Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Building and Construction Industry Improvement Bill 2005 and Building and Construction Industry Improvement (Consequential and Transitional) Bill 2005

Submission no: 1

Received: 12/04/2005

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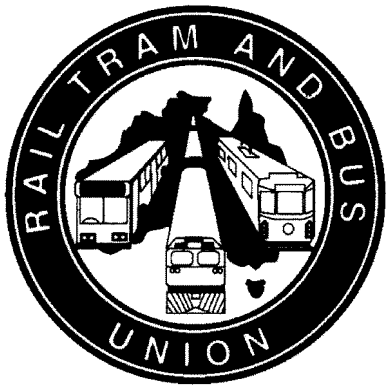

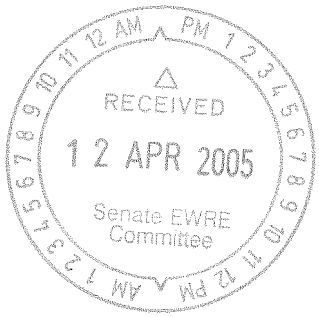

SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION COMMITTEE

SUBMISSION TO THE INQUIRY INTO THE BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2005 AND BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT (CONSEQUENTIAL AND TRANSITIONAL) BILL 2005

April 2005

INTRODUCTION

1. This is the second time in recent years that the Senate has been called upon to inquire into industrial legislation designed, ostensibly at least, to address alleged industrial problems in the building and construction industry.

2. It is less than 12 months since the Senate References Committee on Employment, Workplace Relations and Education reported on the Building and Construction Industry Improvement Bill 2003 (BCII2003) (1). The report followed a lengthy inquiry that included 125 submissions and 13 sitting days to take evidence.

3. The Report identified a number of fundamental flaws in the Building and Construction Industry Improvement Bill 2003 (BCII 2003). The Bill ultimately lapsed upon Parliament being prorogued for the 2004 general election.

4. The BCII 2003 has now returned, in part at least, in the shape of the Building and Construction Industry Improvement Bill 2005 (BCII 2005). However, to the extent that the BCII 2005 repeats the BCII 2003, it has clearly failed to heed the advice in the Senate Committee Report. It follows that the 2005 Bill contains the same flaws as its predecessor.

5. The BCII 2005 also, in certain respects extends beyond the BCII 2003 in a number of respects. This is the case with its application to the issue of defining industrial action for the purposes of the Bill and the issue of penalties. However, consistent with the BCII 2003, its 2005 manifestation continues the inherent unfairness of its predecessor as well as its draconian anti-worker and repressive nature.

6. The Australian Rail, Tram and Bus Industry Union (RTBU), a federally registered union with some 35,000 members working in or in connection with the rail, tram and bus industry, made a submission to the earlier Senate References Committee (2). Much of the critique of the BCII 2003 Bill as contained in that submission is apposite to the BCII 2005 Bill. Nevertheless, in the circumstances, it appears that the points in that submission need to be repeated.

7. With respect to the provisions of the BCII 2005, this submission addresses them under a number of headings – the scope of the BCI 2005, industrial action, penalties and retrospectivity. Specific comments on each of these points will be made under the relevant heading. The submission will then make a number of general comments on the effect of the BCII 2005 in the form of a summary and conclusion.

8. Before going to those headings, the submission will address what the RTBU understands to be the Federal Government's rationale for introducing the BCII 2005.

9. Based on the contents of this submission, the RTBU calls upon the Senate Committee to recommend that the BCII 2005 be rejected in its entirety by the Senate.

THE BASIS FOR THE BCII 2005

10. According to the second reading speech by the Minister for Employment and Workplace Relations:

    "This Bill comes before the Parliament at a time when building industry unions in several states, in particular Victoria, are pressuring employers in the building industry to renegotiate existing agreements well in advance of their expiry terms."

    "The CFMEU is also threatening industrial action in support of its demands. Such action is likely to be unlawful. This approach is an attempt to insulate the industry from the Government's reform agenda."

    "However, the Government will not sit idly by and permit long overdue reform of this industry to be impeded by unlawful union demands. This Bill is a specifically targeted legislative measure to address the unlawful conduct of unions" (3)

11. The Bill Digest states:

    "The purpose of re-introducing part only of the 2003 Bill is to prohibit industrial action in the building and construction industry aimed at pressuring employers to sign new enterprise agreements before the current round of agreements expire in October 2004." (4)

12. This rationale represents a continuation of the extraordinary – but neither uncommon nor unexpected – approach by the Federal Government to industrial relations matters, particularly where it can have a negative impact on a union/s. History shows that this Federal Government will act with alacrity when either presented with an opportunity or can manufacture an opportunity to undermine the collective rights of workers as reflected through their right to join and participate in a union's activities.

13. Consistent with that approach, since its re-election in October 2004, the Federal Government has been rattling its sabre about the type of legislation it intends to bring before Parliament. This has occurred in the context of an electoral outcome that will give the Federal Government the balance of power in the Senate from July 2005.

14. Very few people doubt that the Federal Government intends, by legislation, to greatly enhance the power of employers in the workplace. This enhancement can only come at the expense of employees. In a number of respects the power shift will occur through legislation specifically designed to put unions in a straitjacket with respect to collective bargaining and the capacity to effectively represent their members.

15. With this in mind, it is axiomatic that unions will take what steps they can to defend themselves and their members, including the creation of a situation that prolongs for as long as possible the negative impact of any federal legislation. But it appears that, for this Federal Government, this is unacceptable; that no union should have the audacity to defend itself against it.

16. There is nothing unlawful about parties to a certified agreement agreeing to terminate that agreement prior to its nominal expiry date. The Workplace Relations Act 1996 makes explicit provision for such a possibility (5). The Workplace Relations Act 1996 also makes provision for the extension of the nominal expiry date (albeit for no longer than 3 years from the date of certification) of a certified agreement and for the variation of a certified agreement (6).

17. There has been no evidence provided by the Federal Government that unions in the building and construction industry and, in particular, the CFMEU in Victoria, is or has engaged in unlawful industrial action in any discussions it may be having with employers to re-negotiate the current certified agreements. Nowhere in the second reading speech or anywhere else that we are aware of does the Minister go beyond accusation and allegation into hard and fast evidence.

18. An absence of evidence appears to be a hallmark of the approach by the Federal Government to industrial relations matters. An absence of evidence should not, it appears, be allowed to stand in the way of an ideological obsession. The recent report by the Senate Employment, Workplace Relations and Education Legislation Committee on the Provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004 observed the lack of evidence in support of the provisions of the Bill by the Federal Government, the Department of Workplace Relations and various employer associations (7). Nevertheless, it is doubtful whether a dearth of evidence will prevent the Federal Government from pursuing the changes it seeks in the right of entry provisions.

19. A dearth of evidence is countered by simply making the allegation – long and loud. Or statements are made that imply that if unlawful action has not been taken it is about to be. Or it is coloured by statements that the targets of the legislation (ie unions) are just to type to take such action and then made all the more confusing by reference to controversial reports. It is the submission of the RTBU that this is not a basis for the making of legislation.

20. It is also the case that if a party to a certified agreement takes unprotected industrial action in circumstances where that party is seeking the early termination of the certified agreement, the current legislation provides for a remedy. This is the case whether it involves parties in the building and construction industry or any other industry.

21. This begs two questions – if such action is already covered by current legislation, why the need for the BCII 2005, and if the current legislation covers all certified agreement regardless of the industry in which they apply, why the need for legislation that appears to single out the building and construction industry for special treatment.

22. In our submission, there are two alternative answers to these questions. Firstly that the legislation is not necessary and therefore should be abandoned. Secondly, that the Federal Government has failed to tell the whole story about its underlying motivation for introducing the legislation. If that is the case, then the Federal Government should come clean with the community. It is our submission that this legislation fits in well with our view expressed in point 12 above – that the allegations against the building unions are simply a pretext for the introduction of anti-worker and anti-worker legislation. That being the case the Senate should reject the legislation.

THE SCOPE OF THE BCII 2005

23. According to the Federal Government, the BCII 2005 is designed to prevent certain unions in the building and construction industry from attempting to allegedly engage in unlawful industrial action for the purpose of re-negotiating current certified agreements. The second reading speech also repeats the view of the Cole Royal Commission that industrial action in the building industry is "unique" (8).

24. Putting to one side allegations about the uniqueness of the building and construction – allegations that are not accepted by the RTBU – the BCII 2005 includes work that is generally not regarded as part of the building and construction industry and excludes work that is clearly part of the building and construction industry.

25. This conclusion is reached from an analysis of clause 5 – Definition of *building work.*

26. With respect to building work that is not covered by the BCII , subclause 5(g) refers to the construction, repair, restoration etc. of a *single dwelling.* In other words persons involved in building and construction work associated with stand alone houses is excluded from the provisions of the BCII 2005. This is not an insignificant part of the industry nor can it be contested in any way that this work fits squarely within the definition of building work. The Cole Royal Commission which, coincidentally, did not address the "building of single dwelling houses", calculated that exclusion of that part of the industry removed some 32% of the industry from the purview of the Commission (9).

27. Thus, based on the figures from the Cole Royal Commission, the BCII 2005 despite its explicit reference to the "building and construction industry" deliberately excludes nearly one third of the acknowledged industry from its coverage.

28. To add insult to injury, not only does the BCII 2005 exclude a significant part of the building and construction industry, but it includes sections of industries other than the building and construction industry.

29. This submission focuses on the rail industry. But the RTBU is aware that the rail industry is not the only industry where part of its workforce has been unwittingly redefined as "building workers" at least for the purposes of this legislation.

30. The Bills Digest states:

> "The definition of *building work* includes a broad range of activities – whether these are traditionally thought of as 'building' or not – including fit-out, restoration, repair and demolition, any work 'part of or preparatory to' such activities, and pre-fabrication of made-to-order components'. As the Australian Industry Group pointed out, this appears to deem 'large parts of the manufacturing sector, together with various service sectors, as being part of the building and construction industry" (10).

31. The Senate References Committee Report also contained a section that highlighted the confusion caused by the BCII 2003 through a combination of vagueness and ambiguity and incorporation of non building and construction work in the definition of building and construction work (11).

32. The BCII 2005, in subclause 5(1)(b) defines building work so as to include:

" the construction, alteration, extension, restoration, repair, demolition or dismantling of railways (not including rolling stock) or docks"

33. The reference to certain work in the "railways" – excluding construction work – raises some serious concerns for the RTBU.

34. The RTBU has approximately 5,000 members who perform the type of work covered by the provision of subclause 5(1)(b) – excluding the reference to construction work. In the main, these members are employed in day to day maintenance, repair and upgrading of the railway line and associated infrastructure eg signals and communications equipment, bridges, culverts, fences, embankments and access roads. Further, RTBU members are involved in what is known as periodic or special maintenance. This work includes activities such as relaying railway track, resleepering, tamping and other work associated with upgrading the standard of the railway track and associated infrastructure.

35. With the exception of members employed by Queensland Rail, the members who perform this work are covered by Federal Awards. It is noted however that one of the changes between BCI 2005 and BCII 2003 is that BCII 2005 includes all member engaged in this work regardless of whether they are employed pursuant to a Federal or State industrial instrument.

36. On of the major federal awards covering members engaged in work as defined in the BCII 2005 is the Railways Traffic, Permanent Way and Signalling Wages Staff Award 2003 (11). As the name of the award implies, it covers a broad range of employees who may perform rail operations type work or maintenance work.

37. Members involved in infrastructure maintenance work include fettlers, track repair machine operators, gang protectors, track inspectors and gangers. It would come as a great surprise to them to suddenly discover that, by Federal Government fiat, they have been deemed, at least for the purposes of the BCII 2005, to perform building work as building workers as part of the building and construction industry. They would quite rightly respond that their work does not include building or construction work. The cynical distortion and/or manipulation of the english language by the Federal Government to enlarge the catchment area for the application of this legislation can hardly do the credibility of the process of government any good.

38. Another important consideration concerning the definition is what is meant by "railways". Does it only refer to railway track itself or is it much broader. For example, does in include railway stations, shunting yards, locomotive depots, freight terminals, offices, signal boxes and so on.

39. Given that the definition explicitly excludes "rolling stock" does the definition therefore mean that the BCII 2005 covers locomotives. In other words, an employee performing maintenance/repair on a wagon or passenger carriage is not covered by BCII 2005 but an employee who perform maintenance on the locomotive that pulls the wagon or passenger carriage is covered by BCII 2005.

40. The definition raises questions about where its boundaries lie. For example, does it include white collar employees such as engineers and clerical staff whose work is an integral part of any repair etc. activities performed on the railway track or associated infrastructure.

41. Depending upon how one reads the Bill and the structure of certified agreements in a rail company, it will either impact of a significant number of employees of many rail employers or on all of them. For example, if RailCorp, which operates and maintains the Sydney suburban rail network, amongst other things, pursues a single certified agreement to cover all its employees, then the BCII 2005 may apply to all employees regardless of the fact that the overwhelming majority have nothing to do with building and construction or maintenance or repair work of any type. For example it could mean that suburban train drivers and suburban train guards and stations staff would be caught by the BCII 2005 simply because some infrastructure maintenance workers are covered by the same agreement. On the other hand, if there were to be two certified agreements, one covering the operations employees and the other covering the maintenance, it could mean that employees of the same employer are governed by a different set of rules.

42. As point 40 identifies, the BCII 2005 can operate in such a way in the rail industry that it can, depending on the certified agreement structure, cover all employees of a railway employee. If it will be surprise enough for maintenance employees to find themselves defined as part of the building and construction industry, one can imagine the bewilderment of employees such as locomotive drivers, shunters, guards signallers, train controllers, terminal operators and station staff upon learning the same thing.

43. Part of the Federal Government's offensive against unions in the building and construction industry comes from its reliance on the (spurious) findings of the Cole Royal Commission. It needs to be noted that the Cole Royal Commission did not address the rail industry. The RTBU had no involvement in the proceedings; the RTBU was never approached by officers of the Commission, and, as far as we know, the railways does not rate a mention in the whole 23 volumes of the Royal Commission Report. Yet a significant proportion of railway employees – how significant is debateable and contingent – is to be covered by the BCII 2005.

44. The BCII 2005, contains the extraordinary result of, for at least the purposes of the legislation, redefining a significant group of railway workers as building workers. How significant is the redefinition depends upon a number of factors, but at the least it will include some 5,000 RTBU members who currently work in infrastructure maintenance. None of these employees would regard themselves as building employees. What this does, in our submission, is undermine any view the Federal Government may express that the BCII 2005 is somehow designed to deal with issues "unique" to the building and construction industry. That, in our view, was never the case, and is not the case here.

45. In any event, this Federal Government has, since 1996, conducted one part of its industrial relations strategy, by endeavouring to "demonise" certain unions and certain sectors. At various times this has included unions in the meat industry, the maritime industry, the mining industry, the public service, and tertiary education. The building and construction industry is simply one more link in the chain.

46. It is also recalled that when the BCII 2003 was first introduced, the then Minister for Employment and Workplace Relations, Mr. Abbott state that if it was a success "in that respect you'd be an idiot not to at least consider extending them to other industries" (12). The BCII 2005 is one more stalking horse for industry in general.

INDUSTRIAL ACTION

47. In a number of ways the BCII 2005 broadens the definition of "industrial action".

    - The definition of *building industrial action* in subclause 72(1) extends beyond section 4 in the Workplace Relations Act 1996 by removing the association of industrial action with work performed under a federal industrial instrument. In other words, the BCII 2005 also covers work performed by building workers who are employed pursuant to an state industrial instrument.

    - The definition of *building industrial action* in subclause 72(4) is wider than its counterpart is section 4 of the Workplace Relations Act 1996

    - The exclusion of occupational health and safety matters from the definition of *building industrial action* in subclause 72(1)(g) is narrower than its counterpart in section 4 of the Workplace Relations Act 1996 and subclause 74(2) makes it clear that the onus of proving that work was not performed for reasons of occupational health and safety lies with the person seeking to rely on it.

48. Clause 80 of the BCII 2005 provides that all industrial action taken prior to the nominal expiry date will not be protected. This clause is an endeavour to override the decision of the Federal Court in Emwest Products Pty. Ltd. v AMWU where the Court found that a party may take protected industrial action about a matter that was not included in any extant certified agreement, subject to the certified agreement itself not providing any obstacle to the taking of such action. This situation does not currently exist with respect to certified agreements generally.

49. Clause 74 of the BCII 2005 appears to operate as a "catch-all" provision. It appears to be saying that in addition to the provisions mentioned in points 47 and 48 above, all industrial action that is not protected action is unlawful.

50. Subclause 226(2) broadens the scope of behaviour so as to catch a person for being "involved in a contravention of a civil provision". Such behaviour includes:
    - aiding, abetting, counselling or procuring the contravention.
    - inducing the contravention.
    - being "directly or indirectly" knowingly concerned or party to a contravention.
    - conspiring with others.

51. The Bills Digest states that the provisions of the BCII 2005 "increase the scope of 'unlawful' action compared to the Workplace Relations Act." (14)

52. In the second reading speech, the Minister for Employment and Workplace Relations stated: "The unlawful industrial action provisions will apply broadly across the industry, reducing the concurrent regulation by State and federal systems. They will extend beyond industrial action in relation to industrial disputes, awards or agreements under the Federal Act (15).

53. The RTBU submits that, with respect to industrial action, this Bill establishes a two tier system for workers, or one rule for the building and construction industry (as defined) and another for the rest. This is a fundamentally unfair arrangement as it selects citizens for different and worse treatment than other citizens simply based on the industry in which they work. It is also a recipe for confusion as the boundaries between the two systems are blurred and unclear.

THE PENALTIES UNDER THE BILL

54. Chapter 12 of the BCII 2005 contains provisions for enforceement.

55. The Bills Digest states that the effect of these provisions "is a significant increase in the range of penalties for contraventions of the Bill compared to contraventions of the Workplace Relations Act" (16).

56. Monetary penalties for a civil penalty are up to $110,000 for bodies corporate and $22,000 for individuals. This compares with the monetary penalties in the Workplace Relations Act of up to $10,000 and $2,000 for bodies corporate and individuals respectively.

57. Clause 227 of the BCII2005 extends the right to seek damages to third parties who may not have been directly involved in the alleged action or contravention. This goes beyond the Workplace Relations Act which limits any claim for compensation to direct parties.

58. Clause 227 also grants discretion to the court to make any such order that it considers appropriate in the circumstances.

59. Clause 227 expands the class of person who may bring an action before a court for contravention of a provision. In practical terms this means, at present, the Building Industry Taskforce.

60. Clause 136 of the Bill increases penalties for any contravention of the provisions in the Workplace Relations Act, namely Part VIIIA, that concern payment in relation to periods of industrial action. The fines are increased from a maximum of $33,000 for a body corporate and $22,000 for an individual to a maximum of $110,000 and $33,000 respectively.

61. Thus by comparison with the Workplace Relations Act, the BCII2005 increases the quantum of the existing penalties, expands the range of action that can be taken where it is alleged that a person or body corporate has contravened its provisions, expanded the type of person who can allege they have been affected by the action that contravened the provisions of the Bill, and expanded the type of persons who may take action in a court.

62. Because the BCII2005 expands the range of contraventions and civil penalties, it has been required to insert provisions that prevent a person from being tried twice for the same allegation. Nevertheless, it provides that if a person is acquitted of a criminal offence on a certain allegation, there is nothing to prevent the person being charged with the same offence only to be heard in the civil jurisdiction.

63. Again, the range of penalties provided in the BCII2005 is symptomatic of the unfairness inherent in it and is indicative of the view of the Federal Government that notions such as fairness and equity account for nothing when it comes to dealing with workers.

RETROSPECTIVITY

64. Section 2 provides for the retrospective enactment of the main parts of the BCII2005.

65. The effective date of operation of the BCII2005 is 9 March 2005, the day the Bill was introduced into the House of Representatives.

66. For such a controversial issue, the Minister deals with it in a cursory way. The second reading speech merely states "The provisions prohibiting unlawful industrial action will take effect from introduction" (16). The word "introduction" in this context means the date of the introduction of the Bill into the House of Representatives.

67. The notion of retrospectivity is a controversial and serious issue. It is generally considered that a person should not be charged with an offence in relation to a particular action that was not an offence at the time it occurred. It has been said by a current judge of the High Court that "Retrospective legislation is usually regarded as an evil thing, antithetical to the rule of law" (17). In this case, no basis has been made by the Federal Government for any legislation at all let alone legislation to have retrospective effect.

68. It is further noted that the Master Builders Australia is not a strong fan of retrospective legislation, particularly when it is perceived as having a detrimental impact on employer builders. In a submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs concerning some bankruptcy legislation, the Master Builders Australia stated:

    "The Bill engenders uncertaintly in current business arrangements. It does so in two principal ways: by in effect operating retrospectively on transfers that have already taken place prior to the enactment of the Bill and by providing such wide powers to the court that advance planning of issues is not possible and the discretion of the court is not properly fettered" (17).

    It will be interesting to see whether the Master Builders Australia expresses the same concerns with this Bill and, as it did with the bankruptcy Bill, seek that it be withdrawn (18).

SUMMARY AND CONCLUSION

69. The BCII2005 displays the following characteristics:

(a) It distorts what is generally regarded by the public as the building and construction industry by excluding essential components ie the building of single dwellings, from its operation and by including as part of the building and construction industry particular work that has never been regarded as part of that industry.

(b) The definition issue raised in (a) above is bound to generate a lot of unnecessary confusion and conflict as disputes arise about whether or not the BCI2005 applies in any particular set of circumstances.

(c) It expands the definition of industrial action beyond its current boundary as set out in the Workplace Relations Act 1996.

(d) It increases the type and range of penalties that can be imposed by a court in the event of contravention.

(e) It increases the range of persons who can claim they been affected by an alleged contravention of its provisions.

(f) It expands who can initiate a prosecution.

(g) It applies legislation retrospectively.

70. The common feature running though each of these points is that they adversely impact on workers and their organisations.

71. The Federal Government has –again – relied on the dubious findings of the Cole Royal Commission to support its position. In that regard, the RTBU repeats what it said in the submission concerning the 2003 legislation.

"Further, on any rational assessment of the Cole Royal Commission – despite its best endeavours to discredit unions in the building and construction industry – its findings do not justify this outcome. The Cole Royal Commission was simply a pretext, albeit an expensive one, to launch a legislative attack on the union movement. It would be folly to believe that it is the intention of the Federal Government that the provisions of the BCII Bill will remain confined to the building and construction industry (as defined)." (19).

72. The Federal Government also alleges that the building and construction industry is somehow unique and this characteristic justifies different treatment. At no point is its alleged "uniqueness" identified and therefore we are not enlightened as to what they are and why they in turn justify the legislation. Further, given that the Federal Government – as shown in this Bill – is unclear about just what exactly constitutes the building and construction industry, it would need to leap that hurdle first before it could seek to identify any points of "uniqueness". Unfortunately, notions such as clarity and substance do not appear to have much force in this matter.

73. The Federal Government has stated that part of the rationale for this Bill and in particular, its retrospective effect, is an attempt by some unions in the building and construction industry – with a focus on the CFMEU in Victoria – to circumvent the pending industrial relations legislation post July 2005. In our submission this rationale suffers from a number of defects:

    (a) The Federal Government provides no evidence that the CFMEU or any other union is acting illegally in seeking to circumvent its pending industrial relations legislation.

    (b) It is perfectly legal to terminate certified agreements by agreement before their nominal expiry date and to reach a new agreement.

    (c) There is nothing illegal per se about any person or organisation seeking to place him/herself or itself in a better position to meet and counter possible future adverse consequences.

    (d) The current legislation provides for action to be taken in circumstances where a party to a certified agreement is alleged to have engaged in unprotected industrial action.

74. One of the outcomes of the BCII2005 is the establishment of a two tier workforce. This would occur in circumstances where the boundaries between the tiers are confused and blurred and appear to overlap. As we stated in our submission on the 2003 Bill:

    "The establishment of a situation where employees working side by side are subject to different legislative prescription is a recipe for confusion, injustice and inefficiency" (20).

    It would also occur in circumstances where the potential exists for workers who are remote to the building and construction industry being, by legislative fiat and for the purposes of negotiating there terms and conditions of employment, regarded as building workers.

75. The BCII 2005 expands the capacity for a third party to initiate action in a court for an alleged contravention of the legislation. This could be the case regardless of whether the parties directly involved has resolve their differences and are happy to simply get on with the job. The intervention of a third party such as the Building Industry Task Force in a matter the parties say is over can only exacerbate industrial tension in the industry. The Building Industry Task Force does not have an impressive performance in judicial matters:

    - In PG and LT Smith Plant Hire Pty. Ltd. v Lansky Constructions Pty. Ltd. the Federal Court stated:

      "However, as I noted in paras 80-86 of my earlier judgement, the applicants case was beset with legal difficulties that would have required it to be dismissed in any event. Even on the view of the facts propounded by the applicants, their case was hopeless." (21)

    - In Thorsen v Pine, the Federal Court stated with respect to a submission put by the Building Industry Task Force

      " Such a submission is tantamount to saying that an inspector may target an employer or employee or any other person, and fish through that person's records to see what may be extracted for some still unstated purpose."
      Roving inquiries may be apposite expression for broadranging inquiries into alleged tax fraud and the like under income tax legislation but such notices are foreign to the workplace relations of civilised societies, as distinct from undemocratic and authoritarian states." (22)

76. Consistent with much of its industrial relations agenda, the BCII2005 is in breach of the Federal Government's obligations as a signatory to a number of conventions of the International Labour Organisation. In particular, reference is made to Convention No. 87 Freedom of Association and the Right to Organise and Convention No. 98 Right to Organise and Collective Bargaining. The breach by the Federal Government is, not unexpectedly, based on the legislative barriers to employees being able to organise collectively and importantly to bargain collectively in the absence of unwarranted and unfair restrictions being placed on their capacity to take industrial action. The details of how the Federal Government offends these Conventions and has done so for some time has been put before this Committee in some detail by the International Centre for Trade Union Rights (21). The RTBU refers to the Committee to its recent submission on the Right of Entry Bill in that respect.

77. For all of the reasons set out in this submission, the RTBU calls on the Senate Committee to recommend that the Senate reject this Bill in its entirety.

ENDNOTES

1. Senate Employment, Workplace Relations and Education References Committee. **BEYOND COLE: The Future of the Construction Industry: Confrontation or Consultation.** Commonwealth of Australia, Canberra, June 2004.

2. Australian Rail, Tram and Bus Industry Union. **Submission to the Building and Construction Industry Inquiry.** Australian Rail, Tram and Bus Industry Union, Redfern, December 2003.

3. Building and Construction Industry Improvement Bill Second Reading Speech. March 2005, pp. 1-2.

4. Department of Parliamentary Services. **Bills Digest – Building and Construction Industry Improvement Bill 2005 and Building and Construction Industry (Consequential and Transitional) Bill 2005.** Parliamentary Library, Canberra, March 2005, p. 2.

5. Workplace Relations Act 1996. Section 170MG.

6. Workplace Relations Act 1996. Sections 170MC and 170MD.

7. Senate Employment, Workplace Relations and Education Legislation Committee. **Provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004.** Commonwealth of Australia, March 2005.

8. Second Reading Speech, p.1.

9. Cole. T. **Royal Commission into the Building and Construction Industry.** Volume 3, National Perspective Part 1, Commonwealth of Australia, February 2003, p. 54.

10. Bills Digest, p. 7.

11. Railways Traffic, Permanent Way and Signalling Wages Staff Award 2002 (AW817741 PR921304).

12. The Australian, Friday 19 September 2003, p.1.

13. Emwest Products Pty. Ltd. v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2002] FCA 61 (6 February 2002).

14. Bills Digest, p. 8.

15. Second Reading Speech, p. 2.

16. Bills Digest, p.9.

17. Heydon D. Judicial Activism and the Death of the Rule of Law. **Quadrant.** Vol. XLVIII, No. 2, Jan – Feb.2003.

18. Masters Builders Australia. **Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs on the Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures) Bill 2004: Exposure Draft.** Masters Builders Australia, June 2004, p.4.

19. Ibid. p.5.

20. Australian Rail, Tram and Bus Industry Union. December 2003, p.3.

21. PG and LJ Smith v Lansky Constructions Pty. Ltd. [2005] FCA 134 (25 February 2005).

22. Thorsen v Pine [2004] FCA 1316 (12 October 2004).

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