Penal Powers Cost Unionists

£1,000,000!

by JACK McPHILLIPS

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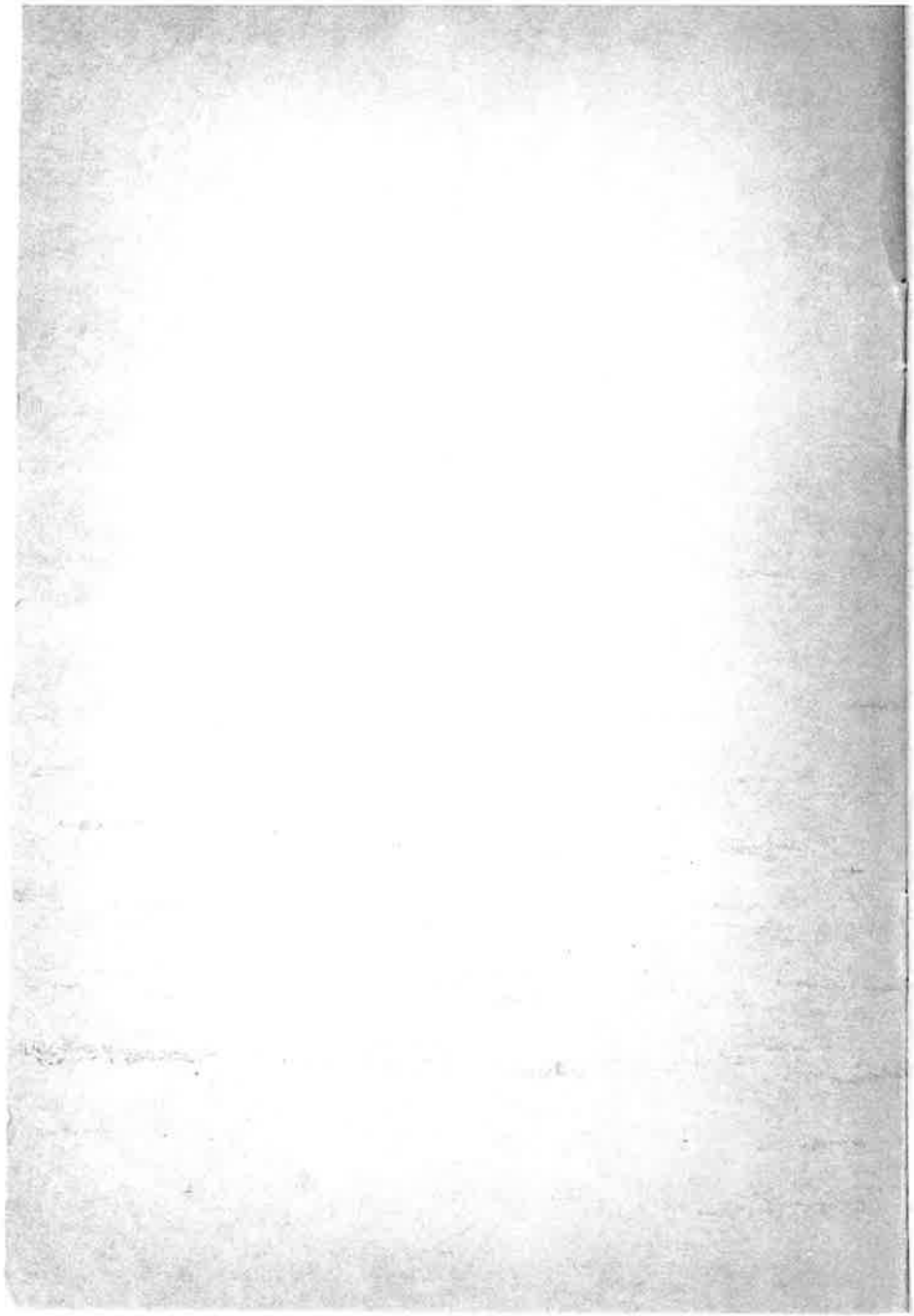

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PREFACE

Fines and legal costs totalling approximately £1,400,000 (August 1963) have been imposed on trade unions and individual workers under the penal provisions of industrial legislation in Australia.

The whole of this tremendous burden has been imposed in denial of the traditional trade union right to strike.

This and the many denunciations of unions and workers who exercise this right, contained in a series of decisions of the Commonwealth Industrial Court and the State Arbitration tribunals in N.S.W. and Western Australia prove that the long-established right to strike has been legally abolished.

Addressing the Fifth Asian Regional Conference of the International Labor Organisation in Melbourne during December 1962, the A.C.T.U. President, Mr. A. Monk, said:

"It has become a custom that as soon as a dispute occurs on any given issue, whether it be minor or major, the employer or the employer's organisation concerned immediately initiates proceedings against the trade union involved and within a few days our Industrial Court, or what we call the 'Axing Court', sets down a date for hearing and, again within a few days, financial penalties, from £100 to £500 are imposed on the union because of every incident which occurs.

"So seriously do we consider the use of these penal provisions against the trade unions in this country that we have decided to bring the matter to the attention of the Freedom of Association Committee

of the International Organisation with a view to the position being investigated by that Committee."

A wave of protest against these penal powers is constantly mounting amongst active trade unionists and the call for stronger action to resist and defeat these powers is becoming louder.

This pamphlet is aimed at assisting this campaign and showing how the use of the penal powers is an integral part of the attack on living standards and the exercise of trade union democratic rights.

Bitter Fight for Union Rights

Workers won the right to organise, form unions and act together to defend and improve wages and working conditions only after bitter struggle against the combined forces of employers and governments.

Every effort to consolidate, extend and act upon these rights has meant continued struggle.

The Combination Laws of England of 1799-1800 which denied the rights of trade union organisation were repealed by other Acts in 1824-25.

But 10 years later, farm labourers from Tolpuddle, Dorsetshire, were sent to Australia as convicts, for trade union activities.

Some press comments of that time find an echo even today:

". . . the real gravamen of their guilt was their forming a dangerous union to force up by various means of intimidation and restraint the rates of labourers' wages." ("Times", April 1, 1834).

"The trade unions are, we have no doubts, the most dangerous institutions that were ever permitted to take root under the shelter of the law in any country." ("The Morning Post", March 29, 1834).

"The real crime was the participating in the aggressive tactics of the trade unions." ("The Morning Chronicle", April 2, 1834).

Many years later, labour historians Sidney and Beatrice Webb recorded: "The law is still an armoury of weapons to which they (employers and governments — McP.) may have recourse, just as unscrupulously and as ruthlessly as their ancestors did in 1834.

What is called criminal conspiracy is still an offence punishable by sentences as atrocious as those imposed on the Dorsetshire Labourers. And criminal conspiracy may easily be held to include an agreement of two or more people, even their common membership of an association for such a purpose."

But the workers knew they must establish certain minimum rights. The struggles for these rights became an integral part of the struggles to defend and improve living standards.

Over a long period of time, what are regarded by the trade unions as "trade union democratic rights" became established.

Today these include:

- The right to form unions and to have them recognised by law.
- The right of unions to exist independent of government control or interference from employers and other outside forces; and the right of the union members to control their own organisations.
- The right to bargain, to enter into agreements or contracts concerning wages and conditions.
- The right to have these enforceable by law as minimum standards, i.e. the right to legalised wages.
- The right to carry out activity for political aims.
- The right of workers to strike and otherwise to restrict the use of their labour; and to support, and be supported by other workers.
- The right to elect representatives of a union's members on a job to act on behalf of the union and the members, free from victimisation by employers.

- The right to hold meetings on the job.
- The right of trade union representatives to enter an employer's premises and to inspect his time and wages records, in order to enrol members, discuss union business with members, police and enforce the operation of awards, agreements and industrial legislation.

Not all of these rights, which the unions regard as the necessary minimum, have been fully established by law. Some exist legally in only a restricted form, e.g. the "right of entry" of union officials, protection of job representatives against victimisation. Where they exist "legally", their use is open to legal challenge by employers.

In every capitalist country in the world today there is an armoury of standing laws, emergency powers and regulations, to impose penalties to limit and abolish trade union democratic rights.

In some countries, long jail terms, torture, death sentences and organised murder are suffered by men and women defending these rights.

Heavy fines, establishment of opposition unions, the use of armed force and organised scab labour, plus victimisation of individual workers are all used, or threatened against these rights.

Strike Right Attacked

In Australia violence was used against the workers in the big strikes of the 1890's and many times since.

In recent years there has been more use in this country of limited jail sentences on union leaders, and extensive fines and threats of fines on trade union organisations and individuals.

The fact that the extension and use of penal

powers against trade unions and their members has been sponsored by the anti-working class Menzies Government should serve as a warning to the trade unions.

These penal powers are mainly, but not only, directed at the right to strike.

The employers' attack on the right to strike is made mainly through industrial tribunals using penalties in:

- Commonwealth Arbitration Act.
- Commonwealth Navigation Act.
- Commonwealth Stevedoring Industry Act.
- State Arbitration Acts of Queensland, N.S.W., Western Australia.
- Commonwealth and State Acts covering Public Servants.
- Commonwealth Crimes Act.

The most frequently and heavily used in recent years are the Commonwealth Arbitration and the Stevedoring Industry Acts and the N.S.W. Industrial Arbitration Act.

In a pamphlet titled "Arbitration under Menzies" the N.S.W. Branch of the Metal Trades Federation — a trade union organisation — said: "In earlier years, the Commonwealth Laws concerned with Industrial Arbitration included provisions which could permit prosecution and fining of trade unions for strike activity. There were numerous occasions when penal powers were exercised against the unions sometimes backed by attempts to use sections of the Crimes Act and other repressive legislation but for the most part general recognition was given, in practice, to the right to strike. This means that earlier penal clauses, aimed at restricting union activity, were largely ineffective and strike action was recognised as a legitimate form of struggle."

As late as August 1948 the most severe penalty available for use by the Commonwealth Arbitration Court against the Building Workers' Industrial Union, for supporting its members in Victoria for action they took to obtain a wage rise, was "de-registration".

But not once since 1948 has a union been de-registered under the Commonwealth Arbitration Act. Severe though this penalty can be, it was not sufficient to meet the purposes of the employers.

Immediately following the war and continuing up to the end of 1950 Australian workers took united and widespread actions of various forms in support of demands to improve living standards and to resist attacks from governments and employers.

The biggest of these struggles included strikes of steel workers in Newcastle and Port Kembla (N.S.W.), railway workers in Western Australia, meat workers in Brisbane, government transport workers in Victoria, metal workers in Victoria and railway workers in Queensland.

These and a great range of other actions were marked by protest resolutions, public meetings, central rallies, leaflet campaigns, deputations to Parliament, street processions, stop-work meetings, overtime bans, go-slow tactics, bans on new labour, mass resignations, 24-hour stoppages, refusals to work certain shifts, short unheralded stoppages, stay-in strikes and other strikes of varying duration.

The following general gains were won:

- Two basic wage increases (7/- in 1946 and 19/- in 1950);
- increased margins (highest general increase in margins ever won);
- week-end penalty rates (established for the first time);
- increased shift rates;
- 40 hour week;
- increased annual leave.

But employers and their organisations and certain governments demanded a halt to the onward march of the unions.

The Commonwealth Arbitration Act as it then stood did not provide the powers they considered necessary.

The Menzies Government provided them.

Role of Menzies

From its election in December 1949, the Menzies Government has obliged with a series of blows at the unions.

A pattern for this series of blows had been provided by some actions taken by Labor Governments.

In 1946 the Queensland Labor Government intervened in a meat workers' strike against victimisation and ordered the Industrial Registrar of the State Arbitration Court to take a secret ballot on the strike issue amongst members of the union.

This ended in a fiasco when ballot papers were posted to persons no longer members of the union and to the names and addresses of deceased members.

In 1948 the Queensland Labor Government rejected wage margins demands of rail workers who took strike action following secret ballots by several unions. The government introduced special emergency powers permitting police violence. Despite this, the workers won.

The Chifley Labor Government made the Arbitration Court a "Court of Superior Record" with the same powers as the High Court to punish for contempt of the Court.

Under this power the present author, then Assistant National Secretary of the Ironworkers' Union,

was sentenced in April 1949 to 30 days imprisonment for criticism of the Court in a speech to union job representatives in Melbourne.

The summons calling on McPhillips to answer a charge of "contempt of Court" was served by a Security Policeman in Sydney, and the reporter responsible for the newspaper report was the prosecution's main witness. Denials of the accuracy of the newspaper report were of no avail. Thus there was a combination of the capitalist press, the Security Police and the government to obtain a penalty.

In 1951, E. Roach, Assistant General Secretary of the Waterside Workers' Federation, was sentenced to 12 months' jail under this same power for an article and cartoon critical of the Court published in the union's journal.

In June 1949 the Chifley Government introduced special emergency legislation to prevent the use of union funds to assist miners in a general strike they had commenced.

Seven union officials were sentenced to 12 months imprisonment, one to 6 months; five other union officers were each fined £100, two unions were each fined £2000 and one was fined £1000. Communist Party Headquarters were raided by Security Police and its officers brought to Court.

The sole crime in all these cases was support for the miners.

This legislation was later repealed and the jailed union officials released after serving about 6 weeks.

Following the defeat of the Labor Government in December 1949, *the Menzies Government moved to extend penal action against the trade unions.*

Its infamous "Communist Party Dissolution Act" was aimed directly at the trade unions.

Menzies and all other anti-union forces knew that the Communist Party had wholeheartedly supported the workers.

They knew that Communists who were trade union officials had been to the fore in raising workers' demands and in leading their actions. They must be removed. They also decided that the active outspoken rank and file unionists must be intimidated by threats and penalties.

All this they sought to achieve by the Communist Party Dissolution Act.

Joint action by the militant and progressive sections — Communist and non-Communist — of the labour movement was a factor in the High Court declaring this legislation to be constitutionally invalid.

When the Menzies Government then sought to obtain these same powers by referendum, the labour movement was even more united in its opposition. A great victory was recorded by the defeat of the Menzies' referendum proposals in 1951.

Between these two defeats the Government proceeded with its plans to attack the trade unions.

The Commonwealth Arbitration Act was amended so as to greatly strengthen its penal powers over trade unions, providing for take-over of a union's power to control its own ballots and even its rules.

Heavy fines and jail sentences were provided for unions, officials and rank and file members.

These and other amendments were said by Menzies' then Minister for Labour, Mr. Holt, to put "teeth into the Act".

The introduction of these amendments coincided with the entry of the "Industrial Groupers" into union office.

(This was first achieved by use of the Court's powers to interfere in the internal affairs of the unions — to investigate union conducted ballots, remove elected candidates from office, appoint de-

feated candidates to office and order ballots to be conducted by people outside the union and in no way responsible to the unions. They have been kept in office in the Ironworkers' and Clerks' Union ever since, by ballots conducted under similar provisions of the Commonwealth Arbitration Act to those inserted by the Menzies Government).

Penal Powers Accompany Wage Attacks

The Menzies Government attacks and the entry of the Groupers, immediately preceded the attack on wages of the workers.

In January, 1952, Conciliation Commissioner Galvin made the first of the "wage freezing" decisions. Despite a marked decrease in the purchasing power of margins since they were previously raised in 1947 as a direct term of settlement of the Victorian metal strike, he rejected the unions' claims for margin increases.

This was followed by the Arbitration Court's decision freezing the Commonwealth Basic Wage in September 1953, by abolishing regular quarterly adjustments, which had operated for more than 20 years.

In February, and again in November, 1954, the Court rejected further margins applications.

These decisions were condemned by the workers and by the A.C.T.U.

Since then, the A.C.T.U. has persistently demanded restoration of the purchasing power of margins (to the 1947 level) and of the basic wage.

Both claims have been equally persistently rejected by the Commonwealth Arbitration Commission.

But as a result of varying forms and levels of job activities, rates of pay above those prescribed in awards have been won.

By the same methods of job action outside arbitration, over-award payments have been established for some sections of workers.

Mass activity by the workers was crucial for the increases in margins in 1959 (28%) *and in* 1963 (10%).

A key feature of the employers' attacks on living standards and the workers' resistance is the use of the penal powers in industrial legislation.

Penal powers of the Commonwealth Arbitration Act have been strengthened several times since 1951.

Use of these laws seemed to reach a peak for that period in 1955, when the Boilermakers' Society was fined £500 plus legal costs.

The "crime" was that Boilermakers at Mort's Dock (Sydney) had levied themselves to support ironworkers on strike (a time-honoured means by which workers show solidarity).

An application to the High Court after this decision resulted in the Menzies penal legislation being ruled invalid. Up to this point — in four years — unions had been fined £5200, plus costs. But not one penny of these invalidly imposed penalties was refunded following the High Court decision.

Menzies also introduced an almost entirely new Act which set up a separate Court — Commonwealth Industrial Court — to deal specially with penalties.

The Australian Labor Party opposed this legislation. Its leader, Dr. Evatt, called this new Court a "Court of Pains and Penalties". A.C.T.U. President, A. Monk, later called it the "Axing Court".

The new legislation was introduced into Parliament by Attorney General Spicer. He was then

appointed to be Chief Judge of this "Court of Pains and Penalties". He is still there, assisted by Judges Dunphy, Joske (another former member of the Menzies Government) and Eggleston (formerly an Arbitration Court advocate for both the unions and the employers).

Penalties Galore

This Court proceeded to impose penalties on a "grand scale":

- In May, 1957, the Seamen's Union was found guilty on ten charges of failing to comply with an order from this Court, fined a total of £900 on three of these charges and ordered to pay the employers' legal costs. Costs in the Industrial Court and an associated action in the High Court totalled £2502. This meant a penalty of £3402 for three days of the one dispute concerning the manning of one individual ship.

- In November, 1958, the Court fined the Australian Air Pilots' Association four sums of £500 each plus costs on four summonses arising out of the one dispute.

- In the same month, it fined the Federated Gas Employees' Industrial Union ten sums of £50 each on ten separate summonses arising out of the one dispute. Costs were added.

- Between April, 1960 and August, 1962 — i.e. in 2½ years — a total of £7600 was imposed on five unions arising out of 26 summonses for non compliance with 11 orders of the Court. Costs were awarded against the unions on 22 of the summonses.

Of these summonses, seven were directed against the Seamen's Union for breaches of one order of the Court. Fines totalling £1800 were imposed on four

of the summonses, and costs on the lot were ordered against the union.

Thirteen of these summonses were directed against the Waterside Workers' Federation for breaches of three orders of the Court. Fines totalling £5400 were imposed upon the union, plus the shipowners' legal costs on each of the thirteen summonses. Each breach of the Court's order was an action by wharfies in the course of disputes concerning normal industrial issues.

Intensified Court orders and finings accompanied the development of the A.C.T.U.-sponsored campaign in support of the demand for 3 weeks annual leave and increased margins between July 1962 and April 1963.

In this period fines totalling £10,850 plus legal costs were inflicted on nine unions in twelve cases where workers had taken various forms of direct action.

For the heinous crime of limiting overtime, banning overtime, banning week-end work and one case of banning a night shift, workers employed in Melbourne breweries earned fines on their unions (five in all) totalling £3900 plus costs, which would bring the penalty to £5000.

The workers replied by levying themselves, and with voluntary contributions from other workers raised more than £3000.

In this period of nine months there were 61 cases taken by employers against 18 unions.

Of these cases, eleven were adjourned with provision to be brought before the Court again at short notice ranging from 24 to 72 hours, and two were dismissed.

In the remainder of the cases, a total of 102 Orders were issued against the unions directing them to cease being parties to various forms of direct action

by their members or small sections of the members, and fines totalling £10,850 were imposed on nine unions. Legal costs of the employers had to be met by the unions on the 102 Orders and on the fines.

No Executions

This orgy of penal actions reached a climax with a series of penalties imposed on the Waterside Workers' Federation at the behest of shipowners in the first few months of 1963, as punishment for the union's campaign for increased wages and annual leave.

In the short period of a few months the shipowners took out 28 summonses against the W.W.F. The Court, in dealing with 23 of these summonses, fined the Waterside Workers' Federation a total of £9200 plus legal costs.

This brought to £17,600 the total amount of fines imposed on the Waterside Workers' Federation by the Court since the Menzies legislation was first used against the Federation in June, 1952. All but £500 of this was imposed since May, 1960.

To this sum must be added thousands of pounds in legal costs of the shipowners.

On 17 summonses dealt with at two sittings totalling 5¼ hours, the Court penalised the Waterside Workers' Federation £6800 in fines, plus costs. On 11 of the summonses the maximum fine of £500 was imposed.

So:

- In the first 4½ years of the Menzies legislation, seven unions "copped" fines totalling £5200 plus legal costs.
- In another and later period of 2½ years, five unions "copped" £7600 in fines, plus legal costs.

- In ten months from July, 1962 to May, 1963, nine unions "copped" it for £10,850 plus legal costs.
- In 5¼ hours, the Waterside Workers' Federation "copped" £6800 plus costs.
- In 1957, the Seamen's Union was penalised £900 plus costs on ten separate summonses.
- In 1958, the Airline Pilots were penalised £2000 plus costs on four separate summonses.
- In 1963, the Waterside Workers' Federation was penalised £6800 plus costs on seventeen summonses.

Looking at that record, the workers will be grateful for the fact that this Court does not possess the power to impose capital punishment!

Latterly, arbitration tribunals which do not have the power to impose fines, have found other penalties to impose on unions for resorting to direct action.

- Last year (1962), in Western Australia, Commissioner Schnaars of the W.A. Industrial Court, refused to include a "preference to unionists" clause in the State metal industry award because the unions had exercised the right to strike.
- In May, 1963, Judge Ashburner of the Commonwealth Arbitration Commission excluded wharfies in Sydney and Melbourne (because of their industrial action) from his decision extending the 10 per cent margins increase to all other ports.

The Judge's decision was greeted by a 24 hour stoppage in all ports. The 10 per cent increase has since been extended to wharfies in Sydney and Melbourne.

Simple Procedure

Although not the only penal sections of the Commonwealth Arbitration Act, those so far most widely used against the unions and workers pressing claims for wage increases are sections 109 and 111 of that Act.

Section 109 provides:

"The Court is empowered—

(a) to order compliance with an award proved to the satisfaction of the Court to have been broken or not observed;

(b) to enjoin an organisation or person from committing or continuing a contravention of this Act or a breach or non-observance of an award;"

Section 111 provides:

"The Court has the same power to punish contempt of its power as is possessed by the High Court in respect of contempts of the High Court.

"The Court has power to punish as a contempt of the Court an act or omission although a penalty is provided in respect of that Act or omission under some other provision of this Act or under some other Act."

This section then empowers the following penalties "in respect of a contempt of the Court consisting of a failure to comply with an order of the Court":—

- **£500 fine on a union.**
- **£200 fine or imprisonment for 12 months on an officer of a union—Committee of Management member, President, Vice-President, Executive officer, Trustee, Secretary, etc.**
- **£50 fine on a rank and file member of a union.**

In their unrestricted use of these two Sections, employers have developed a very simple procedure against exercise of the right to strike.

First, they seek inclusion in awards of a clause making it an offence to fail to work in accordance with the award; plus a clause specifically prohibiting "any ban, limitation or restriction upon the performance of work in accordance with the award".

Such provisions in an award facilitate the invoking of the penal clauses and they are now provided in a large number of awards.

Having obtained a clause in the award prohibiting any form of ban, limitation or restriction upon work, the employer is armed to proceed to seek penalties on the unions in the event of any form of direct action.

In such an event, he seeks an order under Section 109 of the Arbitration Act directing the union concerned to cease being a party directly or indirectly to any such action.

Orders have also been issued when the particular action has ceased, and even against some unions when their members have not actually been involved in the particular action concerned.

Orders have been issued in these circumstances on the grounds of the employers' "reasonable apprehension" of further action occurring, or of a union not yet involved becoming involved.

In some such cases the application for an Order is adjourned with provision for it to be again brought on for hearing on 24 or 48 hours notice.

In some cases the order is directed only at a certain action which has already occurred, is occurring or is threatened. But in many cases it is of a blanket character and covers any form of action likely to occur.

Some orders are limited as to time, e.g. six months, but many are unlimited as to time.

Orders were made against any form of action by waterside workers in ports of Melbourne and Fremantle in April and December, 1960. These orders still exist and the Waterside Workers' Federation has been fined for breach of them this year (1963). An application for repeal of these orders was refused in March, 1963, and the Federation ordered to pay the legal costs incurred by the shipowners in opposing the repeal.

Today the waterside workers are saddled with three orders unlimited as to time and which together prohibit them from taking any form of direct action in any port in Australia.

An order and the adjournment of an application for an order is like an axe over the head of workers, threatening them in the event of any direct action to defend and improve their living standards. And for the "privilege" of having this axe held over them, the workers are obliged to pay legal costs from their union funds.

In many instances the issuing of an order has been sufficient to deter any further action by workers because of the imminent threat of heavy fines. This fact has been publicly acknowledged by Judge Dunphy who has been associated with the use of these penal powers since their inception. *Thus the making of an order is itself a penal power and these orders constitute a penalty on unions.*

No Defence

Having obtained an order against a union under Section 109 of the Act, the employer proceeds to seek a penalty under Section 111 for contempt of the Court if this order is disobeyed.

For this purpose employers invariably engage legal representatives although a mere knowledge of procedure and not of law is all that is required to obtain a penalty by way of fine. If the order is disobeyed the fine is almost automatic, and unless a union is prepared to order its members to cease direct action and use its rules to enforce its orders, there is no defence.

The almost total absence of any effective defence has been demonstrated many times over in the course of experience, but perhaps never more clearly than

by a remark of Judge Eggleston in a case involving the Wool and Basil Workers' Union (N.S.W. Branch) in November, 1962:—

"When the employer comes along and says there is a strike current, then whatever the motives for that strike it becomes very difficult for us to refuse such an order unless you can show that the union is in no way concerned in the strike and has done everything within its power to prevent the strike from occurring."

Some further evidence of this is provided by proceedings on July 25, 1963, and affecting six unions in the rubber industry.

A series of demands including wage increases was advanced jointly by the unions on behalf of workers in this industry in Victoria. Leadership of the dispute was taken over by the Melbourne Trades Hall Council Disputes Committee.

Efforts to negotiate with the employers were rejected in an arrogant manner.

The Disputes Committee called two 24-hour stoppages of the workers and the employers applied to the Court for Orders under Section 109.

Orders had been previously issued against unions in this industry for a period of six months and had expired shortly before these stoppages.

On July 25, 1963, Judges Dunphy and Joske, dealing with the employers' new application, said:—

Dunphy J: "In this matter . . . the organisations represented here today have stated in unequivocal terms that they have placed the matter in the hands of the Trades Hall Council and they are abiding by whatever tactics the Trades Hall Council may choose to adopt.

"The statements put in that form come very close to contempt of Court . . . if there are loyalties, the loyalty paramount has to favour the Trades Hall

Council rather than to observance of the law of the land.

"The fact that, at some of these companies, some cited organisations themselves have joined a joint venture in breach of the award with the consequence that it would not matter if they had any employees there or not.

"There is no escape by an organisation which says it has no employees engaged in a claimant company's factory if, in fact, the organisation is aiding and abetting some other organisation in a breach of the award. In those circumstances the Court has no option whatever save to make the orders asked."

Joske J.: "Undoubtedly the 12 months order sought in this case must be allowed in the circumstances. But if this sort of thing happens in the future and immediately after the 12 months expires the union again proceeds to have this sort of strike, whether or not it is aided or abetted by the Trades Hall Council, the order which the Court would have to make. I would think, would be an unrestricted order."

£66,000 Gone

Use of this penal power (i.e. the power to fine for contempt under Section 111 of the Commonwealth Arbitration Act) against which there is such limited defence, has cost the trade unions £33,005 in fines from the beginning of 1950 to June 1963.

There must be added legal costs of the employers. In these circumstances the very engagement of legal counsel by the employers is a means of "taking it out" on unions.

Some idea of the amount of legal costs can be gained from the following:

• Between October, 1953, and September, 1962, the Amalgamated Engineering Union (A.E.U.) paid out a total of £29,339 in legal costs. Practically the whole of this amount was for costs associated with employers' applications for orders and fines.

• In three and a half years—1960 to mid-1963—the Boilermakers' Society paid out £3669/9/- to meet employers' legal costs. Of this amount, £2991/4/6 was for legal costs of employers in seeking orders and fines on the Society under Menzies' penal legislation.

• Figures published by the Waterside Workers' Federation show that in taxed costs and estimated costs yet to be submitted, a toal of £10,817/5/4 was levied agains the Federation to meet employers' legal costs for orders and fines between April, 1960, and May, 1963.

Having in mind that legal costs are levied against unions for the process of the employer obtaining an order under Section 109 of the Act, and levied again when the unions are fined under Section 111 for breaches of the orders, it is quite likely that the total of legal costs would at least equal the total of fines.

So in the period mentioned (1950 *to June* 1963) *the Menzies Government's penal legislation in the Commonwealth Arbitration Act has robbed union funds of an estimated* £66,000.

Individuals Fined

The Commonwealth Industrial Court is not limited for penal powers to the Sections of the Commonwealth Arbitration Act already mentioned here — Sections 109 and 111.

Among other penal provisions is Section 138. This

provides a fine of up to £100 on a person who holds office in a Branch or Federal body of a union, or is an agent of the union, for advising, encouraging or inciting any member in any form of direct action.

Fines of £40 each plus costs were imposed under this Section on March 6, 1958, on M. Munro and N. Isaakson, Vigilance Officers of the Waterside Workers' Federation, Sydney Branch, for advising wharfies not to work in accordance with the award.

These officials had supported their members in a complaint that the method used in manning a certain job was contrary to practice and was unsafe.

In 1959 Bert Milliner, Queensland Branch Secretary of the Printing Industry Employees' Union, was fined £20 for advice he gave a member of his union concerning certain work in dispute. This advice was held to be a breach of Section 138.

In April, 1959, two officials of the Australian Meat Industry Employees' Union in Queensland were fined for breaches of this Section.

One was Chairman of a Sub-Branch of the Union and was fined £40 plus costs for allegedly encouraging members of the union to adopt a practice where the result would be a tendency to restrict output. He was alleged to have done this mainly by setting an example for go-slow tactics.

The other, while acting Secretary of a Division of the union, was fined £10 plus costs. He attended a place employing members of the union to handle a dispute over a wage claim. Prior to his arrival the men had decided to "give notice" if their demand was not granted. When the employer refused the demand the union official advised the delegate to give his notice as previously decided.

Although the Judges admitted this advice had no effect, and the notice would have been given in any

case, they found the official guilty of advising members not to work in accordance with the award and held this action to be a breach of Section 138.

There have also been instances of individual workers being fined for strike action under the West Australian State Arbitration Act. The most recent example being fines of £5 plus 8/- costs on each of 43 Boilermakers in October, 1962. Their crime was strike action to resist tradesmen's work being done by non-tradesmen at lower rates of pay.

Wharfies a Special Target

But this penalty for direct action, i.e. a fine on individual workers for the exercise of a trade union democratic right, is prescribed in its most far reaching and savage form in the Stevedoring Industry Act by amendments introduced by the Menzies Government in 1961.

Moving to offset efforts by the Waterside Workers' Federation to have legislation introduced by State Governments to provide Long Service Leave for waterside workers, Menzies and Co. introduced a long service leave scheme into the Stevedoring Industry Act.

Under this scheme waterside workers were open to lose up to 30 days of their period of service for purposes of qualifying for long service leave, for each occasion that a strike in which they engaged was "declared" by the Government-appointed Stevedoring Industry Authority.

By this means Menzies and Co. extended their penal powers against the exercise of the right to strike to include a raid on an individual's long service leave.

A successful campaign by the Federation and its members — including direct action — obliged the Federal Government to delete this particular penal provision from the Stevedoring Industry Act in November, 1962. But not before 33,959 days' service had been cancelled.

At the time the government withdrew this penalty a large number of "declarations" were still awaiting decisions by the Judge, and the wharfies' successful campaign undoubtedly saved them many thousands of days credit on their Long Service Leave entitlements.

But that is not the end of the story by a long shot.

At the time these amendments to this Act were introduced by the Menzies Government, the Stevedoring Industry Authority already had extensive disciplinary powers over waterside workers including the power to suspend a man — or any number of men — from work for any number of days for "misdemeanour" or any form of strike action.

Wages Raided—Hostages Held

Now this Government, in its campaign of hate against the waterside workers and their Federation as a leading section of the trade union movement, amended the Stevedoring Industry Act to:

1. Empower the Authority to convert the suspension from work into a loss of four days' "attendance money" for every day's suspension it imposed on a man.

2. Punish waterside workers involved in a stoppage affecting 250 men or one third of the total number of registered workers in the port concerned, which-

ever is the smaller number, by the loss of four days "attendance money" for every day of the stoppage.

"Attendance money" is part of a waterside worker's award rate of pay. It is a rate they won as a result of a long and sustained campaign. It is a cost the employer is required to meet in return for having available to him, as and when he requires it, a labour force of experienced wharf labourers. For the worker it is a partial reward to compensate him when there is no work available. It was included in the award by the Arbitration Court not by the Stevedoring Industry Authority.

Consequently to suspend a waterside worker's attendance money is the equivalent of cancelling portion of any other worker's ordinary rate of pay.

From June, 1961, to June, 1963, there were 174 instances in 29 ports where this penalty was applied because of stoppages involving 250 men or one third of the total port strength.

In these 174 instances the penalty imposed cost the waterside workers £1,316,333 in lost attendance money.

This works out at an average loss of approximately £5/12/- for each worker involved in each instance.

Enormous though this penalty is, it does not exhaust the powers under Menzies' legislation to penalise individual waterside workers.

In some instances where use is not made of the power to suspend attendance money, the Authority decides to suspend the men from work.

These suspensions are for one or more "working days," and the Authority, being the sole arbitrator on the matter, has decided that if there is any stoppage in the port concerned, no matter how limited and irrespective of the number involved,

the day is not a "working day" and does not count for purposes of the penalty of suspension.

The result is that, if on one day ten men are suspended for two "working days," and on any one of these days other wharfies stop work on a totally different issue, on another ship and even employed by a different employer, that day is classified as not being a "working day"; it does not count for purposes of the suspension even though the suspended men were not allowed to work and another day must be spent on suspension.

Thus the suspended men are held as "hostages" against the "good behaviour" of the rest of the port.

Another practice of the Authority is to involve more men in a dispute than the workers concerned or the Federation intend. The Authority, having the power to allocate labour, will send other waterside workers to do work which is in dispute and over which it has already suspended men.

This is tantamount to directing men to "scab", and the inevitable result is to enlarge the dispute and line up more men for the penalty of suspension from work or suspension of attendance money.

One additional result of enlarging the dispute is to put the union in line for fines under Section 111 of the Arbitration Act for contempt per medium of the procedure already described.

In many of the instances involving the Waterside Workers' Federation, when the maximum fine of £500 was imposed on the union this year (1963), the wharfies had already been fined thousands of pounds by way of suspended attendance money.

In a vigorous campaign in support of their claims, the Waterside Workers' Federation and its members have drawn attention to these penal powers with

which the Menzies Government has assisted the wealthy shipowners.

Unions Force Government Retreat

This campaign was greatly strengthened by the endorsement of the Federation's claims by the A.C.T.U. and also by the backing it received from the whole trade union movement. But the basic strength of this campaign and its success to date (August 1963) stems from the unity within the Federation itself and the united mass activity of its rank and file.

In many respects this campaign has provided a pattern and an example for the rest of the trade union movement.

Proceeding from the unity within their own ranks, the waterside workers sought support amongst other sections of the people and in this connection they made a special feature of the country areas.

The waterside workers explained their demands and actions while exposing the operation and purpose of the Menzies Government's penal powers, the way they served the purposes of the wealthy shipowners, and the excessive freight charges these monopolists exacted from the nation's trade.

By speeches, radio broadcasts, an endless series of leaflets and organised tours of country areas by rank and file wharfies, they carried the fight to the Menzies Government and its wealthy backers, where it hurt them most, i.e. amongst the people.

As a result the Government has been obliged to agree to suspend for twelve months the operation of the penal power under which the £1,316,333 loss of attendance money was imposed upon the waterside workers, and to leave in abeyance the suspensions of

this money which have not been already worked out. The sum is estimated to equal approximately £750,000.

However, this still leaves the wharfies suffering a loss of approximately £550,000 and also leaves most of the penal powers intact.

Waterside workers' attendance money can still be suspended under another Section of the Stevedoring Industry Act, and the power to fine unions and individuals under the Arbitration Act remains unimpaired.

From all this it will be seen that in just two Acts the Menzies Government has provided employers with a network of penal powers aimed at penalising the unions and workers for resisting attacks on living standards and for exercising basic rights in an effort to improve such standards.

N.S.W. Act Helps B.H.P.

But far reaching penal powers are also possessed and exercised by the N.S.W. State Industrial Commission under the N.S.W. Industrial Arbitration Act.

The penal powers most frequently used by this Commission enable it to impose fines up to £500 and to cancel the registration of unions for what are termed "illegal" strikes.

These are defined as strikes by employees in government or semi-government undertakings, and strikes by "employees in an industry, the conditions of which are for the time being wholly or partially regulated by an award or by an industrial agreement."

The Commission has laid it down that a strike is any form of concerted action taken by employees without permission of the employer.

This definition means in practice that all forms of direct action are, or are easily made to be, "illegal" strikes.

This Act provides "a penalty not exceeding £500" on a union "whose executive or members are taking part in or aiding or abetting" an illegal strike.

Under these provisions 20 *unions were fined a total of* £16,166 *between January,* 1950 *and June,* 1963.

Legal costs are not as heavy for cases under the N.S.W. Act as under the Commonwealth Act, but they amount to some additional hundreds of pounds.

The employers most often using penal powers under the N.S.W. Act are government instrumentalities and the wealthy steel monopoly, Broken Hill Pty (B.H.P.).

Of the 43 summonses issued for illegal strikes in 1959, 36 concerned disputes in the steel industry, and all the £2175 fines for that year under the N.S.W. Act were incurred because of disputes in the steel industry.

In June, 1961, 10 *unions were fined—in two judgements—a total of* £5425 *at the behest of the B.H.P.*

The first judgement concerned two occasions when, resenting "suspension" imposed by B.H.P. on a limited number of men, a larger body "took the suspensions" with them.

The Commission held these solidarity actions to be an "illegal" strike and fined 10 unions a total of £2050, although the action was eight months old.

The second case concerned a 3 weeks' strike against the dismissal of 12 A.E.U. delegates in January, 1961, and a 24 hour stoppage on March 12-13 to consider a decision by the Commission on these dismissals. The following facts are worth noting.

- This 24 hour stop-work meeting was held on a recommendation from the N.S.W. Trades and Labor Council.

- During the course of the strike the Commission was obliged to order re-instatement of 11 of the 12 dismissed delegates.

Despite all this the Commission fined the unions—eight of the ten involved in the first case—a total of £3375. The unions resisted paying those fines until the latter end of 1962, when failure of the N.S.W. Labor Government to support their stand compelled the unions to pay or face the prospects of being put into the hands of an "official receiver" and being "wound up".

The attitude of the Judges of the N.S.W. Industrial Commission to actions taken by workers against what they held to be injustices is clearly reflected in their varied descriptions of such actions as being "disgraceful", "wanton", "wicked", "without merits", "deplorable", "inexcusable", "without justification" "reprehensible" and, of course, "illegal".

De-registration a Penalty

In addition to the power to fine, the Commission also has the power to "de-register" a union.

The outstanding instance of its use involves the N.S.W. Coast Branch of the Federated Engine Drivers and Firemen's Association.

De-registered in 1955, this union was during the next two years "hit from pillar to post" by various forms of penalties, mainly heavy fines, and then finally re-registered with the loss of its rights in the steel industry.

In this approximate 2½ years of punishment, there is ample evidence of a deliberate plan by B.H.P. to use the penalty of de-registration to rid itself of a "troublesome" union. And there is evidence of collusion in this plan by the Industrial Group leaders of the Ironworkers' Union.

In the course of this prolonged period of attack upon the F.E.D. & F.A.—instigated by the B.H.P. steel monopoly—the N.S.W. Industrial Commission judges made clear that democratic practices of the unions lead them into conflict with the N.S.W. Arbitration Act.

In one case, after fining the union £250 the judges said:

"A union whose executive adopts the policy 'that the union shall be run from the bottom and not from the top', cannot fail to come into conflict with the law."

So rank and file control—a cherished democratic practice of trade unionism—is a dangerous procedure for a union! It must be replaced by rigid control of the rank and file by their elected officials, and these officials must ensure by all means in their power such as fines, suspension of membership and even expulsion that the members obey a law which makes every form of direct action a punishable offence!

Some idea of what the Judges had in mind is given by another Judgement against the F.E.D. & F.A.—again on a proceeding taken by the steel monopolies—when they said: ". . . unless the behaviour of members of this union alters, or unless the control of the union activities is placed in other hands . . . the union will not only remain de-registered as an industrial union without the rights of an industrial union . . . but it will be exposed to further penalties and it may even go out of existence altogether."

They gave force to this latter threat by subsequently putting the union out of existence altogether in the steel industry, and this at the request of the steel monopoly.

The F.E.D. & F.A. experience in relation to de-registration provides the most far-reaching use of this penalty, but it is not the only union to suffer.

The Building Workers' Industrial Union (B.W.I.U.) is another to suffer this penalty in recent times. And the threat of its application is constant.

Fines under the N.S.W. Act as a penalty for strike action have not fallen into discard. The N.S.W. Industrial Commission fined the Gas Workers' Union £350 on August 8, 1963.

Heavy Hand in West Australia

In recent times a series of actions by the industrial tribunal in Western Australia has provided further evidence of the attack upon trade union democratic rights.

Reference has already been made to one decision of this tribunal fining 43 rank-and-file Boilermakers £5/8/- each.

Earlier the presiding Judge had threatened to jail some meat workers.

Other decisions by this Judge and Commissioner Schnaars included:

1. An order
   - directing workers not to resign from the employment of a particular employer;
   - directing any who had resigned to return to that employer;

- permitting such resignation only by consent of the employer, or on approval by the Industrial Registrar for which each worker concerned had to apply;
- making any breach of the order punishable.

2. An order compelling the Boilermakers' Society to cancel a ½ day stop-work meeting it had called to hear a report on a dispute involving wage claims;
   - threatening to de-register the union if the order was not obeyed.

3. A refusal to include a "preference to unionists" clause in the W.A. Metal Trades Award because the metal unions had been involved in a series of stoppages.

4. An order
   - prohibiting any "stoppage of work unauthorised by the employer" of all or any section of the members of each of five metal unions;
   - prohibiting any "officer, member or accredited representative of any of these unions from encouraging any worker to leave the employment of an employer bound by the particular award";
   - defining 'a stoppage of work to include any case on any day in which two or more workers fail to continue their employment . . . and/or to carry out any reasonable and lawful instruction of their employer in a reasonably efficient manner";
   - Making any breach of this order punishable by a fine not exceeding £500.

The Supreme Court of W.A. subsequently held this latter order to be invalid. Having lectured the workers and their unions on their obligation to observe the law, the Commissioner apparently in his zeal exceeded the law himself.

These penalties—all too inadequately set out here—and the Judgements which accompanied them—show that the exercise of the right to any form of direct action is a punishable offence and the legal right to strike has been abolished.

This fact is repeatedly emphasised by authoritative statements from the Courts.

As far back as 1950—immediately preceding the first Menzies' penal powers—the late Sir Raymond Kelly, then Chief Judge of the Commonwealth Arbitration Court, set down the obligations of unions imposed by the law and said:

- It is an obligation on unions to submit their claims to arbitration and abide by the results, good or bad.
- It is an obligation on members of unions to accept these results.
- Where members refuse to do this, it is an obligation on the executive body to take action against the members concerned by fining and/or expelling them.
- This obligation has to be fully honoured, even it is means that a Federal Union has to expel a whole Branch or even completely dissolve itself by fines leading to resignations and/or expulsions of members.

Conciliation Commissioner Schnaars made the position clear in relation to the West Australian Act in November, 1962, when he spoke of union obligations and said:

"One of such obligations is not only not to strike, but to take all necessary steps including the application of union rules to prevent such breaches of the Act."

Strikes Continue

However, the existence of such laws has not removed the causes of strikes and similar actions, and the application of penalties has not prevented strikes.

In 11 years of the operation of the Menzies legislation (1951-1961), there was a total of 13,677 recorded disputes, an average of 1243 per year. These 13,677 disputes directly involved in total 4,258,525 workers. In the 11 previous years, the official record shows 9373 disputes which in total directly involved 2,964,490 workers. (Commonwealth Year Book.)

These figures do not include all the actions taken by workers in support of their demands, such as overtime bans and limitations, etc. They are official and minimum figures. However, they are sufficient to show that the penal powers did not scare the workers off from waging the class struggle.

Nevertheless, in addition to the heavy penalties already imposed, workers have in many instances been obliged to give up a particular struggle and suffer some particular injustice, or leave some demand inadequately supported and unsatisfied, because of the threat and imminence of a penalty or because one has been imposed.

Arbitration Without Penal Powers

Hostile propaganda says that the unions are seeking special rights in wanting removal of penalties directed against them, but retention of penalties against employers.

Dealing with this argument the Building Trades Group of the N.S.W. Labor Council, in a pamphlet on penal powers published in 1959, said:

"In asking for the repeal of these penal powers, the unions are asking for equal rights with the employers, not for special rights.

"Employers are free to seek the maximum profits from their enterprises. For example, they have full and complete rights to hire and fire workers at will.

"They have the right to withhold their commodities from the market without being subjected to penalties in any way."

To those who argue that the law provides penalties against employers for lock-outs, the B.T.G. pamphlet says:

"If the Government wants to remove these, then the unions will not object.

"It is a fact that while fines have been imposed on unions for strikes, no employer has ever been fined for a lock-out."

To those who argue that the absence of penal powers would mean evasion of award conditions by employers, the unions say:

- The compulsory observance by employers of award provisions as a minimum is not a penal power. It merely transfers to the Arbitration Act the ordinary civil rights of enforcement of contract.

- Capitalism forces a worker to sell his labour power in order to live. It gives employers the unrestricted right to exploit this labour power.

- In these circumstances it is the worker and not the employer who needs assistance to enforce a contract.

Some opponents of the trade unions' demand for repeal of these penal powers say they are a necessary part of the system of compulsory arbitration. Apart

from the fact that this system is against the best interests of the workers, it can and does function without penal powers.

The Commonwealth Arbitration tribunals functioned for many years without the array of penal powers now associated with them.

For a long period, about 1927 to 1950, there was virtually no use, or very limited use, of the penal powers in N.S.W., and the Industrial Commission functioned in that time.

A system of Wages Boards consisting of representatives from the unions and the employers with a government-appointed chairman functions for State purposes in Victoria and Tasmania without costly legal procedures or penal powers.

A.C.T.U.-A.L.P. Oppose Penal Powers

The fact of the matter is — as the 1955 Congress of the A.C.T.U. observed — "experience has confirmed the use of these provisions as a means of compelling acceptance by the unions of totally unacceptable decisions of the Courts and other tribunals and the abandonment of the right to strike or take other steps to obtain justice on industrial claims."

This is not the only decision by the A.C.T.U. in opposition to these penal powers.

In 1951 the A.C.T.U. Congress declared that "the Australian trade union movement must retain its right to strike in order to maintain and improve living standards and working conditions."

The essence of that decision has been frequently repeated and the 1959 Congress declared:

"These penal provisions were deliberately inserted in industrial legislation to provide the employers with the highest degree of preferential economic

power by destroying or nullifying the industrial strength of the workers organised in their trade unions."

That decision was reaffirmed by a Federal Unions' Conference in 1962.

The demand of the A.C.T.U. for repeal of all provisions of industrial legislation aimed at the unions has been supported by the N.S.W. Annual Conference of the A.L.P.

The 1963 gathering of this body decided that candidates for pre-selection for election to parliament must sign a pledge to work and vote for repeal of penal powers in N.S.W. State legislation.

Clearly the penal powers prescribed by the Arbitration Acts are a weapon in the hands of the Menzies Government and the employers.

So long as these penal provisions remain, the freedom and independence of the trade unions is restricted and the struggle to defend and improve living standards is seriously hindered.

The partial success of the campaign of the Waterside Workers' Federation against the penal provisions of the Stevedoring Industry Act provides an example. Similar united action by the whole trade union movement could smash the penal powers and send the Menzies Government reeling.

Communist Party Supports Workers

The A.C.T.U., the A.L.P. and the Communist Party of Australia have all declared against the penal powers and so have the workers. This sets the stage for such united mass action.

The policy of the Communist Party of Australia in relation to these penal powers and every other infringement of trade union democratic rights is one of unequivocal opposition.

The C.P.A. has given support to every action of the workers in resistance to these penal powers.

Specifically the Communist Party has sought to assist this resistance by encouraging the development of united mass action in support of wage and other demands of the workers.

This attitude is based upon the view that the penal powers, as part of the system of compulsory arbitration, are intended to hinder and prevent the struggle of the workers to improve their living standards.

Since the penal powers are brought into action in the course of the workers' struggles for better living standards, the way to defeat the penal powers lies in strengthening the unity of the workers in these struggles.

The attitude of the Communists is made clear in a booklet by L. L. Sharkey "The Trade Unions" in which he contrasts the position of the Communists with the top rightwing leaders of the A.L.P. and says:

"The left, the communists and militants have ceaselessly warned against the dangers of submitting to legislation imposing compulsory arbitration and have always demanded a policy of collective bargaining and negotiations backed by the organised strength of the trade unions."

Unhindered by support for compulsory arbitration, the Communist Party of Australia is free to and in fact does play a leading part in developing and encouraging the class struggle of the workers along the lines of militant action.

It is through the extension of such action on a united and widespread scale and the development of varied forms of struggle that the penal powers will be defeated.

The struggle against the penal powers in Commonwealth legislation is an integral part of the campaign to defeat the Menzies Government.

The struggle against the penal powers of the N.S.W. Arbitration Act is a matter of obliging the N.S.W. Labor Government to carry out the demands of the trade unions and the A.L.P. Conference.

In both of these efforts the workers are assured of the whole hearted support of the Communist Party of Australia.