

Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Building and Construction Industry Inquiry

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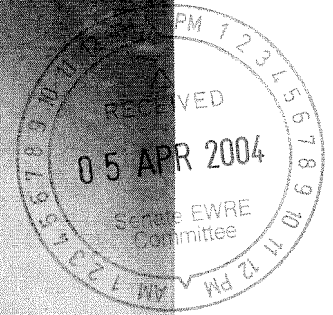
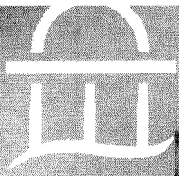
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Building & Construction Industry Improvement Bill 2003 & Related Matters

**A submission to the Senate
Employment, Workplace Relations and
Education References Committee
by the Property Council of Australia**

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Executive Summary

The Property Council supports the *Building and Construction Industry Improvement Bill*, particularly the proposal to establish the Australian Building and Construction Council.

The Property Council contends that the matters identified in the Senate Committee's Terms of Reference can be divided into three sections:

- 1) policy directed to matters of criminality;
- 2) policy directed to industry efficiency, productivity and safety in the broadest sense; and,
- 3) policy relevant to political donations.

Criminality

In the Property Council's view:

- a) there is substantial empirical evidence that elements of the construction industry act beyond the rule of law;
- b) existing institutions have failed to adequately address the issue;
- c) the extent of abuse is widespread enough to warrant a targeted solution; and therefore,
- d) a properly resourced specialist institution is required to restore an operating environment in which the rights of all parties are respected.

Productivity and Work Environments

The Property Council supports initiatives that will:

- provide safe workplaces;
- ensure relevant parties are paid their due in a timely manner;
- ensure entities and individuals pay their taxes;
- encourage entities in the construction sector comply with corporations law;
- eradicate the use of illegal labour;
- improve training and skills development; and,
- increase R&D investment.

The Property Council also supports the application of true enterprising bargaining principles to the construction sector.

Political Donations

Appropriate funding of political parties is crucial to the democratic process. Adequate disclosure is the key to ensuring that the public interest is safeguarded. There is a case for strengthening disclosure rules. However, the Property Council does not believe there is any justification for treating political donations by the property sector any differently from those made by the rest of the community.

Property Council of Australia

The Property Council comprises the leading developers, financiers, owners and managers of investment property in Australia. These members currently own more than \$300 billion of domestic assets.

As participants in the investment community, Property Council members are customers of the construction industry.

That industry sets the *starting price* for property assets within the investment universe and, therefore, the *base for returns* over the life of an asset.

As the built environment helps underpin Australia's productive capacity, the quality of these assets also play a crucial role in meeting broader community goals: economic, social and environmental.

Finally, as real property is an important asset class within collective investment vehicles, the quality and cost of the product delivered by the construction industry directly impacts on the retirement wealth of ordinary Australians.

Clearly, workplace issues influence the overall efficiency of the construction sector and the viability of property as an asset class.

Investors have little expertise in workplace issues and employ firms experienced in such matters.

However, as customers they seek a minimum level of certainty.

At its most basic, they need the certainty that in return for \$1 million dollars of property investment, the construction sector delivers \$1 million of value.

Other asset classes, such as bonds and equities do so. The market risks faced *after* an investment in these asset classes is for Property Council members to manage.

It is the risk *prior* to receiving a final product from the construction sector that concerns the investment industry.

Capital is highly mobile between asset classes and globally.

Our submission contends that construction industry risks arising from a range of poor workplace practices need to be better identified and managed.

Values Based Approach to Public Policy

The Property Council's public policy approach to workplace relations issues is based on the following values:

- *Fair reward for risk and effort* – all those involved in the value creation chain from workers to subcontractors, contractors, professionals and trade suppliers should receive a fair return for their risks and efforts.
- *Co-operative rather than adversarial relationships* – participants in a project are partners in producing a valuable asset. Consequently, those in the value chain should seek to act in a cooperative manner.
- *Safety* – workplaces should be safe and healthy; they should also be free of intimidation and harassment.
- *Learning* – workplaces should encourage skills development and help unleash talent and innovation.
- *Competitiveness* – it is in the nation's interests to foster world class work practices that result in a world class built environment.
- *Triple bottom line outcomes* – a world class industry will deliver economic, social and environmental returns.
- *Citizenship* – the industry should make a prominent contribution to the broader community. It should also abide by agreed social mores, community standards and the rule of law.
- *Ethical behaviour* – industry participants should understand ethical issues and apply ethical principles to all situations – from corporate governance to individual workplace relationships.
- *The right to organise* – labour, employers and capital have the right to organise in order to pursue their interests.

Terms of Reference - Specific Issues

The Property Council has no specialist expertise in industrial law and cannot comment on many of the technical issues related to the proposed *Building and Construction Industry Improvement Bill 2003*.

It leaves those matters to groups such as the Master Builders Association, the Housing Industry Association, the Australian Chamber of Commerce and Industry and the Australian Industry Group.

However, as our members are the direct customers of the construction industry we can offer our views on the public policy issues addressed by the Bill.

The Property Council's analysis is divided into three sections:

- 1) policy directed to matters of criminality;
- 2) policy directed to industry efficiency, productivity and safety in the broadest sense; and,
- 3) policy relevant to political donations.

Criminality

The Property Council contends that the rule of law is abused in many construction workplaces.

It agrees with Commissioner Cole's finding that several of the institutions that govern the construction industry's behaviour are ineffective and that some key players treat normal rules of society with contempt.

The Royal Commission provided evidence of a culture that condones intimidation, stand over tactics and abuse of safety issues as weapons employed to achieve union objectives.

The fact that these tactics are a way of life in some parts of the country is well known.

There is no reason why unions should not act in a militant manner; however, it is widely observed that a culture of militancy too often leads to behaviour that veers beyond acceptable community standards.

The Property Council supports the establishment of the proposed Australian Building and Construction Council (ABCC). In our view, the ABCC's role is not to create a special set of rules to apply to the construction sector. It is required because existing institutions have failed to ensure that the rule of law applies to the construction sector and the broader community in a consistent manner.

We note that States and Territories Governments prefer a more 'co-operative' approach to problem solving. Indeed, we would prefer such an approach had it not repeatedly failed in the past to deal with an efficiently organised 'ends justifies the means' culture.

Some commentators have claimed the Cole Royal Commission was too narrowly focused. That may be the case; nevertheless, the issue of industry corruption needs to be tested on its own merits.

In the Property Council's view:

- a) there is substantial empirical evidence that elements of the industry act beyond the rule of law;
- b) existing institutions have failed to address the issue;
- c) the extent of abuse is widespread enough to warrant a targeted solution; and therefore,
- d) a properly resourced specialist institution is required to restore an operating environment in which the rights of all parties are respected.

What About Other Sectors?

Some argue that a special purpose institution should deal with all sectors, rather than just the construction industry.

The Property Council's view is that the primary breakdown in the rule of law occurs in the construction industry. For that reason it should be the focus of attention and resources.

Should an entity with a broader remit be established, the Property Council contends that the well known problems highlighted by Cole should receive priority for several years.

The Slippery Slope from Militancy to Civil Contempt

Many of the construction sector's problems stem from a lack of respect for civil society.

It is hard for observers and industry customers not to note unionists who say they 'are forced' to breach the Workplace Relations Act – especially when they do so in print.

When CFMEU leaders are televised saying of their own colleagues:

"..they're used to threatening politicians. They're used to threatening other union leaders. They're into intimidatory tactics. They're into using all kinds of unethical methods."

Or the televised advice from one unionist to another:

"All they needed to do was dig in, pull the stadium out and say 'we're not building the stadium until we get a shorter hours deal, like Victoria! And they would have won it. You know, they had the employers, they had the Government by the testicles..."

Observers can only conclude that these union leaders hold Australia's civil institutions and accepted social mores in contempt.

Unions are not alone. The Gyles Royal Commission in NSW highlighted many examples where contractors acted in an ethically feckless manner. The spate of collusive tendering highlighted by Gyles is one example.

A culture of ethical complacency seems imbedded in parts of the industry as this extract from the Master Builder's Association submission to the Senate Committee highlights:

"Firstly, I share the union's view that the Royal Commission was a political witch hunt. Don't get me wrong – there is plenty of union thuggery, extortion, intimidation and bad practices in WA that need stopping. But you didn't need a Royal Commission to discover that. It was well known to the participants and to industry observers. It was known to the police and it was known by the WA Government".

No party should be immune from the rule of law.

Productivity Issues

The Senate Committee's Terms of Reference raise many specific issues relevant to the workings of the construction industry. The Property Council's members are retail customers of an industry which is effectively a manufacturer of products that become investment assets.

Like any customer, we assume the manufacturers are:

- providing safe workplaces;
- paying relevant parties their due in a timely manner;
- paying their taxes;
- operating in line with corporations law;
- providing appropriate training; and,
- investing in R&D.

If there are flaws in relation to these matters, they should be remedied.

Pattern Bargaining

The Property Council has always opposed pattern bargaining to the extent that enterprise agreements should customise the needs of employers and employees at the most local level.

In short, enterprise bargaining should represent an application of the subsidiarity principle to workplaces.

Nevertheless, the Property Council recognises the practical difficulties of applying enterprise bargaining to a site specific project-based industry.

Financial Contributions to Political Parties

Many countries limit financial contributions from entities or individuals to political parties.

Most recently in mid 2003, Canada further tightened the sum of money that could be donated by individuals (\$5,000) and corporates or unions (\$1,000).

The Property Council and some of its members make donations to political parties.

In the Property Council's view, the public interest is protected by applying effective disclosure provisions.

There are considerable virtues in retaining private (but disclosed) donations supported by public funds.

Such donations allow political parties to adequately capitalise their activities, including the formation of an appropriate organisational infrastructure and the means to undertake policy research.

In addition, the act of fund raising itself encourages politicians to engage with sections of the community that are motivated to articulate a range of public policy positions.

The Property Council sees no evidence of any abuse of the political donations process unique to the construction or development sectors.

It certainly sees no rationale for developing rules on political donations targeted solely at the property investment and construction sectors.

Clearly, current disclosure procedures are not achieving standards of transparency that satisfy public interest.

The Australian Electoral Commission has prepared recommendations that will address the transparency deficit and they should be carefully reviewed.

The Property Council contends that any proposed changes to the framework of political donations should apply to all sectors equally.

Conclusion

The Property Council contends that some elements of the construction sector are driven by a culture that is inimical to the accepted standards of civil society in Australia.

It is a problem that is well enough known to be discussed in pubs, boardrooms and Royal Commissions.

It is a fact and deserves a properly crafted public policy program.

The *Building Construction and Improvement Bill* provides a targeted response to the situation and the Property Council supports the thrust of the legislation.

Clearly, there is more that can be done to improve the quality of working and commercial life in the sector, and the Property Council supports efforts to explore these issues.