

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2004-2005 ADDITIONAL SENATE ESTIMATES HEARING
17 FEBRUARY 2005**

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

QUESTIONS ON NOTICE

Outcome 2: Higher productivity, higher pay workplaces

Output Group 2.1: Workplace relations policy and analysis

Outputs 2.1.1: Workplace relations policy advice

Question Number: W186-05

Question:

Senator Collins asked at *Hansard* page 31:

Is the Minister able to make available to the Committee the Government's response to the ILO in regard to a complaint made by the ACTU that the Building and Construction Industry Improvement Bill may breach the freedom of association conventions?

Answer:

A copy of the Government's response is attached.

Australian Government Submission in Response to the Australian Council of Trade Unions Complaint No. 2326 to the ILO Committee on Freedom of Association concerning the Building and Construction Industry Improvement Bill 2003

The Australian Building and Construction Industry

Industry overview

1. The building and construction industry is critical to Australia's economic welfare and prosperity. In 2002-03, it was a \$46 billion a year industry, accounting for nearly 6 per cent of Australia's gross domestic product. There are currently more than 775,000 people employed in the building and construction industry, accounting for 8.2 per cent of total employment.
2. The industry is unique with employment often temporary and cyclical. It is dominated by small businesses, with ninety four per cent of businesses in the construction industry employing fewer than five people. These businesses cover a diverse range of building and construction related activities and, like most small business, are reliant on continuous cash flow. The diversity of the industry and the vulnerability of its small businesses to industrial action makes it difficult for existing government bodies to regulate it effectively.
3. The building and construction industry in Australia has a high rate of industrial disputation. In 2003, the building industry recorded 249 working days lost per thousand employees due to industrial action. This figure compares to 53 working days for all industries and accounts for around 28 per cent of all industrial disputes.
4. Independent research found that improving workplace practices in the building and construction industry could bring a gain of \$2.3 billion per year to the economy, see the cost of living decline by one per cent and increase GDP by one per cent.

The Royal Commission into the Building and Construction Industry

5. The Royal Commission into the Building and Construction Industry (the Royal Commission) was established by the Australian Government in August 2001 to "conduct inquiries into the unlawful and otherwise inappropriate practice and conduct in the building and construction industry". The Australian Government found it necessary to establish an independent Royal Commission following claims by the National Secretary of the Construction Division of the Construction, Forestry, Mining and Energy Union (CFMEU) that organised crime elements were infiltrating his union, a series of violent invasions on Perth building sites, allegations of corruption by a former New South Wales CFMEU official, and an Employment Advocate report that the problems of the industry were beyond his office's power and capacity to handle.
6. The Royal Commission was the most comprehensive independent investigation of the building and construction industry ever undertaken in Australia. The Commission conducted 171 days of public hearings:
 - some 750 witnesses gave evidence;

- over 20 general submissions were received from interested parties throughout the building and construction industry; and
- during the life of the Commission, 1,489 summonses to attend public or private hearings and 1,677 notices to produce relevant documents were issued.

7. In March 2003, the Final Report of the Royal Commission was tabled in Federal Parliament. The final report found an unassailable case for reforming the building industry, concluding that the industry is characterised by lawlessness and widespread disregard for the rule of law, including the *Workplace Relations Act* (WR Act) by both unions and employers. The findings demonstrate an industry which departs from the standards of commercial and industrial conduct exhibited in the rest of the Australian economy. The report catalogues numerous examples of unlawful and highly inappropriate conduct.

8. The Royal Commission saw lasting change in the industry being achieved through structural and cultural change. The report proposed a number of initiatives to reform the industry, including industry-specific legislation. Industry-specific legislation and a permanent and dedicated enforcement body were seen as necessary for real and lasting reform of the building and construction industry.

Australian Government Response to the Royal Commission

9. Following the release of the final report of the Royal Commission, the Australian Government announced that it would accept the Royal Commission's key recommendations, including introducing industry specific legislation to regulate workplace relations in the industry; setting up a new regulatory body, the Australian Building and Construction Commission (ABCC); and implementing changes to OHS, including setting up the Office of the Commissioner for Occupational Health and Safety in the Building and Construction Industry (COHS).

10. The industry specific legislation, the Building and Construction Industry Improvement Bill 2003 (BCIIB) is a key plank in the most significant reform of the building and construction industry ever attempted. It responded to the compelling and unassailable case for reform presented by the Royal Commission.

The Building and Construction Industry Improvement Bill

11. On 18 September 2003, the then Minister for Employment and Workplace Relations, the Hon Tony Abbott MP, released an Exposure draft of the BCIIB for public comment. During the four week consultation period, the Department of Employment and Workplace Relations (DEWR) received a total of 61 submissions. Submissions were received from employer organisations, unions, subcontractors and other interested parties. DEWR representatives also met with key industry participants and State and Territory governments.

12. The measures proposed in the BCIIB were both appropriate to the national conditions in Australia's building and construction industry and necessary to address effectively the findings of the Royal Commission.

13. On 6 November 2003, the Minister for Employment and Workplace Relations, the Hon Kevin Andrews MP (the Minister) introduced the BCIIB into the House of

Representatives. It was passed by the House of Representatives on 4 December 2003. In the Australian Senate, the BCIIIB was referred to the Senate Employment, Workplace Relations and Education References Committee (the References Committee) on 3 December 2003. The Committee received over 120 submissions and heard from 141 witnesses at 14 public hearings held in most capital cities over a six month period. The References Committee report was tabled on 21 June 2004. The Government is yet to respond to the References Committee report. Subsequently, the BCIIIB lapsed with the prorogation of the 40th Parliament, prior to its final consideration by the Senate.

14. On 4 November 2004 the Minister announced that the Australian Government would reintroduce the BCIIIB into the Parliament in 2005. The precise form of the BCIIIB and timing of its re-introduction are still under consideration by the Government.

Compliance with ILO Conventions

15. In developing the legislative response to the Royal Commission's findings, the Australian Government had regard to Australia's international obligations. Accordingly, the Australian Government considers that the BCIIIB complied with Australia's obligations under international labour law.

16. The BCIIIB sought to establish a framework for fair and effective agreement making between employers and employees, including appropriate access to industrial action. In doing so, the BCIIIB would have enhanced Australia's compliance with a number of ILO Conventions.

17. The BCIIIB also sought to build on the focus of Australia's federal workplace relations framework on bargaining at the enterprise level. In particular, the BCIIIB further supported the goal of an inclusive and cooperative workplace relations system that sustains and enhances Australian living standards, jobs, productivity and international competitiveness. The BCIIIB also recognised that many Australian building and construction employees are covered by collective instruments and contained provisions for collective agreements to be made through collective bargaining. The BCIIIB did not seek to prescribe bargaining outcomes, whether collective or individual, reflecting the Australian Government's view that these are matter for employers and their employees to determine.

18. The BCIIIB afforded additional protection for Freedom of Association, thereby enhancing Australia's compliance with Convention 87. The BCIIIB provided greater protection from discrimination or victimisation on the basis of a person's decision to join or not to join an industrial association. For example, the BCII Bill would have enhanced the protection of persons who chose to be members or officers of industrial associations. It also ensured that independent contractors and employers were afforded the same level of protection and freedom of choice as employees.

19. Further, the BCIIIB would also have enhanced Australia's compliance with Convention 81, Labour Inspection, 1947 by providing for the establishment of the ABCC. The ABCC would investigate, enforce and prosecute suspected breaches of federal workplace relations laws.

20. In other developments, the Australian Government has also committed to establishing a Federal Safety Commissioner (FSC) administratively. The FSC will develop, implement and administer an occupational health and safety accreditation scheme to apply to Australian Government construction projects. It will ensure a higher standard of occupational health and safety compliance on these projects and enhance Australia's compliance with Convention 155, Occupational Safety and Health, 1981.

Future of the BCIIB

21. Following Minister Andrew's announcement that the BCIIB would be reintroduced into Parliament, interested parties have been invited to provide suggestions on the BCIIB. Although this request was only made in early November, DEWR has to date received feedback from employer organisations, key industry participants and interested parties. The Minister will consider the suggestions received prior to reintroduction.

22. The reintroduced BCIIB will be subject to the formal legislative processes of Parliament, as provided by the Australian Constitution. This enables non-Government parties, Senators and Members of Parliament to comment on the proposed legislation, to question Government Ministers about the content of the legislation and to propose amendments.

Conclusion

23. The Australian Government is responsible for ensuring that this industry abides by the same laws that apply in other workplaces and remains steadfast in its commitment to restore the rule of law in this industry. For this reason the Australian Government is committed to reintroducing the BCIIB into Parliament in 2005.

24. At this stage, it would be inappropriate to pre-empt the final content or form of the legislation. In the meantime, the Australian Government undertakes to keep the ILO informed on the progress of the proposed legislation.

25. The Australian Government will continue to have regard to Australia's international obligations and its particular national conditions when developing workplace relations legislation.