

EXTRACT

**ABOLISH THE PENAL POWERS
FREEDOM'S FIGHT OF '69**

By J. Arrowsmith

John's entire 36-page pamphlet is available on www.surplusvalue.org.au/OShea
These three pages convey some sense of what it felt like on the day that the bosses' court put Clarrie in prison.

→ And on May 29th, 1969, the A.C.T.U. Executive decided to advise its affiliated membership —

"Not to pay outstanding fines to the Industrial Court pending discussions aimed at repeal of the Penal Provisions."

In July the Australian Council of Salaried and Professional Association advised its affiliates not to pay fines.

Late in 1968 the heat was turned on Clarrie O'Shea personally. Commonwealth Police started to follow him.

He was summoned to appear in Court on January 17th, 1969, and February 18th. He made no appearance —

"I have never been a liar and if I had attended and answered questions about the books or the funds of the Branch, I would have had to tell lies, so I decided not to appear," he told us.

Then in Hobart on March 6th the Australian Council of the Tramways Union unanimously carried a resolution which said in part —

"Council gives notice in the event that the Court seeks to collect such fines and costs from other branches or proceeds against the person of the Victorian Branch Secretary or any other officer of the Union, immediate stop work action will take place in all States to determine on further Industrial action against the application of the Penal Clauses to our Union.

"Such action to be mandatory on all Branches."

UNITY WAS ON THE MARCH

Clarrie O'Shea was followed by police to Hobart and they even hounded him at his home.

He was again summonsed to appear in Court on March 20th. Again he decided not to appear.

On March 24th the 27 Unions reviewed the situation. They decided —

"This Committee of the 27 Unions declares its concern at the hounding and intimidation of the Tramways Union State Secretary for the purposes of enforcing the penal powers of the Arbitration Act.

"We express our commendation to those members of the Tramways Union who have remained steadfast in the face of the use of the penal powers against them as individuals.

"We call on all State Union Executives to discuss this as an urgent matter, express their support, and to call for the support of the A.C.T.U. through their Federal bodies.

"We further determine to form a sub-committee to formulate detailed recommendations for a campaign on the situation."

On April 10th Clarrie again refused to appear after a further summons.

On April 30th he was personally fined \$500 for contempt of Court. Again he was absent. He received a further summons to appear on May 15th.

The 27 Unions decided that the rank and file must be fully informed of developments and convened, in Festival Hall, Melbourne, a shop stewards and delegates rally for 8.30 a.m. on the same day, May 15th. This date is now added to the many historic days in the calendar of Australian Unionism.

The timing was perfect.

About 5,000 attended and showed quite clearly their support for the clear lead given. They carried — with only one vote against — a resolution which declared:

"We express full support for the Tramways, Boilermakers and any other Union that makes a stand against the Penal Powers. We determine that any attempt to take direct punitive action against any Union funds or property or the person of any official will be met with an immediate 24-hour stoppage of work by all workers represented at this meeting and call upon all other workers to stand up and defend Unions and what they mean to Australian workers."

A burst of cheering greeted the Chairman's announcement that a march to the Industrial Court would follow the end of the meeting.

OUTSIDE

Thousands of workers lined up outside Festival Hall. Led by Clarrie O'Shea and other Union leaders, the march moved off. Clarrie dropped out early in order to proceed by car to the Court, as he had decided to appear on this occasion.

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Jim O'NEILL (Boilermakers Organiser, Victoria) was in the front of the march and here is his story —

"As we neared the Court I hurried ahead as I had made up my mind to hear the proceedings. I entered the Court in time to hear His Honour Mr. Justice Kerr say, 'Call Clarence Lyell O'Shea.' There was no appearance. Then, to my surprise, Clarrie appeared. I knew I was seeing Trade Union history made. After the formalities Clarrie was asked to step into the witness box. He refused to take the oath and said, 'I challenge the authority of this Court to deal with my case. I am merely defending the funds of my organisation.' His Honour said, 'I do not want to hear any speeches from you except to know do you or do you not intend to be sworn or make an affirma-

tion to answer questions and to bring the books which you have been ordered to bring?' Clarrie said, 'I do not.'

"Later His Honour said, 'I order and direct you to produce the books which you were asked in the order to produce.' Clarrie said, 'I do not intend to produce those books.' I knew then that Clarrie would go to gaol.

"After further legal points were discussed His Honour ordered Clarrie's formal arrest and adjourned the Court for half an hour."

AT THIS STAGE WORD OF THE ARREST WAS CONVEYED TO THE MEETING OUTSIDE THE COURT WHICH LAURIE CARMICHAEL WAS ADDRESSING AT THE TIME. HE WAS INTERRUPTED AND GIVEN THE NEWS. He then told the meeting —

"That's it fellas — the stoppage is on to-



An Historic Moment: Mr. Laurie Carmichael (Victorian State Secretary, Amalgamated Engineering Union) announces the arrest of Clarrie O'Shea to a meeting of unionists outside the Industrial Court in Melbourne on May 15th, 1969.

morrow. Don't delay — return to the factories and mobilise your mates. This is the time for discipline." VAT THE JUDGE!

Meanwhile we return to Jim O'Neill's story from inside the Court.

"The Court resumed and the discussion went something like this,"

HIS HONOUR: Mr. O'Shea, as you know, I have required you to make your defence to this charge. You do not want to be represented and you do not want an adjournment. Will you now make your defence.

MR. O'SHEA: Yes. Your Honour, my organisation feels that they were unjustly fined under this clause of the Act. We feel very deeply about this position because the matter that bears the bulk of the fines was finally tested in the High Court and that High Court upheld the Arbitration Commission's award which we were defending.

HIS HONOUR: Has your organisation made any application for the remission of these fines?

MR. O'SHEA: Yes. Following the High Court's decision our lawyers made representations to the Attorney-General and the Minister for Labour and National Service, and I understand also that personal representations were made by our senior counsel in that case, Senator Lionel Murphy, in the Federal Parliament.

HIS HONOUR: Are you saying that the fines were not remitted?

MR. O'SHEA: They were not remitted.

HIS HONOUR: As a result of your application?

MR. O'SHEA: As a result of this. Our members feel deeply incensed with what went on. We did, under protest, pay some of the fines. But then Dr. Sharp without any warning issued garnishee proceedings, following the alterations to Regulation No. 35 of 1967, and under those regulations Dr. Sharp issued a garnishee order on the Commonwealth Bank and \$3,700 were confiscated under that order.

HIS HONOUR: Mr. O'Shea, I want to understand what you are saying. You appreciate, of course, that you are charged with defying an order of mine to yourself on the floor of the Court within this Court, thus committing a contempt of Court. The charge against you is that you have refused to be orally examined. Do I understand you are now trying to give to the Court by way of defence your reasons why you refused?

MR. O'SHEA: I think it is pertinent that we are not merely refusing to do this out of

some sense of perverseness but that we feel we have been unjustly treated, and in defence of the attitude that my members have taken — I am acting under their instructions in regard to this matter — we have refused to attend the previous proceedings. In those circumstances today I felt that I should attend the Court. Some remarks were passed on the last occasion that maybe we have something to hide. I want to assure this Court that we have nothing to hide in regard to our finances. What we are doing, we are doing justly to protect the funds of our members and what we think is to protect the rights of the working people in regard to the viciousness of the Penal Clauses that have been imposed upon us.

HIS HONOUR: These are all matters of reform of the law which you must handle elsewhere. Whilst the law is as it is it must be administered.

MR. O'SHEA: I would expect Your Honour to say that, but we point out that in the administration of this law trade unions have been fined a total of \$282,000 whereas the employers have been fined a total of \$2,900.

HIS HONOUR: The explanation of that may be simply that the unions and their officers, acting through their officers, break the law and commit contempt of Court far more frequently than employers do.

MR. O'SHEA: If I may say so, whether under Section 109 or Section 111, this is a mere formal procedure when workers are engaged in industrial struggle which is part of the Trades Union Movement.

HIS HONOUR: Mr. O'Shea, I think you may address me on whether you are to be found guilty of this charge; you may defend it; you may seek, if you wish, to try to show that you have not committed contempt here this morning. You may address arguments to me now to the question of what I should do about it if you are to be found guilty of contempt. But I cannot allow a debate from the floor of the Court about questions whether the law is just or not, whether the law should be altered or not or whether you are entitled to adopt some form of protest about the law: any of these matters are not, it seems to me, relevant to the serious problem that I am confronted with.

MR. O'SHEA: In regard to the arguments that I may direct to the charge of contempt, I think under Section 111, and then again under Section 184, it lays it down fairly clearly that if a person refuses to produce documents or answer questions, he commits a contempt.