

## Andrew Ferguson: how the IR laws hit building workers

*This is an address to ALP branch members on 3 July 2006 by Andrew Ferguson, State Secretary, CFMEU (Construction & General Division) NSW Branch.*



The Howard Government's attack on workers' rights is particularly vicious in the building industry, which has been singled out for special treatment under the new extreme anti-worker laws. It is fair to say the Australian building industry is now operating under conditions not dissimilar to countries with military controlled governments, like Suharto's Indonesia.

Under the government's draconian Building and Construction Industry Improvement Act (BII), the union faces severe restrictions on rights of entry to workplaces and a complete prohibition on any worksite meetings without written permission, whatever the subject. Incredibly, the legislation also allows for electronic surveillance to be authorised by the Director-General of the Department of Employment and Workplace Relations.

While this represents a special attack on building workers, there is nothing to stop this type of regime extending to other workplaces and industries where workers and/or unions successfully oppose government policies and laws.

The government's building industry 'enforcer' is the Building Industry Taskforce, which is set to be replaced by an even more powerful 'workplace police force' in October 2006, the Australian Building and Construction Commission (ABCC). In the meantime the Taskforce swallows a budget of \$96 million while it goes about its business of prosecuting and fining the union and workers.

The Taskforce is empowered to impose crippling fines for unauthorised industrial action, such as unlawful stop-work meetings, including \$110,000 against a union and \$22,000 against individual workers for each offence. These tough penalties may only apply to building unions and workers at present, but it won't be long until they spread to the rest of the workforce.

It must be remembered that these fines apply to each offence, so if ten different companies are affected on a particular worksite, the \$110,000 penalty is incurred with respect to each company, totalling a massive \$1.1 million!

In addition to these specific penalties, unions and workers also face damages claims representing the monetary losses sustained by employers and other affected companies as a consequence of the industrial action. These claims are not subject to any upper limits, and can run into millions if the claimants prove their losses.

In the recent case of a Western Australian union delegate being sacked unfairly, the action to protest this injustice may result in fines and damages ranging from \$5 million to \$10 million.

To date the Taskforce has brought ten cases at an average cost to taxpayers of \$1 million per case, regardless of the outcome. When the Taskforce sought to revoke the right of entry permits of three CFMEU officials, the union won but at a cost of \$40,000-\$50,000 with no possibility of reimbursement.

In effect the Taskforce has more powers than police. It is empowered to enter worksites, ask for the production of documents, including circulars and leaflets for union members, and individuals can be requested for interrogation with no right to silence or protection against self-incrimination. Failure to comply can result in penalties up to \$66,000 in fines or six months imprisonment. As I said, there is also the possibility of video taping and surveillance of meetings authorised by the Director-General of DEWR. Reminiscent of Indonesia under Suharto.

Then there is Howard's Construction Industry Code, which enables the government to use its buying power to intimidate building companies. According to the Code, builders or sub-

contractors can be excluded from future government projects or banned from any private sector projects receiving funding from the federal government, no matter how limited the funding from this source, if they enter into Enterprise Bargaining Agreements (EBAs) which are inconsistent with the government's harsh policies on issues like union rights of entry and recruitment of workers on individual contracts (Australian Workplace Agreements). The full power of state apparatus is being used to bully employers into submission.

It is now possible for building companies to use labour hire at 50 per cent less pay and reduced site allowances, and the union can do nothing about it. Since there is 30 per cent to 40 per cent unemployment or under-employment in the building industry, building companies are in a very strong bargaining position.

The government is also using the immigration laws to undercut worker rights and entitlements. Formerly, builders had to overcome a number of hurdles to import skilled labour, but these have largely been abolished and employers are pretty much free to bring in as many workers as they like. They are currently using workers from South Korea and back-packers paid at half the union rate. This is not about race but workers rights.

All of these changes are fanning a new climate of arrogance and ruthlessness on the part of some employers. For instance, the CFMEU is involved in one shocking case of an employer who maliciously assaulted a young worker with a hammer, causing him severe injuries including blindness in one eye, partial deafness, a broken nose, jaw and teeth, severe scarring and neurological damage. The exploitation and abuse of young workers is becoming more widespread. Unions and Labor activists need to ensure the public is aware of the anti-civil-liberties dimension of Howard's reforms.

The labour movement must fight the Coalition Government all the way to the next election. While the ALP is rightly challenging the WorkChoices legislation in High Court, there isn't much confidence about the outcome.

We are planning a marginal seats campaign in the lead up to the election, targeting in particular the 30 to 40 per cent of union members who vote Coalition. Unfortunately, many union members are not on the electoral roll so we need to address this.

The union movement is planning further protest action following the magnificent demonstration on 28 June. The next national day of action is scheduled for 15 November when 100,000 are expected to march in New South Wales alone.

Importantly, the labour movement as a whole should tactically expose grossly unfair employers and target them for protest action. We must drive the message home by hurting some companies, if necessary, when they engage in unconscionable behaviour.

If Labor wins the next federal election, we would expect them to stop the Taskforce in its tracks by cutting off funding in the event that it's not possible to get repealing legislation through the senate.

In the meantime state Labor governments can help by reforming, or even abolishing, the regional certifying bodies which approve and sign-off on the admission of workers from overseas. At the moment these tend to be composed of local MPs, chambers of commerce and labour hire companies but it is time for unions to be granted representation as well.

I encourage you all to support and listen to Workers Radio Sydney on 88.9 FM from 5:30am to 9:00am, Mondays to Fridays, for news about the union movement's ongoing campaign and to read the latest on our website: [www.cfmeu-construction-nsw.com.au](http://www.cfmeu-construction-nsw.com.au)