Award of Charles Copeman Medal to John Lloyd

Thursday 1 December 2011

Tuesday 28 September 2010 is a date that should resonate for all Australians. On that day, John Lloyd completed his five year term as Australian Building and Construction Commissioner.

Let me take you briefly through the history of construction industry reform in Australia – it is a salutary and sobering story – a story that is a textbook case of an effective and holistic intervention; and an illustration of how vulnerable even the most effective reform processes can be.

On 29 August 2001, the Royal Commission into the Building and Construction Industry was established. The Royal Commission followed the Report of the Employment Advocate into the Building Industry, released in May 2001.

The Royal Commission released its report in February 2003. Its principal finding was that the building and construction industry was characterised by lawlessness –

"there needs to be a recognition by all participants that the rule of law applies within the industry. The rule of law requires that parties honour and implement agreements they have made. It requires that they abide by industrial, civil and criminal laws. At present, they do not"[i]

"These findings demonstrate an industry which departs from the standards of commercial and industrial conduct exhibited in the rest of the Australian economy. They mark the industry as singular. They indicate an urgent need for structural and cultural reform"[ii]

Commissioner Cole went considerably further than merely analysing the building and construction industry and its shortcomings. The Final Report contained 212 recommendations which laid down a blueprint for very significant reform – a blueprint which addressed issues of safety, compliance with the law, productivity and freedom of association.

The then Commonwealth government's primary response to the Final Report was the introduction of the Building and Construction Industry Improvement Bill in November 2003. This bill was some 215 pages in length, and contained a number of very important provisions that Commissioner Cole had identified as fundamental to the industry's success. Between 2003 and the final passing of the Building and Construction Industry Improvement Act in 2005, the Commonwealth elected to transfer a number of those key provisions to the Workplace Relations Act , such that the March 2006 amendments to that Act resulted in a BCII Act that was by volume 70% less than the 2003 Bill. This is a most important issue in understanding the regulatory framework that was established after the Royal Commission. Crucial recommendations of the Final Report were 'transferred' or retained in the Workplace Relations Act, rather than the BCII Act. Those provisions included those dealing with Prohibited Content (SS 356 – 366); Prohibited Conduct (SS 400 – 402); Industrial Action (SS 419 – 509); Right of Entry (SS736 – 777); and Freedom of Association (SS 778 – 813).

The second response to the Final Report was the decision of the Commonwealth to give effect to Recommendation 40 of the Final Report. This meant that the Commonwealth would use its purchasing power as a very significant client of the construction industry to ensure that contractors who wished to execute work for the Commonwealth would be required to apply the National Code of Practice for the Building and Construction Industry to all their projects, whether publicly or privately funded. The Code contained a series of requirements which sought to preserve and enhance freedom of association; and which ensured that all employers in the procurement chain were free to develop their own employment arrangements with their workforces, effectively eliminating the use of project agreements.

We can consider the Coalition's response to the Final Report as a three-legged stool.

The first leg is the BCII Act which establishes and empowers the ABCC and creates a limited set of obligations on building industry participants.

The second leg is the Workplace Relations Act, particularly the sections outlined above – and of those, there is ample evidence at the present time of the crucial importance of the notion of Prohibited Content and the consequent unlawful status of industrial action taken in pursuit of claims that sought to obtain rights in relation to Prohibited Content matters.

The third leg of our stool is the use of the Commonwealth Government's procurement power to force cultural change across the industry.

Our stool, however, is not complete without its seat, which holds the legs in place such that the structure is stable, and distributes the load across the supporting legs.

As the first Building and Construction Commissioner, John had a critical role in the design and implementation of the regulatory framework and discharged the functions of his office firmly, efficiently and effectively. I hesitate to complete the analogy and describe him as the seat on the stool, but you get the idea.

There are numerous legitimate measures that can be applied to the performance of those who hold statutory office – in most cases, the absence of failure is good enough.

Charles Copeman, for whom this award is named, delivered unprecedented productivity gains in the Pilbara – and did so in a way which improved the working environment for management, supervision and workers. Under John's stewardship of the ABCC, labour productivity in the building and construction industry increased by more than an average of 10% from 2006 to 2008. For an industry that represents roughly 10% of GDP, a 10% lift in productivity is an awesome achievement.

Sadly, the construction industry reform framework so ably administered by John has been eroded, and the labour productivity data are trending down. Given the very critical nature of this industry to our economic success and quality of life, there is an overwhelming economic argument in favour of specific industry regulation. There is also a moral argument – a very significant proportion of built infrastructure is funded by the taxpayer – directly or indirectly. The fact that the client and the end-user have no option but to procure locally means that we have a particular obligation to maximise our efficiency and avoid some of the excesses that have characterised the industry's labour relations

Thank you

Stephen Sasse has held senior human resources positions in the construction industry from 2001 through to 2011. He authored the first public employer submission to the Royal Commission into the Building and Construction Industry in July 2002. The views expressed above are personal, and should not be attributed to any other person or organisation.

Stephen Sasse
smsasse@gmail.com
0487 482 331

[i] Final Report of the Royal Commission into the Building and Construction Industry 24 February 2003 Volume 1 – Summary of Findings and Recommendations Page 4, Paragraph 11
http://www.royalcombci.gov.au/docs/finalreport/V01Summary_PressFinal.pdf
[ii] Ibid. Page 6, Paragraph 16