



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**  
**BUILDING AND CONSTRUCTION**  
**INDUSTRY IMPROVEMENT**  
**AMENDMENT (OHS) BILL 2007**

**Second Reading**

**SPEECH**

**Monday, 28 May 2007**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

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**Questioner**  
**Speaker** OÖÇÖConnor, Brendan, MP

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**Question No.**

**Mr BRENDAN O'CONNOR** (Gorton) (7.43 pm)—I rise to speak tonight on the Building and Construction Industry Improvement Amendment (OHS) Bill 2007. The purpose of this bill is to amend the Building and Construction Industry Improvement Act 2005 to, among other things, change the process of appointing federal safety officers; allow the Federal Safety Commissioner and persons working in the Office of the Federal Safety Commissioner to disclose protected information on the scheme to the minister; extend the application of the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme, administered by the Office of the Federal Safety Commissioner, to cover situations where building work is indirectly funded by the Commonwealth or a Commonwealth authority; ensure that persons are accredited under the scheme at the time of entering into a contract for building work funded by the Commonwealth or a Commonwealth authority, taking appropriate steps to see that such persons are also accredited while the building work is being carried out; extend the accreditation requirement to funding arrangements beyond those currently contemplated by the legislation; and clarify that subsection 35(4) of the act only overrides Commonwealth provisions to the extent of any inconsistency.

Labor notes that the government has again had to return to the parliament to correct some elements of its industrial relations platform and this time it must amend the Building and Construction Industry Improvement Act. The last opportunity I had to speak to the original bill—that is, the 2005 bill—was on 10 August 2005 when I made my views known about the prime motivation for the legislation proposed by the government. But clearly the need for this particular bill is not because there are any changed circumstances in the industry but rather a deficiency with the preparation by the minister in relation to this particular matter.

Labor opposed the Building and Construction Industry Improvement Bill when it was first introduced in 2005 because it was a flawed piece of legislation based on a flawed premise. But given the Building and Construction Industry Improvement Amendment (OHS) Bill's focus on occupational health and safety, we will be supporting this bill's timely passage through the parliament. However, Labor's concerns with the government's approach to this law in the past remain the same. Labor has opposed the Howard government's approach to the regulation of industrial relations and health and safety in the building and construction sector because it provides a separate set of laws for the industry and has created in excess of 200 pages of new legislation. It exposes ordinary employees to extreme penalties for taking industrial action and, in connection with the national code of practice for the construction industry and Work Choices legislation, it contributes to an astonishing level of regulation of industry.

The Howard government has also indicated that it will consider on a case-by-case basis intervening in the public interest where employers use existing mechanisms under the Workplace Relations Act 1996. This is an unprecedented level of government intervention in support of employers in bargaining negotiations at the industry level. It does appear, given the intent behind the legislation, that the government is more inclined to intervene to assist employers in this industry than employees. I contend that is indeed symptomatic of the approach taken by the government with respect to industrial relations legislation. It is legislation that I would contend was prepared for political purposes and which is complex, conflict driven and based on false assumptions that will not assist industry or its consumers. It also fails to address a number of significant issues in the industry such as phoenix companies, tax avoidance and the still-unresolved question of protection of employee entitlements.

There are a number of other matters on which there should be a greater focus. There does not seem to be a concern for the very high bankruptcy rates among small contractors in the sector. There is not a particular focus on the relatively widespread non-compliance with award or industrial obligations. Again, the legislation is designed primarily to focus upon conduct of employees or employees' organisations and therefore it lacks balance and consideration for any particular breaches by employers. To that extent it is, as I say, politically driven. That is why Labor has committed to abolishing the politically influenced ABCC and creating an industry specific inspectorate within the proposed independent umpire, Fair Work Australia. These specialist units will operate within the inspectorate arm of Fair Work Australia and one of the first to be developed will be for the building and construction industry.

We want to take the partisanship out of the industrial relations legislation. We want to ensure that there is balance; that the approach of statutory authorities that regulate employment conditions, whether in the building industry or indeed in any other industry in this country, has an eye to breaches of law, if they are there, by employers, employees and indeed organisations that represent either of those two groups; and that it does not focus the government's enmity towards one particular part or player within the industry.

When this bill was introduced by the government, the minister cited high rates of fatalities and the fact that the industry also had the third highest incidence of workplace injuries with more than 12,500 compensated injuries or 34 injuries per day. Labor agree that we need to do all that we can to ensure that Australian men and women who work on building sites across the country work safely and return home safely. We also agree with the view that OH&S performance must be enhanced through cultural and behavioural change but we would argue that the Howard government's punitive and adversarial approach will not achieve this. Labor are driven by a desire for genuine improvement in the area of occupational health and safety across Australian workplaces and we believe appropriate compensation is an important and essential part of that. In fact Labor have a very proud history of focusing on policies that prevent injury at workplaces and indeed have done so in the state legislatures of this country. Wherever there is a federal responsibility, Labor have always been at the forefront of policy development in the area of OH&S.

Labor have made a very significant contribution, particularly when compared with the coalition parties, in this area. I think it is fair to say that we have never sought to use this particular area, which potentially affects workers in this country so drastically, as a political football. However different the respective views are of both major parties in the area of industrial relations, we are particularly concerned that occupational health and safety—that is, that area of public policy—would find itself in a situation of being misused for political and partisan purposes.

Labor is driven by a desire for genuine improvements, as I say, but the Howard government is moving to reduce coverage and compensation by shifting major Australian companies from state based schemes to Comcare. Only last month we had before us in this place a bill which had as its principal objective the minimisation of the costs of work related injury and disease for those covered by Comcare, even though it is a beneficial scheme. This contrasts with the historical evolution of occupational health and safety policy in Australia, which has placed the prevention of workplace injury and illness before all other objectives. This is a principle that has, historically, underpinned state and federal legislation in this area. But this shift away from that accords with the Howard government's Work Choices laws, their punitive and adversarial nature and the ideology behind them. If the government were really serious about occupational health and safety in the building and construction industry, we contend, it would abolish its unfair industrial actions law for the industry.

Indeed, another area that concerns me and that is associated with the government's approach to occupational health and safety is the way in which it has sought to prohibit parties from agreeing upon enterprise clauses that go to union health and safety training. Now, we understand—we do not like it, but we understand—that the government has an extraordinarily high intolerance of unions in this country and would like to see them critically weakened. It is certainly something that the government has sought to do since it was elected in 1996—that is, target the organisations of employees registered under the Workplace Relations Act, and target them critically to damage them so that employees have difficulty getting genuine representation in the workplace. But we do not understand how the government can go so far as to prohibit the capacity for an employer and his or her employees to reach an agreement on a particular clause that would allow for union health and safety training. We do not understand how that could be acceptable if the government were genuinely concerned about occupational health and safety.

So this bill is of concern to us. Unfortunately, it is consistent with the approach the government has taken of putting its enmity towards unions before the safety of Australian workers in workplaces. That is a critical problem with respect to this bill and all bills that the government has introduced in this area of public policy. Labor consider the better approach to be to ensure that fairness exists in the workplace. We would seek to put fairness back into the system. This would mean having a system that places a high degree of focus on cooperation rather than conflict and settling old scores.

The latest available workplace safety data from the ABS suggests that we are not making real progress on occupational health and safety in our Australian workplaces. The figures for work related injuries are instructive. Nearly 700,000 people were injured at work in Australia in 2005-06, and the majority of them, 63 per cent, were men. Men had a higher work related injury or illness rate—74 per 1,000—than women, although the rate for women was still very high—51 per 1,000. Younger Australians, both men and women, recorded higher work

injury or illness rates. The 15 to 19 age group had the highest rate, with 78 per 1,000, followed by the 20 to 24 age group, with 75 per 1,000. Mature-age workers—that is, those over the age of 55—recorded the lowest rate of work related injuries and illnesses, with 50 per 1,000.

The Australians injured at work were predominantly employees—86 per cent of all those injured. The injury rates for owner-managers are certainly significantly lower in comparison. Workers who were employed under shift arrangements had comparatively high rates of injury relative to total employee levels. Indeed, although they make up only 16 per cent of the workforce, 27 per cent of employees injured were those working in shift arrangements outside the ordinary spread of hours such as a day shift.

Perhaps the most revealing aspect of the ABS data was that more than 43 per cent of people who had experienced a work related injury or illness 'had not received any occupational health and safety training in the job where their injury or illness occurred'. Furthermore, over 10 per cent of those injured did not apply for compensation because they thought they would not be eligible, thought they were not covered or were not aware of applicable coverage. This, coupled with the previous statistic, suggests that workers are still in a situation where they are not receiving the relevant training about workplace safety and they are not aware of their rights and responsibilities with regard to workplace safety and coverage by their relevant scheme.

That is why we argue very strongly that it is an appalling decision by the government to proscribe the right of an employer and a group of employees to enter into agreements that may involve union-sponsored health and safety training. In fact, Senator Murray, who does not represent the interests of either major political party, has said time and again that, whatever criticisms some may have of unions, unions have always played an important role in the health and safety of workers. To remove the capacity for such an agreement to be reached under an instrument pursuant to the Workplace Relations Act seems to be counterproductive and, indeed, seems to make it less likely that workers will be safer and more likely that they will be injured in their workplaces. That is of concern to Labor, and again it is symptomatic of a government that places its ideology before the safety of Australian workers.

It is also disappointing to see that the ABS statistics record that about 10 per cent of those who did not apply for compensation acted in this way because they thought it would reflect poorly on their current or future employment record or because the process for making a claim was too complicated. That is, one in 10 workers injured said that the main reasons they chose not to formally seek compensation was the fear of their employment record being affected and the concern that the way in which you apply for compensation was too complex for them. The current legislation does nothing to address these issues; indeed, it contains aspects such as prohibiting leave to attend occupational health and safety training. These ABS figures confirm that what is needed is cooperation, not conflict, and information, not intimidation.

On this point, can I address some matters relating to the sector which is the topic of this debate. As I have previously mentioned, Labor is completely committed to policing the building and construction sector in a way which promotes occupational health and safety and provides constructors and building firms with certainty. But we must also put these reforms into perspective. In recent weeks, some sections of the industrial relations debate have tried to instil fear and uncertainty into the sector—in particular, the commercial segment of this sector.

The facts underpinning the building and construction sector are worth examining. There is little doubt that the building and construction sector is a driving force in our strong economy. The value of construction activity in 2006 was \$103.2 billion, of which \$36.5 billion was residential and \$23.3 billion was non-residential. In terms of total value, as at December 2006 the Australian commercial property market was worth \$576.6 billion. Not surprisingly, the property sector that was worth the most across Australia as at December 2006 was retail, which reached \$315 billion in value. In terms of floor space, the industrial sector is by far the largest of the four major commercial sectors with over 101 million square metres of stock estimated to be worth \$130.5 billion. New South Wales has almost 43 per cent of commercial property by value, followed by Victoria with 25 per cent. Queensland is the fastest growing, increasing its value by 23 per cent over the past year to now account for 13.5 per cent of commercial property by value. Around Australia, construction costs have risen and are still growing at above the rate of inflation. But growth is well down from the increases seen in previous years. For example, construction costs in Brisbane increased by a massive annualised rate of 27 per cent in mid-2004.

It is worth reflecting on what exactly are the drivers of costs in this sector, as much misinformation about this very issue has been publicly aired in recent weeks. According to the experts—analysts who focus on this sector day in, day out—the key drivers of costs in the building and construction sector are labour supply, building

approvals, the consumer price index and materials. One of the biggest impacts on materials and their cost has been the strength of global demand for resource and construction materials. Analysts agree that this has had a dramatic impact on the price of construction materials. Given the size of retail in the commercial building sector, obviously the demand for retail property is heavily dependent on retail turnover, which is reliant on population growth, disposable income and consumer confidence. Obviously, given the strength of the economy these factors have all been strong and have fed into demand in the construction sector.

Another factor impacting on prices in this sector, as noted by the Reserve Bank of Australia, is strong investor demand as pension funds across the globe look for assets offering long-term income streams at high yields. Analysts also agree about what will be the main impact on construction costs in the future. The skills shortage remains the biggest risk to the sector while demand for building and construction remains strong.

A Reed Construction Data report released earlier this month revealed that construction costs in Victoria have surged by 44 per cent since 2000, or nearly twice the pace of inflation. The sharpest increase in construction costs was recorded in Western Australia, where they have jumped by 58 per cent since 2000 as workers have been sucked from construction to the higher-paying mining industry. In Queensland, construction costs have risen by 50.2 per cent since the start of the decade. The Reed Construction Data report confirmed that the dire shortage of skilled tradespeople accounted for most of the rise in building costs. In my home state of Victoria the skills shortage is having a serious impact on building and the affordability of housing. The Housing Institute of Australia has previously stated that the housing industry faces a skills deficit of 150,000 tradespeople over the next five years. Meanwhile, the average age of builders is increasing. For example, the average age of a builder in Victoria is now 47. So in any debate about costs in the sector and future risks to these costs, we should be armed with the complete facts—and only the facts should determine our policy response.

I would like to reiterate Labor's support for this bill. I would like to remind the House that this bill is being introduced and legislation is being enacted because there were deficiencies in the original bill—and I was involved in the debate on that bill in August 2005. So the fact is that this is a bill to correct the minister's failure to attend to the concerns of the building industry. Labor support the bill because there is some focus on improving occupational health and safety in the building industry. But this bill is flawed, as was the primary bill. The bill was politically motivated. It was not focused entirely on the concerns and interests of employees and their safety in the workplace. It was as much about adversely affecting the capacity of employee organisations, and indeed employees, to go about their business safely.

The government should try to remove its ideological blinkers in the area of industrial relations. It should concern itself with the interests of employees and employers and not be so blinded by its enmity towards unions that it has to spend almost its entire energy worrying about how it can critically injure or damage those organisations. Instead, it should focus its attention upon reducing the awful statistics of death and injury in workplaces, whether they be for the building industry or any other sector of our economy.

As I conclude my contribution to this debate, I reiterate Labor's support for this bill but state our longstanding commitment to replace the ABCC with the Fair Work Australia alternative, which will focus on placing fairness and cooperation back in our workplaces.

**The DEPUTY SPEAKER (Hon. AM Somlyay)**—Order! I took the view that the deferred division should not be proceeded with until the member speaking at eight o'clock had concluded his or her speech, so I did not interrupt the member. The debate is adjourned and the resumption of the debate will be made an order of the day for a later hour.