

**Master Builders Queensland 2014 Industry Leaders Lunch**

**Brisbane**

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***Plans for a revamped building watchdog***

**[check against delivery]**

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**Introduction**

Good afternoon, ladies and gentlemen. Thank you for inviting me to speak here today. I suspect that I gain more from these events than you – the feedback you give me about the industry is invaluable.

There has been much debate recently about a revamped building watchdog. First, we must remember what the end goal is. It is not, as the CFMEU has suggested, about stripping workers' rights. It is about creating a more productive, harmonious industry.

More productive and harmonious building sites with fewer days lost to industrial action will inevitably benefit all Australians through greater economic outcomes. More importantly, it will make a difference to you, the people who work in the building industry.

I believe people not only have a right to go to work, and know they will return home to their family safely, but that they have a right to a workplace free from coercion, discrimination, unlawful industrial action and downright thuggery.

To my mind, there are four key components which will contribute to a revamped building watchdog: a return to core business, a new National Building Code, strengthened powers, and a determination to install the rule of law.

**FWBC and the ABCC – strengthened powers**

It is not my position to offer policy advice to government, but having worked for both the ABCC and now the FWBC, I feel it would be remiss of me not to share my observations of the two agencies.

In 2002, I began my foray into the building industry with the Building Industry Taskforce, as its Director. When the ABCC was finally installed as a result of the Cole Royal Commission's recommendations, I worked as the agency's Deputy Commissioner, until 2008.

During my time at the Taskforce, and the ABCC, I conducted a total of 116 compulsory examinations. In its almost two years of operation, the FWBC has performed just three. These powers are not new. They are possessed by many Commonwealth agencies, including Medicare, Centrelink, ATO, APRA, ASIC and the ACCC.

The current powers of the FWBC involve so much red tape, their effectiveness is largely lost. I believe compulsory examinations are vital for the agency to investigate unlawful activity in the building industry. During my time at the ABCC, they were crucial in being able to break down the wall of silence which exists within the industry's entrenched culture.

Another significant difference between my time at the ABCC and my time now at FWBC is the penalties available to the courts for individuals and corporations who have acted unlawfully. When I left in 2008, the maximum penalty for an individual was \$22,000. It is now just \$10,200. And previously, a corporation could face a maximum penalty of \$110,000. The current maximum available to the court is \$51,000.

In line with its 2013 federal election commitment, the now Coalition government has moved quickly to introduce a bill to see the ABCC restored. But I do not intend to wait for the Bill to pass. The agency is already changing its focus and getting on with the job of establishing the rule of law in the building industry.

### **New attitude**

The agency's main focus when I arrived concerned me. From the widespread feedback I was receiving, the industry was heading away from the rule of the law, not towards it. The industry was heading away from improved productivity and it was heading away from harmonious worksites for people to go to work each day.

When I returned to the building industry after three and a half years away from it – as head of the Victorian Construction Code Compliance Unit (CCCU) in March 2012 – it became clear that unlawful conduct on building sites had indeed regressed.

Upon my arrival at the FWBC in October last year, I found some agency staff were jaded, and understandably so. I was the fourth Director the agency had had in a mere seven months. I have made it clear to FWBC's staff that if we are to create positive change in the industry, we must first look internally, to ourselves. I am proud to report that there appears to be renewed energy at the agency. I am already receiving regular, positive feedback about the professionalism and responsiveness of our staff.

However, it is all very well to have a regulator. What the industry really needs is a regulator determined to enforce the law to increase productivity, and harmony, on building sites across Australia. I can assure you, we are determined.

That said, we cannot do it alone. In recent times, the police, in certain jurisdictions, have improved their responsiveness when we have called upon them – in particular to deal with trespassing issues. I note that in Victoria this process is made easier thanks to a Senior, dedicated police liaison officer for industrial relations issues. The FWBC is in regular contact with the liaison officer.

### **'Cold Case Unit'**

You may have seen media reports this week that I have opened a 'Cold Case Unit' at FWBC. While there is no specific team at the agency specifically tasked with investigating old cases, I can confirm I have reopened one case and will do the same with others where it is in the public interest to do so. There are several cases on the list we are currently looking at, but it would not be appropriate for me to mention whether, or how many, involve Queensland.

**Return to core business**

Part of the agency's new emphasis is what I refer to as a return to 'core business'. This has seen wages and entitlements work returned to the Fair Work Ombudsman. Do not get me wrong, it is important work. However, the Fair Work Ombudsman has the resources and specialist expertise to handle wages and entitlements matters relating to the building industry. This transfer has provided the FWBC with the opportunity to focus on its core business: coercion, industrial action, Right of Entry, discrimination and freedom of association. Our investigators are concentrating on enquiries into these matters, whether the allegations are against head contractors, sub-contractors, employers, workers, unions or their officials.

Let me emphasise we do not pick and choose which matters to investigate. When the day comes that we identify and receive more allegations of employers engaging in unlawful conduct than unions, then we will investigate more employers than unions.

As matters currently stand, it is the other way around. I will leave it to your imagination as to when the tables will be turned. We currently have 26 active investigations in Queensland. 21 of them involve unions.

***Industrial Action***

Unlawful industrial action is, regrettably, commonplace in the industry. That is why, and because it has such a serious impact on productivity, it is part of our core business. No doubt you will all have heard about unrest at the Indooroopilly Shopping Centre redevelopment site just last month. Some 100 workers downed tools. Work resumed on the site only after the Fair Work Commission issued return to work orders. While FWBC was on site throughout the dispute, our work into this very serious matter continues. Our job did not end when work resumed. We are currently investigating the alleged unlawful industrial action and conduct of the union at the site. I wish I could say the Indooroopilly incident was isolated. But it is not.

Exactly two weeks ago, 300 workers walked off a significant Sunshine Coast building site. FWC has issued return to work orders and again, FWBC is investigating. And of course there were the work stoppages on the Gallipoli Barracks and QUT Creative Industries Precinct projects at the end of last year. Industrial activity continued for a shocking seven weeks. The magnitude of the stoppage was huge and our investigation continues in earnest.

***Right of Entry***

Right of Entry is a large part of our core business. Three weeks ago, his Honour Judge Burnett penalised the CFMEU and three Queensland officials almost \$40,000, for hindering, obstructing and acting in an improper manner on a Brisbane building site. Joseph Myles, Kane Pearson and Shane Treadaway entered the site to investigate alleged safety concerns. I am yet to understand why Mr Treadaway needed to carry an EFTPOS machine with him to address safety issues.

In delivering his penalty judgment in Brisbane, Judge Burnett said words to the effect, *"The right of entry is a position of trust and those who seek to abuse the right should be dealt with."*

One of the officials penalised was Joseph Myles, who the week before the penalty hearing was twice arrested on a Melbourne Regional Rail Link construction site for trespassing.

For your information, we are currently looking at putting on the FWBC website a list of union officials who have form trying to enter sites, but do not have a valid right of entry permit. I have heard stories about permit holders shrinking their official A4 sized permit to the size of a business card, making it very difficult to read. Now, would a Police Officer accept a photocopy of a driving license or one in a different format? Site management should be equally demanding.

Know your rights. It is within your right to request to see and inspect the permit. FWBC is available to help you understand your rights as it is critical you fully understand them.

### **New Building Code**

The Federal Government has indicated that it will release a revised Building Code to replace the one introduced in early 2013. It will aim to use the Government's purchasing power to promote workplace arrangements that drive productivity, flexibility and compliance with the law. You should also note that the Government has indicated that the new Code will apply to the upcoming round of EBA negotiations in the building industry.

I have no doubt that the previous Code and Guidelines helped to reduce unlawful conduct when the Code was at its most robust from 2006 to 2009. However, the Code's effectiveness diminished when the Implementation Guidelines were successively watered down in 2009, 2012, and then with the 2013 Building Code.

I note that, in recent days, the Productivity Commission has released a draft report that includes recommendations for the Commonwealth to adopt the Victorian Construction Code, and for higher penalties to apply to contraventions of workplace relations laws within the building industry. Both Queensland and NSW introduced Guidelines on 1 July last year. The tri-State compliance units are responsible for monitoring compliance with the Guidelines.

I cannot speak for Queensland, but just this week I spoke to my old office in Victoria and was informed of their latest statistics relating to the Guidelines. Seventy-nine projects, of \$10 million value or more, are in tender to construction stage and covered by the Government Guidelines. These projects have a total value of \$15 billion. Overall, 358 contractors are now required to comply with the Guidelines.

In all states, proven breaches of the Guidelines are to be reported to the responsible Minister, who is empowered to sanction contractors, government agencies and public servants. I want to emphasise there is no ability to sanction unions. These sanctions, which are set out in the Guidelines, include being excluded from future government tenders. Sanctions also include being reported to an appropriate statutory body, such as the ASX in the case of publicly listed companies. I must say that I saw the sanctions as a last resort. I would much prefer to see cultural change being brought about.

**Conclusion**

We have a big job ahead of us, ladies and gentlemen. But rest assured, I am not wasting any time. My agency is already working hard to establish the rule of law on Australian building sites.

A revamped building watchdog is crucial to the productivity of this industry. It is critical if people are to attend building sites for work each day, and have a chance of going about their job, without the threat of coercion, unlawful industrial action, discrimination and general thuggery.

Increased powers will strengthen my agency. A new National Building Code will also help create order.

For the moment though, FWBC is returning to its core business. We are determined to work with all industry participants to create more productive and harmonious building sites for the benefit of all Australians.