

“It’s a long way to fall, mate!”



Submission to the Victorian CCCU Inquiry:
Compliance with the law in the Victorian construction industry
October 2012

It’s about the right of workers to have safe, fair work environments

Independent Contractors Australia (ICA) approaches what is happening in the Victorian construction industry from the perspective of independent contractors who work in the construction industry and who are often the individuals most subject to abuse, harm and significant financial disadvantage because of the way in which the Victorian construction industry operates.

“It’s a long way to fall, mate”

The quotation above—“It’s a long way to fall, mate”—was a frequent taunt yelled out at workers on the Westgate Bridge upgrade during 2009–10. These were workers ICA met with, who were not part of the CFMEU construction union. They belonged to a different union but were caught in a ‘war’ not of their making.

These workers operated in an environment of fear. They provided us with video footage from their mobile phones which we placed on our website:
<http://www.independentcontractors.net.au/Current-Issues/Construction-sector/video-clip-westgate-bridge-violence>
No worker should be subjected to abuse such as that witnessed on this video or the abuse they received while at work. The abuse they suffered was directed at them by other work ‘mates’—men who belonged to a rival union!

The evidence of abuse on the Westgate Bridge was not only anecdotal like that which we obtained directly from workers. It was recorded in great detail in a court case against union officials who were prosecuted for violence and harassment on the Westgate Bridge job. We summarised this on our website too:
<http://www.independentcontractors.net.au/Current-Issues/Construction-sector/union-violence-on-westgate-bridge>

We provided an overview in April 2009 which, in part, said:

“The current Westgate Bridge upgrade has virtually stopped because of violence and threats... Workers say they have been followed home and photographed and abused. Gates have been welded shut and vehicles smashed. Workers have been surrounded in their cars by groups of people threatening them with violence—one car allegedly being ‘pushed, kicked and rocked’.”

Nothing has changed

The policing activities of the Australian Building and Construction Commission (ABCC), prior to about 2010, in large measure curtailed a good deal of the abuse and harassment in the Victorian construction industry, although it did not eliminate it. With the closing down of the ABCC much of that abusive environment has quickly returned. The violent activities of construction unions directed against Grocon workers during August 2012 have demonstrated that nothing has changed. Violence, abuse and harassment directed towards workers by other workers on Victorian construction sites is endemic.

The CCCU Inquiry

The Victorian government has commissioned its Construction Code Compliance Unit (CCCU) to conduct an inquiry into “The use of violence, intimidation or harassment within the Victorian building and construction industry” and related matters. The terms of reference are here:

http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2012/September/120917_Clark_-_Terms_of_Reference_for_CCCU_investigation.pdf

Independent Contractors Australia is pleased to make a submission that we hope will lay bare some matters that are generally hidden behind a ‘code of silence’ in the industry, induced by fear. Few individuals, businesses or industry associations are prepared to state the truth about the industry for fear of direct harassment, even violence, and an orchestrated process of imposing considerable financial harm against those who don’t comply with the industry ‘system’.

Recommendation One: Apply OHS laws

There is ample evidence, from court cases at least, of violence, harassment and intimidation on Victorian construction sites. What amazes ICA is that such instances are not reported, investigated or prosecuted as breaches of work safety (OHS) laws. There appears to be a culture of belief amongst relevant Victorian authorities that violence, intimidation and harassment conducted under the guise of an ‘industrial relations dispute’ are somehow acceptable and protected from OHS prosecution.

Under OHS laws, harm does not have to happen to persons for a criminal breach of the law to occur. It is the creation of, or toleration of, work circumstances in which harm could occur that creates a breach of OHS laws. That is, a business operating with unsafe machinery or using unsafe practices is in breach of OHS laws even if no one is injured.

At the very minimum, the worker-on-worker violence, harassment and intimidation that is endemic on Victorian construction sites under the mask of ‘industrial relations’ activity should be subjected to investigation by OHS authorities. If such violence, harassment and intimidation were to be perpetrated by an employer against a worker, OHS investigation (and possible prosecution) would be swift. This is how it should be. Instead, a glaring double standard seems to exist.

Unsafe worksites and situations are being tolerated on an endemic basis. As a result, the state is failing to fulfil its duty to ensure safe worksites in Victoria.

Recommendation: Violence, harassment and intimidation of workers under the guise of ‘industrial relations’ activity should be treated no differently from any other form of workplace violence, harassment and intimidation.

- Employers should be required to report such matters to the OHS authorities.
- Employers should be subject to OHS prosecution where they fail to take all reasonable measures to stop such violence, harassment or intimidation.
- Individual workers or others involved in subjecting other workers to violence, harassment or intimidation should be subject to OHS prosecution.
- If Victorian OHS legislation is insufficiently clear on this matter, it should be amended to make it clear that any form of workplace violence, harassment or intimidation is a breach of the OHS Act.

The true nature of the Victorian construction industry. How it works!

“What the f...., you want me to stop a concrete pour on this fella who pays me fully and on time. Yet last week I asked you to heavy a bloke that owes me 150 grand and you did nuthing. Go get f...ed”

Industrial relations in the Victorian construction industry operates primarily to prevent and limit competition in the industry. It is a process of controlling who gets what jobs, who is allowed to stay in business and who will be squeezed out. It operates through typical mafia-style, gangland-type ‘honour’ (and dishonour) amongst thieves. It’s complex, and has certain ‘rules’, but is fraught with uncertainty over the application of the ‘rules.’ However, the enforcement of template enterprise agreements is at the heart of the competition suppression system.

The quotation cited above occurred during 2012 at the Victorian Trades Hall Council in an exchange between a union official and a concrete contractor. The contractor has worked and survived in the industry for years. He pays off union officials both through having union enterprise agreements and ‘brown paper bags’. “It’s just the way business is done”, he says. But there are limits. In being ‘union friendly’ he expects things in return. In the circumstances mentioned above, a building company had defaulted on a final payment to the concreter on a job, yet it was still in business. The concreter had demanded the union close down the business’ current job until he was paid the debt. But the union did nothing. Then the union demanded that he close down a concrete pour for another builder who was a good and reliable payer to the concreter but didn’t have a union enterprise agreement or hand over ‘brown paper bags’. Here’s the truth of the Victorian construction industry. It’s honour and dishonour amongst ‘thieves’.

In its simplest form the process is an anti-competitive system in which industry players are just chasing money. The ‘rules’ are straightforward and everyone understands them even if they don’t like them.

Large firms pick up all the big jobs. They are margin players. Whatever the cost of a job, they add their margin and pass this on to the client. If costs go up, the client is charged more (if it’s not a fixed-price job) and/or the risk is passed on to the subcontractors and independent contractors down the chain. If it’s a fixed-price job, the extra cost is built into the tender price.

In this system, individual independent contractors working in construction—the people who actually do the productive work—suffer the most. They are pushed from pillar to post, frequently not paid or underpaid and have the cost of construction problems pushed onto them.

The construction unions act to keep out new competitors. Large ‘union friendly’ firms pay off the union thugs through cushy jobs and other means. Unions impose industrial relations hell on potential competitors to the ‘friendly firms’, thereby stopping small players becoming bigger. The way this plays out is complex, as demonstrated in the concreter example above, but the overall picture holds true.

Enforcement occurs through violence, intimidation and harassment. But more importantly, enforcement also occurs through the legal mask of the industrial relations system—specifically and recently through the operations of the *Fair Work Act* (FWA). The provisions and outcomes of the FWA mean that anti-competitive behaviour is effectively sanctioned through the endorsement of union enterprise agreements under the FWA.

Recommendation Two: Strong support for the Victorian Code

The Australian Building and Construction Commission was clearly effective in reducing a good deal of the violence, harassment and intimidation occurring on construction sites. During the ABCC’s operation, industrial activity significantly dropped and productivity markedly increased.

Most of the media coverage of the ABCC related to its powers to prosecute over violence and intimidation on worksites. But its truly effective powers related to its policing of the Federal construction code of conduct. For the most part, construction violence is just one of the tools used to impose anti-competitive practices in the sector. To create lasting change in the industry the commercial realities must change. If violence and intimidation result in the violent parties making money, the violence is rewarded and continues.

The Federal construction code changed that commercial dynamic. This was because any construction business that was involved in or permitted anti-competitive industrial relations activity (including violence and intimidation) found itself excluded from government work. This changed the commercial ‘reward’ system because the financial benefits from violence and intimidation were largely removed. Unfortunately this was undone with the closing down of the ABCC.

Recommendation: ICA strongly supports the Victorian government’s Construction Code of Conduct and recommends it be implemented fully.

Recommendation Three: Biekie Gangs and drug trafficking

There is some concern that criminal biekie gangs have a close and daily involvement in the Victorian construction industry. Further, that this involvement is closely aligned to the activities of some construction unions. In addition there are suggestions that major drug trafficking (principally ice) through biekie gangs on Victorian construction sites is significant. The levels of intimidation, harassment and violence that occur on or around Victorian construction sites are on a scale that seems consistent with criminal biekie gang activity.

No Victorian construction worker should have to work in an environment where criminal bikie gang activity occurs.

Recommendation:

The Victorian construction sector should be subjected to a major investigation to discover:

- If (and if so, to what level) criminal bikie gang activity is occurring on Victorian construction sites.
- What (if any) links exist between criminal bikie gangs and Victorian construction unions.
- The extent of drug trafficking occurring on Victorian construction sites.

Victoria Police should be allocated significant and sufficient resources to conduct investigations into alleged criminal bikie gang activity on Victorian construction sites and to undertake prosecutions where required.

Victorian laws in relation to bikie gang activity should be reviewed with a view to achieving parity, at least, with bikie gang laws in South Australia (for example). Victorian laws should also have a specific focus on targeting the elimination of illegal bikie gang activity in the construction sector.