

AUSTRALIAN RAIL, TRAM AND BUS INDUSTRY UNION



SUBMISSION TO SENATE COMMITTEE INQUIRY INTO THE BUILDING AND CONSTRUCTION INDUSTRY
(RESTORING WORKPLACE RIGHTS) BILL 2008

1. The Australian Rail, Tram and Bus Industry Union (RTBU) is a federally registered union with some 33,000 members in all States and Territories of Australia. Where employees are employed in or in connection with the rail industry, the tramway industry or the publicly owned bus industry they are eligible to be a member of the RTBU.
2. Due to the broad definitions in the Building and Construction Industry Improvement Act 2005, certain members of the RTBU come within its jurisdiction. As we shall see however, this is the case regardless of the fact that on any sensible analysis most of the applicable members do not perform building and/or construction work.
3. The Building and Construction Industry (Restoring Workplace Rights) Bill 2008 which is the subject of this Inquiry seeks to repeal the Building and Construction Industry Improvement Act 2005 and the Building and Construction Industry Improvement (Consequential and Transitional) Act 2005 (hereinafter referred to collectively as the "Act"). This is a positive step for industrial relations in Australia and, in the submission of the RTBU, the sooner those pieces of legislation are repealed the better.
4. The Act went through a two stage process to become legislation. A Bill was first introduced in 2003 and was the subject of a Senate Inquiry.¹ The Bill ultimately lapsed upon the proroguing of Parliament for the 2004 General Election. Following its re-election, the Howard Coalition introduced the Building and Construction Industry Improvement Bill 2005 and the Building and

¹ See Senate Employment, Workplace Relations and Education References Committee, BEYOND COLE: THE FUTURE OF THE CONSTRUCTION INDUSTRY: CONFRONTATION OR CO-OPERATION?, Commonwealth of Australia, Canberra, 2004

Construction Industry (Consequential and Transitional) Bill 2005. These Bill were also the subject of a Senate Inquiry.² They subsequently became legislation.

5. The RTBU made a submission to both Senate Inquiries. At the first Inquiry the RTBU stated, amongst other things:

*The BCII Bill is draconian and anti worker. It is based on anti democratic principles, subjects the people covered by it to rigid, cumbersome and oppressive legislative prescription, represents a direct attack on the right of employees to organize collectively and to pursue a collective agreement with their employer and to protect their physical occupational health and safety in the workplace. The BCII Bill is not only a direct attack on employees in the building and construction but is a direct attack on employees in the rail industry. The BCII Bill specifically applies to employees in the rail industry.*³

*An outcome of the BCII Bill is the creation of a two tier workforce in Australia – tiers where the boundaries are blurred and confused and appear to overlap. 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.*⁴

The BCII Bill is based on anti democratic principles and the discarding of the ethical principal that all citizens ought to be treated equally under the law.

*For example, the BCII Bill removes the fundamental right of a citizen against self-incrimination. This principle, developed historically from the oppressive techniques used by such bodies as the Star Chamber and evolving over time to protect citizens against the whims of overzealous governments and government agencies, is set at nought in this Bill. Worse, the inquisitorial powers given the Australian Building and Construction Commission (ABCC) will not be subject to judicial oversight.*⁵

6. The Act saw the then Federal Government stretch the elasticity of the English language to breaking point when defining the notion of a building worker. As the RTBU noted in its submission to the second Inquiry, the Act would catch railway workers who undertake infrastructure maintenance work:

² See Senate Employment, Workplace Relations and Education References Committee, PROVISIONS OF THE BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2005 AND THE BUILDING AND CONSTRUCTION INDUSTRY (CONSEQUENTIAL AND TRANSITIONAL) BILL 2005, Commonwealth of Australia, Canberra, 2005

³ Australian Rail, Tram and Bus Industry Union, SUBMISSION TO THE SENATE INQUIRY INTO THE BUILDING AND CONSTRUCTION INDUSTRY, Australian Rail, Tram and Bus Industry Union, Redfern, December 2003, p. 2

⁴ *ibid.* p. 3

⁵ *loc. cit*

Members involved in infrastructure maintenance work include fettlers, track repair machine operators, 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 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.⁶

Nevertheless, not unexpectedly, the then Federal Government retained the original definition in the final legislation.

7. Since the Act came into effect, the action of the previous Howard Coalition Government and the Australian Building and Construction Commission (ABCC) has confirmed the validity of the criticisms made in point 5 above. According to the Construction, Forestry, Mining and Energy Union (CFMEU)⁷:

- An elected OHS Representative was forced to attend the ABCC after the representative reported dangerous breaches of electrical safety;
- A 19 year old apprentice was targeted for questioning after workers took action in response to a workmate receiving serious neck injuries in an on-site incident;
- A University Lecturer was threatened with imprisonment and forced to attend an ABCC hearing after witnessing an incident in a city street as a passerby;
- Several workers were prosecuted by the ABCC after complaining about maggots being found in their food;
- On one building site, several workers were compelled by their employer to attend questioning, one over three days.

⁶ Australian Rail, Tram and Bus Industry Union, SUBMISSION TO SENATE INQUIRY INTO THE BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2005 AND THE BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT (CONSEQUENTIAL AND TRANSITIONAL) BILL 2005, Australian Rail, Tram and Bus Industry Union, Redfern, April 2005, p.5. See also Senate Report into the 2005 Bill, op. cit. p.12

⁷ Construction, Forestry, Mining and Energy Union, HARDHAT EXPRESS, April/May 2008, Construction, Forestry, Mining and Energy Union, Sydney, April 2008

8. In the same publication the CFMEU goes on to say:

Over 50 ordinary men and women have been forced to attend secret interrogations by Howard's ABCC enforcers. If they refuse to answer questions – about issues like what happened at a union meeting – they can be jailed for six months.

Many more are being threatened with \$22,000 fines and loss of pay if they stop work for any reason – even over safety, in what is one of Australia's most dangerous industries. These powers are bad for construction workers and bad for the industry.⁸

9. The Federal Court of Australia, in a matter concerning the predecessor of the ABCC (the Building Industry Task Force) stated with respect to the Task Force's view of its powers:

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 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 civilized countries, as distinct from undemocratic and authoritarian states.⁹

The terms “undemocratic” and “authoritarian” are appropriate descriptors of the provisions of the Act.

10. The Act is contrary to Australia's obligations under the Conventions of the International Labor Organisation. Reference is made in particular to ILO Convention No. 87 Freedom of Association and the Right to Organise and ILO Convention No. 98 Right to Organise and Collective Bargaining.¹⁰

11. In their conclusion regarding the merit of the Act, the Labor Senators at the 2005 Senate Inquiry aptly and astutely stated:

The law can be perverted only so far before it becomes dysfunctional and manifestly at odds with the public good. The cost of this discovery will be felt first by employees and soon after by employers and their shareholders and bankers.¹¹

⁸ loc cit

⁹ Thorsen v Pine [2004] FCA 1316 (12 October 2004)

¹⁰ For elaboration on how the previous Howard Government legislation continually offended these ILO Conventions see: International Centre for Trade Union Rights, SUBMISSION TO SENATE INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (RIGHT OF ENTRY) BILL 2004, International Centre for Trade Union Rights, Melbourne, February 2005

¹¹ 2005 Senate Report, op.cit. p. 15

No law can be more dysfunctional than the Act – a law that says a worker can be jailed for failing to answer questions asked about their daily activities as representatives of working people or for any other reason they so choose.

12. In November 2007, the Australian people passed judgement on what they thought of the industrial relations agenda of the then Howard Government. That judgement was a resounding rejection. By repealing the Act, the Government will be doing no more than endorsing the position taken by the Australian people at the last election.

13. The Act has to be repealed. For this reason the Bill should be supported

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