

EMBARGOED UNTIL 22 SEPTEMBER 2009, 2:45pm

Workforce Conference, 22 September 2009
Park Hyatt Melbourne

Speech by ABC Commissioner John Lloyd “Reflections on the Australian Building and Construction Commission”

1. My reflections on the ABCC will comprise three parts:
 - a brief retrospective of what was happening when the ABCC commenced;
 - workplace relations in the building and construction industry in 2009; and
 - the future.
2. **The Retrospective.** The Cole Royal Commission, the most thorough of numerous inquiries into the industry’s workplace relations, reported in February 2003. The Royal Commission made 25 substantial findings about the industry’s disregard for the law.
3. The Royal Commission recorded 88 types of inappropriate conduct. The more serious types of conduct were:
 - union officials pressuring head contractors to replace subcontractors because they did not have a union-endorsed EBA;
 - head contractors and unions making agreements which overrule agreements made between subcontractors and their employees;
 - unlawful industrial action by a union forcing businesses to move outside the state;
 - unions seeking to act as the arbiter on who can and cannot work in the industry;
 - a union pressuring a head contractor to withhold payments from a subcontractor, in turn placing pressure on the subcontractor to accede to the union’s industrial aims; and
 - contractors paying union subscriptions for employees in order to enable those employees to work on a site.
4. At about the time the ABCC was created a leading head contractor admitted in a Federal Court case that the unions controlled their sites.
5. Industrial disruption plagued the industry. In the March quarter 2003 working days lost per thousand employees in the industry was 86.3. By September 2006 this figure had fallen to 1.6. The corresponding all industry numbers were 8.4 and 2.3.
6. **The 2009 Situation.** The ABCC has pursued five key goals in discharging its functions. I consider that we have achieved these goals and as a consequence the ABCC has been a successful regulator.
7. First, we aimed to be accessible and visible. It is important that we:
 - are seen on sites;
 - respond quickly to investigate any complaint; and
 - cover CBD, suburban and regional sites.

8. This approach has its downsides for staff. It is unfortunate that they are often subjected to abuse when going about their work on site. Threats, posters with personal details, damage to vehicles and assaults are what they have encountered. We have responded by ensuring they are well trained and equipped to handle such eventualities.
9. Second, we devote considerable resources and effort to advising and educating industry participants. We were concerned that many in the industry did not understand their rights and obligations under workplace relations laws. We employ the full spectrum of advice mediums to get the message across. Face-to-face contact at the workplace remains a most effective way of informing people. We have conducted about 1000 information sessions for close to 22,000 attendees across Australia.
10. I believe we have been effective in this area. More subcontractors are prepared to stand up for their rights and to reject unwelcome or unlawful actions.
11. Third, we have devoted increasing time and resources to National Code work. Our role is to promote and assess on site compliance with the National Code and its associated Guidelines.
12. The Code has been a crucial lever for change across the industry. Its impact on changing conduct can be easily underestimated. Code compliance has become an important requirement for most contractors working on medium to large projects. I am often puzzled by the opposition to the Code and the arguments that code compliance requirements should be relaxed.
13. Fourth, the ABCC is committed to thoroughly investigating every complaint it receives. We are responsible for holding those who contravene the law accountable for their actions. We have undertaken over 600 investigations.
14. We view lawful conduct as the responsibility of all involved in the industry. Accordingly, any building industry participant who contravenes the law, whether they are client, contractor, employee or association knows that they are likely to be held accountable for their conduct.
15. A very important case in this regard was the Perth-Mandurah railway matter. We took proceedings against about 100 employees. The employees were advised that by going on strike for six days they were engaging in unlawful conduct. They had also been served an order of the AIRC not to go on strike. The case underlined the fact that we would proceed against any building industry participant involved in a contravention.
16. The controversial compulsory power has been an invaluable investigatory tool. It has played a crucial role in reducing the impact of threats and intimidation throughout the industry. In the absence of the power, speaking up would again involve a very high price.
17. Fifth, we are active in bringing cases before the courts. We have commenced over 60 legal proceedings. Cases proceed only after very thorough investigations, the careful preparation of briefs of evidence and the advice of external counsel. They involve considerable resources, time and effort.

18. This careful and thorough approach means that we are successful in over 75% of cases that we initiate. Also, as time goes by the courts are awarding higher penalties.
19. The ABCC has achieved these performance benchmarks.
20. It means the industry is now more lawful. Many in the industry support the ABCC and its role. I also know that many oppose our existence and role.
21. In 2009 a few observations are irrefutable:
- the industry is more lawful than in 2003;
 - industrial disruption is at historically low levels;
 - coercion, intimidation and discrimination have been reduced;
 - the ABCC does not target unions nor look after employers. We investigate and commence proceedings without fear or favour;
 - OHS is a shared responsibility. We will commence proceedings where OHS is abused as a smokescreen for industrial purposes;
 - we work well with the Fair Work Ombudsman to protect employee entitlements;
 - the unions refuse to engage with the ABCC; and
 - the industry is more productive and efficient. As Heather Ridout said to the recent Senate Inquiry – the contention that productivity has improved because of the ABCC and associated reforms is “iron clad.”
22. Also, there are less tangible improvements across the industry:
- industry participants are now confident that there is a regulator out and about that is prepared to help and to address difficult issues;
 - subcontractors and their employees are better informed about their rights;
 - subcontractors are more prepared to stand up for their rights;
 - the ABCC has faced considerable attacks, criticisms and scrutiny. We have maintained a high level of professionalism and respect during these challenging times.
23. In assessing where we are today an instructive approach is to think about what no longer takes place, rather than what does.
24. **The Future.** The conduct and performance of the industry have improved. But this does not mean that a relatively stable future is assured.
25. We have once again reached an important juncture in the industry’s workplace relations. We have had another inquiry, the Wilcox Inquiry and its report. A Bill has been introduced, a Senate Committee has inquired and reported. All the key industry parties have made numerous submissions.
26. The submissions fracture along what are now predictable lines. The contractors support the ABCC and strong independent powers. The unions oppose the ABCC and want no hint of special regulation for the industry. The union approach is a recipe for a quick return to the bad old days.
27. The industry is well placed to build on the progress of the last six years. It plays such an important role in the Australian economy, although well shielded from international competition. Its history and characteristics mean that the participants cannot achieve

highly lawful outcomes alone. Reason, cooperation and harmony have time and again proven unable to produce lawful and productive outcomes for this industry. A strong regulator and set of rules are still required.

28. The ABCC has improved the industry's conduct and productivity. Most in the industry, except for some unions and their fellow travellers, welcome this state of affairs.
29. The improvements are not universal. Some in the industry persist in unlawful conduct. We currently have 57 investigations underway and 32 matters before the courts.
30. In recent months the industry in Victoria has seen a re-emergence of blatant unlawful conduct. The Westgate Bridge, Royal Children's Hospital and Maryvale Pulp Mill projects have displayed constant poor conduct and disruption. Two of these projects are Government undertakings with the community ultimately bearing the costs of unlawful conduct.
31. In two decisions during the last fortnight the Federal Court has imposed fines totalling \$168,250 on the CFMEU and its officials in Victoria. The court has noted the CFMEU's history of unlawful conduct and set the penalties at levels to deter such conduct in the future. It appears that this level of penalty will be unavailable in the future.
32. I am concerned that the union officials in Victoria and other states are asserting that the ABCC is going and they are back. Also, some major contractors appear to be wavering in their resolve to reject unlawful conduct. If these trends took hold the relative industrial peace and efficiency of the industry would be at risk.
33. A regulator needs to be constantly vigilant to respond to new developments and trends. We are always looking at ways to work smarter and to engage more effectively with the industry.
34. I have been critical of some of the recommendations for change. I have done that because it would be so unfortunate to see the recent progress placed in jeopardy.
35. I hope most in the industry continue to conduct themselves in a lawful manner. I hope they continue to be assisted in this endeavour by a committed and responsive regulator. The coming weeks are to be very important in the pursuit of these outcomes.

John Lloyd