

Australian Greens' Dissenting Report

Overview

1.1 The Senate Education and Employment Committee inquiry examined the Building and Construction Industry (Improving Productivity) Bill 2013 (the ABCC bill), the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 (the related bill), and the Fair Work (Registered Organisations) Amendment Bill 2014 (registered organisations bill).

1.2 All three bills have been considered by the Committee twice before and have previously been rejected by the Senate.

1.3 In the Committee's previous reports on these bills, the Australian Greens have recommended that the Bills not be passed and have voted against them.

1.4 There was no evidence before the committee that was persuasive or compelling enough to change that view. On the contrary, the evidence received reinforced the view of the Australian Greens that the bills should be rejected by the Senate.

Conduct of the ABCC

1.5 An examination of the previous conduct of the Australian Building and Construction Commission (ABCC) highlights the problem of reinstating the Commission via the ABCC bill.

1.6 The ABCC failed to act as independent regulator committed to the best interests of the industry, the conditions of the workers and the legitimate needs of employers.

1.7 It was unwilling or unable to address construction industry employers engaging in illegal activities including the widespread use of misleading contracts. Construction companies signing up workers as independent contractors instead of hiring them as employees remains a serious issue that reduces industry standards. For employees it means they lose basic work and safety rights.

1.8 The construction industry is one of this country's top four most dangerous industries. The ABCC never took an employer to court over breaches of occupational health and safety laws. Instead, the number of deaths in the construction industry increased during the period that the ABCC was in operation. In 2004 the number of deaths was 3.14 per 100,000 workers. In 2007 it stood at 4.8 and in 2008 at 4.27, per 100,000 workers.¹

1 CFMEU, *Simple as ABCC: Bad Laws Cost Lives*, www.cfmeunsw.asn.au/campaigns/stop-the-abcc, (accessed 13 October 2016).

1.9 The coercive powers of the ABCC, which could subject construction industry workers to secret interrogations and force them to answer questions under oath, resulted in construction workers having fewer rights than other workers.

1.10 The Greens believe a person should not have fewer rights than an accused criminal simply because they work in the building industry. People shouldn't fear being hauled into secret inquisitions and forced to 'name names' under threat of imprisonment. We do not want or need McCarthyism in the building industry.

Recommendation 1

1.11 The Australian Greens recommend that the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 not be passed.

The need for a national corruption body

1.12 Evidence to the committee supported the need for a broad-based corruption watchdog, rather than establishing a body whose focus is to attack unions. A broad-based federal anti-corruption body would be able to investigate and pursue corruption at all levels in society.

1.13 The experience of ICAC in New South Wales shows that corruption is not limited to one industry or arena, including parliamentarians. If the government was serious about tackling corruption it would establish such a body at the Commonwealth level.

Recommendation 2

1.14 The Australian Greens recommend that the government establish a broad-based federal anti-corruption body.

Building code

1.15 The *Building and Construction Industry (Improving Productivity) Bill 2015* also contains provisions in relation to the Building Code that are very concerning. The provisions will enable a new Building Code that, estimates suggest, will impact on more than 1 million Australian workers.² Significant existing employment conditions for construction workers will be prohibited.

1.16 The Building Code will apply not only to employers tendering for government construction projects, but also all employees working for those employers in the private sector; all entities that supply transport or prefabrication manufacturing to government jobs; and other entities that include contracting or transport suppliers.

2 Electrical Trades Union, *Submission 21*, p. [5].

1.17 Evidence to the committee showed that the Building Code provision will enable the Commonwealth government to prevent local agreements having clauses for a range of matters including guarantees on the numbers of apprentices.

1.18 For example, 76 clauses in current Electrical Trades Union construction agreements could be prohibited, including clauses that:

- prevent unlimited ordinary hours worked per day;
- guarantee the employee's ability to have a day off on Christmas Day and Easter Sunday and other public holidays;
- encourage employment of apprentices;
- discourage discrimination against mature workers;
- include agreed stable and secure shift arrangements or rosters;
- ensures construction workers' conditions and entitlements cannot be eroded;
- provide for equality and fairness onsite for construction workers; and
- impact on the rights of construction workers to have a safe workplace.³

Recommendation 3

1.19 The Australian Greens recommend that the provisions in relation to the Building Code be removed from the Bill.

The Registered Organisations Bill

1.20 The Fair Work (Registered Organisations) Amendment Bill 2014 is also fatally flawed.

1.21 The government claims that the bill just puts corporations and registered organisations on an even footing, implying that unions and other registered organisations ought to be treated in the same way as corporations because they are fundamentally the same. This is not the case.

1.22 Unions are required under the *Fair Work (Registered Organisations) Act 2009* and other legislation to be democratic organisations, while corporations are not. Unions are required to publish their accounts and financial returns every year online, but proprietary limited companies are not.

1.23 The government fails – or refuses – to understand that employee organisations do not exist for the same reason as businesses. Businesses exist to make profit: that is their sole purpose and the measure of their success. Company directors are legally required to act in the best interests of their shareholders and to continue to make a profit.

1.24 Unions exist to advance the interests of their members, and in doing so, help all workers. Unions advise people of their rights and entitlements at work and ensure

3 Electrical Trades Union, *Submission 21*, pp. [4 and 30].

those entitlements are honoured. They ensure that the lowest paid workers enjoy something approaching what others take for granted: a decent income and quality of life.

1.25 Unions fought for shorter working weeks. Unions are responsible for the existence of the weekend. It is thanks to unions that workers are entitled to annual leave and penalty rates. These things were not granted to workers by benevolent corporations; unions fought for every single one.

1.26 Unions drive changes to our workplace laws not for their own benefit, but for the benefit of their members and all Australian workers. They receive no direct financial advantage from their work. Registered organisations are fundamentally different to profit-making corporations and they must be treated differently.

1.27 Evidence to the Committee reinforced the Australian Greens' view that the Bill is unnecessary. Current laws prevent officers of registered organisations from using their positions for their own personal benefit and those that do are prosecuted. Rather than extending the current requirements demanded of unions to corporations, the bill allows the government to micromanage unions in a way that would be unthinkable of private companies, while still imposing the same penalties on unions that apply to publicly listed companies.

Recommendation 4

1.28 The Australian Greens recommend that the Fair Work (Registered Organisations) Amendment Bill 2014 not be passed.

Conclusion

1.29 The Australian Greens will always stand up for people's rights at work. We urge Senators not to support these bills.

Senator Lee Rhiannon

Australian Greens