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Inquiry into Building and Construction Industry (Restoring Workplace Rights) Bill 2008

The Geelong West Branch of the Labor Party welcomes the opportunity to comment on the Building and Construction Industry (Restoring Workplace Rights) Bill 2008.

We welcome the Bill, whose purpose is to repeal the Building and Construction Industry Improvement Act 2005 as well as the Building and Construction Industry Improvement (Consequential and Transitional) Act 2005.

These Acts were promulgated to implement recommendations of the Cole Royal Commission into the building industry.

The final report of the Cole Royal Commission was tabled in Parliament on 26 and 27 March 2003. Its Volume 11, entitled Reform - Achieving Cultural Change included recommendations for the creation of the Australian Building and Construction Commission – national taskforce (chapter 3)

www.royalcombc.gov.au/hearings/reports.asp

It came as no surprise to us that the then government eagerly accepted many of Justice Cole's recommendations when it designed the Building and Construction Industry Improvement Act 2005 and the Building and Construction Industry Improvement (Consequential and Transitional) Act 2005.

Close reading of that legislation reveals that its aim is to impose draconian measures on building and construction workers.

These impositions on the rights of building and construction workers were enshrined under the rules of the Australian Building and Construction Commission (ABCC), which was established in 2005 under the above Acts.

Experience of and reports on the actions of the Commission vindicates our misgivings and our mistrust in the processes established. We have found that 'unlawful industrial action' covers many things, the majority of these being trivial. The Commission seems to be as wide-ranging in its powers of raising fear and intimidation as the McCarthy era in the United States. It has had the effect of fostering mistrust and ill-feeling between employers and workers, because both groups are locked into a draconian pattern of actions and penalties, making negotiation and even normal human relations on the job more difficult.

Some examples will serve here.

1. At a major local refinery, the toilets in the workers' amenities block overflowed, creating a health and safety hazard. Workers walked off the job, since they could not retreat to their sheds as they were adjacent to the overflowing toilets. When the problem was fixed, they peacefully went back to work. Nonetheless, each was docked four hours' pay and received an admonitory letter from the ABCC.
2. At a workplace in the west of Victoria, workers took strike action a day after a near-collision between a bus and a VLine train on a track adjacent to the site. Brodene Wardley, the health and safety officer, successfully negotiated with management to have the safety problem fixed. She was later summoned to appear in court and was questioned, intimidated and threatened, all for doing her job and doing it well.

www.constructingfear.com.au/download/brodene-1, www.constructingfear.com.au/download/brodene-2

We enclose a copy of the video Constructing Fear which details this and other cases where the ABCC has taken action against building workers.

Under the Australian Building and Construction Commission the many rights Australians take for granted are no longer accorded to workers in the building and construction industry, for example:

- It rescinds the right to silence when questioned, even if the person being questioned might self-incriminate or incriminate others by answering;
- It criminalises acts which are not crimes in themselves, such as attending a meeting;
- It has the power to force answers to questions that invade a worker's right to privacy eg. membership of a political party or a union;
- It can force even uninvolved bystanders to answer questions under the threat of punishment for refusal to answer;

Australian workers outside the building and construction industry are not subject to such wide-reaching, unfair and unjust rules and nor should they be. The law plainly discriminates against one section of the workforce.

We agree with Senator Siewert that there can be no reason to keep the Building and Construction Industry Improvement Act 2005 and the Building and Construction Industry Improvement (Consequential and Transitional) Act 2005 on the statute books. They should be repealed forthwith. As a consequence, the Australian Building and Construction Commission should also be disbanded.

We therefore fully support the Building and Construction Industry (Restoring Workplace Rights) Bill 2008. We urge that it be expedited in its passage through Parliament and hope that it will attract bipartisan support in both houses of Parliament.

We understand that the Government is not intending to revise these Acts before 2010. This means that there is every possibility of more prosecutions being initiated under the Acts before that time.

Therefore we strongly suggest that no more prosecutions be pursued under the Acts until they are repealed or substantially changed, whether this occurs in the near future or in 2010. Any cases already before the courts should not be proceeded with.

Yours sincerely



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