

Labor Senators' Dissenting Report

Introduction

1.1 Labor Senators are astounded at the Government's continued attempts to re-establish the Australian Building and Construction Commission (the ABCC) and to enact the Registered Organisations bill. This is not based on a genuine need for the ABCC or to somehow improve union governance practices, but is rather an ideologically-based and politically motivated attempt to crack down on the ability of unions to advocate for workers' rights.

1.2 Moreover, after the superficial resolve shown by Prime Minister Turnbull in using this bill as part of his strategy for calling a double dissolution, the Government continues to waste the time of the Parliament and the resources of the Senate in holding a further inquiry and prompting more debate over provisions that have previously been revealed as unnecessary.

1.3 These bills are fundamentally misguided in that they will not promote greater workplace productivity. This was a key point of Labor Senator's previous dissenting report for the most recent ABCC inquiry.¹ These sentiments were echoed by Australian Council of Trade Unions' (ACTU) Secretary Dave Oliver in the public hearing for the current inquiry:

[t]his bill, despite its name, has very little or nothing to do with productivity. In fact, the government's own industry monitor has shown that construction sector labour productivity over the last five years has increased to 2.8 per cent, as opposed to multifactor productivity of 1.25 per cent. We are at a bit of a loss as to how people could think that you could get higher productivity through more regulation. We know that the current government is big on the notion of cutting red tape. It seems that if you are a bank, for example, we are looking at greater deregulation. But if you are a union, particularly in the construction sector, you want to have more regulation in place.²

1.4 Similarly, the Maritime Union of Australia contrasted the significant regulatory intervention of ABCC bill with the Government's previously stated intention of cutting red and green tape.³

1.5 The Government's claims to increase productivity are instead euphemism for the restriction of workers' rights. Furthermore, at a cost of \$35 million,⁴ the

1 Labor Senators' Dissenting Report, in Senate Education and Employment Legislation Committee, *Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]*, March 2016, pp. 9–18.

2 Mr Dave Oliver, *Committee Hansard*, 4 October 2016, p. 11.

3 Maritime Union of Australia, *Submission 24*, p. 6.

4 *Explanatory Memorandum*, p. 4.

re-establishment of the ABCC is not only bad policy but is also a bad deal for the tax payer.

A piece of poorly-targeted and unnecessary legislation

1.6 In addition to negatively affecting productivity, the bill "treats construction workers as second-class citizens in their own country"⁵ by singling out the industry for particular oversight and regulation. As discussed in the Education and Employment References Committee's 2014 report into the government's attempts to re-establish the ABCC, many industries outside the construction industry are also vulnerable to economic loss through industrial action.⁶ The construction industry is therefore not unique, and it is clearly ideological and political motivations that are driving the Government's dogged pursuit of this bill's passage through Parliament.

1.7 In addition, the bill "does not deal with the big issues of the industry."⁷ As outlined by Mr Noonan from the Construction, Forestry, Mining and Energy Union (CFMEU), the big issues include poor safety and deaths on construction sites, the rip-off of workers, the use of temporary visa workers to undermine Australian job security and conditions, the use of nonconforming building products, insolvency and phoenixing,⁸ none of which will be addressed by these punitive reforms.

1.8 Labor Senators also reiterate the comments made in our previous dissenting report about the powers of the Fair Work Building Industry Inspectorate. The Inspectorate has a full suite of appropriate investigative and prosecutorial powers to deal with any unlawful behaviour in the building and construction industry—whether by employers, employees, unions or contractors. The existing *Fair Work (Building Industry) Act 2012* is a secure, fair and adequate regulatory framework of industrial relations in Australia that provides enforcement based on education rather than prosecution, retains the important safeguards on the exercise of coercive powers of workers, and provides the capacity for a genuinely independent compliance unit.⁹

1.9 Furthermore, as Mr Noonan pointed out, prosecutorial action is better directed right at the top, to the big construction companies who commit egregious breaches of

5 Mr Dave Noonan, National Secretary, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 4 October 2016, p. 13.

6 Education and Employment References Committee, *Government's approach to re-establishing the Australian Building and Construction Commission*, March 2014, p. 56.

7 Mr Dave Noonan, National Secretary, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 4 October 2016, p. 13.

8 Mr Dave Noonan, National Secretary, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 4 October 2016, p. 13.

9 Labor Senators' Dissenting Report, in Senate Education and Employment Legislation Committee, *Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]*, March 2016, p. 11.

law and abandon the undertakings they have given to improve compliance,¹⁰ rather than at construction workers who are trying to pay their bills and feed their families.

A sham attempt to combat corruption

1.10 Regrettably, some isolated instances of corruption has been found in the construction industry. However, as Mr Oliver stated:

...the trade union movement does not support corruption in any shape or form. Unfortunately, corruption does reside in all sectors of our society. We see it in the sporting arena, the corporate arena and the political arena. That is why we have consistently called for the establishment of a national ICAC to be able to root out where there are problems in regard to corruption across any sector of this country.¹¹

1.11 Furthermore, where corruption has been found, adequate steps have been taken to eliminate it. Labor Senators draw the Senate's attention to the comments made by Mr Noonan at a public hearing conducted during the previous inquiry into this bill:

In terms of people who behave badly, our union has acted in the past. We have no tolerance for corruption. The word 'corruption' is thrown around freely by those who support this bill—notwithstanding the fact that the bill itself does not address corruption or the criminal law. We have had junior, medium-level and indeed one very senior official who we have sacked and expelled from the union because their conduct did not meet the standards we expected. Some of those matters are now in front of the courts, so I do not want to name them. We do not have any time for corruption in the industry. Any official of the union, or any delegate of the union, who engages in corruption is not working for the members, they are not working for the union; they are working for the employer who has corrupted them, and we find it disgraceful. Where credible and supported allegations are brought, we deal with them.¹²

10 Mr Dave Noonan, National Secretary, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 4 October 2016, p. 13.

11 Mr Dave Oliver, Secretary, Australian Council of Trade Unions, *Committee Hansard*, 4 October 2016, p. 16.

12 Labor Senators' Dissenting Report, in Senate Education and Employment Legislation Committee, *Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]*, March 2016, pp. 11–12.

The bill impedes work health and safety

1.12 In our previous dissenting report we argued that the narrow definition of protected action could actually result in poorer workplace safety.¹³ This situation remains unchanged.

1.13 In the Senate Education and Employment Reference Committee's report, Unions NSW voiced concerns over the power the ABCC will have in relation to health and safety issues raised on site. Because the health and safety issue must relate to the individual, and he or she is the only person who can raise it, there is a real risk that individual workers could feel intimidated. The Maritime Union of Australia was also concerned about the onus being on the individual to prove there is a legitimate occupational health and safety concern.¹⁴ For further discussion on this matter, we refer the Senate to that report.¹⁵

1.14 Despite these insights, the bill's Explanatory Memorandum again states that its provisions won't affect an employee raising concerns about occupational health and safety.¹⁶

Lack of regard for basic rights and liberties

1.15 Should these bills pass the Senate, the ABCC would be able to use coercive powers stronger than those provided to even the state or federal police to compel workers to give evidence and be interviewed, with no right to silence or representation by a lawyer of their choice.¹⁷

1.16 In our previous dissenting report, we noted that the Law Council of Australia held grave concerns about the encroachment of these provisions into territory that is not consistent with the principles of the rule of law and traditional common law rights.¹⁸ Given the bill has not changed since it was last considered, the Law Council has reiterated these concerns and Labor Senators also wish to highlight our continued

13 Labor Senators' Dissenting Report, in Senate Education and Employment Legislation Committee, *Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]*, March 2016, p. 16.

14 Education and Employment References Committee, *Government's approach to re-establishing the Australian Building and Construction Commission*, March 2014, p. 70.

15 Education and Employment References Committee, *Government's approach to re-establishing the Australian Building and Construction Commission*, March 2014, pp. 70–72.

16 *Explanatory Memorandum*, p. 7.

17 Labor Senators' Dissenting Report, in Senate Education and Employment Legislation Committee, *Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]*, March 2016, p. 13.

18 Labor Senators' Dissenting Report, in Senate Education and Employment Legislation Committee, *Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]*, March 2016, p. 13.

opposition to such powers.¹⁹ We direct the Senate to our previous dissenting report for a full discussion of this issue.²⁰

1.17 Furthermore, as detailed in the Education and Employment References Report, the perceived need for coercive powers can be traced back to the Cole Royal Commission, in which Commissioner Cole's remarks about the possibility of productivity being increased through radical industrial relations "reform" involving punitive industrial relations laws sparked a mythology about the uniqueness of the construction industry which continues today.²¹

Conclusion

1.18 The legislation proposed is poorly targeted, unnecessary and will not achieve what it sets out to do. As stated by the CFMEU, the government "should act in the interests of all of the community not just in the interests of the big construction companies, big building-products manufacturers and property developers."²² The coercive powers and limitations on workers' rights are not in line with the values of Australian society and are not justified in terms of productivity gain.

1.19 For these reasons Labor Senators do not see merit in either the Building and Construction Industry (Improving Productivity) Bill 2013 nor the Fair Work Amendment (Registered Organisations) Amendment Bill 2014 and oppose both in their entirety.

Recommendation 1

1.20 Labor Senators recommend that the Senate reject the Building and Construction Industry (Improving Productivity) Bill 2013 and the Fair Work Amendment (Registered Organisations) Amendment Bill 2014.

Senator Gavin Marshall
Deputy Chair

Senator Doug Cameron
Participating Member

19 Law Council of Australia, *Submission 2*, p. 5.

20 Labor Senators' Dissenting Report, in Senate Education and Employment Legislation Committee, *Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]*, March 2016, pp. 13–14.

21 Education and Employment References Committee, *Government's approach to re-establishing the Australian Building and Construction Commission*, March 2014, pp. 13–14.

22 Mr Dave Noonan, National Secretary, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 4 October 2016, p. 14.

