ABOLISH THE PENAL POWERS
FREEDOMS FIGHT OF ’69
INTRODUCTION

This booklet is published by a group of twenty-seven Victorian Unions known as the "Trades Hall Council Administrative and Financial Review Committee."

These Unions decided in 1967 to withhold affiliation fees from the Melbourne Trades Hall Council until that Council provides for—

2. A basis of executive representation that brings together the main trends in the trade union movement without any section being restricted with regard to their individual rights.
3. The recognition of individual union rights which must include the lifting of the suspension of four Unions.

As a result of their decision to withhold affiliation fees they were suspended from attending meetings of the T.H.C.

Consequently these Unions began to co-ordinate their own activities and have been involved in a number of successful public campaigns which the Trades Hall Council had either ignored or condemned. These campaigns included opposition to the Victorian Supreme Court Rules charges, a black ban on the discharge of sewage into Port Philip Bay at Carlton, giving assistance in having the objectionable Melbourne City Council By-law prohibiting distribution of leaflets on city streets withdrawn.

It was this group of Unions together with a number of other Unions who led the Victorian protest over the gaoling of Clarence Lyell O'Shea on Thursday, 15th May, 1958. Mr. O'Shea, Victorian Secretary of the Tramway and Motor Omnibus Union, who had been gaol for alleged contempt of the Commonwealth Industrial Court arising out of legal summonses instituted under the penal sections of the Commonwealth Conciliation and Arbitration Act.

The gaoling of O'Shea, who acted in accordance with the instructions of his Union, brought about an explosive nation-wide series of actions and stoppages which for the first time in the history of Australian Industrial Arbitration seriously challenged the Establishments' concept of imposing penalties on workers and their Unions.

Here the twenty-seven Unions record some of the events which led up to the gaoling of Clarence Lyell O'Shea, and the bitterness expressed by Australian workers who have for so long suffered the hated class law which led to his imprisonment.

The booklet is also a tribute to the fine action taken by these Australian workers, an action which attracted world-wide attention.

OUR COVER: Photograph shows Clarrie O'Shea being escorted by Commonwealth Police to Penridge Gaol on 15th May, 1959.

PRICE 20 CENTS
NOW LET'S MOVE ON BY 13 YEARS

In the same House on February 25th, 1969, Mr. CLYDE CAMERON (Labor, Hindmarsh, South Australia) asked the present Minister for Labor (Mr. Bury):

How many times have Unions been fined, and by what amounts since 1966? The Minister's reply — broken up into groups of Unions as adopted by the A.C.T.U. is as follows:

<table>
<thead>
<tr>
<th>Group</th>
<th>Total Fines No. of Times Fined</th>
<th>Section 111 Union Fined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metal Group</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amalgamated Engineering Union</td>
<td>$42,050</td>
<td>160</td>
</tr>
<tr>
<td>Federated Ironworkers Union</td>
<td>$35,000</td>
<td>123</td>
</tr>
<tr>
<td>Blacksmiths &amp; Boilermakers Union</td>
<td>$20,000</td>
<td>131</td>
</tr>
<tr>
<td>Australian Society of Engineers</td>
<td>$16,300</td>
<td>132</td>
</tr>
<tr>
<td>Sheet Metal Workers Union</td>
<td>$16,300</td>
<td>133</td>
</tr>
<tr>
<td>Electrical Trades Union</td>
<td>$18,350</td>
<td>40</td>
</tr>
<tr>
<td>Federated Moulders Union</td>
<td>$3,000</td>
<td>9</td>
</tr>
<tr>
<td>F.F.D.F.</td>
<td>$800</td>
<td>1</td>
</tr>
<tr>
<td>Blacksmiths Society (now amalgamated with Boilermakers Society)</td>
<td>$600</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$167,310</strong></td>
<td><strong>101</strong></td>
</tr>
</tbody>
</table>

Transport Group:
- Waterside Workers Federation: $50,200
- Seamen's Union: $5,400
- Railway Union: $14,800
- Transport Workers Union: $11,000
- Australian Railway Union: $1,400
- A.F.U.E.: $800
- Miners: $100
- **Total:** $84,300

Building Group:
- Plumbers Union: $1,400
- Timber Workers: $800
- **Total:** $2,200

Food & Distribution Group:
- A.M.E.U.: $5,000
- Liquor Trades Union: $4,000
- Amalgamated Storemen & Packers: $4,200
- **Total:** $13,800

Manufacturing Group:
- Amalgamated Clothing Industry: $5,500
- Aircraft Employees: $1,000
- Carpenters: $700
- Metal Workers: $1,900
- **Total:** $9,550

Composed with A.C.T.U.:
- Airline Pilots: $4,000
- Municipal Officers: $1,000
- Australian Journalists Assn.: $350
- **Total:** $5,350

**Total:** $282,410

("HANSARD," PAGE 81 — QUESTION NO. 1027)

BUT FINES are only one side of our picture.

EMPLOYERS' LEGAL COSTS are loaded on to a union with the fines. So we asked Mr. KEN CARR (Secretary, Trades Hall Council Financial and Administrative Review Committee)

"Can you estimate what amount of legal costs Unions have been saddled with?"

He replied:

"About three times the total of the fines, because there are about two cases before the Court for every one that results in a fine and the Unions are saddled with costs of these."

Mr. PAT CLANCY (Secretary, N.S.W. Branch, Building Workers' Industrial Union) added to this:

"In the Metal Trades struggles last year one Union was fined $15,000 plus $16,000 in costs for the employer."

SO THERE IT IS.

THE GENERAL ESTIMATE IS THAT MORE THAN $750,000 has been taken out of workers' union dues through the penal powers and legal costs.

Somewhere a voice will say:

"Ah yes—but what about the employers - the System works both ways you know."

MR. CAMERON WAS NOT ONE SIDED.

HE ASKED ALSO WHAT FINES HAVE BEEN IMPOSED ON THE EMPLOYERS?

Here Mr. Bury was most generous. His figures covered the period 1940 to 1968 — A QUARTER OF A CENTURY — and they show that in that time employers were charged with 332 breaches of awards AND FINED ONLY $2,978.

We asked three Union officials to comment on the significance of this contrast.

MR. ALEX MACDONALD (General Secretary, Trades and Labor Council of Queensland) said:

"The fines paid by the employers equal 0.8 per cent of the fines paid by the Unions. So the bosses do not worry much about fines by the Arbitration Court."

MR. TED INNES (VICTORIAN BRANCH SECRETARY, ELECTRICAL TRADES UNION) commented:

"The employers have the right — uncontrolled by any authority whatever — to increase prices to cover any wages increase the Court may grant. On the other hand if the workers regard a decision as unfair, and take action to gain more, then they are subject to all the weight of the penal powers."

"The Arbitration system therefore is loaded against the worker."

MR. LAURIE CARMICHAEL (VICTORIAN STATE SECRETARY, ALLEGAMIZED ENGINEERING UNION) said:

"The boss has the right to hire and fire as the ups and downs of the business world effect him. But workers who withdraw their labor, because of some grievance, and nobody does this lightly; in the vast majority of cases every avenue of settlement is explored before a stoppage — they are regarded as some form of criminals and speedy action is taken to plunder their union funds in the hope this will drive them back to work."

NOW LET'S RETURN TO 1956

This time the scene is the SENATE CHAMBERS, the date — June 12th, SENATOR SPICE (Attorney-General in Mr. Menzies Government) had this to say:

"The Industrial Relations (the Arbitration System) works both ways you know."

"Industrial relations and the just settlement of industrial disputes are matters which, quite obviously, directly effect the prosperity and economic development of any country, but they have special importance in Australia."

"From a combination of circumstances, they have become more controversial and more complicated in this country than probably in any other."

Senator Spicers then went on to give some reasons for this:

"Australia has become the most highly unionised industrial country in the free world. We have some 60 per cent of our wage and salary earners, both male and female, members of some appropriate union."

He then mentioned that the United Kingdom, which is a highly unionised country on standards of other parts of the world, has only about 27 per cent of its wage-earning population members of unions.

"Another highly industrialised country, the United States of America, has only 27 per cent."

"In addition there is probably more political activity on the part of the organised trade union movement and individual unions, in this country than in any other, and that tendency is for major industrial issues to become political issues."

"We have had, over recent years, a sustained experience of full employment and this has greatly strengthened the bargaining power of the individual employee and of the Union."

"There is a potentiality in the industrial movement of this country for the exercise of power unsurpassed in any other democratic country, but we would claim that our industrial movement has yet developed that recognition of the responsibility which power carries with it, and which is to be found in other countries of the world."

THAT'S LETTING THE CAT OUT OF THE BAG PROPERLY!

The Penal Powers were considered necessary because:

- The Unions were too strong.
- They took up political issues vital to workers.
- Full employment enables a worker to stand up for himself more effectively.
- Therefore the power of the industrial movement must be curbed.

BRING ON "FAME CAT" UNIONS

Senator Spicer's remarks are nothing new from the top Liberals, but this particular speech is of special significance for our story.

TWO MONTHS after making clear his anti-union bias SENATOR SPICE wrote a letter (13.8.1956) in which he resigned from the Senate and on that same day was appointed MR. JUSTICE SPICE, CHIEF JUDGE OF THE INDUSTRIAL COURT — A POSITION HE HOLDS TO THIS DAY. He had two terms as a Liberal Party Senator. The second began in 1949 and he stepped straight into Menzies Cabinet.

Born in 1899, he graduated as a Barrister and Solicitor in 1921.

His record of support for anti-working class politics goes back at least to 1933, a year of widespread unemployment — when he became President of the YOUNG NATION-ALISTS (forerunner of the Liberal Party).
He was knighted in 1963, 
Wage struggles are the arena where the 
penal powers come into play more often 
than others, so let us now turn to examine 
some recent wage judgments by the 
Commission, and their effect on the struggle of 
Trade Unionists. For many years in Australia, 
wages were based on the following formula: 
- **A BASIC WAGE**
  - (An equal amount in every adult male 
pay envelope — 25 per cent less for 
  craft workers)
- **A MARGIN FOR SKILL**
  - (Higher or lower according to the 
  Court’s estimate of the skill required 
  in each job).
- **QUARTERLY ADJUSTMENTS TO THE BASIC WAGE**
  - (An increase or decrease of wages ac-
    cording to the rise or decline of prices 
    of a limited range of commodities).

The unions always said this system was 
inadequate but at least it had built 
up to a recognition that wages 
are a basic wage plus or minus adjustments.

In the post-war period of inflation — a 
system where the amount of currency in 
circulation is vastly increased — prices started 
to rise considerably. The **QUARTERLY AD-
JUSTMENTS** were of some cushioning effect 
here. Wages rose — however inadequate 
these were — for three months.

What happened to wage judgments 
following the introduction of the penal powers?

In 1963 after a consistent campaign by 
employers and the Menzies Government, the 
Court cut out the system of quarterly 
adjustments.

The new system was one towards 
ridding the wages system of the idea that 
the price of goods is the argument 
for wage increase.

The basic wage itself.

- BASIC WAGE APPLICATIONS: 
  - The advocacy of increased wages 
    was usually based on the argument 
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FOR THE WORKERS IT IS ARBITRATION AND PENAL POWERS BUT NOT SO FOR THE "TALL POPPIES."

Of the many scandalous actions to come out of the Federal Parliament in the last 20 years everyone is aware of the big salary rises and juicy pension handouts they have voted themselves. They are just as quick to hand out large lump sums of the taxpayers money to others — you have to be in their good books of course!

Clarrice O'Shea was in goal on May 20th and a million workers were in action against the powers of the Industrial Court but this was the day the Gorton Government chose to introduce legislation to increase the judges' salaries.

Mr Justice Sir John Spicer went up from $18,000 to $24,000 per year — OVER $600 per week!

To tell workers, thousands of whom would like to take home the $5,000 per year he got as a raise, let alone the rest of his salary, that they can't do this or that to win an increase!

Mr Justice Dunphy and the other Judges of the Court went up from $17,000 to $22,000.

On top of salary Mr Justice Spicer gets an allowance of $1,500 per year and the other Judges $1,000. All have a Commonwealth car available when they call for it.

When called on to hear a 109 Order against a Union interstate, they get $25.20 per day travelling allowance.

They have unlimited sick pay and are appointed for LIFE!

They have a long holiday of from four to six weeks annually and a short one of three to four weeks at another part of the year.

All, of course, on full pay.

Every worker in the Commonwealth Public Service gets three months' long service leave after five years service.

But the honorable gentlemen of the Bench, get 12 months' long service leave after 10 years.

It goes by the strange name of "sabbatical leave," but if you call it that name — wouldn't it sound sweet to have your boss come up and say "Here you are Jim. Here's a year's pay. Next year?"

Now let us look at THE POWERS — THE DETAILS, AND HOW THEY OPERATE.

The power of the Industrial Court rests on two foundations. One is IT IS A "COURT OF SUPERIOR RECORD."

We asked MR. FELIX MARTIN (Victoria Secretary, Moulders Union) to explain the meaning of this.

"A Court of Superior Record is one that has the power to order any person to appear before it for refusing to carry out an order or direction of that Court. For instance, if a group of workers in a factory consider a certain part of the plant is dangerous, too dirty or too hot to work in, and boycotted, then their boss can ask the Industrial Court to issue an order directing them to work in that section of the plant. If they fail to do so they are in contempt of the Court and face penalties under the Act.

"It is the same, of course, with a stoppage of work over any other issue. All of the Criminal Courts and the High Court are clothed with similar power."

FOR THOSE WHO COMMIT "CONTEMPT" THE COURT CAN IMPOSE ANY OF THESE PENALTIES:

- $1,000 FINE ON A UNION.
- $400 FINE OR IMPRISONMENT FOR ONE YEAR ON AN OFFICER OF A UNION — COMMITTEE OF MANAGEMENT MEMBER, PRESIDENT, VICE-PRESIDENT, EXECUTIVE OFFICER, SECRETARY, ETC.
- $100 FINE ON A RANK AND FILE MEMBER OF A UNION.

IN AUSTRALIA TODAY —

- STUDENTS, EDUCATIONALISTS AND OTHERS ARE SEEKING A MODERN EDUCATION SYSTEM AND IMPROVEMENT IN CONDITIONS GENERALLY FOR YOUNG PEOPLE.
- OUR RELATIONS WITH THE U.S.A. AND COUNTRIES TO OUR NORTH ARE QUESTIONS ROUND WHICH AN INCREASING NUMBER OF PEOPLE ARE CONCERNED.
- PENSIONERS ARE MAKING THEIR PROBLEMS WELL KNOWN AND SEEKING A BETTER DEAL.
- MANY ARE ASKING SHOULD WE PERMIT FOREIGN CAPITAL TO BUY OUR INDUSTRIES AND MINERAL RESOURCES?
- SOME SECTIONS OF THE FARMING COMMUNITY SEE PROBLEMS OF OVER PRODUCTION LOOMING.
- TAKEOVERS AND Mergers ARE CREATING AN EVEN MORE WEALTHY AND POWERFUL FEW AT THE TOP WHOSE VIEWS ARE CONSTANTLY DRUMMED OUT FROM T.V., RADIO AND THE PRESS.
- ABORIGINAL AND NEW GUINEA PEOPLE ARE ORGANISING, AND SUPPORTED BY WELL-WISHERS IN ALL STATES, ARE PRESSING THEIR NEED FOR LAND, ETC.
- PRICE RISES ARE EATING INTO WAGES AND THOSE ON FIXED INCOMES.

The workers, in their Trade Unions, are among the best organised forces seeking advance in our country.

THAT WHICH LIMITS THEIR ABILITY TO MAKE PROGRESS LIMITS ALL.

The abolition of the PENAL POWERS AND THE INDUSTRIAL COURT will help all AUSTRALIANS who desire SOCIAL PROGRESS.
My release is a great victory for the workers, working people and all other democrats who have stood up against the shocking of workers' struggle. I should like to congratulate everyone in Australia who has played and is playing a part in this magnificent struggle. I am afraid that all workers remain adamant in their opposition to the penal powers, which are designed to suppress the workers. They will carry on the 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.

It is perfectly clear that the employers and their Government have found a device to extricate themselves from the dilemma into which they have not themselves by imprisoning me in an attempt to intimidate the workers. Neither the Tramways Union nor I have paid one cent of the fines, nor will we ever do so.

The infinite power of the workers when they are really aroused has frightened the life out of the Government and the employers.

It will go on to greater victories. Therefore I am certain the workers, working people and all democrats will continue the struggle for the abolition of all penal powers.

Australian workers have never before conducted such a magnificent struggle. Again I feel certain that they will use the initiative they have displayed so far in this struggle to some much more radical social advance such as social services and pensions.

(Signed) C. L. O'SHEA.

(Statement released at 11.32 a.m. on May 21st, 1969, as he left Pentridge Gaol.)
CONFRONTATION WILL CONTINUE

In Melbourne the "27" called a Shop Stewards and Delegates' Rally on May 28th. Again the attendance and enthusiasm were very good.

In moving the resolution, Mr. LAURIE CARMICHAEL told the meeting:

"What we are discussing is freedom and democracy for the working class against vested interests.

"The struggle against the penal powers, against the existence of the penal powers and not just their appearance, goes deep into the heart of capitalist society, to the heart of exploitation.

"They are intended to keep the working class in a submissive state so they can be exploited through their wages, and burdened with higher taxation which in turn goes to help the monopolies.

"This struggle goes to the heart of exploitation and the relationship between employers and employees, so it will be drawn out and will require all the resources of Shop Stewards and activists to explain and argue out the issues in the workshops."

The resolution was seconded by Mr. W. BRIAN (Furnishing Trades) and included these sentences:

"This meeting, in noting that discussions are taking place with the Federal Government about the legislation, insists that the penal powers must go. Changes for appearance only will not be good enough and will not be accepted by the workers we represent, and in all the circumstances we again call for the abolition of the Industrial Court.

"We endorse the proposal that all unions must not pay any fines at all, and we further propose that unions should not attend the Industrial Court for any purpose that relates to the Penal Powers of the Arbitration Act.

"We re-affirm that any union proceeding against by confiscation of funds, property, or action against any union official because of a determined opposition to the penal powers, will be fully and immediately supported by industrial action."

"We determine that regular factory meetings be held, deputations elected, and telegram and resolutions sent demanding the complete repeal of the penal powers.

"We state that any procrastination in the talks to secure the full repeal of the penal powers must be met by the full force of the Australian Trade Union Movement."

"Similar rallies were held in other States so the stage was set for the next moves in the campaign.

"During June and July the discussions between the Government and the A.C.T.U. failed to produce any worth while progress towards the repeal of the powers.

"On July 30th the A.C.T.U. Executive decided that factory meetings should be held, as from August 11th to enable the rank and file to hear progress reports on the negotiations.

"The States Trade and Labour Councils were to organise the meetings.

"On the reaction to this decision in Victoria Ken Carr has the last word of our story.

"The Victorian Trades Hall Council failed to implement the A.C.T.U. decision. Not one meeting was organised by its leadership.

"We of the 27 Unions carried out the decision to the fullest extent possible.

"We arranged about 85 factory meetings — some extended beyond lunch hour and in others the workers stopped for the day.

"As was the experience in May, we found tremendous support, for our demand for the removal of the powers.

"The A.C.T.U. Executive, as well as the factory meetings, decided to advise the Government that it must be in a position to report settlement of the penal powers issue to the A.C.T.U. congress which opens on September 8th.

"As we have said many times, and as this booklet shows, with massive support throughout the whole movement, we do not believe that an alteration here or there will suffice.

"We want the repeal of the repressive side of the Act in toto.

"If the Government fails to agree to this at the time the Congress assembles, we confidently look to that gathering to take the necessary decision to lift further the demand for repeal.

"Since May, only one Union has been fined and refused to pay — so let's Carr."
Tasmania:
Hobart Branch, A.T. & M.O.E.A.

Victoria:
Australian Railways Union, Executive Meeting 20.3.69.
Meat Workers Union.
Building & Motor Trades from Cresco site, Hastings.
Melbourne University Campaign Against Conscription.
Monash University Labor Club.
Australian Timber Workers Union.
Hospital Employees Federation of Australia.
Building Workers Industrial Union of Australia.
Commonwealth Shops Union Committee, North Melbourne.
Railway Maintenance Mass Meeting.
James Hardy & Co., Shop Committee (A.E.U.), Boiler-makers, Ironworkers, EWU, FEDFA, Painters, Carpenters and Ironworkers, Brooklyn.
Drewon Branch, Aust. Labor Party.
Bendigo Division, A.T. & M.O.E.A.
Miscellaneous Workers Union.
Australian Host Industry Employees Union.
Diamond Creek Branch A.I.P.
Maso, University Campaign Against Conscription and Merch. University.
Municipal Employees Union — Coles, Secretary.
Melb. Branch, Young Labor Association.
National Committee Union of Aust. Women.
State Sec. & National President, Bill Webber, Australia.
Retired Tramwaymen's Association of Victoria.
Bellarine North Workshops Employees, Inter Union Shop Committee.
ETU Members at Bowral Scott.
Melb. University Revolutionary Left.
Assoc. Architects, Engineers, Surveyors & Draftsmen.
Assoc. Architects, Engineers, Surveyors & Draftsmen.
W. V. Sec.
The Connolly Association of Victoria.
Central Gippsland Trades & Labour Council.
The Prahran Commune — Ralph, Haddan, Valentine.
Franks, Dov McMeekin, Richard Bucklaire, Valerie.
Palmers, David Bland, Peter Haslin, Adrian.
Lacey, Lacey, Helen Lacey.
Jack Downey, retired tramman, Surrey Hills.
Joy Porter, Alderton, ex-City, Upwey.
W. Halliday, Tramway Wagon Driver, Coburg.
Jack Kerrigan, Clayton.

Canberra:
At opening of Bendigo By-Election E. G. Whittam.
Jim Collins, MHR.
Seamen's Union of Australia:
Perth Radio — Seamen's Union Members SS "Hemi-
gypsa."
Darwin Radio — Seamen's Union crew members "Iron-
linders."
Seamen's Union members "Balvaara."
Adelaide Radio — Seamen's Union members MV "Il-
lowa."
Combined Maritime Unions "Iron Clipper" —
Seamen Members "Trebridge."
Port Adelaide — Crew SS "Yurtinga" — Seamen's Union Delegates.
Sydney, N.S.W. — Seamen's Union Members "Seaway-
kings" — Shop Work.
Carrington, N.S.W. — Crew MV "Ipanoa."
Newcastle, N.S.W. — MV "Lake Macquarie."
Sydney Radio — Seamen's Union Members "Celt-
tara."
Crowes Nest, N.S.W. — Seamen's Union Members "Baltora."

New Zealand:
N.Z. Tramways & Public Passenger Transport Authori-
ties Employees Industrial Union of Workers, Auckland Branch.
Petition from Workers in Auckland, New Zealand, with
44 signatures.
Raglan Drivers Union, Dunedin, N.Z.
N.Z. Railroaders Federation.
Crew of N.Z. Freighters MV "Karamu."
N.Z. National Seamen's Union Members of the MV
"Kowhai."
N.Z. Seamen's Union Members vessel "Nahere."

Canada:
United Fishermen's & Allied Workers' Union, Vancouver.

England:
J. R. Hunt, Transport & General Workers' Union.
Imperial Relations Trust.
Mr. Tom Barker (82 years old), London, England.