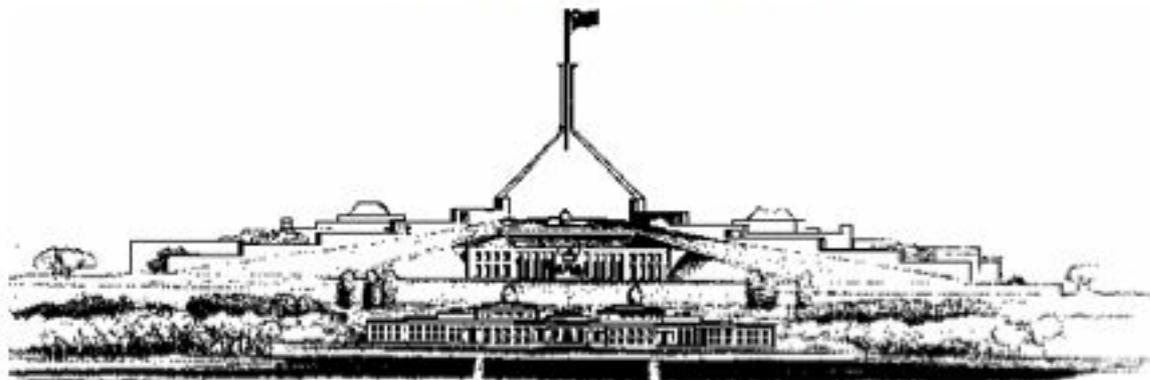




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**

**PROOF**

**BILLS**

**Building and Construction Industry  
(Improving Productivity) Bill 2013, Building  
and Construction Industry (Consequential  
and Transitional Provisions) Bill 2013**

**Second Reading**

**SPEECH**

**Thursday, 5 March 2015**

BY AUTHORITY OF THE SENATE

---

## SPEECH

<p><b>Date</b> Thursday, 5 March 2015</p> <p><b>Page</b> 50</p> <p><b>Questioner</b></p> <p><b>Speaker</b> Lambie, Sen Jacqui</p>	<p><b>Source</b> Senate</p> <p><b>Proof</b> Yes</p> <p><b>Responder</b></p> <p><b>Question No.</b></p>
---	--

---

**Senator LAMBIE** (Tasmania) (13:37): I rise to speak to the Building and Construction Industry (Improving Productivity) Bill 2013 and Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013.

This is one of the most difficult bills I have had to consider while I have been in the Senate and, like the Fair Work (Registered Organisations) Amendment Bill 2014, I have serious concerns and reservations. It is clear that the intent of this bill is to target and punish unions and organised labour groups, while neglecting to impose the same set of rules and standards on corporate Australia.

The intent of this bill follows a pattern set by the Liberal and National parties. It is similar to other bills brought before this Senate by the Liberal and National parties, which rely on destruction and undermining of basic civil rights and freedoms in order to achieve a quick law and order outcome. It is a pattern of legislative behaviour that we witnessed in Queensland and driven by former Premier Campbell Newman. However, in the rush to achieve a quick outcome or get an easy conviction, we run the risk of damaging the fundamental human and civil rights building blocks of our nation.

Before I give examples of the damage this legislation will cause to fundamental Australian human and civil rights, it is worthwhile to remind the Senate what an official explanation of the bill is. The Building and Construction Industry (Improving Productivity) Bill 2013 and Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 were introduced with the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013. The bill: (1) re-establishes the Australian Building and Construction Commissioner and the Australian Building and Construction Commission; (2) enables the minister to issue a building code; (3) provides the appointment and functions of the Federal Safety Commissioner; (4) prohibits certain unlawful industrial action; (5) prohibits coercion, discrimination and unenforceable agreements; (6) provides the ABC Commissioner with powers to obtain information; (7) provides for orders for contraventions of civil remedy provisions and other enforcement powers; (8) and makes miscellaneous amendments in relation to self-incrimination, protection of liability against officials, admissible records and documents, protection and disclosure of information, powers of the commissioner in certain proceedings and jurisdiction of courts.

At first glance, there are compelling arguments both for and against this piece of legislation; however, when the argument is simplified and when it is reduced to its essence, what this bill does is to re-establish a Star Chamber where basic civil rights for Australian citizens and workers are suspended in an attempt to address corruption, misconduct and crime within the Australian building industry. In taking this extraordinary action—the suspension of basic human rights—there is an implicit assumption that Australia's existing laws and law enforcement agencies cannot properly address the corruption, misconduct and crime within the Australian building industry, which, I have no doubt, exist, just as corruption, misconduct and crime within the Australian banking industry and within political parties, undoubtedly, exist.

The Liberal government have tried to justify this extraordinary legislation by attempting to take the high moral ground, but I say, 'What's good for corrupt building workers is good for corrupt bankers, corrupt bureaucrats or corrupt politicians.' And that is why, when I spoke to similar legislation which suspended and destroyed basic civil and human rights in order to achieve an easy quick law and order outcome with regard to corruption and organised crime, I said on Monday:

I believe that an equitable solution to corruption in the workplace and broader Australian society is the establishment of a permanent corruption watchdog whose star chamber powers will apply to bankers and union members equally. They must be applied equally. Combine that body with reformed world's best whistleblower or public interest disclosure laws that protect, encourage and reward genuine whistleblowers to come forward and then corruption in the workplace, corruption in government departments, corruption in the board rooms and corruption in political parties will be properly addressed.

Most Australians would not be aware of the extraordinary powers that this legislation will give not to police officers but to lesser trained public servants. The average Australian would expect that if they were accused of a crime they would have the right to silence and the assumption of innocence. Under this legislation that right to silence has been destroyed, and the assumption of innocence has been overturned and reversed. The government, through Senator Abetz, admits so in the official explanatory notes when he writes:

Under clause 57 of the Bill, where an application has been made regarding contravention of a provision in Chapter 6, and it is alleged that a person took action for a particular reason or with a particular intent, that allegation is presumed to in fact be the intent of the person, unless the person proves otherwise.

People who have been targeted by the legislation and accused of a crime or wrongdoing will have to prove that they are not guilty, rather than the authorities having to prove they are guilty. My point is: if you are going to apply a legal standard to a building worker, why is the same rule not applied to a bank manager or a financial adviser? Clearly, there is just as much wrongdoing, fraud and crime in corporate Australia as there is in the building industry. And, that being the case, if we are going to have a watchdog, let that watchdog track down corruption and organised crime in every location in Australia. Do not just start up a special government organisation to exclusively target the people who do not donate to your electoral campaigns. If you are going to bring that bureaucrat beast to life, as I mentioned in a speech earlier this week:

Of course there is an ongoing need to monitor, investigate and enforce our laws wherever crime and corruption is found within any organisation, whether it be government departments, political parties, corporations or unions. Wherever there is a concentration of power and money, the risk for criminal or unethical behaviour increases, because, as we all know, if you are human, power corrupts and absolute power corrupts absolutely.

However, the problem I have when the Liberals say they want to apply corporate standards of regulation to the unions is that Australian corporate standards are not all that flash. The standards the government want to impose on the building industry should be applied to their mates in the banking and finance industry. Otherwise it is not fair taking away the basic civil rights of a group of Australian blue-collar workers, while duchessing and pandering to white-collar workers and the big end of town.

Inspectors of the new commission under this proposed Liberal law will have more powers than police officers and less accountability. If a police officer wants to search your home, ordinarily that police officer has to apply to a judge or magistrate for a search warrant and justify his or her actions. In doing so, the police officer will be held accountable for their actions both during and after the search is carried out. In other words, a citizen's right to privacy is protected by rigorous checks and balances which have evolved in our legal system. These rights to privacy have been influenced by fundamental democratic human rights which, as the government admit, prohibit unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. This legislation bypasses all those checks and balances by giving public servants—with questionable training—the power to enter people's businesses and residences without any warrants approved by judges or magistrates.

The explanatory notes issued by the government, under Senator Abetz's name, prove that point when he writes:

Inspectors are able to enter business premises without force if they have the reasonable belief that there are records or documents relevant to compliance purposes on the premises, or are accessible from a computer on the premises, or if a person who ordinarily performs work or conducts business at the premises has information relevant to compliance purposes. Both of these grounds of entry are restricted to situations where the inspector has a reasonable belief that there is information or a person relevant to a compliance purpose present at the premises. ...

Inspectors are also able to enter premises, whether residential or business, in a narrower range of circumstances; namely if they reasonably believe that a provision of the Bill, a designated building law or the Building Code applies to work that is being done, or applied to building work that has been, performed on the premises, or that a breach by a building industry participant of those same laws is occurring, has occurred or is likely to occur.

During the whole of that explanation from Senator Abetz, there is no mention of search warrants, and that concerns me greatly. We do not take the law into our own hands.

Probably the worst example of a politician infringing on the basic civil right of freedom of association was in Queensland, when Campbell Newman almost made it illegal for people like Vietnam veterans to ride motorbikes

in a group. This bill contains a provision which breaches the human right of freedom to associate, which underpins the right to collectively bargain. Senator Abetz writes in his official notes:

To the extent this provision will restrict the application of site-wide agreements in the building and construction industries, the Bill limits the right to collectively bargain.

It is there in black and white—the government do not like workers organising themselves and collectively bargaining. So they introduce legislation which makes it illegal in certain circumstances.

Senator Abetz writes in relation to privilege against self-incrimination and the right to silence:

Clause 102 of the Bill provides that a person is not excused from giving information, producing a record or document, or answering a question under an examination notice, or as the result of an inspector exercising their relevant powers, on the grounds that to do so might tend to incriminate the person or otherwise expose the person to a penalty or other liability. This limits the right not to be compelled to testify against him or herself or to confess guilt.

In other words, Australian citizens, if this legislation is passed, can be compelled by public servants to testify or confess guilt against themselves. Surely this breach of a fundamental right and legal standard must concern the majority of members of the Senate.

As the official name of this legislation, the Building and Construction Industry (Improving Productivity) Bill 2013, suggests, the whole purpose is to improve productivity in Australia. With extraordinary powers which target and destroy basic civil and human rights contained in this legislation, you would expect productivity in Australia, when compared to the rest of the world, to be very poor. The government's own documents prove that this is not the case. The *Why Australia: benchmark report* from Austrade sells Australia to the rest of the world and undermines the political doom-and-gloom message that the Abbott government needs to peddle locally in order to convince ordinary Australians to easily give up their basic civil and human rights and therefore accept unacceptable government behaviour when the likes of Mr Hockey, the PM and Senator Abetz steal from the sick, the poor and the elderly and then, with the assistance of a compliant media, rebadge the theft as 'budget savings'

Whenever the government members say 'budget savings', they are clearly misleading the nation. 'Budget savings' is a clever way for Liberal politicians to say, 'Hey, let's steal from poor, vulnerable Australians while we look after our own rich mates.

In relation to labour productivity, this is what the Abbott government is telling our foreign neighbours.

Australia has enjoyed a sustained period of labour productivity growth exceeding growth in real wages. Over Australia's 23 years of consecutive economic growth, labour productivity has recorded a compound annual growth rate of 1.8 per cent per annum, while real unit labour costs have fallen by 0.5 per cent each year. Australia has experienced particularly strong labour productivity growth over the past two years, with growth of 1.9 per cent in 2012-13 and 2.6 per cent in 2013-14. During this same period, real unit labour costs have broadly remained stable, indicating that effective cost of labour has remained in line with productivity improvements.

The government's own words have busted their own myth regarding a labour productivity crisis in Australia. Therefore the government's own words have undermined the reason to rush extraordinary legislation through this parliament before the final findings of a royal commission into union corruption are made public and properly considered and the recommendations put across the table.

I am not naive or inexperienced enough to believe that all is well in the building and construction industry or has been well in the union movement. Some elements of Australia's union movement have behaved in a shameful, selfish and unpatriotic manner. Hal GP Colebatch has written a book which details and proves how Australian unions sabotaged our troops in World War II. The book tells the shocking, true but largely suppressed and hidden story of the war waged from 1939 to 1945 by a number of key Australian trade unions against their own society and against the men and women of Australia's fighting forces at the time of Australia's greatest peril.

However, I have to say that, to their great credit, the union movement are now leading the way, helping our veterans integrate and transition back into civilian society, when this Liberal-National Party is trying to cover up the deadly dysfunction in the Department of Veterans' Affairs. The union movement has a program called

Helmets to Hardhats which aims to re-employ and train some of the 70,000 young diggers who have served in war zones over the last decade and a half. They have also joined the fight to lower the appalling suicide rate of our veterans—a very dark fact that this Liberal-National Party does everything to cover up and hide, because they know it is a national shame.

There may be a few in the union movement who are happy that I will vote against this legislation. They may think that they can continue to get away with their illegal activities. I have received many briefings from Tasmanian builders who have great fears over the undue and allegedly corrupt and criminal behaviour of the unions who work in the building industry. Of course, I urge those builders to document their concerns and allegations and take them to the police and other law enforcement agencies. However, if the Tasmanian builders do not receive action and enjoy the justice they deserve from the existing authorities, I will take their sworn statements of corruption and/or criminal behaviour and table their allegations in this Senate under privilege. I will not tolerate any illegal activities, bully boys or standover activities on building sites in Tasmania. I will not tolerate Tasmanian builders and their employees who work on the mainland being bullied, stood over or discriminated against. There may be some in the union movement who have not got the message that criminal behaviour will no longer be tolerated or accepted and that from this day forward we will have new opportunities for consensus and cooperation in the building industry. For those silly few left in the union movement who think they can take me on over the protection I will give to Tasmanian builders and workers should our law enforcement agencies fail, I have a simple message. Islamic State threatens to behead me. That does not intimidate me, and neither will any threats from any unions or bullies.

I oppose this legislation because it demonstrates a pattern of political behaviour that we witnessed in Queensland that was driven by former Premier Campbell Newman. In the rush to achieve a quick outcome or get an easy conviction through by passing the existing system of law and order, Australia runs the risk of damaging fundamental human and civil rights—building blocks of our nation.