



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

**BUILDING AND CONSTRUCTION
INDUSTRY IMPROVEMENT AMENDMENT
(TRANSITION TO FAIR WORK) BILL 2009**

Second Reading

SPEECH

Thursday, 13 August 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Questioner
Speaker Keenan, Michael, MP

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Mr KEENAN (Stirling) (9.09 am)—The coalition strongly opposes the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009, because we believe that every Australian, whether they be an employer or an employee, deserves to be able to go to their workplace and operate in an environment where basic law and order is enforced. Every Australian has that right, and this bill abolishes the body that ensures that law and order is enforced in the building and construction industry.

Mr Sullivan—Rubbish!

Mr KEENAN—Already we get heckling from the back bench, who say it is ‘rubbish’. But it is true, and I will run through the reasons why the abolition of the ABCC and its replacement with a toothless tiger will result in exactly that.

We hear a lot of spin and rhetoric from this government and very little of substance, but the spin that they are putting out on this particular bill deserves a gold medal. We have heard the minister claim that the abolition of the ABCC and its replacement with a toothless tiger was actually the government standing up to the militant building and construction unions. But of course the exact opposite is true. The new body that has been established within Fair Work Australia to replace the incredibly successful Office of the Australian Building and Construction Commissioner is not an independent body. It is controlled by the minister. It is not a strong cop on the beat. It will become so bogged down in paperwork and bureaucracy that it will not have the time and resources to do its job properly. It is not a simpler model; it is a more complicated model that makes it far more difficult for it to go out and do the job that it is supposed to be doing, which is enforcing law and order in the building and construction industry.

It is important that this House acknowledge that the building and construction industry is not like any other sector of the Australian economy. It has for decades been plagued by serial thuggery, lawlessness and unlawful activity. It has been plagued by strikes, assaults, bribes, intimidation, trespass, vandalism, sabotage, threats, coercion, boycotts, blackmail, stalking, collusion, wilful damage—you name it and this industry has had it. These practices have meant high infrastructure costs, delayed projects—stalled for months by strike action—and the development of a culture which can, in many respects, be compared with that of organised crime. Ordinary Australians will not and should not be required to cop this sort of behaviour. People are smart enough to know that the rule of law is more important than the agenda of minority interest groups and militant unions. I wish that the powers of the ABCC—and they are quite extraordinary powers—were not needed. But we know from serial misbehaviour within the sector that the tough cop on the beat needs to have the powers that are required to do its job. Sadly, this bill will abolish those powers and it will abolish the body that has been so successful in enforcing law and order.

I want to remind the House why the Office of the Australian Building and Construction Commissioner was established. Of course, it took a coalition government to take the tough decisions to return the building and construction industry to law and order. In August of 2001, the Howard government established the Cole royal commission to investigate the culture of lawlessness that had plagued that industry for decades. Commissioner Cole reported in March 2003, and the report catalogued more than 100 different types of unlawful conduct in that sector. This resulted in the creation of the Building Industry Taskforce, a body that secured law and order in the industry until the BCII Act was established, and the ABCC was created in 2005. The ABCC was created as a genuine and strong cop on the beat, and it was given the powers that it needed to actually enforce law and order and to do its job properly.

The ABCC is independent, it has been very effective, and it has done the hard yards to try to wrest control of the industry away from a culture of lawlessness and return it to something resembling other sectors in the Australian economy—sectors where people can go to work and expect that they will not be stood over or subjected to thuggery or intimidation, where they can just go to work and behave like they are in a normal workplace, as every other Australian would expect. It has been incredibly successful in returning law and order to the industry and,

in doing so, it has also been incredibly important for the overall health of the Australian economy. Independent research says that industry productivity is up by some 10 per cent, there has been an annual economic welfare gain to the whole Australian economy of \$5½ billion per year and inflation is lower. It is estimated that there has been a downward impact on CPI, to the tune of 1.2 per cent, and higher GDP for the whole Australian economy—up by 1½ per cent—because of the significant success of the ABCC.

It has also, very importantly, resulted in a significant reduction in the number of days lost to industrial action. For the workers in that industry it has resulted in real wage increases of more than 15 per cent. So it has gone some way, within its short life, towards controlling the culture of lawlessness in the industry and changing the culture of the industry. But I do not think anybody who has been privy to some of the work done at the Westgate Bridge construction site in Victoria could say that the ABCC's work is done or that the culture of the industry has been changed. This industry still requires an incredibly tough cop on the beat to do the job it is being asked to do in what is a very tough industry.

I want to go through some examples of lawlessness that were uncovered by the Cole royal commission. These are the sorts of things that have been happening in this industry in the last decade—it is not ancient history—and they are great examples of how the militant unions in the sector have conducted themselves. Cole came up with more than 100 examples of the lawlessness that occurs, and I would like to remind the House of some of the case studies he presented. He talked about a Japanese company called Saizeriya. They wanted to establish new facilities in Victoria. It is generally acknowledged that it is in Victoria and Western Australia that the militant construction unions are at their worst. After some discussion with the state Labor government in Victoria, Saizeriya decided to make a massive investment in food-processing infrastructure. They were going to invest, in the first instance, \$40 million. This project would have created 100 jobs locally and about 500 full-time jobs on an ongoing basis, with experts predicting that the indirect flow-on effects from the establishment of the new facilities would create up to 3,000 additional jobs.

Saizeriya's long-term plan was to open a new facility every five years. They wanted to invest more than \$200 million over a 20-year period. But the second they started work on their first site, the Victorian Trades Hall Council and the militant unions started their normal campaign of work bans, boycotts, contractor restrictions, strikes—the sorts of behaviour I outlined earlier. They did this in support of union demands that three workers who were not needed on the project but who were members of the union be employed, that arrangements be made for employees from an asphalt company to be dual ticketed, that a barbecue lunch be provided on site at Easter 2001 and that the company agree to provide a DVD to be raffled at the barbecue with the proceeds to be paid to the CFMEU fighting fund to support its opposition to the work of the Cole royal commission.

As you can see, the union's demands were ludicrous. But, because those demands were not met, this union went about disrupting the project and ensuring that it could not go ahead in a timely manner. As a result, the first plant, which was due to open in February 2002, was not completed until June 2003. After completion of the first stage, and because this company had found it so difficult, the company decided to pull the plug on any further investment. So the \$200 million and the 3,000 jobs that would have come into the Australian economy were pulled because the company found it far too hard to do business in Australia because of the unions and the poor industrial relations climate that existed. They looked at taking their business to New Zealand instead. The royal commission found that:

By any standards, the Victorian investment proposed by Saizeriya Australia Pty Ltd was significant. It had great potential benefits for the Victorian economy. Largely as a result of industrial misconduct on the part of the AMWU and CFMEU members and officials associated with the project, the first stage will, it is expected, be completed almost 12 months behind schedule. Not surprisingly, Saizeriya Australia has chosen to review the issue of whether it will proceed to build some or any of the four remaining plants which formed part of the original proposal. Saizeriya Australia's experience starkly calls into question the effect upon foreign investment requiring building and construction work of any magnitude in Victoria when such work may be subject to unlawful and inappropriate conduct and actions by unions.

Anecdotally, if you ask well-placed people in Victoria about Saizeriya, they will tell you that the founder of Saizeriya, a very successful Japanese businessman, had been subjected to a campaign of fear and intimidation by the Japanese yakuza when he was establishing his business in Japan. I understand that one of his stores in Japan was actually burnt down as a result of that. He saw off that challenge and built his business there. But he said he has never found anything as difficult as the culture of the construction industry in Victoria and that what he was subjected to in Victoria was worse than what he was subjected to by the Japanese mafia in Japan.

As I said, it is in Victoria and Western Australia that you see these militant construction unions at their worst. The Cole royal commission outlined the case of Dependable Roofing. The situation was that a contractor had

engaged Dependable Roofing, which was not on the union's list of approved companies, to perform work. The CFMEU, led by Joe McDonald, raided the site. They hunted down the employees of Dependable Roofing, who were at the time working on a scissor lift some 6½ metres off the ground. The CFMEU raided the site and hunted down employees of this contractor, which was not a union approved contractor. This happened in the last decade; it is not ancient history. This union official is still causing trouble and he is still the lead union official for the CFMEU in Western Australia at the moment. He hunted down the employees. The raiders surrounded the scissor lift and prevented it from being moved. They then turned off the central control unit of the elevated platform and removed the keys, so those workers were stuck 6½ metres in the air and could not get down.

After stranding the workers up in the air, the union then claimed it was a safety issue. When Dependable's workers finally were able to get down from the lift, they were so intimidated by the raiders that they were forced to retreat into their site office. During that time one worker was assaulted by Joe McDonald, and others were surrounded, abused, threatened and told to get off the site. When in the site office, which was a demountable site office, a temporary arrangement, the raiders bashed and kicked the side of the office and eventually lifted that site office from its mounts and pushed it over, with the people trapped inside. This was Joe McDonald, a serving union official in Western Australia. This is a report from the Cole royal commission.

This is an example of the way that these unions behaved, and it is an example of the sort of behaviour and lawlessness that the ABCC was established to deal with. It would be good if we could report to the House that this sort of behaviour was a thing of the past within the building and construction industry, but clearly it is not. We can see that from examples at the Westgate Bridge building site in Victoria from just the last couple of months. There have been some appalling examples of behaviour from that site. It has been blockaded and delayed. It has seen intoxicated unionists from both the AMWU and the CFMEU engage in behaviour that could only be called absolutely appalling.

Mr Cheeseman—That's not true.

Mr KEENAN—So you are saying that reports of bad behaviour at the Westgate Bridge are not true?

Mr Sullivan—Were they in the *Australian*?

Mr KEENAN—It is interesting, because your minister has commented on those reports. Maybe you should refer back to her speech. It is interesting that members opposite would interject that this is not true. So apparently there has not been any bad behaviour at the Westgate Bridge. This is probably a great example of the sort of denial the Labor Party members are in. If they were not in that denial, how could they support the abolition of this body that has brought law and order back to this industry?

Let me just go through the examples of behaviour that apparently have not occurred at the Westgate Bridge site. What has happened is that union officials there have surrounded the manager of the construction company, called him a dog, abused him, banged on windows, kicked the front door off its tracks, impeded people from going to work and abused staff. Even a cursory search on the internet, if members opposite would like to undertake that, will show documentary photo evidence of this happening. This needs to be considered in the context that the company is paying workers on that site, on average, \$135,000 a year, which I think by any measure is a reasonable wage.

We have also seen balaclava clad, militant raiders involved in high-speed car chases. There have been allegations of bikies being paid money to attend protests. There have been attacks on the private homes of supervisors. There has been damage to vehicles. There have been bricks thrown through windows, with death threats. Ultimately, police have been called in to protect workers who just wanted to go onto that site and do their job. All of this has happened within the last 12 months. Now we find this government is going to abolish the one body that has the powers to control this sort of behaviour.

I am happy to go on with examples of bad behaviour. Again I will turn to Western Australia, which is subject to the CFMEU in particular, who have an incredibly blackened record of behaviour within the building and construction industry. The infamous Joe McDonald, whom I referred to earlier, had his right-of-entry permit withdrawn at state and federal levels some time ago. Despite this, in 2008 the Industrial Relations Commission had to force an undertaking from the secretary of the CFMEU's WA branch that Mr McDonald would not continue to enter sites unlawfully. This was a result of a complaint from Multiplex. Mr McDonald had entered their sites on over 30 occasions without a valid permit. In a media interview afterwards, Mr McDonald said that

he would continue to illegally enter building sites, despite the undertakings that had been given to the Industrial Relations Commission. So clearly this is not a union or a union official with much respect for the law.

The Cole royal commission found that payments had been made to the CFMEU in Western Australia of over \$1½ million for so-called casual tickets, which is basically money paid in return for industrial peace on sites where all workers are not members of the union. The Cole commission found that, of the \$1½ million that had been paid, they could only trace less than \$500,000 of that money. So \$1 million of this money paid to the CFMEU has just disappeared.

Mr Sullivan—It's an allegation.

Mr KEENAN—It is interesting that Labor Party members here seem to think that this is all made up. They might want to go back and refer to the Cole royal commission. Apparently they will not believe that members of the CFMEU would behave in this way. It is only that sort of denial that could lead you to support this ludicrous bill that abolishes the body that controls this sort of behaviour.

There are significant problems with this legislation that we are opposing here today as the opposition. Despite the rhetoric of the Minister for Employment and Workplace Relations that it maintains a tough cop on the beat—and this is another great example of the minister's clichés; she says 'tough cop on the beat' but sadly it does not mean anything—this bill removes the independence of the building inspector and it ties up the watchdog in red tape. It actually has a sunset clause, for the abolition of the powers that the new body has, to do its job properly. Most ludicrously, it contains provisions that switch off the powers that the new inspectorate within Fair Work Australia has to enforce the law. That seems to me to be an extraordinary thing to contain within Commonwealth legislation. There are laws that are established so an independent body can do its job, and you can apply to have those laws switched off. Why you would need those laws switched off is unclear to me. Of course, what will happen is that this will become part of negotiations and the unions will demand that these powers be switched off for any particular site and therefore they can return to their bad old ways without fear of having a policeman on the beat that has the powers to draw them into line.

This bill also reduces penalties for unlawful behaviour within the industry by two-thirds. It narrows the definition of industrial action and it removes provisions that stand against coercion and undue pressure being put within that industry.

It is not just the opposition that is appalled at what is happening here. With the exception of the militant unions, which are going to be given carte blanche to return to their bad old ways through this bill, all of the stakeholders within the industry are publicly on the record opposing what is happening here. AMMA have supported some aspects of the bill but their overall impression is:

... the effect of the BCII Amendment Bill is to disarm the tough cop and tie up the building industry watch dog in red tape.

That is exactly what the opposition says and exactly what is going to happen if this bill passes through parliament. The Master Builders Association said that the government must reconsider the bill and not proceed with its passage and that the bill is potentially disastrous for the building and construction industry. The AI Group, perhaps one of the government's more favoured business groups, have said that cultural change has not been achieved within the industry. They have raised concerns about the proposed switch-off provisions, about the five-year sunset clause and about watering down the penalties by two-thirds, and they are also concerned about the lack of independence of the proposed inspectorate. The Civil Contractors Federation have echoed the concerns of the AI Group, as have the Business Council of Australia. They have said that they want the bill delayed and that they are opposed to having switch-off provisions within the bill, provisions which are, quite frankly, ludicrous. The Air Conditioning and Mechanical Contractors Association oppose the bill. They say that this bill will result in:

... a significant diminution of the powers of the "...cop on the beat..."

and:

... there is likely to be a return to a level of unlawful behaviour on construction sites that prompted the actions that were taken by the government in 2002 to curtail such behaviour.

These are the bodies that actually represent people who are engaged in this industry on a day-to-day basis, and they are saying that passage of this bill will result in a return to the bad old days within the building and construction industry.

I will go on. Australian Business Industrial say that the government should reconsider its approach to the controversial aspects of the bill. The Electrical and Communications Association believe that the specific legislation for the building and construction industry should remain. The Housing Industry Association said:

To enable a long term cultural change, HIA submits the bulk of the current institutional framework embodied in the ABCC needs to continue without some of the significant “watering down” of powers contemplated in the Bill.

The Australian Chamber of Commerce and Industry supports the existing system. They say that the ABCC should:

... be retained as a stand-alone agency, with its existing capacities and responsibilities, and with its supporting legislation and associated instruments essentially unchanged.

Finally, the Chamber of Commerce and Industry Western Australia, a body that knows all too well the behaviour of the CFMEU in WA, say:

Removal or weakening of such power is expected to encourage union lawlessness.

So there we have it. All of the organisations representing people who actually operate within the industry say that the passage of this bill is going to result in a return to lawlessness within the building and construction industry, a return to the practices that I have reminded the House about that were exposed by the Cole royal commission and that led to the establishment of the ABCC. It was established with the powers that it needs to maintain law and order within the industry—and all the resulting good that that has done for the Australian economy as a whole, not just for the building and construction industry.

Nobody should be fooled by the minister’s spin on this particular issue. This bill fulfils the long and oft-stated goal of the militant construction unions to abolish the ABCC; it is replaced by a toothless tiger that does not have the powers to do the job properly. In a tough industry, the new body is going to be weak and it is not going to have the ability to do what it is supposed to do. The opposition will oppose this legislation at every step of the way, because every Australian employer and every Australian employee deserves to be able to work in a culture that is free of lawlessness, free of thuggery and free of intimidation. They should expect that they will be able to go to work in the building and construction industry and have the same law and order that every Australian worker expects when they get up in the morning and go about their lawful business.

We will oppose this bill. It abolishes a very successful body and it fulfils the oft-stated wish of the militant construction unions. Nobody should be fooled by the minister’s spin on this. It is a bad bill. The opposition will oppose it.