

Preface

This report is the first undertaken on the building and construction industry by a parliamentary committee. It has been an instructive exercise in every way. The size and diversity of the industry, and its unique operational characteristics and culture have justified the committee's decision to give itself broad terms of reference. This inquiry has focused, for the first time, on the industrial relations of a particular industry. The committee is well experienced to undertake this task. The Government's industrial relations policy, as expressed in a large number of (attempted) amendments to the *Workplace Relations Act 1996*, have been the subject of numerous inquiries by the legislation committee over the past three parliaments. In the Building and Construction Industry Improvement Bill 2003 (the BCII Bill) we see, in a new legislative context, a reincarnation of provisions and clauses recycled from previously rejected legislation. All this is concentrated on the centrepiece of core policy: the creation of a separate and quarantined industrial relations regime for an industry allegedly much troubled by disputes instigated by unions tainted by criminality. The whole industry, employers and employees alike, being around 7 per cent of the workforce, will be fenced off from the rest of the working population and other industry, as in a gulag, working under a much more exacting regulatory regime.

The committee's terms of reference direct it to look specifically at the provisions of the Building and Construction Industry Improvement Bill 2003, but this is not just a report on a bill, or even on the industrial relations record of the industry. It attempts to cover the spectrum of industry related matters which will be affected by the bill if it is passed. In fact, industrial relations is one, relatively minor, issue affecting the industry, but only because the more important issues of industry cost structures and resulting occupational health and safety problems accentuate what little industrial unrest affects the industry. The Government has not been interested in adopting a holistic approach to the building and construction industry. To do so would be to raise awkward questions that could not be addressed by the 'reforms' it wishes to impose.

The inquiry into the building and construction industry elicited 125 submissions. Those appearing as witnesses before the 14 public hearings across the country numbered 141. Submissions and witnesses are listed in appendices to the report. As will be referred to again later in this preface, most submissions came from individuals and organisations broadly opposed to the Government's industrial relations policy, and to the BCII Bill in particular. The committee majority regrets the imputation by one Government party senator that the organisation of the hearings and the selection of witnesses was carried out so as to disadvantage supporters or advocates for the BCII Bill.

Such a subterfuge was as unnecessary as it would have been improper. Despite the committee having issued specific invitations to individual developers and to large building firms and contractors, the response was negligible. It has been suggested that this was the result of intimidation from unions, but that is unlikely. It has also been claimed that constructors were reluctant to reveal their concerns because of their fear

of losing Commonwealth contracts. That is a more plausible explanation, but the reasons will remain a matter for conjecture. It is more likely that businesses currently enjoying 'boom' conditions, and having good relations with unions and employees did not wish to involve themselves unnecessarily in a potential controversy, especially given the likelihood that the Government's legislation would fail to pass the Senate. In short, there is no credible evidence that builders or contractor were 'stood over' either to prevent their appearance, or to force them to appear. Had there been such evidence the committee and the Senate would have taken appropriate action.

Among the witnesses who appeared before the committee were industrial lawyers and academics specialising in industrial law, employment and the construction industry. Their evidence was valuable for the perspective it offered, for its exposition of complex relationships in the industry, and for its caution against taking simplistic views on causes and effects. Equally useful was the contribution from many workers and contractors in the industry who explained the way the industry worked and the nature of the relationships which held the industry together. The hearings allowed the committee to test some assumptions underlying the Government's policy, although there are gaps in the information which has been sought and used by the committee.

This inquiry by the references committee, while covering a great deal of familiar ground, has allowed scope for more reflection on the assumptions underlying Government policy, and the failure of the Government to win the confidence either of most industry stakeholders or the Senate in the pursuit of this policy. This report explains why the committee majority recommends the rejection of the Building and Construction Industry Improvement Bill 2003.

The committee majority has examined the evidence and finds overwhelming support for the bill's rejection. It has sought in vain for direct evidence from builders and developers in support of the proposed legislation. It acknowledges that there is support from industry associations and from the Property Council of Australia, but it is difficult to assess the extent to which this reflects the attitudes of the membership of these bodies. Such constituents appear to have absented themselves from the debate. For instance, the submission received from the largest construction company, Multiplex, avoided endorsing the bill and proposed its own solution to industrial dispute resolution in the industry.

Inevitably, in any inquiry, there will be more evidence from those who are resistant to change than those who desire it. Advocates of change need to convince sceptics that improvements leading to material benefits will result from changes proposed, and that those benefits will be widely distributed among the stakeholders. The Government's proposals have fallen down badly when measured against this criterion. It looks extremely doubtful that even those who are the intended beneficiaries of the Government's 'reforms' will gain from this legislation. They realise that the targets of the legislation, the trade unions, cannot be removed from the industrial scene at the stroke of a pen. The future of the building and construction industry will continue to depend on a co-operative arrangement between capital and labour. Increased industrial action is a likely outcome of the passage of the BCII Bill, but pressures on builders

and contractors will not follow from industrial action alone. Worse than having employees who have to be well-treated is the threat of having no workers at any price. The industry is already under pressure from a looming skill shortage, as this and other inquiries of this committee have revealed. Punitive anti-union action will have the effect of disrupting, if not destroying, what remains of the training compact between unions and industry employers.

There appears to be no enthusiasm from industry for the kind of legislation which is proposed here. A great deal of departmental time and a \$67 million royal commission have been taken up with driving an agenda which has no appreciable industry or community support.

As a consequence of the Minister declining the committee's invitation to appear before it, the committee was unable to question him as to why particular provisions had not been discarded from the draft bill as a result of strong representations from employer groups, whose members might make some claim to be the beneficiaries of the legislation. The committee majority expresses some disappointment with the paucity of evidence it received in relation to the origins of Government policy and the motivation behind it. In this report the committee has sometimes been forced to rely on speculation because it was not able to question the Minister about the anticipated effects of the bill.

For instance, why were some clauses retained when they appeared to benefit no one in the industry? What industrial response was the Government expecting if the bill was to pass? What options did the Government have if its measures provoked sustained industrial unrest? Departmental officers who appeared for the Government could not be expected to answer questions that go to the heart of policy - explaining the reasons behind ministerial policy - let alone speculate on the likely effects of the bill's passage on the state of the industry. In essence, the Government has escaped effective scrutiny by both Houses in the consideration of this legislation.

The Government claims that the findings of the Cole royal commission point to a culture of lawlessness in the building and construction industry which is so entrenched as to require that industrial relations in the industry be separately regulated under the supervision of a Building Industry Taskforce. To see this in perspective, such industrial lawlessness operates at a level which saw (in 2000-01) an average building worker engaged in industrial action for less than half a day per year. What is proposed by the Government is likely to provoke a major industrial confrontation, with the potential to cause very considerable damage to the industry and to the economy. It is not much wonder that developers and builders have been conspicuously unenthusiastic about the Government's legislation.

There is no precedent for industrial legislation being applied to one industry to the extent which is proposed in the Building and Construction Industry Bill 2003. The government may point to past legislation covering the coal industry and airline pilots, but arrangements made in these cases were within the ambit of the then Conciliation

and Arbitration Act, with decisions made by commissioners of the Conciliation and Arbitration Commission.

The committee believes that caution and reflection have been lacking in the Government's approach to the undoubted problems that beset the building and construction industry. This has led the Government to overlook the possibility of more energetic national leadership in bringing about effective uniform legislation dealing with occupational health and safety and other regulatory concerns which are within the province of the states. This would have been a far more effective means of eliminating sources of industrial discord in the industry than haphazard use of the corporations power. It would also have led to widely acceptable and enduring change, in contrast to what is promised with the BCII Bill.

The Cole royal commission wasted its time in chasing demons rather than in looking at the commercial characteristics of the industry which determine the nature of its labour needs. The Government has similarly ignored this challenge by failing to legislate effectively against tax evasion and the operation of phoenix companies. Costs also have a bearing on the affordability of effective occupational health and safety practices, and this in turn has consequences for industrial relations.

The committee majority also notes the Government's heed of Commissioner Cole's specific warnings against practices such as pattern bargaining and project agreements which have assured a large measure of industrial harmony. Instead, we are promised rule by 'black-letter law', leading to a substantial increase in industrial regulation in the industry. The Government has relied on the royal commission to underpin its outmoded industrial relations policy stance and to frame its legislative response. The result has been a failure in political processes and a textbook example of how not to make public policy.

Senator George Campbell
Chair