

**Address by John Sutton, National Secretary
CFMEU Construction & General Division**

**“A union perspective on Industrial Relations
in the Australian Building Industry 2005**

13-14 JULY 2005

LE MERIDIEN AT RIALTO - MELBOURNE

BACKGROUND

➤ Cole Commission part of general assault on trade unionism in Australia

- When first elected in 1996 the Liberals nominated 4 industries/unions they would target.
- \$66m Royal Commission the device used to target unions as opposed to deregistration or other form of assault.
- Cole recipe now in 2005 can be seen as but one element of Howard Government general assault on trade union rights in Australia.
- Various ideas from Cole to target construction unions now being rolled out by Federal Government for all workers.

➤ Cole Commission deeply flawed as an investigative or comprehensive industry inquiry.

- Almost exclusive focus on industrial relations issues.
- Mentality of Cole.
 - strong unionists equals lawbreakers/criminals.
 - Neanderthal view of industrial relations sees bad guys (unions, big employers) and good guys (heroic small business).
- 91% of evidence presented of anti-worker or anti-union character.
- Unwillingness to tackle serious structural/systemic issues that hamper industry performance.
- Despite hundreds of so-called findings of illegality and suggested heinous activity in secret Volume 23, only one successful prosecution (Baulderstone in WA) ever eventuates.
- Cole Commission thoroughly politicised method of laying groundwork for future attacks on building unions/building workers.

SPECIFIC LEGISLATION

➤ BCII Bill 2003

- Cole's 229 Recommendations translate into 200 pages of union bashing laws providing a separate and lower set of rights for Australians working in the building (and related) industries.
- Senate Inquiry considers the Bill at length and majority reject the legislation as devoid of merit.
- June 2004 Senate rejects BCII Bill 2003.

➤ BCII Bill 2005

- March 9 2005 the Federal Government introduces an abbreviated version of original Bill dealing with "building industrial action" which becomes specifically unlawful.
- Huge fines, unlimited compensation, injunctive relief all introduced to hit parties to unprotected industrial action in building industry.
- Legislation to have retrospective effect once Parliament passes the Bill later in 2005.
- This mini BCII Bill specifically introduced to impede union tactics for early negotiation of new industry patterns.

➤ BCII Bill 2005 ?

- Full monty a la BCII Bill 2003 likely in August/September.
- Some elements (eg. award stripping, right of entry restrictions etc) of BCII Bill 2003 subsumed into Government's broader legislative assault on trade unions generally.
- Some evidence conflicts around meaning of and what to do about "pattern bargaining" not yet resolved.
- Employer concerns about being handicapped with large administrative and bureaucratic burden seem to be falling on deaf ears.
- Budget allocation to enhanced Taskforce/ABCC in place.

➤ **Workplace Relations Amendment (Codifying Contempt) Act 2004**

- Coercive investigatory powers granted to Secretary of DEWR with right to confer powers on Building Taskforce inspectors.
- First time such far-reaching powers used in industrial relations context in Australia.
- People in the building industry lose right to silence and right against self-incrimination.
- Failure to co-operative results in maximum \$6600 fine and maximum 6 months gaol term for second offence.
- Civil Liberties groups condemn use of draconian measures in industrial relations disputes.

TASKFORCE ISSUES

➤ **History**

- Interim Building Taskforce established August 2002 after Cole brings down mini-report urging Government to put impediments in way of new pattern bargaining round (2002-2005).
- Government immediately funds new squad of ex-Federal Police and familiar union busters to get out and try to block firms doing new EBAs – efforts entirely unsuccessful.

➤ **Personnel**

- Squad headed up by Nigel Hadgkiss of ex-Federal Police/NCA etc.
- Hadgkiss joins speech-making circuit equating union officials with child molesters and talks of defeating the unions “being like surrounding Saddam Hussein in Baghdad”.
- Hadgkiss and Co. have no training or elementary understanding of industrial relations issues. Hadgkiss tells 2004 Senate Estimates Committee that the building unions are the perpetrators of organised crime for reasons of money, profit and greed.
- Taskforce personnel operate as union busters pure and simple. Investigating breaches of law against workers “not within their remit” and complaints against employers hand-balled elsewhere in bureaucracy.

➤ **Track Record**

- Up to 3 months ago \$13m expended on 13 prosecutions.
- Most prosecutions achieve minimal fines or thrown out of court.
- Judiciary often scathing in criticism of tactics and activities of Taskforce (see leaflet containing various quotes).

➤ **New Powers**

- Hadgkiss and Co. have complained often that they don't have sufficient powers – they seek “special police powers” like ASIC, ATO, ASIO etc.
- Federal Government responds to Taskforce urgings and (with Democrat support) introduce coercive investigative powers with some minor constraints.
- New powers (as described earlier) take effect June 23 2005.

➤ **Transition to ABCC**

- ABCC likely to come into operation late 2005.
- Previous Minister Abbott said he wanted 200 inspectors on the ground – speculation as to exact size.
- Industry sources say Hadgkiss will head up Investigations Unit and industry figure to be overall head.
- Challenges to ABCC powers both in legal forums and civil and political protest inevitable.

NATIONAL CODE OF PRACTICE

Economic coercion by Government.

Various abuses becoming apparent – absolute discretion to Minister/Bureaucrats without transparency.

Current Government broadening the use of this tool in funding arrangements – significant constitutional issues for Federal/State Relations.

INDUSTRIAL OUTCOMES 2005 AND GOING FORWARD

Ideologues in Federal Government and National Employer Associations largely ignored by key industry players.

Pattern EBAs 2005/2008 are essentially in place.

Constant litigation from Taskforce/ABCC poses economic threat to unions and employers.

Flashpoints quite possible as people goaled for industrial relations issues.

Judiciary likely to continue to be scathing of politicisation of industrial law (abuse of civil liberties in workplace).

REAL INDUSTRY ISSUES

Productivity high by international standards.

Strike levels at record lows.

Unofficial industrial action/civil disobedience likely to grow.

Real causes of disputation unlikely to be addressed as traditional industrial dispute forums disempowered.

Various big structural issues to remain unaddressed.

- serious skill shortages and poor commitment to training
- impact of boom/bust cycles
- death and injury still too common
- low barriers to entry/undercapitalised and unstable contractors and sub-contractors
- inadequate profit margins for traditional tender based work
- lopsided advantage for clients/developers visa vis building firms
- rampant tax evasion (the public purse helps fund inadequate pricing from the top that flows down the chain)
- increasing resort to legal/illegal migrant labour
- high bankruptcy rate

CONCLUSION

The industry is in for a period of instability as the Government's big stick is used on key participants.

Long term players (unions, major contractors, major sub-contractors) will generally work around the political and legal obstacles created by the Government.

One or more serious flashpoints appear likely.

It is probable that the vast Government machinery will impact the union movement outside its strongholds.

The future of industrial relations and strong unionism in construction is also tied up in the broad labour movement political/industrial struggle against the Howard anti-union agenda.