

Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Building and Construction Industry Inquiry

Submission no: 112

Received: 22/03/2004

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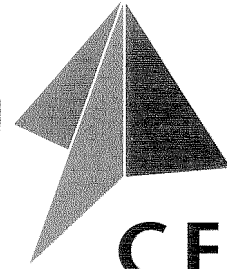
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16 March 2004

The Secretary
John Carter
Senate Employment, Workplace Relations
and Education References Committee
Suite SG - 52
Parliament House
Canberra, ACT, 2600



CEPU

COMMUNICATIONS
ELECTRICAL
PLUMBING
UNION

Dear Mr Carter

**CEPU Submission to Senate Inquiry into the Building and
Construction Industry Improvement Bill 2003**

DARWIN HEARINGS – 5-6 April 2004

Mr Alan Paton – Witness Statement

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As previously advised, Alan Paton, an organiser with our Darwin Office, would like to address the Committee with respect to the Wickham Point LNG Project in Darwin.

A copy of his witness statement is attached. Could you please advise this office in due course of the time and place of the hearing so Mr Paton can make himself available.

If you have any questions regarding the Darwin hearings please contact Lindsay Benfell.

Yours Faithfully,

A handwritten signature in black ink, appearing to be "Peter Tighe".

Peter Tighe
National Secretary

Encl: Alan Paton Witness Statement

Senate Review of the Cole Royal Commission into the Building & Construction Industry &

THE BUILDING & CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2003

Senate Reference Committee – Darwin 5-6 April 2004

CEPU SUBMISSION Alan Paton Witness Statement

INTRODUCTION

1. I am currently employed as an organiser with the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia (CEPU), Electrical Division, Qld Branch and the ETU Queensland Branch based in Darwin.
2. I have been an organiser with the union since February 2000.
3. Prior to that I was electrician working in the construction and mining industries.

Darwin LNG Project at Wickham Point

4. An international joint venture, which includes oil giant ConocoPhillips, is building a subsea natural gas pipeline from the Bayu-Undan gasfield in the central Timor Sea, about 500 km northwest of Darwin, and a 3 million tonnes per annum liquefied natural gas (LNG) plant located near Darwin.
5. The LNG plant is currently being constructed at Wickham Point on the Middle Arm Peninsula in Darwin Harbour. The subsea pipeline will extend from the LNG plant to the Bayu/Undan gas field. It will supply Japan with LNG for 17 years from 2006.
6. Construction of the Wickham Point LNG plant is the Northern Territory's biggest ever private investment project and will take about three years to build.
7. Bechtel, the world's largest engineering/construction company, is building the \$1.6 billion LNG Plant which at its peak will employ around 1200 people. It is expected that

the electrical workforce will peak at approximately 250 to 300 electricians. In a modern plant such as this there is a large amount of electrical and instrumentation and control work.

8. Wickham Point is a greenfields site. Greenfield agreements have been certified under s.170LL of the Workplace Relations Act 1996 with Bechtel, Thiess Pty Ltd, Sunbuild and various other subcontractors involved in the project.
9. The massive size, complexity and long duration of the Project mean that the negotiation of a Project Agreement for the Wickham Point site is essential. In fact it is the only practical way of managing the logistics of multiple subcontractors on such a site.
10. The Cole Royal Commission did not like Project Agreements. Cole put them in the same basket as pattern agreements criticising them for prescribing wages and conditions of employment which should be dealt with at an enterprise rather than a project level.
11. Cole points out that the current *Workplace Relations Act* does not encourage project agreements and argues that the current provisions which discourage project agreements should remain in place. However, he also notes that because project agreements are commonplace these provisions are not effective. Indeed project agreements are often not registered. Clearly the parties want project agreements and if the legislation makes it difficult then they have them anyway. It is pointless to ban something the parties want. Despite this Cole recommended that it should be harder to get project agreements up.
12. The result is s.68 of the *Building and Construction Improvement Bill 2003* which makes uncertified project agreements unenforceable. It also prevents the AIRC from certifying a project agreement if it is a pattern agreement. That is, if the agreement provides for standard employment conditions for employees across a number of

different employers on site it cannot be certified and is therefore not enforceable. Or if there are a number of the same or similar agreements with different contractors on site they cannot be certified as they are considered pattern agreements.

13. The Bill is getting rid of project agreements by stealth because in reality it will not be possible to make such an agreement. The only way a project agreement can be certified is if it is a unique agreement with a single employer on that site. This flies in the face of the reality of a building site. No single employer does every aspect of the work and employs all employees on a site. Under the Bill the AIRC has to be satisfied that each agreement for the site is not a pattern agreement.
14. It should also be remembered that under the Bill an agreement may be considered a pattern agreement if *only part* of the agreement results from pattern bargaining. This will be pretty hard to satisfy, as agreements build on each other. It is hard to imagine a completely non-pattern agreement.
15. Cole is wrong about project agreements. There are many good reasons for negotiating project agreements. On the issue of project agreements the submissions to the Cole Commission by the industry parties were at one. The industry parties want the option of negotiating project agreements. Both the unions and the main construction employers and employer organisations all put to Cole the numerous merits of Project Agreements. Getting rid of the option of a project agreement reduces the options available to employees and employers in the bargaining process.
16. In fact Cole noted that the majority of submissions argued in favour of project agreements. Despite this, Cole still found against the making of such agreements. This is a clear example of Cole bias. It is also evidence that Cole had an agenda and it didn't matter what the industry parties submitted he was going to go his own way anyway.

17. Project agreements may not be the best approach for all construction sites. However, for engineering projects such as the LNG Project at Wickham Point, the only sensible approach to industrial regulation is a project agreement. A project agreement will deliver the certainty that such an enormous engineering project requires. Before tenders can be called or even money raised, the overall cost of the project needs to be known and locked in.
18. One of the arguments used by Cole against project agreements is that they force a cost structure on subcontractors that should be the subject of negotiation at the enterprise level. However, subcontractors, knowing what their costs will be from the outset, simply tender on that basis and so are not placed at a disadvantage.
19. For large projects like this LNG Project, head contractors engage a myriad of subcontractors to perform work on site. They negotiate project agreements before the commencement of the project and before consulting or engaging subcontractors who become part of these industrial arrangements. I believe there is no other workable way to properly manage a site. It has to be done before the project gets off the ground because otherwise there are too many unknowns in the tender process. Project agreements save time, add transparency and create a level playing field for tendering. Subcontractors tender on the same basis with the quality and track record of their previous work being the yardstick by which their tender is judged.
20. Cole decided the wages and conditions should be individually negotiated with each subcontractor at an enterprise level. This is not workable in practice. It does not deliver certainty or the degree of control required by the head contractor.
21. With respect to the understandable desire of head contractors to be in control of their projects and to coordinate the various aspects of work on their sites, Cole said this need could be accommodated in ways other than project agreements. For instance, Cole suggested that if a head contractor wants to have flexibility with respect to working hours that requirement can be included among the conditions of the tender.

Any subcontractor would either have the option of not tendering or approaching its employees seeking a variation to their relevant certified agreement.

22. This is simply a project approach in another guise. Head contractors would clearly want to control a whole range of employment conditions and wage rates and making those wages and conditions a condition of the tender is no different to having a project agreement in place. It would result in a de facto project agreement. All the practical objections that Cole raises with respect to subcontractors having to pay different rates and conditions depending on which project their employees are working on, would be exactly the same under this scenario.

23. If the industry players all want project agreements and there are numerous compelling reasons why they are a good idea, why does the Government want to upset this arrangement. What purpose is served by making it more difficult to negotiate project agreements?