

TO BUILD OR NOT TO BUILD

WORKPLACE REFORMS IN THE WESTERN AUSTRALIAN CONSTRUCTION SECTOR

**Deidre Willmott BJuris, LLB (WAust); LLM (Melb)
Executive Director, Policy
Chamber of Commerce & Industry Western Australia**

I would like to thank the Institute of Public Affairs for inviting me to speak to you today about workplace reforms in the Western Australian construction sector.

Chamber of Commerce and Industry of Western Australia

The Chamber of Commerce and Industry of Western Australia (CCI) is the leading business association in Western Australia. It is the second largest organisation of its kind in Australia, with a membership of over 5,000 organisations in all sectors including manufacturing, resources, agriculture, transport, communications, retailing, hospitality, building and construction, community services and finance.

Most members are private-sector businesses, but the CCI also has representation in the not-for-profit sector and the government sector. Over 80 percent of members are small businesses, and members are located in all geographical regions of WA. Some 100 business associations are affiliated with the CCI, expanding the organisation's representative coverage to more than 10,000 enterprises.

CCI has a long and proud record in industrial relations in Western Australia both at a policy level and in its practical advice to members.

Through its Construction Industry Services CCI has provided an industrial relations specialist to work on site on almost every major resources engineering construction project in WA for over 25 years.

Background

You will all be aware that WA's economy is a powerhouse. We are experiencing record economic growth, record levels of investment, we have the highest rates of growth in average weekly earnings in Australia and the lowest unemployment rate.

WA companies have also registered more than a quarter of all AWAs lodged to date with 101,627 registered from March 2006 to the end of the June quarter 2007. Over 22% of workers in WA are covered by AWAs and AWAs account for around 50 per cent of employees on federal agreements in the mining and resources industry.

In short, WA has embraced workplace reform. This is underlined by the fact that union membership has now dropped to only 16 per cent of the total workforce.

The question is what will happen if workplace reform is rolled back under an ALP Government. CCI is most concerned that Forward with Fairness Policy Implementation Plan announced last week will see a return to union domination of workplaces and especially construction sites.

I would like to leave you with two key messages that can be drawn from WA in this area.

First, the future of WA's resources industries depends on a record number of projects now under construction or in the pipeline. Any return to industrial mayhem will threaten the delivery of these projects on time and on budget. This will result in lost export opportunities and will undermine confidence in WA as a supplier and ultimately as a place to invest.

Secondly, the experience in WA following the 2001 election of the Gallop government shows that if the ALP dismantles the current controls on the construction unions, we will see a return of union thuggery to construction sites.

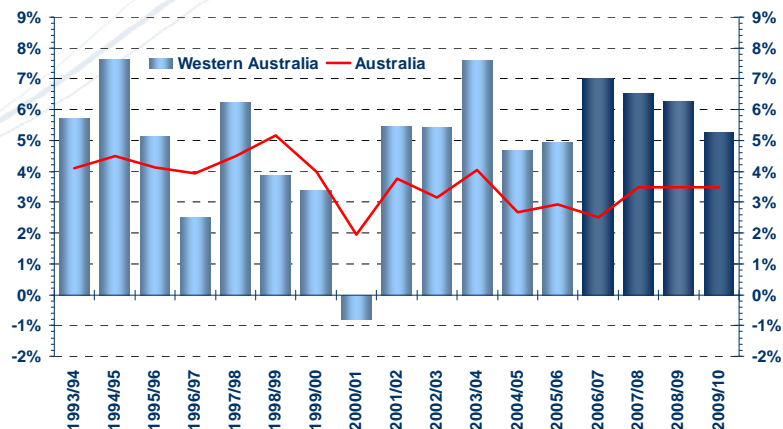
WA's Economy

Although it has only 10% of Australia's population, WA's economic success has accounted for around one-quarter of the total growth in the national economy over the past year, and contributes over 36% of the nation's export income.

Over the year to March, the WA domestic economy grew at the "China-like" pace of 10.2 per cent – by far the fastest rate of growth of any state, and more than twice the rate of growth recorded nationally. Such growth has not been a temporary phenomenon, but a consistent story for the past 6 years.

Looking forward, the expectations are that the WA economic boom will continue over the medium term. Such an optimistic outlook is based upon a balanced growth profile, with continued growth in the domestic economy boosted by a resurgent export performance as the significant increases in capacity undertaken over the past 6 years results in increased production – particularly for our key export commodities, including iron ore, petroleum, nickel, alumina and gold.

Real Economic Growth WA and Australia



Source: ABS Cat. 5206.0, 5220.0, CCI



Construction Sector

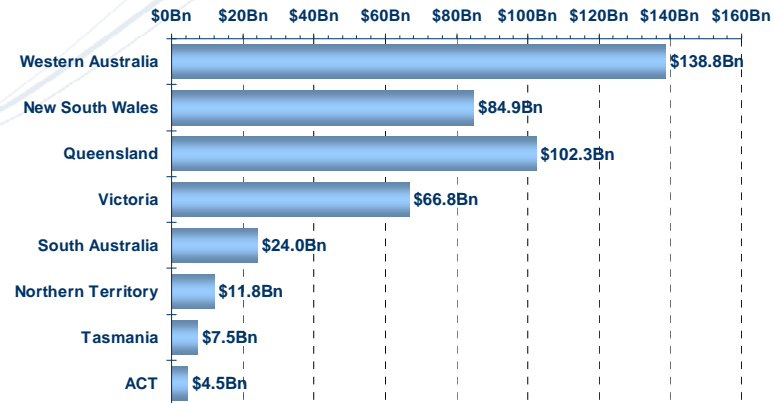
At CCI, we see WA's current growth as more than a boom. The forecast sustained demand for our resources from China and increasingly from India mean that, in the absence of some world 'shock', WA will continue to operate at increased levels of production for the foreseeable future. In the meantime, economic growth will be driven by the extraordinary volume of construction work required to develop these new projects across the state.

In addition to engineering construction projects we have also seen an increase in residential building and commercial developments, underlined by the announcements of a number of office developments in the Perth CBD, including the Century City, Bishops See, Raine Square, William Street, and just this month the announcement by BHP Billiton of their new office tower, which will be the second tallest skyscraper in Perth.

In 2006, almost one-third of all engineering work undertaken in Australia was in WA, with some \$14.3 billion worth of engineering construction work progressed, while an additional \$13.3 billion worth of work remained incomplete by the end of 2006. There was also a significant amount of non-residential building undertaken in WA, with a record \$2.3 billion worth of work progressed, and a further \$1.1 billion still incomplete by the end of 2006.

Despite the current record levels of construction activity in WA, the future prospects are equally favourable, with almost \$140 billion worth of investment projects currently either under construction or still in the pipeline – by far the largest amount of current and future investment activity of any State.

Investment Projects, Australia Value by State, March 07

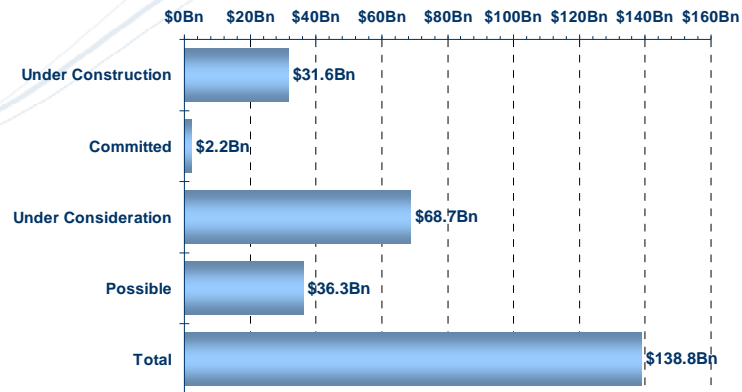


Source: Access Economics/Delta Electricity Investment



Of this total amount, over \$100 billion of investment is still waiting to be developed, including mega projects such as the \$15 billion Gorgon Gas Development and the \$10 billion Pluto Gas Development in the State's North West. To give you an idea of the magnitude of this investment, the value of the projects still waiting to be developed is roughly equivalent to the total output produced in the WA economy in 2005-06.

WA Investment Projects Value by Status, March 07



Source: Access Economics/Delta Electricity Investment



In order to facilitate such developments, which are competing in global markets, it is critical that there is a stable investment climate – and workplace relations are central to that stability.

Importance of workplace reforms to the WA construction sector

The WA construction sector is a different place from that of the 1970s, 1980s and early 1990s when the belligerent, bullying and threatening behaviour of the BLF and its successors was the hallmark of the industry. Workplace relations reforms have been centrally important to putting paid to this historically appalling behaviour.

In addition to *WorkChoices*, there have been three other key elements common across the country bringing stability to the industry:

1. *Building & Construction Industry Improvement Act 2005*
2. *Australian Building and Construction Commission.*
3. The *National Code* and implementation guidelines.

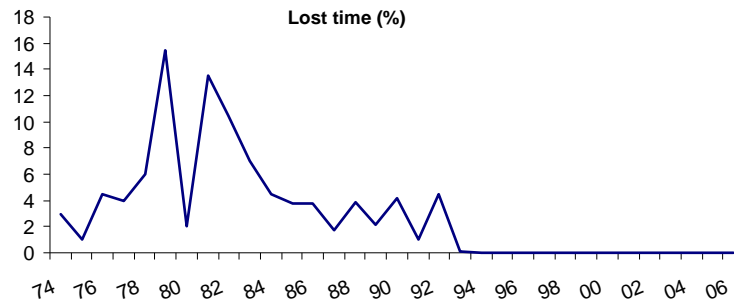
In CCI's experience, availability of AWAs and non-union greenfields agreements under *WorkChoices* has been effective principally for the moderating influence their availability has had on unions. There appears little doubt that unions faced with these options have become more responsive and responsible. AWAs are prevalent in the earthmoving and civil construction sectors in WA and are beginning to gain prominence in other areas of the industry such as by major construction contractors in remote construction. Greenfields agreements are commonly the commencement point as employees are gradually moved onto AWAs on projects that will last more than a year. Even employers with EBA's or collective union agreements are beginning to use AWAs to provide flexible arrangements for individual employees in order to keep those employees engaged. This has been important as employers and projects manage skills and labour shortages.

The combination of this package of four measures found in the new legislation has seen industrial action and standover tactics almost disappear in WA.

The current industrial peace is best demonstrated in the following slides.



Changing work practices at Hamersley

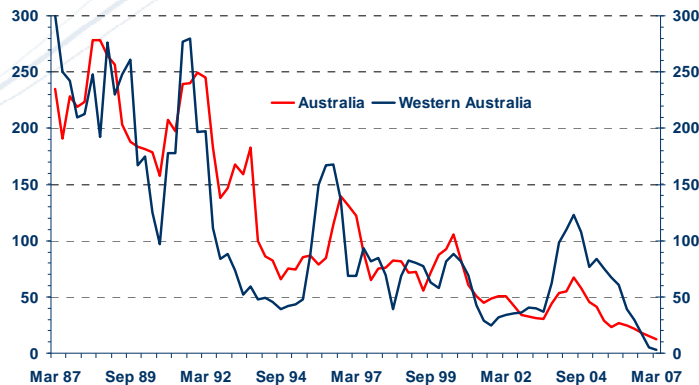


March 2007

While this slide does not relate to the construction industry, it is a clear demonstration of the benefits of individual agreements and the direct engagement with the workforce that was achieved by Hamersley Iron when they introduced individual workplace agreements under the Court Government's 2003 legislation. After the 2002 abolition of workplace agreements, the company moved to AWA's in the Federal system without any further loss of time through industrial action. Former Rio Tinto CEO Leigh Clifford has described how "anarchic labour relations nearly throttled WA's iron ore industry in the 1970's and drove our chief customer to encourage supply from Brazil".¹

¹ Leigh Clifford, *Reflections on the Global Mining Industry*, CCI/CME Corporate Business Lunch Perth 9 March 2007.

Working Days Lost Per Thousand Employees, WA & Australia, In '000s

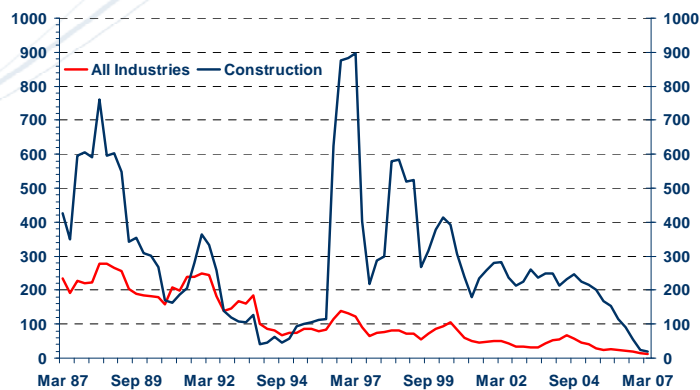


Source: ABS Cat. 6321.02



This slide shows how dramatically workplace reforms have reduced strikes in WA since 2006.

Working Days Lost Per Thousand Employees, Aus. By Industry, In '000s



Source: ABS Cat. 6321.02



There are no statistics on strikes in the WA construction industry, but this slide shows the dramatic fall in days lost through industrial action in the construction sector nationally.

Contribution of the ABCC

There is no doubt that the ABCC has had an enormous impact in Western Australia. On 25 July 2007, *The West Australian* reported that the ABCC had “boosted the Australian economy by \$3.1 billion a year while cutting inflation by making construction cheaper.”²

² The West Australian, ‘Building watchdog takes a \$3.1b bow’, 25 July 2007

ABCC Commissioner, John Lloyd, has commented that WA has attracted a lot of attention from the ABCC because “WA for a long time had a record of high industrial disputation in the industry.”³

As at 31 May 2007, WA had the second highest number of investigations (26) compared with 50 in Victoria and 11 in NSW.⁴

At 5 June 2007, WA had five current cases behind Victoria’s eight cases and NSW’s four.⁵

Perhaps the best measure of the ABCC’s success in WA can be heard in the words of CFMEU boss Kevin Reynolds who:

*“...blames the ABCC and its investigators with their ‘Gestapo’ powers for striking fear into workers with legitimate concerns, but concedes he regrets some of his union’s past industrial campaigns. ‘I would admit that some of our disputes, like the “no-ticket no-start” disputes and walking off concrete pours and things of that nature wouldn’t be tolerated these days by any government.”*⁶

ABCC current cases

The most high profile current case concerns actions against 107 employees working on the Perth to Mandurah Railway Project who took unlawful industrial action over 7 days from 24 February 2006 following the termination of a CFMEU shop steward on the project. Eighty two employees breached a s127 order of the Australian Industrial Relations Commission not to take industrial action.

The ABCC is seeking declarations that each of the employees engaged in unlawful industrial action and breached the AIRC order and penalties. The matter is listed for hearing in the Federal Court on 29 October 2007.

At the same time there have been a number of out of court settlements in ABCC interventions. On 2 November 2006, the Leighton Kumagai Joint Venture parties on the Mandurah Railway Project accepted payment of \$150,000 from Joe McDonald and the CFMEU in settlement of Supreme Court proceedings arising from the February strike action.

³ John Lloyd, ABCC, Extract from Workforce Daily, 6/7/06

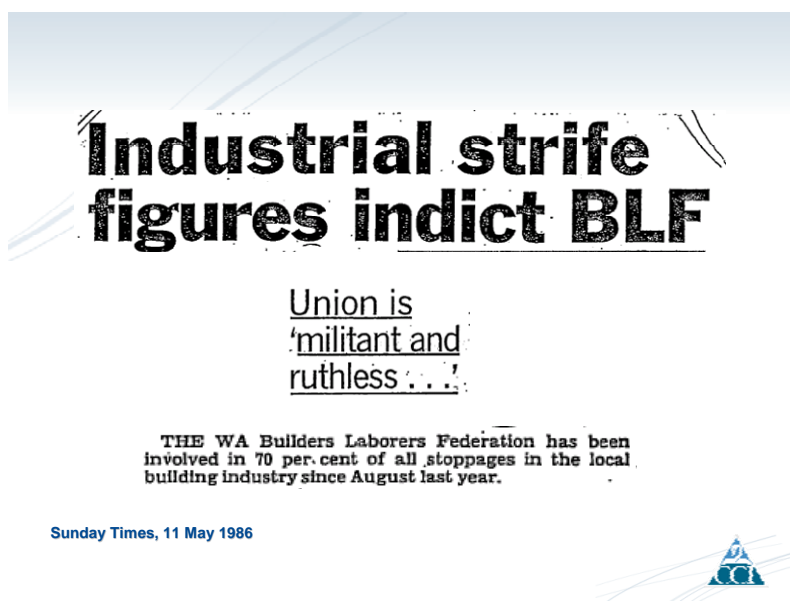
⁴ John Lloyd, ABCC Commissioner, Australian Building & Construction Commission Industry Forum presentation, 5 June 2007

⁵ Ross Dalgleish, ABCC Deputy Commissioner Legal, Australian Building & Construction Commission Industry Forum presentation, 5 June 2007

⁶ *The Australian*, 26 May 2007

Turning back the clock – workplace reform unwound

This is where we have come from. These headlines come from 1985 and 1986.



WA plea to axe BLF now

West Australian, 5 April 1986



Role of the Builders Labourers Federation

The pervasive power wielded by the BLF in the 1970s and early 1980s has been well documented

Ultimately it was deregistered by the Hawke Government. But, as the Cole Royal Commission reported, the same officials simply moved to other unions.

In WA the State Secretary of the BLF in 1973, Kevin Reynolds, remains a union heavyweight all these years later, as the State Secretary of the CFMEU.

Royal Commission findings

The Cole Royal Commission found that in WA there was a union attitude of “dominance, power, disregard of the rights of others and disregard of the law.”

It cited instances of Joe McDonald, the Assistant State Secretary of the CFMEU, being prepared to take militant action despite agreements he had entered into and being prepared to shut down sites if not everyone was a financial member.

It found that Joe McDonald saw “industrial relations as a brutish exercise of power.”

So what will happen if an ALP Government is elected on a promise to disband the ABCC by 2010? We are concerned that this promise sends a signal to unions that the ALP will not stand behind the ABCC to ensure that it can continue to do its job as effectively as it has to date.

In WA the Gallop Government disbanded the WA Building Industry Task Force and replaced it with a newly formed section within the Building Industry and Special Project Inspectorate (BISPI) that did not have the same powers and was largely

ineffectual. The Cole Royal Commission reported that this abolition had resulted in the ‘reappearance of all the restrictive practices which existed in the 1980s and early 1990s’.

But the impact was immediate. Unions did not wait for the formal dismantling of the Task Force. Targeted companies found the unions at their gates the Monday following the election. The Royal Commission cites one case where Joe McDonald turned up on the Monday and declared it was “*GST time. Get square time. We have waited for this for years.*” Another construction manager reported how a CFMEU organiser told him:

“Now that the Labor Party has won, we have 4 years to level the playing field. We will take one builder at a time and pursue them until they play with us or they crumble. At the moment, its your turn.”

There are other cases set out in the report of the Royal Commission’s report.

Mike McLean, Executive Director of the MBA in WA, told the Royal Commission that the CFMEU was much more militant and aggressive following the abolition of the WA Building Industry Task Force. The Royal Commission found that around Australia the unions “had taken strength from their ability to resist” reform efforts made by various governments including WA.

Up until 2005, the CFMEU caused extensive disruption to a number of major projects including engineering construction projects such as Murrin Murrin nickel mine, the Worsley Alumina Expansion Project and Rio Tinto’s Hi Smelt plant in Kwinana.

One of the worst hit projects was the State Government’s Perth to Mandurah Railway Project. On 22 September 2005, *The West Australian* reported that WA’s Planning and Infrastructure Minister Hon Alannah MacTiernan was “blaming the industrial action for part of the project’s \$45 million cost blow-out and a four-month delay.”

It was this project which Leighton CEO Mr Wal King recently gave as an example of the mayhem that could return if tough new laws were relaxed. He said the project had lost 70 days to strikes at a cost of \$150,000 a day.⁷

Rio Tinto’s Hismelt project was plagued by stoppages up until the end of 2005, with state union officials thumbing their noses at directions from the ACTU. According to the company more than 20 stoppages delayed production of pig iron by at least four months.⁸

What the ALP will do

The ALP’s Forward with Fairness Policy Implementation Plan announced on 28 August 2007 confirmed that:

⁷ The West Australian, ‘Construction boss says turning back IR clock will cost \$13b’ 2 August 2007

⁸ *The West Australian*, ‘Rio on eve of pig-iron pour despite industrial setbacks’, 27 April 2007

- ABCC will be abolished from 31 January 2010 with its responsibilities to be transferred to a specialist inspectorate within Fair Work Australia;
- AWAs will be abolished - transitioned out by 2012;
- Common law contracts will apply for employees earning over \$100,000 per year;
- Awards and collective agreements will reintroduce compulsory arbitration and give unions a foot in the door;
- Right of entry rules are still unclear, for example, what is “proper notice”; and
- Small and medium business will once again face unfair dismissal claims.

Conclusion

The continued growth of WA's resources industry depends crucially on the ability of the construction industry to meet the building and engineering construction projects required by the resources sector. Based on the ALP policy, a change in government will place at risk our ability to deliver these projects on time and on budget.

WA provides the lesson of history. The aftermath of the election of the Gallop Labor Government in 2001 provides a clear indication of what we can expect if a Labor Government is elected at the coming federal election.

Our pessimistic prediction is that the election of an ALP Government will see industrial action and union thuggery almost straight away. Unions will not wait until the legislation changes. They will be out in force as soon as the result is announced. What will the new Prime Minister do on that day? The answer to that question will determine Australia's future for the next few years.