



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2005

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

Second Reading

SPEECH

Tuesday, 16 August 2005

BY AUTHORITY OF THE SENATE

SPEECH

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Questioner
Speaker Abetz, Sen Eric

Source Senate
Proof No
Responder
Question No.

Senator ABETZ (Tasmania—Special Minister of State) (6.10 pm)—I table two revised explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in *Hansard*.

Leave granted.

The speeches read as follows—

BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2005

The Government is committed to doing all that is necessary to reform the building and construction industry.

This bill reflects the Government's commitment to ensuring the law as it applies to other industries is observed equally by all participants in the building and construction industry, regardless of whether they are union officials, employers or workers.

The Government is not, as some have suggested, pursuing reform in this industry driven by some ideological agenda. Instead, the basis for the proposed reforms is well grounded in economic reality.

Construction is a \$50 billion a year industry, comprising nearly 7% of GDP and employing over 700,000 Australians.

Despite being a significant contributor to the Australian economy, productivity in the building industry has clearly not kept pace with productivity in other industries, let alone productivity in the domestic housing sector.

A study by Econtech found that if labour productivity in commercial construction matched the home building standard, it would result in a 1% decrease in CPI, a 1% increase in GDP and \$2.3 billion in benefits to consumers, workers and taxpayers every year.

The key difference, of course, between the commercial and the domestic construction sectors is the restrictive work practices on CBD construction projects.

It would be bad enough if lawful restrictive work practices were the extent of the problems of the building industry. Unfortunately, the industry's problems are much, much worse.

The reasons for reform are therefore clear and indeed it would have been highly irresponsible for the government not to tackle the problems which plague the construction industry.

The Royal Commission found that the commercial construction industry was characterised by: illegal and improper payments; chronic failure to honour legally binding agreements; and regular flouting of court and industrial tribunal orders; and a culture of coercion and intimidation:

At the heart of the findings is lawlessness. It is exhibited in many ways. There are breaches of the criminal law. There are breaches of laws of general application to all Australians where the sanction is a penalty rather than possible imprisonment. There are breaches of many provisions of the Workplace Relations Act 1996 (Cwth). [Volume 1, page 6, para 17]

The economy and community cannot bear the costs of such conduct, the laws of this country must apply equally to all citizens whether they be union officials, employers or employees.

The Royal Commission noted that:

These findings demonstrate an industry which departs from the standards of commercial and industrial conduct exhibited in the rest of the Australian economy. They mark the industry as singular. They indicate an urgent need for structural and cultural reform. [volume 1, page 6, para 16]

In response to the Royal Commission's Report the Government acted quickly to establish the Building Industry Taskforce which commenced operations in October 2002.

This decision was consistent with a recommendation in the First Report of the Cole Royal Commission. Commissioner Cole's intention was to establish an interim body to secure the law prior to the establishment of a national regulatory agency for the industry.

The Taskforce performance has been a key factor in putting the brakes on the culture of coercion and intimidation that has existed in the industry.

As at 30 June 2005, the Taskforce had received 3,037 enquiries, 2,738 of which had been responded to in one working day and 1,502 of which had been resolved within three working days. In the period to 30 June 2005, the Taskforce has placed 25 matters against unions and employers before the courts.

Despite this testimony to the active role that the Taskforce has played in the industry, the industry remains plagued by a culture of civil disobedience, of coercion, intimidation and threatening behaviour, and of contempt for the very law that governs it.

Another serious concern is the standard of occupational health and safety in the industry, which the Royal Commission found to be unacceptable. All employees, whether in the commercial construction industry or any other, have the right to expect a safe workplace. To improve occupational health and safety performance in the industry, behavioural and cultural change is necessary above all else. The Australian Government, as a major client of the building and construction industry, is well positioned to drive such change.

KEY ELEMENTS OF THE BILL

Compliance and Enforcement

The centrepiece of the bill's approach to improving compliance with the law in the building and construction industry is the establishment of the Australian Building and Construction Commissioner (ABC Commissioner).

The ABC Commissioner will head a statutory agency with power to monitoring, investigating and prosecuting breaches of federal workplace relations laws in the industry. To secure broader compliance with the law across the industry, the ABC Commissioner will refer matters to other relevant State or federal agencies, such as Australian Securities and Investment Commission, the Australian Competition and Consumer Commission and Australian Taxation Office.

The ABC Commissioner will have the power to appoint Australian Building and Construction Inspectors to monitor compliance with and, when appropriate, institute proceedings under the Workplace Relations Act 1996 and the proposed Building and Construction Industry Improvement Act 2005. The ABC Commissioner's enforcement role will be underpinned by a stronger compliance regime with increased penalties that are more appropriate to the circumstances of the industry.

Importantly, the ABC Commissioner will also be required to provide advice, assistance, information and education to the industry parties on the proposed Building and Construction Industry Improvement Act 2005, the Workplace Relations Act 1996, Building Code, and issues affecting the industry.

A new regulatory framework for the building and construction industry

The Workplace Relations Act 1996 will continue to provide the basis for workplace relations regulation in the industry. The bill strengthens and in some respects extends its provisions to address the inappropriate practices identified by the Royal Commission.

In line with the Royal Commission's recommendations the bill will have a wide application. The legislation, however, is designed to apply to the commercial construction sector and therefore largely excludes the domestic housing sector.

It is important the bill have a wide coverage, through a broad definition of building work, so that it can effectively bring about the structural and cultural change the industry requires. Construction unions have demonstrated a willingness to target companies manufacturing products related to the building industry.

The definition is therefore intended to ensure the problems endemic in the industry are not shifted further down the contractual chain and all those involved in the construction industry, whether on site or supplying essential materials, are covered by the enhanced regime to be introduced by the Act.

Importantly, the definition of building work is able to be modified by regulations. This will ensure that minor adjustments can be made, to address any issues that may emerge from the practical operation of the Act. Any non-construction related activity inadvertently captured will be able to be excluded from the operation of the Act. Similarly, it will enable the addition of other categories of building work, should the need arise.

Industrial Action

Access to protected industrial action under the Workplace Relations Act will continue to be available for negotiating building certified agreements. This bill imposes some additional requirements to address the particular problems of the industry.

Reflecting the recommendations of the Royal Commission, there will be a clear delineation between lawful and unlawful industrial action—industrial action that is not for the legitimate purpose of advancing claims for a building certified agreement will be expressly unlawful.

A party taking unlawful action will be exposed to penalties and damages. There will be improved access to sanctions in the form of injunctions, pecuniary penalties and compensation for loss suffered as a consequence of unlawful action.

The bill also contains measures to prevent spurious occupational health and safety concerns being used as a ‘front’ for industrial action about other issues. The Royal Commission found that the misuse of occupational health and safety issues as an industrial tactic ‘cheapened’ legitimate occupational health and safety concerns within the industry.

The Government is committed to improving occupational health and safety standards in the industry. This is not advanced by abusing the right to take industrial action to protect employees’ health and safety.

Leading by example

The bill provides for a Federal Safety Commissioner who will promote improved occupational health and safety standards across the industry generally. The Federal Safety Commissioner will foster occupational health and safety on Australian Government funded building projects by developing and managing the accreditation scheme for Commonwealth building contracts. Under this scheme the Federal Safety Commissioner will test contractors’ occupational health and safety credentials on-the-job, as well as through their management policies and systems, before they enter into contracts with the Commonwealth to carry out building work.

The Government is also developing alternative strategies to foster cooperation with the States and key industry parties to achieve nationally consistent frameworks. The Australian Government will use its position as a key client in the building and construction industry to provide leadership in workplace safety and other workplace relations matters and drive reform across the industry.

Conclusion

Building and construction is a conspicuous black spot in Australian workplace relations.

This Government is proposing a package of reforms that will overcome this black spot in our national life and which imposes significant additional economic costs on the community. In the past, Governments have turned a blind eye because the problem seemed intractable. Australia does not deserve this sort of industrial behaviour, and frankly we just can’t afford it anymore.

The Government’s building and construction industry reforms will force the required cultural change; encourage fair play and create a far more efficient and decent building and construction industry.

To unlock these benefits for all Australians, substantial and lasting reform is needed. That reform must be structural, cultural and directed at the specific problems of the industry. The Government accepts the Royal Commission’s assessment that this will only be achieved through industry-specific regulation.

The Australian Labour Party has acknowledged the problems of the building and construction industry. Their challenge is whether they are prepared to separate themselves from the lawlessness of this industry, or bow to the thuggery of well-known and vocal elements. It is a choice between acting for the benefit of all Australians, especially workers and their families, or protecting behaviour that is unlawful, harmful and costly to us all.

The Government has made its choice.

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

The second reading speech for this bill was incorporated in the speech to the Building and Construction Industry Improvement Bill 2005.

Debate (on motion by **Senator Abetz**) adjourned.

Ordered that the resumption of the debate be made an order of the day for a later hour.