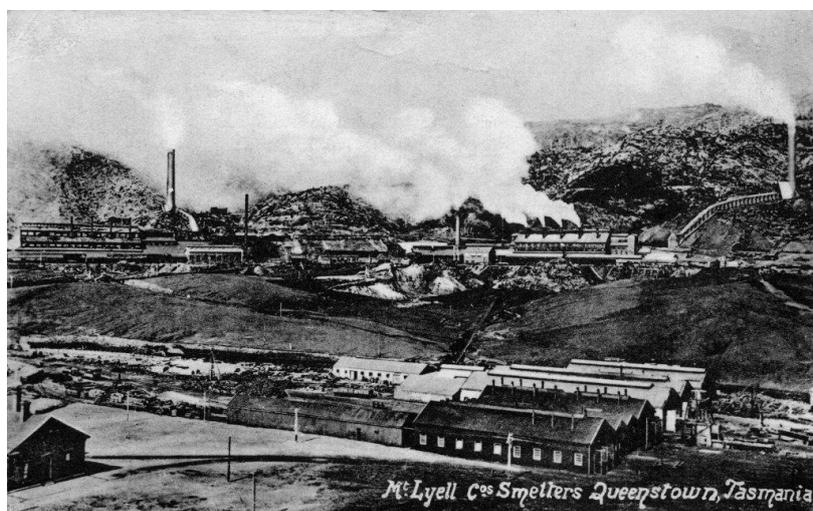
Why was he sent to gaol in 1969 and how did this bring about an end to the penal provisions of the arbitration system at that time?

Are there lessons for our current campaign to Change the Rules?

I was in my last year of high school in 1969, and didn't get to know him until 5 years later, so I can't claim to have participated in the general strikes that followed his imprisonment. I do acknowledge sources other than my personal knowledge of the man: articles by Katie Wood, John Merritt (who conducted several hours of oral history interviews with Clarrie for the National Library of Australia), and Ted Heagney of the Trade Union Training Authority. A section of Clarrie's ASIO files for the period 1946 – 1964 is available online, although it is not particularly useful.

Clarrie

Clarence Lyell O'Shea was born on 30 June 1905 in Zeehan, Tasmania. Clarrie's father was an underground miner at the time, working at the Mt Lyell copper mine – hence Clarrie's middle name.



James O'Shea, the father, worked at the mines for 11 years but he developed a problem with his lungs and moved the family to Victoria when Clarrie was five or six years old. James worked for a year as a dairy share farmer in Gippsland but couldn't make a go of it and went to suburban Burnley, near Richmond.

Clarrie didn't particularly excel at school, and the family income was both minimal and precarious. By the age of 9 he was selling newspapers at the Burnley railway station, then delivering morning and afternoon papers to people's houses, and had Saturday work with a local baker. An elder brother, James Arthur O'Shea (below) was killed in France a month before the armistice.



At the age of 13 ½ Clarrie found full time work as an office boy at the *Labor Call* newspaper, published by the Labor Party every Thursday.



There he saw prominent trade union officials and Labor politicians. He had to leave the job after a couple of years when the family decided to move back to Gippsland for James' health. They had a small dairy and grew potatoes; Clarrie worked for three years for the local grocer. However, Clarrie missed city life and returned to Melbourne in 1925, marrying Edith Pomeroy just before his twentieth birthday.

As married life began, so did his long association with the tramways.



He obtained work as a conductor at around £5 per week. On the eve of the Depression, Clarrie's parents moved back to Melbourne in the hope that his siblings could find work. The Depression hit the family hard. One brother couldn't get permanent work until he joined the Air Force in 1938. Clarrie told John Merritt that it was the Depression that led to his embrace of Communism. He remained employed (although his wages, like everyone else's, were cut by 10% on 1931). He said that working on the trams kept him in daily contact with people struggling with unemployment and poverty.

Clarrie had joined the Labor Party in 1925 but the inadequacy of its response to the problems of the Depression and the Communists Party's much sharper analysis of the crises inherent in capitalism, its organisation of the unemployed and the poor, including the anti-eviction struggles in which Clarrie participated, meant that by 1931 or thereabouts he had joined the CPA.

Communists attempted to work in and win leadership positions in the trade unions, but they also created an Australian section of the Militant Minority Movement which was affiliated with the Red International of Labour Unions, established by the Comintern in 1921, which was more orientated to the organization of rank and file trade union members.

MMM and more

THE MILITANT MINORITY MOVEMENT

The campaign against Bruce's Anti-Trade Union Bill has brought wide recognition of the vital importance of militant unions to the working class.

Bruce and his imperialist partners are seeking to shackle the unions and to kill their fighting spirit, preparatory to reducing wages and working conditions to the coolie "competitive" level, and rushing the workers into war. Spokesmen of all sections of the Labor Movement are freely denouncing these schemes, and urging that it is in the unions that the strength of the working class lies.

But—words apart—what is being done to build up the fighting effectiveness of the trade unions for the fights which are immediately ahead?

The Australasian Council of Trade Unions has done exactly nothing since it was formed to improve either the organisation or the policy of the trade union movement. In general, the Labor Councils are content to grub along in the same old way. The heads of the main unions are still absorbed in the old arbitration game.

In present circumstances, new life can come only from the rank and file.

Significantly, in the Miners' Federation, the Waterside Workers, the A.W.U., and half a dozen other unions a ferment is developing, as militant members find their desire for a forward move against the boss thwarted by the bureaucrats who "lead" their unions.

This is tending, in several cases, to take the form of a mere anti-official movement—naturally enough in the circumstances—aiming only at the replacement of the existing officials.

Such a movement by itself can bring no permanent results.

The fight against the bureaucrats must not slacken. Their crimes and weaknesses should be exposed on all occasions. A new leadership must be pushed forward.

But the movement can advance only if this campaign centres around a programme of militant immediate demands.

This is why particular importance attaches to the work of the Militant Minority Movement, which is putting forward programmes of class demands around which all active trade unionists can rally.

Militant workers, answer Bruce's Bill by linking up with the Militant Minority Movement!

The Militant Minority Movement sought to win workers from the influence of reformist social-democrats. In 1932, Clarrie was a MMM candidate for depot delegate in the Melbourne Cable Tramways Depot, winning the election and thus gaining a seat on the Tramway Employees Association executive.

Early struggles that Clarrie was involved with included a successful campaign to prevent an additional 1/6d cut to wages above the 10% basic wage cut, and a successful struggle for an overtime payment during the 1934 visit to Melbourne of the Duke of Gloucester. The tramways union had a federal structure although the state branches were pretty much their own bosses. Nevertheless, the respect in which Clarrie was held by Victorian and other officials saw his election to the position of federal secretary in 1942. By 1946, he was elected president of the Victorian branch, and the following year, its secretary, the latter being the more powerful of the elected positions.

We now know some of the personal background to O'Shea, but what personal qualities explain his ascendancy in the Tramways Union?

I first met Clarrie in 1974, five years after the great fight to end the penal powers. Clarrie had by then retired, although he was still very active politically. We were both active in the Australia-China Society. I was an Executive member and National Delegate from SA and Clarrie was a Vice-President of the Victorian Branch. We were on an ACS delegation to China.



(Clarrie O'Shea in China in 1974, 6th from right. Others in the photo include Melbourne lawyer Jack Lazarus, top row, 3rd from left; in front of him, Ted Bull, Victorian Secretary of the Waterside Workers Federation and CPA M-L Vice-Chairperson; Syd Clare, Sydney wharfie, centre, back; John Cummins, BLF and CFMEU legend, back row, second from right; and the author, right.)

Clarrie had a warm and endearing personality. There was no pretension or arrogance. It's hard to find the right words for such a person. He had charisma. He was only one of two people about whom I have used the phrase "statesmen of their class" – the other was Charlie McCaffrey, mentor to many young South Australian Marxist-Leninists in the late 60s and 70s. This former Ironworkers official and state secretary of the SA Trades and Labour Council shared with Clarrie a bearing that was calmly patrician and dignified, a very grounded self-assurance and unquestioning belief in the revolutionary future of socialism and communism.

I spent three weeks in Clarrie's company in China and enjoyed every moment of it. He was a very good listener and was never over-bearing or opinionated. Perhaps having mentioned when we first met that my wife was a friend of his grand-daughter Cathy King, who had studied with us at Adelaide University helped us get off to a good start.

But why take my word for it? I am obviously biased by a friendship and comradeship towards Clarrie. What was said about Clarrie from the other side of the fence?

The capitalist press has never been a friend of the working class. It is rare for it to present a positive portrait of a union leader, particularly one who has just led a big strike. No doubt there is an element of purposeful flattery in it, playing to the ego as a prelude to trying to suborn and buy-off the particular leader. In any case, after a long strike in 1951, the Melbourne paper *Argus* ran a profile on Clarrie which said, in part:

Hear Secretary O'Shea speak from a strike meeting platform and you hear a man with concise control of his audience, a ready access to facts, and a zealotry which cannot be doubted. Meet him in his Unity Hall office and he becomes a quietly spoken fellow...and ready to give the case for his members. He started as a trammie; he knows his members. And any number of them will tell you that it is through him that the present level of wages and conditions has been maintained.

Under ASIO's spying eyes

Clarrie first "came under notice" of the authorities in 1933. This was before ASIO but whatever records that were held on O'Shea were passed on to that body when it was created by Labor in 1949. In 1955 it compiled a summary of known intelligence on Clarrie. Point 7 in the report notes his attendance, representing the TEA at the State Anti-War Conference in Melbourne in 1934. Point 8 goes on to recount how, during World War 2 he was the organizer of the Volunteer Defence Force at the Essendon Depot. Some snitch made a report on Clarrie to Military Intelligence in 1942 and an investigation was carried out which essentially cleared him noting:

1. *O'Shea is a Driver Conductor employed by the Tramway Board at the Essendon Depot.*

2. Was granted two weeks' leave to organise the Tramway V.D.C. which he did successfully by getting 1100 volunteers.
3. O'Shea is known to the Board as a Red whose views have changed considerably since Russia entered the war.
4. O'Shea is regarded by the Board as intelligent and reliable and was given the organizing position on account of his ability.

At the conclusion of this report, ASIO summed up what it knew of Clarrie as a person.

"O'Shea is a thickset, well-dressed man, with great reserves of energy, and a reputation as a smooth speaker with a forthright manner of expounding Communist ideology.

"He is recognized as having outstanding organizing ability, and his shrewdness and zeal have placed him in a position of considerable influence in his Union and in the trade union sphere in general. However, his Union responsibilities do not prevent him from playing a leading part in Communist Party and "front" activities which is sometimes the case with leading Communist Union officials."

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DRP. JMS S E C R E T

Evaluation: [REDACTED] Report No. 8056

[REDACTED] Information: June 1955

[REDACTED] Event: Report: 12.8.55

VICTORIA

Clarence Lvall O'SHEA (VPF.1135)

Clarrie O'SHEA is a very good type of person. Although very loyal to the Communist Party, he would not stoop to do unscrupulous things which the Party might want him to do.

2. He is very highly regarded by Tramway men, and particularly as he always abides by the majority view. He is unlike J. J. (John Joseph) BROWN (VPF.1210) who would work something at all costs to conform with Party policy.
3. BROWN has been frequently at variance with O'SHEA over strike decisions etc.
4. Jack SHANNON (an anti-Communist) of the Miscellaneous Workers' Union, has expressed the view that O'SHEA could be won away from the C.P. of A. However, it is considered that a good deal of time would have to be spent on this task.

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In June 1955, ASIO confirmed its generally positive evaluation of Clarrie's personal qualities.

1. *Clarrie O'Shea is a very good type of person. Although very loyal to the Communist Party, he would not stoop to do unscrupulous things which the Party might want him to do.*
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ASIO was created by the Labor Party to serve the ruling class by keeping under surveillance any person suspected of working towards a Communist agenda. Its records are often trivial and boring, for example, lists of the registration numbers of cars parked outside a meeting place, or comments made by speakers at the meeting. But it also probed leading Communists for weaknesses, for anything that would make them vulnerable to blackmail or other pressure to change sides, as Victorian Communist renegade Cecil Sharpley had done. They assessed the likelihood of Clarrie "cracking under police pressure" (Sharpley believed he would), or of being induced to leave the Party. They could not find such weaknesses.

Sharpley's defection to the ruling class gave the reactionaries the opportunity to stage a Royal Commission into the Communist Party in Victoria in 1950. The turncoat Sharpley testified that in 1948, the National Secretariat of the Communist Party had ordered a transport workers' stoppage against the newly proclaimed Essential Services Act. O'Shea had objected, saying that tramway men were in no mood for a political strike, and added "If I pull them out, it will be disastrous for union militants in the elections on the 24th of this month." The Party had ignored O'Shea's advice and in the elections that followed, the Communists were defeated. O'Shea himself was not up for election at the time.

Equal pay for women

This quality of always abiding by the majority view of his members sometimes embarrassed O'Shea. As a Communist he knew the limitations of trade unions and trade unionism. They operated by and large within rules set by the capitalist state and had to represent the views of members, the majority of whom at any one time were unlikely to be Communists or to be supporters of Communist policy. His obligation as a Communist was to try and inject scientific socialist, revolutionary politics into the spontaneous consciousness of his members without in any way alienating himself or isolating himself from them.

When John Merritt interviewed him, Clarrie stated that there were three things of which he was proud amongst his other achievements. They were equal pay for women, penalty rates for seven-day shift workers and his successful struggle against the penal clauses of the Commonwealth Arbitration Act.

In relation to women, he said that wartime employment of women on the tramways as conductors led to demands, which were successful, for equal pay with men. Not only that, but the union insisted that women employees be called conductors, not conductresses, so as to emphasise their equality.

But there was another side to that issue. In August 1957, Clarrie appealed for public support for trammies who were fighting cuts to public transport services. He was appearing before a panel of journalists on HSV 7's *Meet the Press* TV show. The male drivers had voted to exclude women from tram driving. Journalist Douglas Wilkie tried to trip Clarrie up.

"Women as well as men drive trams in Russia and China, why won't you allow it here?"

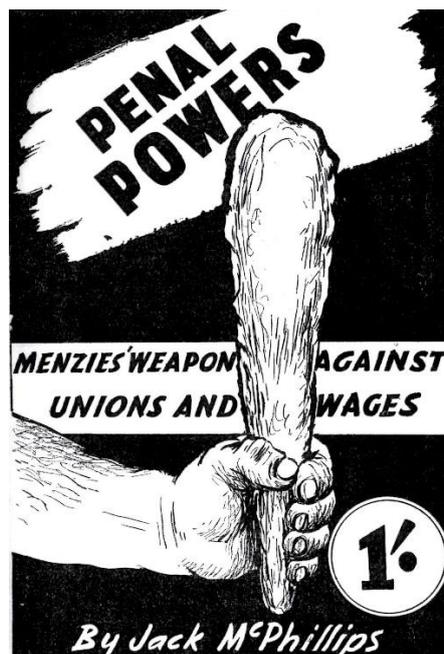
It was an uncomfortable question. Clarrie replied, "Members of my union felt that the employment of women drivers would only be an excuse by the Tramways Board to avoid improving drivers' conditions. They met and decided to oppose any move to employ women as drivers."

Journalist Reg Leonard then asked, "Was that because the men had the majority vote?"

Clarrie replied, "Shall we say the men convinced them by logic. My personal experience is that women are the equal of men in most jobs. But with tram driving I have no experience of comparing them."

The response illustrated the contradiction for a Communist union official of having to represent sometimes reactionary membership views which conflicted with one's personal experience and beliefs.

Pressure from below



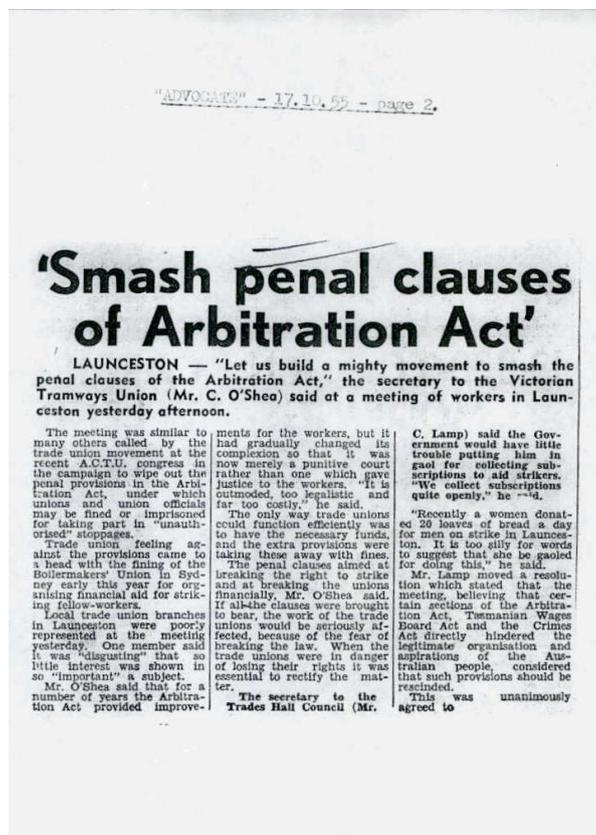
But now, on to the penal powers.

Workers in Australia have never had the legal right to strike. Our federal Constitution is a horrible mish-mash of rules for the conduct of the various state and federal executive committees of the bourgeoisie. It is unreadable and was barely fit for purpose even as the ink dried on the signatures of those adopting it. It certainly does not have a Bill of Rights within it nor any general clauses on the rights of Australian citizens.

Workers' rights, such as they are, arise from or are circumscribed by legislation of the day rather than a Constitution for all times.

The first federal Conciliation and Arbitration Act of 1904 made all strikes and lock-outs illegal with fines of up to £1000 (\$130,000 in today's terms). The Scullin Labor government softened this a bit in 1930, but then Chifley strengthened it after the war, giving the Arbitration Court the power to impose penalties for contempt of orders. Menzies increased the penalties and included a provision for 12 months' imprisonment for a union official and £50 for a union member (\$24,120 in today's terms). Each state had its own penal provisions as well as those introduced federally.

O'Shea was amongst those who opposed the penal powers. However, many on the right of the Labor Party supported them as the price to pay (literally!) for a system that removed from them the need to actually organise and lead industrial struggles.



In October 1955, the *Burnie Advocate* carried an article headed, "Smash penal clauses of Arbitration Act". It reported that Clarrie had arrived and addressed a meeting of Launceston unionists. "Let us build a mighty movement to smash the penal clauses of the Arbitration Act," it reported Clarrie as saying. "When the trade unions were in danger of losing their rights, it was essential to rectify the matter," he said.

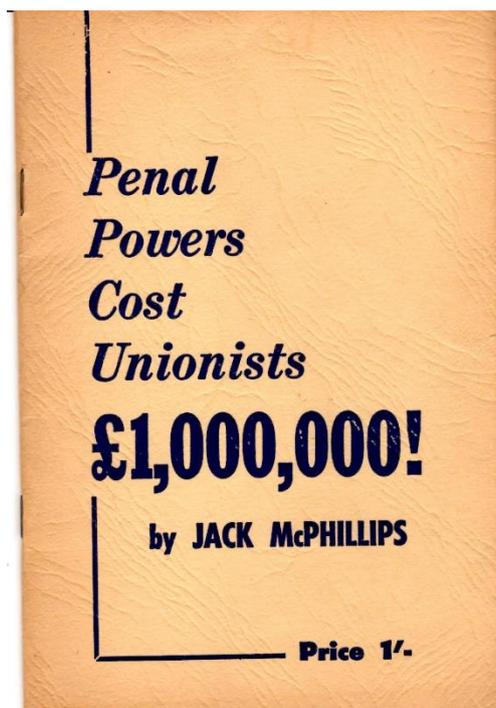
Pressure from below was building on the ACTU.

The 1952 Special Conference called for defiance of the Court by refusing to accept any decision it may make in favour of employers reducing wages or increasing hours. However, given the scope of penal powers, this was a very limited area of defiance. It certainly did not call the whole system of penal powers into question.

At the 1956 Special Conference, the following motion was passed: "We reaffirm the declaration of previous Congresses that all punitive provisions of Federal and State Industrial laws throughout the Commonwealth, which authorizes the imposition of penalties against unions for participation in strikes, should be repealed, and we call upon the Interstate Executive and State Labor Council to renew their representations to the Commonwealth and State Governments for the repeal of these objectionable features of their industrial legislation."

Renew their representations to the Commonwealth and blah-blah-blah

This was cap-in-hand begging at its worst. It envisaged nothing beyond "representations" to governments for a repeal of the legislation. The ACTU would not move beyond reliance on parliament and would not countenance any form of mass struggle.



Between 1956 and 1968, unions were fined 799 times. What angered workers most and led to these fines were the insertion of bans clauses in awards, and the absorption issue (absorbing any over-award payment into new award wage levels). The Ironworkers' Jack McPhillips, a long-time anti-penal powers campaigner, estimated in 1963 that over the course of the Arbitration Court's decision-making history, workers and their unions had been fined £1,400,000 (around \$40 million today).

The penal powers were widely regarded by workers as unfair – between 1958 and 1968 employers had been fined \$2978 – less than 1% of the fines imposed on unions for the same period.

Various unions had begun to protest the penal powers by refusing to pay fines, but most backed down when push came to shove. They complied with orders to produce their financial records rather than risk contempt proceedings and gaol.

One militant exception was a group of seven rank and file boilermakers in WA who had gone on strike over unfair treatment of fellow workers. The men were fined \$30 each which they refused to pay, inviting gaol and issuing a statement that “in view of the vicious nature of the penal clause of the Act, they would make a stand if necessary to assist the campaign to highlight the situation and have the Act amended.”

This threw the ruling class into a panic. Rather than see rank and file workers in gaol, an anonymous benefactor paid the fines and the matter was dropped.

The Tramways Union in Victoria had been fighting the introduction of one-person buses. In 1965 it won a case in the Commission requiring both a driver and a conductor unless otherwise agreed by both the union and the Board. But the Board defied the Commission and introduced two one-person bus routes. These were banned by the union which had a no-bans clause in its award. The dispute went all the way to the High Court where the union was fined \$10,800. It began paying off the fine but refused a demand for a lump sum payment. The fine had been reduced by the payments to \$8,100 by this stage.

All the way with Clarrie O'Shea!

It was now that Industrial Court judge John Kerr, the son of a boilermaker and future coup master in the dismissal of the Whitlam government, ordered that O'Shea produce the union's financial records and make himself available for verbal examination. O'Shea refused and was fined \$500 (nearly \$6000 in today's money). When he was again ordered to attend the court, he said “I challenge the authority of this court to deal with my case. I am merely defending the funds of my organization...” Kerr refused to listen, but Clarrie went on: “I am a paid servant of my members, I am directed to protect their interests at all times, whether it is in regard to

their wages, working conditions or their funds, and I am doing what appears to me and to our members to be the only logical course that I can take to protect their funds.”

O’Shea indicated that he would refuse to surrender the union books and would not submit to questioning by the Court. Kerr summed up the case saying, “People who choose, by what is fashionably called nowadays civil disobedience, to defy the law do so on their own responsibility and must take the consequences... In those circumstances, Clarence Lyell O’Shea, I have no alternative but to order you to be committed to prison, there to be detained until you shall make to the satisfaction of the court proper answer on your oral examination or until the court shall order otherwise.”



Five thousand unionists had attended a support rally for Clarrie that morning and had marched to the Industrial Court, changing Harold Holt’s obsequious “All the way with LBJ” to the militant “All the way with Clarrie O’Shea”. They determined to return to their workplaces – to organize a general stoppage the next day. This was the time of the 27 Rebel Unions who had left the right-wing Trades Hall then under the leadership of the reactionary Industrial Groups. Neither the Trades Hall leadership, nor the ACTU Executive, meeting in Melbourne that afternoon, supported O’Shea. ACTU President Albert Monk (“Monk the Skunk”) refused to even discuss the matter or put it on the ACTU Executive’s agenda.

This may have been something of a déjà vu moment for Clarrie: the *Communist Review* of December 1934, in its report on the strike during the Duke of Gloucester’s visit, not long after Clarrie had been elected to the Tramways union executive, said:

This strike exposes in all their bankruptcy the leaders of the ACTU. Here we find workers prepared to take the action they did – prepared to fight for improved conditions against the capitalist State, in face of a barrage of chauvinistic propaganda;

and the reformists still continue to advocate a policy of reliance on Arbitration. Even whilst the last ACTU Congress was being held and it was apparent that the Tramway strike was developing, the reformist bureaucrats refused to allow it to be discussed, much less give a militant lead on the question.

The day following O'Shea's gaoling, Friday May 16, 200,000 workers walked off the job in Melbourne. There were walkouts in regional centres too: Geelong, Bendigo, Ballarat and the La Trobe Valley.

NSW was a major centre of working class organization and CPA leadership. The NSW Trades and Labour Council, also under the Grouper's right-wing control, refused to endorse strike action, but 5000 workers were already on the streets on Friday morning. A thousand striking workers marched through Darwin.

A second, larger strike occurred in Victoria at the start of the next week. It was estimated that half a million workers walked out. The number of participating unions had grown to 40, but many of the strikers were wild-cattling, striking through local shop committees or rank and file organisations without official union support.

In South Australia, the Trades and Labour Council called a general strike. On Tuesday May 20, five thousand workers met at the St Clair Youth Centre. It was estimated that 100,000 workers walked off the job. Strikes were held in Pt Pirie, Pt Augusta and Whyalla as well. There was a general strike in Tasmania and in Canberra where Governor-General Hasluck ran out of luck and had to cancel functions because his driver was on strike. Thousands were out in NSW and 20 unions defied the Trades and Labour Council and called a 24-hour strike for Thursday.

On Tuesday evening, the Attorney-General announced his own déjà vu moment – O'Shea was to be released because the \$8100 union fine and his own \$500 fine had been paid by a mystery man. The anonymous benefactor was quickly revealed to be a former advertising executive of the *Australian Financial Review* Dudley McDougall who claimed to have won the Sydney Opera House lottery. However, McDougall was known to be a friend of Albert Monk, with whom he had spoken that morning, and O'Shea later maintained that ASIO was also involved in paying the fines.

Over one million on strike

On Wednesday May 21, O'Shea was released. He had been in Pentridge for six days and a medical examination revealed a heart condition. But he was in great spirits, addressing a large crowd of supporters:

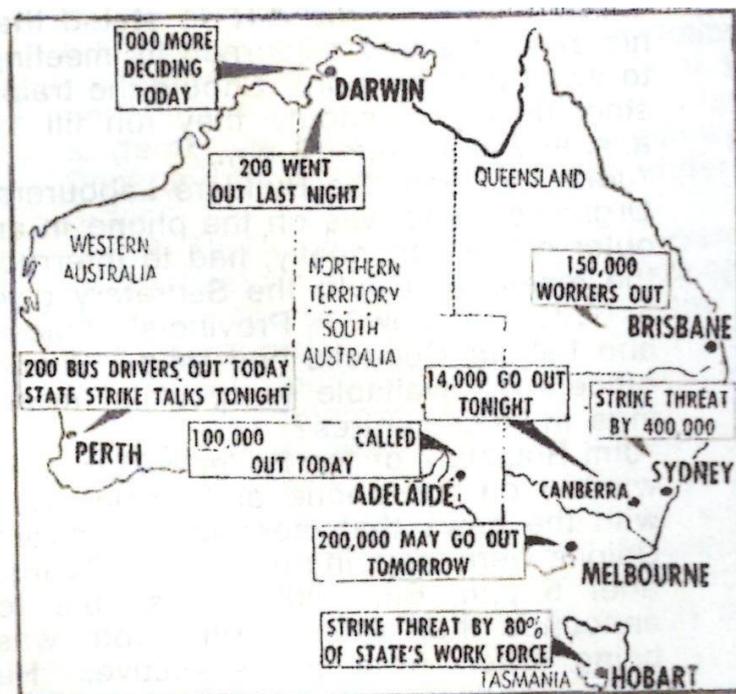
My release is a great victory for the workers, working people and all other democrats who have stood up against the shackling of workers' struggle...My imprisonment and release were only a small part of the much bigger question of oppression of the

workers. I will try to play my full part in bringing it to an end...Neither the Tramways Union nor I have paid one cent of the fines, nor will we ever do so...Australian workers have never before conducted such a magnificent struggle.



Despite O'Shea's release, workers had the bit between their teeth and were determined to press home the advantage. A 24-hour general strike planned for NSW for Thursday went ahead, with over 100,000 walking out in Sydney, Wollongong, Newcastle and other centres. Likewise, in WA 85 unions called out their members and 100,000 stopped there too.

All in all, over a million workers had struck to smash the penal clauses of the Arbitration Act.



So what had O'Shea achieved? Well, everything and nothing. Nothing according to an extraordinarily churlish piece by Ted Heagney, former ARU and FIA official, Arbitration Commissioner and National Director of the ACTU's Trade Union Training Authority. You can find it online. Heagney argues that the 1967-68 metal workers' strikes against the absorption decisions "were the end of Penal Provisions". It is a preposterous view. The metal workers' stoppage drove the bosses to make more attacks and demands for more penalties which poured fuel on the flames of workers' resentment. The strikes by metal workers, boilermakers and others in the lead-up to the O'Shea strike were important and contributed to a mood of militancy and resistance that made the timing of Clarrie's defiance of Kerr so decisive.

In a sense it was also nothing according to O'Shea. In his little booklet *Workers' Power Versus Penal Power!!!* he is self-deprecating, giving all credit for the victory over the penal clauses to the magnificent actions of the workers:

"Although I was presented as the central figure, the truth was that it was the workers and students who were the central figures. They played the main part, they secured my release from gaol and no-one else..."

It was typical of the political line to which O'Shea adhered that he would credit the mass struggles of workers over his own contribution.

But O'Shea *does* deserve credit. He was a 63-year old man at the end of his working life who risked indefinite imprisonment to bring down the penal powers.

And they were brought down. There were a few feeble attempts to use them after Clarrie's release, but they were ignored or better – paid by employers to avoid more walk-outs. No sooner were the penal powers made inoperative than workers embarked on strenuous campaigns to raise wages and improve working conditions. By 1971, 30% of workers were involved in strikes. The share of wages as a percentage of GDP rose to its highest level ever. Average weekly earnings rose by 30% between 1969 and 1974. By 1976, union coverage had reached its highest ever level of 56%.

If O'Shea deserves credit for this, so does the Party of which he was a Vice-Chairman. The Communist Party of Australia (Marxist-Leninist) was founded on March 15, 1964. Many simply refer to the divisions in Australian Communist ranks as a mirror of the Sino-Soviet split, and that played its part, but it neglects serious differences over ideology, for example whether to pursue socialism by revolution or through peaceful transition; over politics, for example whether the ALP was a two-class party to be united with or a party of capitalism to be fought against; and organisationally, for example whether to have an open party based on suburban branches or a largely clandestine party organized in workplaces.

The founding Chairperson, Ted Hill, wrote a trenchant criticism of trade unionism and parliamentarism in a 1965 book titled *Looking Backward: Looking Forward...* It quickly became a sort of bible for the type of militancy espoused by O'Shea and his fellow Vice-Chairperson,

Paddy Malone of the Builders' Labourers Federation. After Malone's death in October 1970, Norm Gallagher, also of the BLF, became a Vice-Chairman, as did Ted Bull, Victorian Secretary of the Waterside Workers' Federation.

According to Hill, the trade unions, even as great bastions for the defense of workers' rights, were nevertheless entirely absorbed into the machinery and structure of the capitalist economy and state, and the outlook corresponding to them, trade unionism, could never be anything but a bourgeois ideology. Hill and his group were critical of the hesitancy and caution of many union officials associated with the old CPA, let alone of the ALP, and urged workers to go beyond the boundaries of respectable and polite unionism.

The new Party resolved to put workers' teeth into the struggle to defeat penal powers. O'Shea later said that his struggle had been three years in the planning. Allies were sounded out and commitments sought, encouragement was given to the 27 rebel unions in Victoria that had refused to renew their affiliation with the official Trades Hall, and the developing mood for struggle within the working class was continually monitored so as to find the most opportune time to challenge the system by daring to go to gaol.

Corporations are never satisfied

The ruling class continually reviews and reassesses its tactics. It does it in its political parties and in its peak bodies and advocacy organisations and through its mass media. With penal powers unable to be used for nearly a decade after Clarrie's imprisonment, a different approach was decided upon.

In 1972, South Australian Builders' Labourers Federation officials Les Robinson and Ron Owens were jailed for eight days for placing a ban on a company that had used non-union labour. They were prosecuted under a civil law, the law of torts (or damages). This created a precedent for the use of civil laws in industrial disputes.

One such civil law arose from the Trade Practices Act of 1974 which had been adopted to resolve conflicts between different sections of the capitalists, stopping a subsidiary or cartel member of one corporation from restricting the business operations of another. By rejigging Sections 45D and 45E of this Act in 1977, unions were treated as corporations and secondary boycotts (where one union goes out on strike in support of another) were made illegal. Penalties of up to \$50,000 for an individual and \$250,000 for a "corporation" were provided for. Unions could be sued for the losses incurred by employers as a result of strike actions. From 1977 onwards, these amendments to the Trade Practices Act were thrown at unions involved in the Mudginberri and Dollar Sweets disputes, amongst others.

Incidentally, in March 1977, Hill, O'Shea, Bull and Gallagher jointly authored and signed a small pamphlet addressing these injustices, pointing out that the struggles against the

Essential Services Act, the Communist Party Dissolution Bill and the penal powers “all occurred outside the official leadership of the central trade union bodies.....It was only the **action**, the **struggle**, of the tramway workers, O’Shea and thousands of Australian workers that led to the paralysis of the penal provisions”, and it called for similar struggle against Fraser’s new penal powers. It was also in this pamphlet that for the first time that I can recall, the Party’s preparation for the O’Shea struggle was acknowledged: “It originated,” they said, “in the Communist Party (Marxist-Leninist)”.

Even with the weapons of these new penal provisions in their arsenals, the capitalists were not satisfied. WorkChoices, introduced by Howard in 2005, gave employers the right to negotiate with individual employees, while the Australian Building and Construction Commission introduced separate draconian laws for construction workers.

These became so toxic that confrontations loomed, particularly when rank and file CFMEU member Ark Tribe (below) was prosecuted and faced 6 months gaol. In the leadup to the 2007 federal election, Tribe appealed for support from Julia Gillard, Deputy leader of the Labor Party and shadow Minister for Workplace Relations. He was given the cold shoulder.



The new Labor Government did away with WorkChoices, but Gillard and the then ACTU leader Sharon Burrow devised Fair Work Australia, embedded in which were huge penalties for unions and individual workers. Indeed, one of Gillard’s first acts as Minister for Workplace Relations was to threaten striking WA workers with “the full force of the law” unless they ended their strike and went back to work immediately. Since its introduction in 2009, Fair Work Australia has seen millions of dollars in fines imposed on unions undertaking industrial action, and large financial penalties imposed on individual workers. In real terms, they are heavier than those imposed under the penal powers.

Where to now?

So where does this leave us as we contemplate what must be regarded as a heroic campaign to Change the Rules? Heroic, because we know what it took to defeat the old penal powers, and we know what it will take to defeat the new ones.

We have a different composition of the working class. We have seen a number of large concentrations of industrial workers destroyed and made to disappear under neo-liberalism, and in transport and mining, workers have been replaced by autonomous operations. Many workers are in precarious, part-time employment and union coverage is a shadow of what it once was.

In the lead up to the recent federal election, the Change the Rules campaign was diverted into a marginal seats campaign with the focus on changing the government to change the rules. Despite assurances that Change the Rules won't be nobbled in the way that Your Rights at Work was, the danger of this happening is very real. In the wake of Labor's defeat, there are calls from within the Party for a "move back to the centre" and for Labor to "get back touch with blue collar workers". There is certainly nothing progressive in such calls by Joel Fitzgibbon, Don Farrell and others: it means dropping the so-called "class warfare rhetoric" of wealth redistribution and giving the green light to Adani, not strengthening the movement for the right to strike.

How far can unions be relied upon to practice the civil disobedience of which Sally McManus spoke after being elected to the leadership of the ACTU? Most are not led by militant Communists. They are asset rich and activism by cheque book has replaced the activism of enduring the sacrifice of gaol terms.

But the sense of unfairness is widely felt and captured well by McManus in her booklet *On Fairness*. Undoubtedly the momentum of the campaign must be maintained despite Labor's electoral loss. It must be maintained as an independent agenda of the working class, something used to apply pressure **to** the Labor Party rather than being an excuse to rely **on** it.

And even if Labor had won and could have been forced to make some improvements to our industrial relations laws, changes made through legislation are changes awaiting repeal by legislation.

We do need a Bill of Rights that enshrines basic human rights, including the right to strike, in a code for all times. Papua New Guinea has a Bill of Rights. It enabled their Supreme Court to declare the Manus Island Detention Centre illegal, a violation of human rights. Our

Constitution must go. We need a Constitution for an independent Australia, an Australia freed from imperialist domination, and it should vest in the people the responsibility for determining the nature of our social system as capitalist or socialist.

Real change always comes from waves of defiant, militant and at times “illegal” struggle on the job, in the streets and in our communities. We will never get it by begging or pleading with the bosses or the politicians.

Changing the rules can encompass changing the government as the first step in a broader strategy. The ACTU is unlikely to abandon that parliamentary focus. But the strategy for working class activists must point in the direction of changing the system instead. It must be fought for by mass action on *our* ground, the workplaces and communities, rather than on *their* ground, parliament.

As the 1988 May Day march got underway from Tarndanyangga, heading down King William Street to Parliament House, I saw Clarrie walking along, in the same direction, outside the *Advertiser* building. I left the march and approached him. We greeted each other warmly and had a chat as we kept abreast of the marchers. Clarrie was as cheerful as ever, but I did notice some discoloration of patches of skin around his face. I later heard, in August, that he had died. Unity Hall in Melbourne was filled to capacity by mourners. That didn't surprise me – Clarrie was much loved and respected as a working class hero.

Coming back from China in 1974, we were approaching the customs check point at Melbourne Airport. The Customs officer whose line we were about to enter called out, from about 6 metres away, “Clarrie O’Shea! No need to check your bags mate, come right through!” I shortened the distance between myself and Clarrie and passed through under the shadow of the great man. That small incident, five years after he had been gaoled, said all that needed to be said about the recognition and respect that were shown to him by working people from all walks of life.



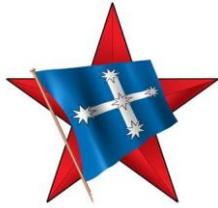
"Everything I have done or tried to do I have done with the idea of service to the people in struggle. I do not believe I can just arbitrarily impose my ideas on people. But I do believe that the break down of capitalist society is impelling thousands into struggle and I believe they are learning in struggle that capitalism must be ended. I will try to do my best to bring that end nearer."



Clarrie O'Shea
former Vice-Chairperson CPA(M-L)



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