

Productivity - April 1994

CHAIRMAN'S INTRODUCTION

This is the third report of the Economic Development Committee of the Parliament of Victoria which, under its current Terms of Reference, is conducting an inquiry into the Victorian building and construction industry.

The Terms of Reference are broad and far-reaching and are outlined in the body of this Report.

The first Report dealt with corruption in the tendering process. The second, with the evidentiary powers of Parliamentary committees. This Report concentrates on that part of the reference requiring the Committee to investigate and where appropriate, recommend changes to improve productivity in the industry.

Subsequent reports on tendering and security of payment are also in the process of being prepared.

The scope and complexity of this aspect of Reference has proved difficult to manage, research and draw a conclusion. This is evidenced by the fact the Committee divided along party lines on most issues throughout the preparation of the report.

With the different political, philosophical and ideological positions of members on the Committee, this divergence of view was not unexpected, nevertheless it was disappointing that members were unable to reach common ground on any issue.

At an early stage of the inquiry the Committee noted there was no definition of productivity which could be agreed upon by all participants in the industry. Indeed, productivity is defined differently by almost every group involved or having an interest in the industry and is dictated by their own particular objectives.

It is generally recognised that the building and construction industry is vulnerable to severe economic swings. This has produced a 'hothouse' culture in which the interests of employers, clients, employees and developers are often at odds. In the ensuing conflicts, each of the parties has sought to maximise the return for itself. Unfortunately it appears, each has detracted significantly from the long term well-being of the industry; and this in turn has had a counter productive effect on the Victorian economy.

Conflict between various vested interests in the industry is rooted historically in poor management and work practices, and the impact this has had on costing and pricing (ie economic affordability). Clearly, both employers and unions must take responsibility for this situation. On the one hand there has been a lack of commitment by employers to a rigorous and ongoing strategy to address their own management shortcomings and eliminate opportunities for poor work practices; and on the other, there has been a failure by union interests to sustain any commitment to remove such practices. This has allowed poor work practices to become entrenched, encouraging disruption on building sites either to extend the life of a job, or alternatively to gain benefits which are unjustified in productivity terms.

The practice of "No Ticket, No Start" is a useful example of the tenacity of such practices. Whilst this has been removed from the Victorian Building Industry Agreement, it is widely acknowledged throughout the industry that the practice still continues on commercial and industrial building sites, and it is understood is now spreading to the housing sector.

It appears that these work practices are underpinned by fort-like, indiscriminate and often stubbornly defensive attitudes, and if anticipated these may well shape the content of the Minority Report which will attach to this Report. If this is the case it serves only to highlight how far the community and industry has yet to travel in achieving any real gains in productivity.

In its investigations the Committee was constantly frustrated by a prevailing fear of union retribution that permeates the industry. In the course of the Inquiry, a number of Committee members received information on a strictly confidential basis of threats and intimidation, of 'closed shop' deals, and of threats to freeze out companies or sabotage their jobs.

Regrettably, members receiving this information were unable to provide sufficient assurances to the informants that would have enabled them to present their evidence to a public hearing.

A number of witnesses initially agreed to provide evidence but subsequently withdrew or failed to appear on the scheduled hearing day. The Committee was therefore forced to rely on information and evidence from industry organisations such as the ACTU, VCTU, MBAV and a small number of individuals. It is grateful to those individuals and organisations who co-operated with the Committee in the production of this Report. The level of assistance provided from individual companies and unions, and individual unionists and workers has been disappointing, however, given the damning anecdotal evidence provided confidentially to some Committee members, their reticence is understandable.

The Committee has received evidence to suggest that work practices and the overall behaviour of the Victorian building and construction industry has cost private clients and Victorian taxpayers thousands, possibly millions of dollars over recent years. Such a situation cannot be allowed to continue.

It is clear from the evidence that the recent merging of a number of building unions to form the CFMEU has not yet impacted on productivity in the industry nor resolved the various demarcation disputes which continue to disrupt the industry. Indeed it would appear that the level of minor disputation is on the increase as various union members and organisations vie for official positions and control of the union.

In tabling this Report, I would like to recognise the support and effort of the Committee staff and acknowledge that whilst Committee members were not unanimous on their findings, there was a level of co-operation throughout the inquiry process.

The Honourable Gerald Ashman, MLC

Chairman

Economic Development Committee

FINDINGS AND RECOMMENDATIONS

- *The Committee finds that an atmosphere of uncertainty and fear of retribution operates within the Victorian building and construction industry, creating a culture that accepts inefficient and corrupt practices as the norm.*

The Committee finds that the Victorian building and construction industry is critically divided on what the basic productivity objectives are and how to achieve such objectives.

The Committee finds that improvements in levels of disputation and lost time are due primarily to economic conditions and there has been no significant change in performance across the bulk of the industry over the past five years.

The Committee also finds that one-off clients or developers have little or no interest in industry reforms; while major developers and owners are tolerating inefficient work practices and/or repeatedly agreeing to unrealistic union demands for the sake of their short term financial survival.

The Committee finds this situation, together with unsatisfactory contractual relationships between building owners, developers and contractors, is one of the root causes of problems facing the industry and has led to increased costs for both public and private sector clients.

- - *there is intimidation of employers in regards to the use of non-unionised labour, supply of goods and materials, the appointment of shop stewards and job delegates and adherence to conditions such as site allowances and inspection of company records;*
 - *corruption exists within the balloting process of union elections;*
 - *there is an abuse of employers' rights to hire and fire.*

The Committee finds that in relation to the activities of the trade union movement and their role in the Victorian building industry:

The Committee also finds that trade union amalgamations have not significantly alleviated demarcation disputation.

The Committee finds that the employment of ex-B.L.F. officials within the Construction, Forestry, Mining and Energy Union is of serious concern and has the potential to destabilise the industry with subsequent effects on productivity gains.

- - *such assets are of little advantage to ex-members of the B.L.F. or the building industry in general whilst they remain frozen in trust;*
 - *it is, after a seven year lapse, extremely difficult to locate the beneficiaries of the trust and further impossible to fairly apportion the equity between any such beneficiaries; and*

- *such assets as remain should be utilised for the benefit of the Victorian building and construction industry. The Committee finds that in regard to the assets of the Builders Labourers Federation, that:*

The Committee finds that there is considerable confusion amongst contractors as to the relationship between Federal awards, State legislation and State agreements and as to what is legal activity and what is entrenched custom or practice.

The Committee further finds that existing provisions concerning inclement weather and no ticket/ no start currently contained within the Victorian Building Industry Agreement are subject to abuse by Victorian unions.

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- *intimidation of contractors and government officials by C.F.M.E.U. union officials;*
- *collusive practices extending to the cost of labour and the letting of tenders for public works which may be in breach of the Collusive Practices Act; and*
- *possible illegal collection of monies by individuals, the C.F.M.E.U. and V.A.R.I.C.C.*

In relation to asbestos removal, the Committee finds from its investigations to date, there is evidence of:

The Committee finds that to date the small number federal enterprise agreements operating within the industry have demonstrated some productivity gains but that such gains are difficult to measure and in many cases technologically driven and do not afford any significant and productivity benefits to the Victorian building industry or the Victorian taxpayer.

The Committee finds that the Victorian Building Industry Agreement has in part assisted in achieving a reduction in disputes, however, the Agreement includes clauses that are in breach of the Employment Relations Act 1992; and contains dispute settling procedures that promote a centralised and standard approach to disputation.

The Committee finds that the Victorian Government should be able to use its purchasing power to ensure that the recommendations in the Committee's first report and subsequent reports are enforced in public sector construction.

Finding 1.1

Finding 1.2

Finding 1.3

Finding 2.1

Finding 2.2

Finding 2.3

Finding 2.4

Finding 2.5

Finding 2.6

Finding 3.1

Finding 3.2

Finding 4.1

Recommendations

- The Committee recommends that the Building Industry Taskforce be required to investigate and monitor the activities of the Victorian branch of the Construction, Forestry, Mining and Energy Union to determine any illegality or criminal activity relating to the intimidation of Victorian employers in relation to placement of shop stewards, employment of labour, inspection of records and supply of goods.

The Committee recommends that the Building Industry Taskforce monitor the performance within Victoria of ex-Builders Labourers Federation members now employed by the C.F.M.E.U. and report regularly on this performance to the relevant Minister and if deemed necessary by that Minister, to the Parliament.

The Committee recommends that legislation concerning the former assets of the Builders Labourers Federation be amended to release such assets for the benefit of the Victorian building and construction industry.

The Committee reports it will undertake a thorough investigation of the uses of such assets and issue a definitive statement regarding such assets by the commencement of the 1994 Spring session of Parliament.

- - to act as a reference and resource centre for employers and employees in respect of industry conditions and allowances; and
 - to take on an educative role in the industry with regard to interpretation of current legislative provisions and alerting employers within the Victorian building industry to the consequences of short-term expediency and acquiescence to inappropriate union demands.

The Committee recommends that the Department of Industry Services allocate sufficient resources

- - to inspect and investigate any public or private sector works projects where there is evidence or any suggestion of unlawful demands being made on either employers or employees. (The Committee does not envisage that the Task Force would involve itself in industrial matters generally covered by the Department of Industry Services);
 - to investigate breaches of the Collusive Practices Act, Restrictive Trade Practices Act or the Crimes Act by V.A.R.I.C.C. and its relationship with the C.F.M.E.U. (formerly the B.W.I.U.) and by the Bricklayers and Plasterers Division of the V.S.B.T.U.; and
 - to investigate the letting of government contracts for asbestos removal, bricklaying, plasterwork and roof tiling over the last five years.

The Committee recommends that the Building Industry Taskforce undertake a monitoring and auditing role within the industry including the authority:-

The Committee recommends that the services of the Building Industry Taskforce be expanded and resourced to undertake the role and tasks recommended in this and other reports.

The Committee recommends that where appropriate and necessary the Victorian Government legislate to enable use of its purchasing power to enforce recommendations contained in this and other Economic Development Committee Reports concerning public sector construction.

- Peter Batchelor, MP
- Michael Leighton, MP
- Brian Mier, MLC
- Pat Power, MLC
- The lack of courtesy and proper formalities extended to various witnesses.
- The repeated failure of the Government appointed chairperson to convene meetings and conduct proceedings in a spirit of bi-partisan co-operation.

(1) Mr Rowan does not accept or understand the danger of asbestos and asbestos removal. Mr Rowan is not fit to be an asbestos removalist.

(2) Mr Rowan lied in his evidence given under oath to the Committee. Additionally, his evidence is inconsistent and incoherent.

(3) The majority of the Committee erred in accepting Mr Rowan's evidence. Consequently the findings and recommendations of the majority are fundamentally flawed.

(4) Based on the evidence of all other witnesses, asbestos and asbestos removal are extremely dangerous and hazardous. There is a demonstrable need for properly trained, qualified and registered asbestos removalists and hygienists. The Victorian Asbestos Removal Industry Consultative Committee (VARICC) guidelines form a suitable Industry Standard.

(1) The Attorney-General refer Mr Rowan's evidence to the Director of Public Prosecutions for consideration of perjury charges.

(2) The Minister for Industry Services investigate the safety record and procedures of Mr Rowan and GRIME Services with a view to removing their registration.

(3) The Minister for Industry and Employment seek Cabinet approval for an instruction to all State Government Departments and Agencies that no further State Public Sector work be given to GRIME Services.

(4) The Minister for Industry and Employment refer to the appropriate Federal Authorities, allegations that Mr Rowan failed to forward PAYE instalments to the Australian Taxation Office.

(5) The VARICC guidelines on asbestos removal continue to be the Industry Standard.

(6) The State Government maintain the current level of licensing of asbestos removalists.

(7) The State Government establish formal on-going consultation with unions and employers to continually review work practices and safety standards in the highly dangerous asbestos removal industry.

Recommendation 2.1

Recommendation 2.2

Recommendation 2.3

Recommendation 2.4

Recommendation 2.5

Recommendation 4.1

Recommendation 4.2

MINORITY REPORT CHAPTER 1

INTRODUCTION

This Minority Report is submitted by the following members of the Economic Development Committee:

The Majority Report of the Economic Development Committee Inquiry into the Victorian Building and Construction Industry does not meet the terms of reference of 22nd December 1992 referred to it by the Minister for Industry and Employment, The Hon. Phillip Gude MP.

It does not include any findings or recommendations that will provide the industry with a comprehensive package of measures to lift productivity, competitiveness and standards as required by the Terms of Reference.

The report has no vision and fails to harness and extend the skills and creativity of people working in the industry.

The findings and recommendations have been determined by inaccurate information and at times unsubstantiated evidence.

The Majority Report's findings in relation to what can be described as the "Asbestos Farce" and the evidence of Mr Rowan, is an example of this. Even when the evidence of unreliable witness was rebutted by expert and credible witnesses, the Majority Report still chooses to rely on discredited and unsubstantiated evidence.

Unfortunately, the approach of the Majority Report in the "Asbestos Farce" is typical of their approach throughout their report. Rather than this being an isolated aberration, this flawed approach is repeated time and time again, whether dealing with union elections, asbestos regulations or the genuine efforts of the industry to improve productivity levels.

The report does not take into account in any serious or adequate way the evidence provided by the Construction Industry Development Agency in relation to its work and the Building Industry Reform Strategy.

This is particularly negligent given that this national Reform Strategy has been actively supported by the Victorian Government - which remains a signatory to the In-Principle Reform Agreement - and that the Strategy has made significant progress in facilitating workplace reform and higher levels of productivity.

CIDA has completed Codes of Practice for contractors, sub-contractors and consultants known as the "Australian Construction Pre-Qualification Criteria" and will complete a draft report in March and a final report in June 1994 on Security of Payments.

The CIDA work is the most comprehensive of its kind on these issues, and has been undertaken at an estimated cost of \$7 million with the strong support of employers and unions in the industry.

Despite this - and the support of the Kennett Government for the national reform Strategy - the Majority Report has refused to develop recommendations that are consistent with, and complementary to, the national Strategy. The Majority Report is clearly inconsistent with the policy position of the Victorian Government and appears to undermine its approach.

The Economic Development Committee (EDC) has previously presented two reports to the Victorian Parliament as part of its inquiry into the Victorian Building and Construction Industry. The first report was titled "The Corruption of the Tendering Process" tabled in May 1993 and the second titled "Evidentiary Powers of Parliamentary Committees" tabled in October, 1993. These two reports had bi-partisan support.

Opposition members of the Committee were keen to ensure that this bi-partisan approach continued with the Committee's third report dealing with Productivity. Unfortunately this has not been possible.

It became apparent to Opposition members that it would be impossible to support the findings and recommendations of the Majority Report, and at the same time comply with the Terms of Reference and the Minister's expressed wishes on the role and purpose of this Inquiry.

Moreover, the authors of this Minority Report are deeply concerned at the way in which the Inquiry was conducted. Our concern goes to two areas:

The behaviour of Government members has not been in keeping with the spirit and intent of Parliamentary Committees.

We believe that Government members, and the consultant employed by the Committee, approached their task not only with pre-conceived ideas, but also with a pre-determined political agenda which they sought to impose on the Committee by force of numbers.

This demeans the role of Parliamentary Committees, and devalues the important contribution they can make to the administration of this State.

It became apparent on several occasions that some Government members were uncomfortable about the way in which the Inquiry was being conducted, but felt too intimidated to resist. This further reduced any prospect of the Committee achieving a bi-partisan approach to its task.

It is against this background that this Minority Report has been prepared. It seeks to examine in a positive and honest framework the important reform process that is already underway in the building industry, and how this process might be improved and complemented.

CHAPTER 2

FINDINGS AND RECOMMENDATIONS

We find that the Majority Report of the Committee has failed to meet the obligations of the Parliamentary Committees Act of the Parliament of Victoria.

We find that the national industry reform process that is currently taking place should be encouraged and supported to ensure that productivity improvements and workplace change become a permanent feature of the industry.

We recommend that the Victorian Government should continue its support for and active participation in the Building Industry Reform Strategy of the Federal Government, and this process should continue to enjoy bi-partisan political support in Victoria.

We welcome and endorse the on-going support the Victorian Minister for Housing has given the Federal Government Building Industry Reform Strategy, and in the light of this support, express our dismay at the failure of the Majority Report to endorse the Reform Strategy and the important contribution of Victoria since 1991.

We find that the Building Industry Reform Strategy of the Federal Government (including the work of the Construction Industry Development Agency) has facilitated workplace reform and higher productivity in the industry, and that in some cases outstanding results have been achieved as a result of these initiatives.

We find that while enterprise bargaining was slow to take off in the building industry it is now being actively undertaken across the industry, and that Enterprise Bargaining Agreements (EBAs) entered into under the Commonwealth Industrial Relations Act have led to the achievement of higher productivity and workplace reform, and have resulted in projects being brought in on or ahead of time, and under Budget.

We find that the Victorian Building Industry Agreement (VBIA) has assisted in achieving stability and harmonious relationships in the building industry and has assisted in dramatically reducing the incidence of

lost time. We find that the VBIA approach is supported by parties in the industry, and should be supported by this Committee and the Victorian Government.

We find that collusive tendering has had an adverse effect on productivity levels in the building industry.

We find that there are circumstances where unscrupulous employers in the industry avoid their legal responsibilities (e.g. award obligations, insurance, taxation payments, WorkCover, Occupational Health and Safety legislation), and that this works against reform and productivity improvement in the industry.

We recommend that the Minister for Industry Services take steps to strengthen the enforcement role of his Department and its statutory authorities in ensuring these responsibilities are met.

Further, we recommend that the Minister for Industry and Employment and the Minister for Industry Services raise with the Commonwealth Government the need for the enforcement role of the Department of Industrial Relations to be strengthened where it has responsibility for these matters.

We find that the employment of ex-BLF officials with the CFMEU is of concern to the industry but that no evidence has been provided at this point which confirms the fears of some employers or the Master Builders' Association.

We recommend that the Government consider enacting legislation that would provide that the funds and assets of the BLF being held by the Custodian be used for the purpose of training and skills development in the building and construction industry, with particular emphasis on assisting unemployed building workers.

We find that no credible and tested evidence has been presented which indicates that unions have used intimidating tactics to secure "No Ticket No Start" agreements on sites since the introduction of Freedom of Association provisions under the Employee Relations Act 1992.

We find that the award provisions relating to inclement weather can lead to unnecessary disputation and lost productivity, and welcome the new provisions contained in Enterprise Bargaining Agreements that deal with inclement weather.

We find that the Employee Relations Act has had little, if any impact on the Victorian building industry and that its role will continue to diminish because of the exodus of workers to federal awards. This trend is likely to be beneficial to productivity levels in the industry in the long-term because of the superior arrangements in the federal jurisdiction for enterprise bargaining and linking wage increases to productivity improvements.

We find that during the 1980s there was an insufficient capacity for regulatory authorities to regulate the asbestos industry.

In particular, in relation to asbestos, we find that:

We recommend that:

We note with concern that evidence was presented by the Master Builders' Association that in 1985 the then Leader of the Opposition, Mr Jeff Kennett, collaborated with the BLF during the same period in which the Federal and Victorian Governments were in the process of de-registering the union and seeking to bring about better industrial relations in the industry. We also note that this was the same period in which the leadership of the BLF was attempting to pressure the Victorian Government to intervene in the legal processes so that criminal charges against Mr Norm Gallagher would be dropped.

We find that the Majority Report has abused the Parliamentary Committee process in that it has sought to advantage one side in the CFMEU Union elections at the expense of due process.

We therefore find that the Majority Report has acted in an undemocratic fashion in interfering in the internal elections of trade unions and trying to pre-empt a decision of the Federal Court.