



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

PROOF

BILLS

**Construction Industry Amendment
(Protecting Witnesses) Bill 2015**

Second Reading

SPEECH

Monday, 11 May 2015

BY AUTHORITY OF THE SENATE

SPEECH

<p>Date Monday, 11 May 2015 Page 16 Questioner Speaker Lambie, Sen Jacqui</p>	<p>Source Senate Proof Yes Responder Question No.</p>
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Senator LAMBIE (Tasmania) (11:51): Thank you, Senator Abetz. I was actually wrapped up with the Minister for Defence, Minister Andrews, this morning. I thank him for his time, because he gave me a whole hour and some more.

I rise to contribute to the second reading debate on the Construction Industry Amendment (Protecting Witnesses) Bill 2015. This is one of a number of bills before this parliament and Senate which will have a significant impact on the Australian building and construction industry. I have spent many hours hearing from both employers and union leaders whose members work in the building and construction industry. As I have mentioned in previous speeches, this is one of the most difficult issues and pieces of legislation I have had to consider and make decisions about.

There is much disagreement between builders and union bosses in the construction industry, but it is fair to say they agree on the purpose of this bill. The CFMEU say in their briefing documents:

... the Construction Industry Amendment (Protecting Witnesses) Bill 2015 ... amends the Fair Work (Building Industry) Act 2012 (FW (BI) Act) to extend the period during which the Director of the Fair Work Building Industry Inspectorate (FWBII) can apply to a nominated Administrative Appeals Tribunal presidential member for an examination notice by a period of two years. Under the current provisions of the FW (BI) Act, the capacity for the Director to make such an application will expire on 31 May 2015.

3. The FW (BI) Act now provides that the Director may apply for an examination notice in circumstances where he/she wants to obtain information relevant to an investigation into a suspected contravention of the FW (BI) Act or a designated building law by a building industry participant. Once issued, these examination notices can compel a person to give certain information or documents to the Director, or to attend in person before the Director to answer questions relevant to an investigation not less than 14 days after the examination notice is given. A failure to comply with these notices is a criminal offence attracting a penalty of up to six months imprisonment. The common law privilege against self-incrimination which would otherwise apply is overridden by the FW (BI) Act.

4. The power to issue coercive notices in construction-related industrial matters, supported by a criminal sanction for non-compliance, has existed since the introduction of the Building and Construction Industry Improvement Act in 2005.

5. In 2012, following the Wilcox review, the FW (BI) Act came into effect. This Act retained the coercive powers/ criminal sanction until May 2015. It also introduced a number of statutory safeguards designed to minimise the chances of this intrusive power being abused.

Minister Abetz, in his second reading speech, essentially agreed with the CFMEU's description of the bill's purpose and powers when he told the Senate:

... this Bill, the Construction Industry Amendment (Protecting Witnesses) Bill 2015, will extend the period during which the Director of the Fair Work Building Industry Inspectorate can exercise the agency's compulsory powers.

The Bill will extend the powers for a further two years. All other aspects of the current legislation are unchanged, including the automatic immunity given to a witness over their evidence.

However, that is where the agreement between the CFMEU and the government stops. The common ground is exhausted. The CFMEU say:

The power, and the criminal sanction which attaches to it—

this legislation—

are excessive, unnecessary and inconsistent with internationally recognised labour standards and the industrial norms of a modern democracy.

The government, through its minister in his second reading speech, counters the union's argument that the laws breach fundamental civil rights, including the right to silence and the right to be presumed innocent until proven guilty, by stating:

The ability to compel a person to provide information is vital to protecting workers and witnesses who dare to stand up to unlawfulness and intimidation and assist the regulator to clean up the industry. The powers also ensure Fair Work Building and Construction is able to carry out its investigations effectively and break down the 'culture of silence' and retribution that exists in the sector.

So the key question that must be answered is: what is the level of corruption, crime and dysfunction in the building industry and is there an involvement of organised criminals in the Australian building industry? If, as the government says, the construction industry has been affected by unlawful conduct, thuggery and intimidation for too long, and if there is an involvement of organised criminals in the Australian building industry, then there is a strong case to support these extraordinary laws which take away basic civil liberties.

The best independent authority today to make that call and make those findings is the current royal commission. Their findings are not handed down until later this year. I would prefer that legislation which establishes the ABCC is debated in this Senate after those royal commission findings are made public. A previous royal commission headed by the Hon. Justice Terence Cole RFD, QC did make the case that the industry was characterised by lawlessness in the conduct of industrial relations and it recommended significant changes to industrial relations laws, which resulted in the current system. However, the Cole royal commission in the early 2000s found no evidence of organised criminal activity.

The acknowledgement of organised criminal activity in the Australian building and construction industry today by a royal commissioner would, in my mind, justify extraordinary action and legislation. However, until that official acknowledgement happens, I will be very cautious in my approach to any legislation which comes before this Senate which affects the basic human rights of building workers.

Apart from the current royal commission, I am aware of an official report that could answer with some credibility the question: are organised criminals involved in Australia's building and construction industry? I have been informed by many, including the report's author, that the Victorian government have a copy of that report. I have written to the Victorian government, to Premier Andrews, requesting that they release that report. To date they have acknowledged my letter, but I have had no further reply. The content of that letter to Premier Andrews is as follows:

Dear Premier

I refer you to what is allegedly a secret report, as well as a Cabinet in Confidence Report, authored by Nigel Hadgkiss, a former Construction Code Compliance Chief. Mr Hadgkiss is now a Director of the Fair Work Building and Construction Commission.

I have been reliably informed that one of the main purposes of the Report was to examine the connection between organised criminal gangs and the building and construction industry in Victoria.

A number of media stories have alleged that the Report given to the Victorian Government in 2013 warned of illegal behaviour during the Grocon dispute was "the tip of the iceberg" in an industry where "unlawful activity extends beyond unlawful industrial relations conduct into serious criminal activity".

Media reports in the Herald Sun on 1 April 2014 allege that strong links between a number of outlaw bkie gangs and the provision of drugs and prostitutes to the workers during the construction of the desalination plant also occurred.

I am very concerned about the alleged links between organised criminal gangs and Australia's Building and Construction industry and would appreciate if you could provide me with a copy of Mr Hadgkiss' Report.

I believe that Mr Hadkiss' Report is an important document which would allow me to become fully informed as I prepare to cast my vote and make a decision in the Federal Senate regarding the Australian Building Construction Code legislation. I understand the original terms of reference included:

conduct at the recent blockades of Grocon construction sites, including conduct that may be unlawful and/or a breach of the Government's construction industry guidelines;

the use of violence, intimidation or harassment within the industry;

the obligations of other employers whose workers took part in the Grocon blockades;

breaches of industrial and other laws that may have occurred during the Grocon blockades;

the effectiveness of current Commonwealth regulation of the building industry, including whether action could be taken by the Commonwealth in relation to the Grocon blockades

recommendations for immediate actions to strengthen compliance with the law and the guidelines

I also believe that an updated final report was submitted by Mr Hadkiss in August 2013 with additional terms of reference:

practices that create a tolerance of unlawful conduct;

other conduct and practices in breach of the guidelines;

possible involvement of organised crime elements within the industry;\

the current state of compliance with legal obligations within the industry in comparison with historic compliance levels;

the impact of recent changes to the Guidelines to the National Code and the abolition of the Office of the Australian Building and Construction Commissioner (ABCC); and

recommendations for future actions to enhance compliance with the law and the guidelines.

I would appreciate it if you could please provide both these reports by return.

Yours sincerely

Senator Jacqui Lambie

Failing the receipt of a final report and recommendation from the current royal commissioner, the report held by the Victorian government may be enough to make an informed vote on the Abbott government's full legislative plan to manage the Australian building and construction industries.

So today I ask Minister Abetz to support my call for the Victorian government to make public Mr Hadgkiss's document. It is one thing to receive pressure from a crossbench senator; it is another to receive pressure from a federal government. So I think us working together could ensure that the document is made available to the public either through this Senate or through the existing royal commission, which may have powers to seize or at least request this important document.

Of course, this explosive report was initially made available to a Liberal state government, which then used the old technique of 'cabinet-in-confidence' to cover up its contents—which prompts the question: why? If the report does contain evidence of organised criminal involvement in the Victorian building industry, why would the Liberal Party want that evidence covered up? Up until now, the Liberal Party has been able to take the high moral ground when debate and community discussion focus on the Australian building industry, but the actions of the former state Liberal government in officially covering up this report at the very least must raise a few eyebrows.

I have had conversations with people who say they contributed to the secret Hadgkiss report. They have confirmed to me that the report would be damaging to both the Labor and Liberal governments. And that report is a tipping point and pivotal to the debate on the introduction of a strong regulator. So, if this government really wants to

clean up the building industry, my message is loud and clear: find a way to make the information in the Hadgkiss secret report public. If the Liberal government fails to do that, then it is open to legitimate criticism that the Liberals, as well as Labor, have plenty to hide when it comes to corruption and organised crime connections in the building and construction industries.

Perhaps we should look at the high-rise building approvals granted to developers and fuelled by Chinese money during the time that the Liberals were in caretaker mode in the lead-up to the last state election. Did any of those big dollars find their way to any political parties? I guess we will not know that until the Hadgkiss report has been released, and I need to see that. I am sure that the crossbenchers would like to view that document as well. Thank you.

The PRESIDENT: The question is that the bill be now read a second time.