



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

**BUILDING AND CONSTRUCTION
INDUSTRY IMPROVEMENT BILL 2005**

**BUILDING AND CONSTRUCTION
INDUSTRY IMPROVEMENT
(CONSEQUENTIAL AND
TRANSITIONAL) BILL 2005**

Second Reading

SPEECH

Thursday, 11 August 2005

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Thursday, 11 August 2005
Page 6
Questioner
Speaker Emerson, Craig, MP

Source House
Proof No
Responder
Question No.

Dr EMERSON (Rankin) (9.28 am)—In recent times the Prime Minister has alluded to the need to strengthen antiterrorist laws in Australia. He need look no further than the amendments to the Building and Construction Industry Improvement Bill 2005. I speak advisedly of the amendments because no government member in this parliament has referred to the amendments at all. There are only two possible explanations for that: they are unaware of the content of these amendments or indeed their very existence or, alternatively, government members are aware of the amendments and are hoping, as the Minister for Employment and Workplace Relations no doubt hopes, that no-one on the opposition side will have read them.

The second reading speech referring to the main bill was delivered on 9 March 2005. In the speech, the minister says:

The government will move amendments to this bill to implement remaining elements of the Building and Construction Industry Improvement Bill 2003, including amendments to set up the Australian Building and Construction Commission.

The minister knew exactly what he was doing on 9 March 2005 and yet it is only in the last two or three days that these amendments have appeared.

Let us understand the gravity of these amendments. All members who were here in the previous parliament will well recall the Senate sitting until 2.20 on a Saturday morning—a very unusual situation. The Senate was sitting because, as shadow industrial relations minister, I was objecting to the coercive powers that were contained in a piece of legislation at that time. Through the objections and the arguments that I made on behalf of the Australian Labor Party the Democrats came to accept a number of the major points that we were making, and we had said to the government that we would sit indefinitely unless the government buckled and modified those coercive powers. The government did in fact buckle under pressure and modified those coercive powers. Not the bill of 9 March but the amendments that were circulated in the last few days overturned the measures that were passed by the Senate to modify the worst aspects of those coercive powers.

I will go through them one by one. For a start, when I was in discussions with the minister I pointed out that the penalties for a person involved in the building and construction industry not complying with a request from an investigator were only in the form of a jail sentence. If the matter were relatively minor—that is, the noncompliance by a participant in the building and construction industry—then surely provision should be made for a financial penalty so that we did not have a situation of the courts having to rule that even for minor breaches people would go to jail for up to six months.

The minister said to me that that seemed a reasonable point and, as a consequence of the arguments that we made, the amendments passed at 2.20 am on 24 June did provide for financial penalties. Well, surprise, surprise! The amendments to this bill remove the provision for financial penalties such that—and let us understand this—if there is any noncompliance on the part of any participant in the building and construction industry to a request by an investigator for information, then the penalty is jail. The Australian people need to understand what this government has done through amendments to legislation which have not yet been debated in this chamber. The minister will perhaps refer to these amendments in summing up later on in the debate on this bill, but he has allowed this debate to continue without anyone knowing that the penalty for someone in the industry not complying with the requests of an investigator from the Building Industry Taskforce to produce documents or answer questions is jail. If anyone in Australia has any interest in civil liberties they need to understand what this government has done.

Secondly, the government on 24 June at 2.20 am also agreed that there needed to be some fetters on the conduct of the powers of the Building Industry Taskforce. The Democrats had said to them, on a suggestion from Senator Marshall from the ALP, that a set of guidelines would need to be prepared so that this task force could not just run rampant across the industry. Provision was made for them in the amendments that were passed at 2.20 am on 24 June. The guidelines were subsequently prepared and they were a disallowable instrument. But again—surprise, surprise—that provision has disappeared.

I refer to the minister's speech made in the daylight hours of 24 June in this place after we received the message back from the Senate. He said:

The powers—

that is, of the task force—

are similar to those which the Australian Competition and Consumer Commission have at the present time. Indeed, after agreement with the Democrats last night, we will model guidelines on the ACCC guidelines that apply to the exercise of powers under section 155 of the Trade Practices Act.

That is gone. Those guidelines have gone because this minister wants the Building Industry Taskforce to have unfettered powers consistent with the minister's ambitions for this task force. We had inserted in the same amendments late at night in the Senate that there should be a provision such that minor and petty matters could not be investigated by the task force. We did not want a situation where the task force simply intimidates people because they are a member of a trade union. The government's intentions are completely clear because in the amendments to this legislation which have not been debated the government has removed that constraint on the task force so that now it can investigate minor and petty matters.

The impact of these three changes in the amendments to the legislation here today is that an investigator can go up to a building industry worker and ask such questions as: 'Are you or have you ever been a member of a trade union? Are you or have you ever been a member of the Australian Labor Party?' That person may have done nothing wrong and there may be no suspicion of that person having done anything wrong, but if that person does not answer that question then this legislation can send that person to jail for not answering a McCarthyist question as to whether that person is or has ever been a member of the trade union movement.

Let us understand in this parliament today what these amendments do. They deprive building industry workers of civil liberties that suspects in terrorist cases in Australia have. I will say that again: building industry workers will have fewer civil liberties upon the passage of this legislation—which has not been debated properly in this parliament—than people who may have knowledge about terrorism activities in this country. That is why I said at the outset that if the Prime Minister wants a model for stiffening up the terrorist laws in this country he need look no further than the amendments to the Building and Construction Industry Improvement Bill 2005 that were circulated only in the last couple of days and have not yet been debated in this chamber.

Let us understand further what an investigator can do to anyone who is in the building industry. An investigator can approach someone in the building industry and demand the production of telephone records, of any documents relating to whether that person is a member of a trade union movement, of any information whatsoever that the inspector considers might be relevant to an investigation. Where else do we have in the law the capacity of an investigator to go up to someone who is not necessarily suspected of having done anything wrong and demand the production of that person's telephone records and the production of that person's bank statements? And if that person does not cooperate there is no financial penalty, only jail. That is what this legislation does today.

It is not an accident. The government tried to get away with this last time and, thanks to some moderation on the part of the Democrats, we were able to remove those outrageous provisions from this legislation. And this minister sneaks them back in and just calls them innocently the Building and Construction Industry Improvement Bill 2005 amendments, with a date of 5 August 2005. This is a disgrace and it is an indication of how this government intends to run the parliament. They intend to put in one bill, have people come along and debate that bill, slip in a set of amendments that are far more wide-reaching than the bill itself and hope that no-one will notice what is in the amendments to the bill. They intend to slip it through the House of Representatives without even telling government ministers and members what is in the bill in case they might let it slip that the true force of the bill is in the amendments, so that we have no debate on the amendments. Then it goes to the Senate, where the government enjoys a majority, and it sails through. We have today compelling evidence of how this government intends to conduct itself in this parliament now that it has a majority in the Senate—by making massive amendments to legislation, amendments that are then not debated.

Let us be frank. When this debate finishes, people will come in from the government side and, apart from those who are watching now on the monitor, they will not know they are voting for extreme coercive powers that deny civil liberties to people engaged in the building and construction industry. Not only will they not know, they will not care. This government is treating the Australian parliament with contempt and it is time that we understood the true colours of this government. It is supposed to be a free enterprise government. It is supposed to be a

government that is for the individual and yet it has extreme coercive powers here in this legislation. Not only that; in this building and construction industry amendment bill there is reference to a code. Let us understand what the code is. It is a code of conduct. At chapter 3, section 26, it states:

The Minister may issue one or more documents that together constitute a code of practice (the Building Code) that is to be complied with by persons in respect of building work.

What this means is that the minister at his whim can choose which company gets a government project by deciding whether the agreement with the workers who build that project suits the minister or not. This is going to put building industry companies very much in the government's debt, because the minister can say: 'I don't really like this company. They've said something about us that we don't like.' The minister could say: 'We haven't received a political donation from this particular company. Isn't it time that that company made a political donation?' The minister can ensure that that particular company does not get work, because the minister can write anything he wants in the code of conduct.

We now have a government that has put itself in a position where it can intimidate not only the workers in the building and construction industry but the companies themselves into doing exactly what the government wants, including providing political donations and rewriting agreements with trade unions, all at the whim of the minister. There is no accountability whatsoever to the parliament. More than a year ago, the former chief executive of the Australian Industry Group, Bob Herbert, said it was very bad practice that the minister at his whim could determine which companies got government projects—and here it is enshrined in legislation. So we have not only the liberties of individuals compromised severely with this legislation but the rights of building industry companies to conduct their business in an honest and decent way.

With reference to the civil liberties of workers in this industry, one of the rights that most Australians would believe they enjoy is the right not to incriminate themselves. Surely it is one of the central tenets of our legal system that, in being required to answer questions, you cannot incriminate yourself. Under the amendments to this bill, section 231 states:

231 Certain excuses not available in relation to section 230 requirements

Excuses that are not available

(1) A person is not excused from giving information, producing a document, or answering a question, under section 230 on the ground that to do so:

- (a) would contravene any other law; or
- (b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or
- (c) would be otherwise contrary to the public interest.

So the government can compel people to incriminate themselves. Where are the civil libertarians? They should be exposing what the government is doing in this legislation. Where are the civil libertarians on the government side? They walk around Australia saying that they are all for the individual and civil liberties yet they are about to pass a piece of legislation that denies workers in the building and construction industry fundamental civil liberties, irrespective of whether the particular worker is suspected of having done anything wrong or not. This means that this Building Industry Taskforce can go around identifying people in the building and construction industry who are members of a trade union and intimidate them and demand the production of their financial and telephone records, and the penalty is jail even if they are not suspected of having done anything wrong.

That is what goes to the heart of this government's union-busting agenda. It wants the task force to be able to intimidate innocent people simply because they are members of a trade union. Let us understand where we are: here, on 11 August 2005, this government is going to pass legislation that has not been properly debated to achieve its goals and to deny civil liberties to people who are seeking to earn an honest living in the building and construction industry. Of course there are problems in parts of the building and construction industry. We on this side of parliament believe that collaborative solutions, tripartite solutions, are the best way. We certainly strongly oppose this denial of basic civil liberties.

In the remaining minutes I have I will speak on the primary bill, which is also important in that it is retrospective in its application and it is essentially designed to make it very difficult for unions to renegotiate certified

agreements. The truth is that, certainly in Victoria, the horse appears to have bolted because a large number—hundreds, if not thousands—of agreements have been renegotiated. I put this to you: if the building and construction industry is in such shocking shape in Australia, if it is so inefficient, why have large companies agreed to renegotiate the certified agreements? The government says that they have agreed because the unions might go on strike. Gee, it is possible. I accept that it is possible that the union might, at some point, have said that they might go on strike. What does the government do? It brings in a massive bill with retrospective application.

There you go—the government is pretty keen on retrospective legislation and on the denial of civil liberties to innocent people working in the building and construction industry. It has only one agenda and it is not the efficiency of the building and construction industry; it is the destruction of the trade union movement in this country. It knows that if it can destroy the trade union movement it can attack quite effectively the Australian Labor Party. We will stand shoulder to shoulder with the trade union movement of this country.