

Submission on the Senate Inquiry into *Building and Construction Industry (Restoring Workplace Rights) Bill* 2008 by Chris White 10 October 2008

I support the bill repealing the *BCII* Acts 2005 in their entirety.

1. **Respect for democracy**

Senators supporting the repeal can reasonably do so to respect democracy.

a. The union campaign Your Rights at Work *YRAW* in the democratic 2007 election was successful against Howard's repressive workplace regime – both *WorkChoices* and the *BCII*. In order to uphold democratic principles to respect this vote means support for this repeal.

Public opinion hardens against retaining these separate laws for building and construction workers with ACTU TV ads and the publicity of the repressive activities of the *ABCC*, and the campaign over Noel Washington. See www.rightsonsite.org.

I support damming criticisms of academics such as Professor George Williams.

The repeal could operate December 2008 - not to be continued, as is the government's pledge until 2010.

b. In 2005 this time the Howard government's anti-union agenda rather than the Patrick's tactics against the MUA, implemented the *BCII* bad laws and regulations and the Code and the Guidelines. They unfairly targeted building and construction workers, with unprecedented powers of the 'political' state to police and penalise workers active over legitimate employment and OHS grievances.

This *BCII* system is the opposite of good industrial relations between employers and unions with negotiation and collective bargaining and settlement, without penal powers, as experienced in building the Sydney Olympics.

At the time, the *BCII* bill in 2005 did not have any political legitimacy. Rushed through the Parliament, this extreme command and control system was reasonably opposed by the workers and their unions and the labour movement,

ALP MPs and Green and other political representatives expressed opposition together with a broad-based legitimate opinion of industrial relations and labour law researchers and community groups. The then 2004 Senate had rightly rejected similar repressive legislation on the merits.

The Howard government with Senate control forfeited legitimacy by rushing through the 2005 parliamentary process ignoring reasonable consultative forums over the basis and the details of the *BCII* bill.

There was no discursive political process of allowing citizens to assent in any democratic manner.

The government excluded those directly affected - the building and construction workers and their unions, who have quite properly democratically protested and campaigned in *YRAW*.

The government used false premises for targeting these workers when the strike rate was at its lowest.

Over-the-top unfair repetition of right-wing corporate attacks on militant unions was the spin. This only backed the interests of powerful building corporations and industry political lobbyists. The *BCII* system was bad for working families.

That it was so far below fair workplace standards was shown later in 2005, the ILO found the *Building Construction Industry Improvement Act* and the *Australian Building and Construction Commission* to be in breach of international labour standards.

ILO (2005) Council Report from the Freedom of Association Committee
<http://www.ilo.org/public/english/standards/relm/gb/docs/gb294/pdf/gb-7-1.pdf>
paragraphs 409-457.

On the merits of the argument the *BCII* should be abolished before 2010.

The *BCII* system and the way it was introduced had then and continues to have little democratic legitimacy.

Next, I argued the Howard government ignored the States' rights.

I remember at a SA Industrial Relations Conference in Adelaide hearing a 'law and order' speech by the then Minister for Workplace Relations Tony Abbott firing made-up allegations about union organising that he said ought to be made 'unlawful', but I pointed out that in SA there was no such allegations, the parties conducted industrial relations fairly well, so it was even more discriminatory when there was not State's based evidence or demand from employers to restrict organising rights of SA building unions.

The Commonwealth Minister ignored this point. State Minister's opposed his unjustified Commonwealth intervention.

On many grounds of standards of democracy, the *BCII* had little legitimacy. Senators can support the repeal now by reversing what was illegitimate in 2005 based on democratic principles.

2. **Beware Fear**

Fear mongers whipped up in 2005 the necessity to crack-down with policing against strikes when 99.7% of the time workers were not involved in industrial action. This

ideology hid the real intention of introducing state fear - the policing, spying and lawyers intruding to intimidate active unionists. This is unprecedented in the democratic world and most unfair in any industrial relations system. Those who benefited were the more powerful corporate and employer interests.

Fear mongers will no doubt be back saying repeal means more strikes.

I support for legitimate collective bargaining with the right to strike and this right was formerly repressed, so yes workers and their unions have to have that right to withdraw labour on the same conditions as all workers.

This does not necessarily mean more strikes.

In reality, the recession will mean much less industry full stop - so no strikes.

In any event, often the right to strike is in reserve in negotiations and is not used as settlement is reached on the grievance. This is a much fairer collective bargaining process than now.

The *BCII* unique workplace relations system still operating allows the employer as well as normal management dominance an array of legal weapons to crush with penalties any ability of effective bargaining, and such fear based system is anathema for this century's workforce.

The real fear culture is by the *BCII* regime.

I urge all Senators to view the film DVD by Jo Loh in 2007 'Constructing Fear: Australia's Secret Industrial Inquisition'
www.constructingfear.com.au

Read my review as the same arguments now apply to the Rudd government.
<http://bushtelegraph.wordpress.com/2007/08/29/%e2%80%98constructingfearaustralia%e2%80%99s-secret-industrial-inquisition%e2%80%99/>

Senators supporting repeal can begin the process of changing the culture of fear on building and construction sites.

3. Modern industrial relations practices

This century's industrial relations means employers and unions start to deal with industrial relations challenges and employment grievances and workplace conflict. This is as well as surviving the instability of the world capitalist financial crisis and (at the time of writing) the already severe impact on parts of the building and construction industry and a lengthy recession.

A new industrial relations system has to put the interests of working families first.

So even more so, Tony Abbott's right-wing 'penal power' politics to undermine militant unionism, then his 'First the Verdict' – then the (discredited) Cole Commission, then the politics of the *BCII* and the unnecessary and repressive practices of the *ABCC* - these all it can be argued can be assigned to their past eras.

There is no evidence going into 2009 why the *BCII* and *ABCC* have to be retained at all. Such industrial relations have no place in the future.

Furthermore, it is not reasonable for the government to accept the repeal of the *BCII* in 2010, and to continue full steam ahead when the industrial conflicts are well and truly over with still the *ABCC* relentlessly and politically pursuing building and construction workers and charges them with offences that need to be abolished. It is most unfair to harass workers and make them fearful when the taking of legitimate union action such as the human right to strike has to be respected and protected and not be penalisable.

Modern industrial relations practices are based on the freedom of workers to negotiate over whatever claims are seen as necessary and to collectively bargain to defend their industry, economic and social interests.

This is without any vestiges of the *BCII* police state intervening. No 'inspectors' treating union meetings as criminal conspiracies (like 200 years ago). No lawyers able to claim so-called 'unlawfulness' against workers organising and union officials legitimately advancing their members' claims.

Building workers deserve to have the freedom to pursue grievances and seek settlement including using one means, the basic human right to withdraw labour without penalty.

The *BCII* regime's structure of protected action that is lawful but unprotected action covering nearly all building union responses is unlawful and to be penalised is a false structure fundamentally denying the right to strike and has been criticised including by the ILO Committee of Experts (see my 2008 Evatt chapter).

Such ancient penal power policy does not need to be applied now with the great economic challenges for this industry and for our economy.

4. Workplace rights for all

A specialist building and construction division of the inspectorate of *Fair Work Australia* with a strong investigative and compliance role is required, but not at all based on the disreputable penal powers *BCII* and their use by the *ABCC*. I have read many legal cases where the conduct of the *ABCC* is in question. At the time of writing the latest is from *WorkPlace Express* 10/10/2008 :

'The acting chief justice of the Federal Court Justice Jeffery Spencer has accused the *ABCC* of bias in pursuing an unfounded coercion case against the plumbing union and its leader while ignoring the sham independent contracting operations and evasion of tax and

certified agreement obligations engaged in by a "black economy" company run by a "foul-mouthed industrial cowboy".‘

There are alternative models of industrial relations like the *Sydney Olympics* environmentally and socially sustainable model, one that enforced all workers' rights with no targeting with penalties of building and construction workers. There are many industrial relations models successful due to upholding a worker's dignity and allowing democratic participation rather than the *BCII* master and servant model. It is about time, dignity is restored to building and construction workers.

Further, for this century's essential challenges, repealing the *BCII* can remove the current ban on socially responsible union campaigns, such as the world-leading environmental green bans and innovative campaigns in the public interest on global warming.

With community support, green bans are supported for socially and environmentally responsible building development. Socially responsible withdrawing of labour as a means of support for negotiation allows communities to substitute a social decision for a short-term market greed determination.

As well, making it unlawful for unionists attending political protests against global warming is a denial of a civic freedom of political communication in a democracy.

In an industry with 50 deaths each year, the priority for the safety and lives of workers should prevail over profits. OHS lawful strikes are now more risky, but should be 'firewalled.' Brodene Wardley OHS Delegate and Safety Rep of the Year was 'belittled' by the *ABCC* over a legitimate safety concern and tells her story in '*Constructing Fear*.'

The best enforcers of OHS standards are the union worker safety reps trained for prevention and compliance. But agreement for union training schemes and paid OHS union training leave are prohibited. Preventative health and safety policies are essential with trained elected union safety representatives that are currently 'unlawful'

Just as important for effective compliance is the necessity for new prosecutorial processes against employers for industrial manslaughter. This is vital in a modern industrial relations system for the building and construction industry.

Senators supporting repeal support workers' rights and reintroduce some semblance of balance in the culture of building workplaces.

Author

I have a Law/Arts degree from the University of Adelaide.

I worked as industrial officer for the SA AWU and 10 years with the LHMU, I was elected Assistant Secretary and Secretary of the United Trades and Labor Council of SA.

I am familiar with the industrial relations realities of the building and construction industry. I am a former President of the Industrial Relations Society of SA.

I live in Canberra, researching labour law and specifically the right to strike.

Further research

I made a Senate submission, despite no Inquiry. It is still valid (in the rushed time of the bill). This was before we knew the details of *WorkChoices*, which is also unfairly repressive of the rights of building and construction workers and their unions.

For background, White, C. (2004) Review of Jim Marr, 'First the Verdict The true story of the Building Industry Royal Commission' *Australian Options*, No. 35, Summer 2004 www.australian-options.org.au.

I gave these papers at the AIRAANZ 2005 Conference Sydney University and 2006 White, C. (2005) 'The Right to Politically Strike?' I defended the unions' right to political protest. The Howard government targeted building and construction unions because of their political opposition - that ought to be a political civic freedom. See <http://airaanz.econ.usyd.edu.au/papers.html>

White, C. (2006) 'Provoking Building and Construction Workers' AIRAANZ 21st Century Work: High Road or Low Road? <http://www.aomevents.com/conferences/AIRAANZ/papers.php>.

White, C. (2005) Senate Submission on *WorkChoices* Bill (2005) Senate Inquiry submission No. 129; www.aph.gov.au go to Senate submissions.

Background Paper White C (2006) 'The Perth 107 Right to Strike Contest' the *Australian Institute of Employment Rights* www.aierights.com.au

White, C. (2006) 'The Perth 2007 and the right to strike' ICTUR *International Committee for Trade Union Rights* magazine International Union Rights. Volume 13. Issue 3. The BCII and ABCC is notorious internationally for worst industrial relations practice.

My general arguments against limitations to the right to strike posted 2007 Blog: *Larvatus Prodeo*. 'What limits the right to strike?' <http://larvatusprodeo.net/2007/05/21/guest-post-by-chris-white-what-limits-the-right-to-strike/>

My 'Right to strike' August 2008 arguments for a Rudd government. Chapter in Christopher Shiel editor 'The State of Industrial Relations' *Evatt papers*, Vol. 5, No. 1, Evatt Foundation, Sydney, 2008, pp. 91-102. Foreword by Chris Gambian <http://evatt.org.au/news/482.html>

