

BUILDING SCIENCE FORUM OF AUSTRALIA FORUM

WORKCHOICES

A CONSTRUCTION PERSPECTIVE ON INDUSTRIAL LAW REFORM

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Australian building workers have been subject to a sustained political attack for some years now

This commenced with the election of the Liberals in 1996 and the announcement from Peter Reith that the construction industry along with the coal industry, the meat industry and the waterfront would be targeted in the years ahead.

In 2001 in the run-up to the Tampa election the Liberals announced the Cole Royal Commission in the Australian building industry.

The Cole Commission was:

- an arm of the Executive - non-independent
- a hopelessly biased, anti-union farce from beginning to end
- \$66M of taxpayers money wasted (\$22M on lawyers)
- it laid the basis of continued political attacks on building workers/unions
- it provided the ideas platform for a range of anti-worker, anti-union restrictions, many picked up by Government and used in the general Workchoices legislation for all workers, others used in the BCI Improvement Act
- only one successful prosecution (of the company Boulderstone) eventuated from the 23 Volume Report

The Cole recommendations were turned into a 2003 Bill by Tony Abbott which was subsequently examined by an extensive Senate Inquiry which found it to be entirely counter-productive and it was rejected in total by the Senate in 2004.

Upon the re-election of the Howard Government in late 2004 and successfully winning control of the Senate in July 2005 one of the first legislative acts of the Howard Government was to enact a 2005 version of the legislation.

The main change from the 2003 Bill was that some of the prescriptions, ie., compulsory pre-strike ballots, resolutions on right of entry for union officials,

prohibitions on pattern or industry bargaining etc., were transferred to the new Workchoices Legislation to impact all Australian workers.

I will not deal with the vast new legislative landscape represented by Workchoices, the explanatory memorandum and the regulations. In all nearly 2000 pages of government intrusion and regulation mandating how the Government says businesses, workers and unions should interact. Suffice to say this panoply of laws has been written by lawyers for lawyers – not to achieve a quick, low-cost resolution of the underlying issues between the parties.

Since you've heard quite a bit of the detail tonight, I will to deal with a number of specific matters.

Firstly our protagonists who want to remove effective trade unionism from the Australian landscape often argue that this issue is all about respect for the Rule of Law. It's not. Our protagonists are entirely selective in their attitude to law. For instance Australia is a signatory to the core international Labor law conventions adopted by the International Labor Organisation.

We are bound to enact laws which promote and foster the right of workers to collectively bargain and the right for workers to promote their interests by associating collectively (Conventions 87 and 98). The Howard Australian Government consistently dismisses these vital instruments of international law.

In particular let's look for example at what the ILO's Committee on the Freedom of Association said in November 2005 when dealing with an ACTU complaint about the new building legislation. It called upon the Australian Government to make substantial changes to the BCIA including amending the "unlawful industrial action" provision to bring it in line with Freedom of Association principles. It requested amendments to Sections 39, 40, 48, 49 and 50 to eliminate excessive impediments, penalties and sanctions against workers and unions for taking industrial action in pursuit of collective bargaining.

Similarly the Committee urged the revision of s.64 to let the parties determine the level of bargaining and urged the Government to take the necessary steps in line with Convention 98 to promote genuine collective bargaining in the building industry.

Further, the Committee expressed concern about the extent of the powers conferred on the ABCC and called on the Government to introduce safeguards to ensure the ABCC does not interfere with the functioning of trade unions and also that an appeals mechanism should exist from arbitrary decisions of the ABCC.

I guarantee you the Howard Government will not respect these findings from the ILO because they do not suit its political purposes.

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The next issue I want to go to is the extraordinary infringement on the civil and democratic rights of the building industry participants that flow from the operations of this administrative body known as the ABCC and in particular its ability to use so-called coercive investigatory powers.

The ABCC can issue a notice on anyone they believe is in possession of information that can assist them with a prosecution of a building industry participant. Here I am talking about the prosecution of an industrial relations breach under the BCIIA or the Workplace Relations Act. We are specifically not talking general criminal issues which are not within the purview of ABCC. Its job is to enforce the Howard Governments industrial relations laws in the building industry.

If you receive a notice you have 14 days before which you will be interviewed by investigators from the ABCC. You cannot refuse to attend their interrogation sessions, you cannot refuse to answer their questions, you can have a lawyer present. You must hand over any documents that they request to further their investigations and/or prosecutions.

The normal presumption of the Right to Silence that exists in our general law is suspended by these ABCC processes. They cannot use the information gathered in a

prosecution against you the person subject to the interview, but they can use the information to prosecute workmates, trade unionists etc., or anyone that is the target of their investigations.

The process I have described is mandatory. If you fail to co-operate there is only one penalty - 6 months gaol.

The interrogation process I have referred to above is a secret process. Apart from the lawyer that may be present with you, you are not at liberty to reveal the content of the interrogation to anyone including family, friends etc. If you breach the secrecy provisions this too is a serious offence bringing serious legal penalties.

What I have just described is the epitome of the Howard Government's war on trade unionists in the Australian building industry. These anti-democratic techniques are amongst the most extreme measures adopted in relation to industrial relations issues anywhere in the world.

Increasingly democratic voices are condemning these abuses of our civil liberties. Only today the President of the Australian Council for Civil Liberties Terry O'Gorman, said on ABC Radio that the ABCC should not exist and that it represents a misuse of power by the Executive arm of Government.

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The next item I want to highlight is the decision of the ABCC to prosecute 107 individual building workers for allegedly participating in unlawful industrial action on a building project in Perth in February this year.

On July 5 the ABCC started legal action in the Federal Court against 107 construction workers on the Perth to Mandurah rail project.

The following evening about 60 workers and their families were served with writs in their homes. They are charged with taking 'unlawful industrial action' in February and March this year, after the union delegate was sacked from their job-site.

These workers face fines of up to \$22,000 under building legislation and some face a further \$6,600 for allegedly ignoring an Industrial Relations Commission order banning strikes on the project.

The ABCC has asked the court to make orders against the workers declaring their action unlawful; to impose the fines, and to order that the workers pay the Federal Government's costs of the court action.

This is the first time individual workers have faced fines for strike action in Australia under these laws.

These workers lost 8 days wages at the time by deciding to stand by their workmate, the union delegate. Now they face being judged under Australian law to be industrial criminals who must pay heavy fines and court costs that could financially bankrupt these ordinary working families.

When the Government's agency ABCC decided to launch this attack the February dispute was 5 months in the past, both management and workers had put the February dispute behind them and the site was operating productively. The building company Leightons didn't invite this intrusion by Howards workforce police. They in fact are critical of this new development that could engulf their project in a new round of conflict.

Leightons themselves have indicated that while they are suing the union for the February dispute they chose consciously to not sue their own employees – this remains Leightons attitude – they see no merit in dragging long term employees through the courts for no good purpose.

I raise this dispute to demonstrate what is entirely wrong about the Howard Government's vision of industrial relations.

The Howard Government doesn't care about the true merits of a dispute back in February, it now wants to dispense punishment – this is the policy of retribution to

individual workers who dare exercise traditional Australian rights or values. Standing by your mate was something that once made Aussies proud – not so today in the workplace.

The other thing that is so wrong about it is the thematic approach. Rather than modern industrial relations being about sorting out the issue that's causing workplace conflict and moving on, this Howard Government's approach is to create winners and losers, to punish the designated bad guys, ie., the workers and threaten them with bigger and bigger punishment if they don't bow to the other side's will.

It seems to me to have a resonance with what is so wrong-headed about the Bush/Howard view of Middle-East politics. Such an approach will never ease conflict, get people to see each others point of view and then get people working with each other.

Bigger sticks usually just engender deeper hatreds and inhibit genuine dispute resolution.

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I now want to say a few words about the future.

Many of us in the industry have been and will remain in the industry for the long haul. Certainly strong trade unionism will, in my estimation, endure long after the present crop of union bashing politicians have become a distant memory.

This is not the first major assault on the rights of organised labour – it probably won't be the last. These things go in cycles. Radical agendas are in fashion at times then discredited at other times.

What I would like to do as I conclude is to take the audience to some of the real structural issues that sooner or later we will have to come back to. In truth we have one of the most productive and efficient construction industries in the world but there

are real, systemic problems we must address, once things move on from the Government's fixation with union bashing.

The list of structural issues that I would table and wish to visit on another occasion are:

- the serious skill shortages and inadequate commitment to training
- the damaging impact of boom/bust cycles
- the appalling death and injury rate
- the low barriers to entry/the undercapitalised and unstable contractors and sub-contractors
- the inadequate return margins for traditional tender based work
- the present lopsided advantage for clients/developers as compared to builders
- rampant tax evasion (the public purse helps fund inadequate pricing from the top that flows down the production chain)
- widespread non-compliance with workers' statutory entitlements, workers compensation, superannuation provisions etc
- the increasing resort to legal and illegal temporary migrant labour
- the high bankruptcy rates among small contractors

This list is not exhaustive. These are real issues that the CFMEU remains committed to working with employers and Governments on.

Thank you.