

Building and Construction Industry (Improving Productivity) Bill 2013

Second Reading Speech

Introduction

Today I introduce the Building and Construction Industry (Improving Productivity) Bill 2013.

The construction industry provides many jobs for workers in small business, large enterprises and contractors. It is critical to a productive, prosperous and internationally competitive Australia. The Coalition Government recognises the importance of an industry that is vital to job creation and essential to Australia's economic and social well-being.

This Bill re-establishes the Australian Building and Construction Commission, a genuinely strong watchdog that will maintain the rule of law to protect workers and constructors and improve productivity on building sites and construction projects, whether on-shore or off-shore.

This Bill will reverse Labor's changes to the laws which underpinned the Australian Building and Construction Commission before it was abolished in 2012.

The Bill prohibits unlawful industrial action, unlawful picketing, and coercion and discrimination. Penalties that are high enough to provide an effective deterrent will apply to breaches of these provisions. A wide range of effective remedies such as injunctions will also be available to the ABCC and persons affected by unlawful behaviour.

The need for the Australian Building and Construction Commission to be re-established

For many years, the building and construction sector provided the worst examples of industrial relations lawlessness. Then Workplace Relations Minister in the Howard Government, the Hon. Tony Abbott MHR, was prepared to tackle this long-standing bad behaviour and in 2001 established a Royal Commission into the Building and Construction Industry. The final report of that Royal Commission provided compelling evidence of the need for reform in this industry. It found consistent evidence that building sites and construction projects in Australia were hotbeds of intimidation, lawlessness, thuggery and violence. Projects were delayed, costs blew out and investment in our economy and infrastructure was being jeopardised.

Central to the Royal Commission's findings was industry lawlessness. It concluded that the standards of commercial and industrial conduct exhibited in the building and construction industry represented a significant departure from that in the rest of the Australian economy. Witnesses reported criminal conduct, unlawful and inappropriate conduct, including breaches of the relevant workplace relations and work health and safety legislation and a disregard for Commonwealth and State revenue statutes. Inappropriate conduct was defined by the Royal Commission as "...behaviour that infringes the *Workplace Relations Act 1996*, a person's right of choice or other conduct which departs from recognised norms of civility and behaviour".

The Royal Commission findings publicly established what everyone in the industry had known about for years, but previous governments had been unwilling or too intimidated to

tackle. The Howard Coalition Government was prepared to step in and make the tough decisions required to clean up this sector. The establishment of the Australian Building and Construction Commission in 2005 provided a genuinely strong watchdog, dissolving the 1970s style practices that plagued this industry. It was a strong, specialist regulator that enforced the rule of law applying to the building and construction sector.

While the ABCC existed, the economic and industrial performance of the building and construction industry significantly improved. For example, a 2013 Independent Economics report on the state of the sector during this period found that:

- building and construction industry productivity grew by more than 9 per cent;
- consumers were better off by around \$7.5 billion annually; and
- fewer working days were lost through industrial action.

The former Labor Government came under sustained pressure from building and construction unions to abolish the Australian Building and Construction Commission and the building code that supported its work. The Labor Government procrastinated for five years, before then Workplace Relations Minister Bill Shorten gave in to union demands and abolished the organisation in 2012 and replaced it with a regulator with significantly reduced funding and powers. This saw the ‘bad old days’ return – wildcat stoppages, militant protests, demands from unions that their mates be employed on projects ahead of non-unionists, and an increase in construction industry disputes to a seven year high.

No one needs reminding of the scenes we saw late last year, merely weeks after the Australian Building and Construction Commission was abolished: violence on the streets in the City of Melbourne, with militant union protestors intimidating the community and their supporters attacking police horses. We had workers on the site purchasing an advertisement in the Herald Sun with an open letter to their own union bosses asking for the blockades to stop. Images of these protests were seen on television screens around the world. What message did that send to national and international companies about investing in building and construction projects in Melbourne or Australia?

We saw the CFMEU grossly bullying non-members by creating posters labelling them – amongst various other things - ‘scabs’ and advocating that they be run out of the industry in open defiance of the Fair Work Act and Supreme Court orders to end the protests.

We saw a violent dispute at the Little Creatures Brewery site in Geelong where union picketers were accused in court documents of making throat-cutting gestures, threats to stomp heads in, workers who wanted to get on with the work being told they were ‘dead’ and shoving, kicking and punching motor vehicles.

We saw union protestors threatening people with ‘Columbian neckties’ at City West Water in Werribee, where the dispute was so heated that workers had to be flown in by helicopter. The term ‘Columbian neckties’ came from the Columbian Civil War of 1948 and involves slashing a victim’s throat horizontally and pulling their tongue out through the open wound.

And just this month, we saw CFMEU officials threaten to stop work on a Lend Lease project in Adelaide if a union flag was not moved to a more prominent position.

The previous government was well aware of this type of behaviour in the building and construction industry and so was understandably reluctant to abolish the Australian Building and Construction Commission despite strong union pressure. It contracted Justice Murray Wilcox to review the industry to buy time. Justice Wilcox recognised the need for, and the benefit provided by the Australian Building and Construction Commission, stating in his report that, “the ABCC’s work is not yet done”. And, “it would be unfortunate” if the ABCC’s replacement body “led to a reversal of the progress that has been made”. But that is exactly what we have seen.

The Labor Government set up a severely curtailed version of the ABCC called the Fair Work Building Industry Inspectorate. As well as having its powers substantially curtailed, it faced significant reductions in funding and staffing of around 30 per cent. The inspectorate was hampered by quite novel restrictions on its ability to initiate or continue with proceedings if matters the subject of litigation had been settled by the parties. These amendments were introduced without any prior notice or forewarning by the Leader of the Opposition when he was the responsible Minister. They are equivalent to a person running a red light and causing an accident then Police being unable to charge that person with any offences including running the red light if that person has settled with the other person involved in the accident. These provisions are certainly contrary to former Prime Minister Gillard’s views, whilst she was the responsible Minister in 2009. At this time she said, in relation to misbehaviour in the building industry, that “...*Each and every breach of the law is wrong and each and every breach of the law should be acted upon.*”

These provisions in the Labor Government legislation were heavily criticised by the Law Council of Australia as giving primacy to the interests of private litigants over the application and enforcement of laws of the Parliament. The Law Council of Australia urged reconsideration of this provision and the community can be reassured that there is no such provision in the Coalition Government’s Bill.

The election commitment

In the Government’s *Policy to Improve the Fair Work Laws*, the Coalition Government committed to re-establish the Australian Building and Construction Commission to once again ensure the rule of law and productivity on commercial building sites and construction projects, whether on-shore or off-shore.

We took this commitment to the 2010 and 2013 federal elections as a key policy. So important did we see this commitment that we also committed to re-establish the Australian Building and Construction Commission within 100 days of the Parliament first sitting. This Government was given a clear mandate by the Australian people to make this change.

The Coalition Government is committed to ensuring that the rule of law is maintained and that workers in the building and construction sector can go to work free of intimidation and harassment. As the Cole Royal Commission concluded a decade ago, the behaviour that we too regularly see in this industry marks it as singular. It is an industry in which conventional standards of commercial and industrial behaviour do not apply. Like in the textiles, clothing and footwear sector – special circumstances require special laws.

We also promised that a re-established Australian Building and Construction Commission will administer a code that will govern industrial relations arrangements for Government-funded projects. This step will ensure that taxpayers’ dollars are used efficiently. We also

promised we would work with state governments to ensure consistency with guidelines introduced by those governments who saw the urgent need to set up their own schemes in response to the Gillard Government's abolition of the ABCC. A new statutory code is being developed that is intended to commence at the same time as the re-established Australian Building and Construction Commission on 1 January 2014.

Description of the Bill

The main object of the Bill is to provide an improved workplace relations framework for building and construction work to ensure that it is carried out fairly, efficiently and productively for the benefit of all building industry participants and for the benefit of the Australian economy as a whole.

The Bill aims to improve the bargaining framework so as to further encourage genuine bargaining at the workplace level. Enterprise bargaining negotiations must be harmonious, sensible and productive and should be tailored to the particular workplace.

The Bill upholds and promotes respect for the rule of law and ensures respect for the rights of all building industry participants. The Bill contains provisions to ensure that unlawful action, including unlawful industrial action and unlawful pickets are dealt with appropriately. The Bill includes the ability for the courts to impose significant penalties for individuals and organisations that participate in unlawful action.

The Bill provides effective means for investigating and enforcing the law. The Australian Building and Construction Commissioner will be able to exercise their power to obtain information quickly and effectively without being hindered by unnecessary bureaucratic red-tape around the issue of examination notices. However, to ensure accountability and transparency, the use of these powers will continue to be reviewed and reported on by the Commonwealth Ombudsman.

Importantly, this Bill encourages productivity and the pursuit of high levels of employment in the building and construction industry. It will ensure that the Government's Policy to deliver the Infrastructure of the 21st Century is delivered on time and on budget. This Bill will create jobs and investment by ensuring employers and workers in the industry can get on with the job without fear of intimidation.

The definition of building work

The definition of building work in the Bill includes off-site prefabrication of made to order components for parts of buildings, structures or works. The definition of building work also includes the transporting or supplying of goods to be used in building work. This is a change from the previous ABCC legislation and is included to ensure that large resource construction projects cannot be indirectly disrupted through coordinated 'go slows' on the supply of materials to those projects.

The extension to the Exclusive Economic Zone and continental shelf

The Bill extends the geographic limits to the exclusive economic zone and land above the continental shelf. This extension will bring the legislation into line with the Fair Work Act.

The structure of the ABCC

This Bill will re-establish the Australian Building and Construction Commission to ensure the rule of law is enforced in the building and construction industry. The Australian Building

and Construction Commission will be led by its Commissioner, who will have the critical task of monitoring, promoting and enforcing appropriate standards of conduct by building industry participants and referring matters to other relevant agencies and bodies as required.

The Australian Building and Construction Commissioner will also be responsible for investigating suspected contraventions of the law by building industry participants. They will also institute or intervene in proceedings in accordance with these laws; and, provide assistance and advice to building industry participants on their rights and obligations under designated building laws.

The Australian Building and Construction Commissioner will be supported by Deputy Commissioners, and by a statutory agency, to be known as the Australian Building and Construction Commission, comprising persons engaged under the *Public Service Act 1999*. The Australian Building and Construction Commissioner will be the head of that Statutory Agency. The Agency will be properly funded to ensure it can do its work – the funding taken away by the Labor Government will be restored.

Penalties

Changing the lawless culture of the building and construction industry requires strong regulation, a strong regulator and a level of penalties that will act as a deterrent to unlawful behaviour.

Higher penalties are justified in an industry that is so critical to Australia's economic performance. Building and construction organisations are well resourced and some show a blatant disregard for court orders and shrug off fines as 'simply part of the cost of doing business'.

Unlawful action

The Bill makes it clear that unlawful action will not be tolerated and there are significant penalties for taking unlawful industrial action, or for engaging in, or organising, an unlawful picket. Safeguards are built into the legislation which ensure that the Commissioner is able to separate unlawful and organised picketing aimed at disrupting building and construction work from legitimate protests.

The Bill also reinstates civil remedy provisions in relation to coercion and discrimination and makes it clear that project agreements are unenforceable where the intention is to secure standard employment conditions relating to a particular site or sites covering employees from different enterprises. These type of project agreements inhibit genuine enterprise bargaining.

Coercive powers

The Bill enables the Australian Building and Construction Commissioner to compel witnesses to attend an examination or to produce documents where he/she reasonably believes that the person has information or documents relevant to an investigation into a suspected contravention of workplace relations laws. These powers are needed to ensure the Australian Building and Construction Commission is able to carry out its investigations effectively and is a key tool for breaking down the historical and unacceptable 'culture of silence' in the sector. These kinds of powers are not novel and are also granted to a range of other Commonwealth regulatory bodies such as the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission, the Australian Taxation Office, Centrelink and Medicare.

The Bill does, however, contain appropriate and effective safeguards to ensure due process and transparency in the use of these powers. The Bill requires the Australian Building and Construction Commissioner to provide the Commonwealth Ombudsman with a report about the examination along with a video recording and transcript of the examination. At the end of each financial year, the Commonwealth Ombudsman is required to prepare and present to the Parliament, a report about examinations during the year. This will ensure public transparency and accountability and give the community confidence in the work of the ABCC.

Federal Safety Commissioner and the Australian Government Building and Construction OHS Accreditation Scheme

The Government is committed to using its influence as a funder of large building and construction projects nationally to lead the way on improving work, health and safety standards and culture throughout the building and construction industry. For this reason, the Bill retains the role of the Federal Safety Commissioner and the *Australian Government Building and Construction Industry WHS Accreditation Scheme*.

Conclusion

The Coalition Government is committed to doing all that is necessary to reform the building and construction industry and to reinstitute the rule of law in this sector.

The Coalition Government is wholeheartedly believe that workers deserve to be able to go to work each day without the fear of being harassed, intimidated or the subject of violence.

The former Labor Government undermined confidence in the building and construction industry. Abolishing the Australian Building and Construction Commission has seen a return to lawlessness and an increase in the number of days where work is simply not being done in the industry.

Australia cannot afford to have a building and construction industry which is inefficient and unstable. The restoration of the Australian Building and Construction Commission and the code which support its work is a critical reform for Australia. The contents of this Bill reflect this commitment.