

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ACCREDITATION OF BUILDING PRACTITIONERS MET AT HENTY HOUSE, LAUNCESTON ON 31 AUGUST 2006

Mr JOHN FULTON WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Mr Fulton, by way of introduction I indicate to you that the committee will not be taking evidence from anybody at this stage with regard to any comment they may wish to make about the agreement signed between John White and Bryan Green. The Director of Public Prosecutions is considering that matter, and so that we don't prejudice his considerations in any way we are staying right away from that.

Mr FULTON - I am not a great reader, so I have asked Jeremy to come in and read the documents, if that's all right.

CHAIR - Any need for a declaration?

Mr FULTON - He's only reading my words out of my document.

CHAIR - Okay. While we don't want to question him or he doesn't want to make his own volunteered comments, that will be fine. You are welcome to read.

Mr FULTON - I am here representing about 50 per cent of the total work force, and half of the work force is over 50. Over the past decade, the State Government has dramatically increased the statutory charges and compliance requirements to the point where these charges have had a serious impact on the building and construction industry, particularly those who are multiskilled, operating partnerships and sole-trader businesses, and who are now moving into the part-time work due to age.

On page 15 there are a few graphs from the Bureau of Statistics. They demonstrate the loss of full-time workers after 50. These statutory charges and insurance requirements have now denied to some building practitioners the right to work. Attached to the back of this document is a letter from the Department of Treasury in reply to concerns regarding our civil right to work. Our constitution of civil rights and freedom is being severely eroded by Parliament and is far removed from the original citizens' ideology. The constitutional convention debates stated the charter of liberty that is embraced within this bill of political liberty and religious liberty. This new charter is to be given by the people to themselves.

The Constitution protects Australian citizens from bad law but there is sufficient evidence that the constitution has not been applied to the Building Act 2000, and in particular the Housing Indemnity Act, for these acts have caused much damage and human suffering, even to the point of suicide.

The Director of Building Control has provided a copy of Counsel to Government. That is what they call a bible for writing legislation. Within that document there is no reference to the Australian Constitution. The Australian Constitution sets up a lot of our rights and freedoms that laws have to comply with. Mr Justice Kirby said:

'The Australian Constitution included appeal to the High Court, giving any of citizen the right to go to the High Court if they felt the Commonwealth or State had violated these constitutional rights. Keep your eye on the Constitution because this is great protection. The protection of your liberties does not ultimately depend on Parliament or even the courts: it depends on the love of the people for their liberties.'

My total submission to this Legislative Council Select Committee is based on the issue of bad law and the protection provided in the Australian Constitution for Australian citizens. I have a strong belief that some sections of the Building Act 2000 are ultra vires - which means no legal capacity - and I also believe that the select committee can only return a finding of ultra vires to most of the issues raised in the terms of reference of this inquiry.

CHAIR - Just before you go on, you are not intending to read the whole document to the committee today are you?

Mr FULTON - No.

CHAIR - Because we have 30 minutes allocated for the duration.

Mr FULTON - Issues of consideration: is the right to work a civil right? Does a person have freedom of choice in how the application of that choice is to be implemented, except in the case where a criminal act has been committed? Does the consumer have a civil right to select a competent, qualified person of their choice, regardless of their statutory registration and standing?

Issues for resolution: has the Constitution granted Parliament the power to legislate a charge compliance requirement over a civil right, or cause a person to need to purchase that civil right, or, in the case of the consumer, has Parliament been granted a power to deny the consumer their civil right of free choice? Once Parliament applies a charge or condition over a civil right, it is no longer a civil right. The country would then be deemed to be a socialist state where it is the responsibility of the state to satisfy its citizens primary capacity rights.

The Australian Constitution proclamation: 'our civil rights are not in the hands of any government, but the rights of the Crown in prosecuting criminals are.' - Edmund Barton, Prime Minister.

Definition of a right and privilege: a right is not what someone gives you; it is what no-one can take from you. A privilege is something that is granted and can be taken away.

Parliamentary legislative format limitations: State parliaments are legislatures with limited powers, and any law which they attempt to pass in excess of those powers is no law at all. It is simply a nullity, entitled to no obedience - that is taken from the Australian Constitution. The following constraints are placed on the drafting of all legislation: Australian Constitution, natural law, religious belief, civil rights, human

rights. Any law that does not fulfil the requirements of the above is deemed to be ultra vires.

Mr WILKINSON - I do not want to cut you short but we can, and we will because it is our duty, read all this. Is it easier for you if you just summarise rather than reading it out word for word, because we will be doing that? Is it easier for you if you summarise and give us the salient points that you believe we should be hearing, amplifying what is in here?

Mr FULTON - Okay.

Mr WILKINSON - Is that fair, Mr Chairman?

CHAIR - They did mention it was only going to be 10 minutes, and then it still left 20 minutes.

Mrs SMITH - Your choice.

Mr FULTON - Human damage from the Building Act 2000: eight suicides - one recorded in New South Wales *Hansard* for 9 May 2003 - and 59 per cent of the building industry is unable, or unwilling, to register under current criteria. Home owner/builder applications have increased dramatically in response to consumers' civil right to choose a builder of their personal choice. The Constitution requires Parliament to pass laws for peace, order and good government. With so much recorded human damage, the law must be deemed ultra vires.

Interpretation of the Constitution - Quick and Garron. The Constitution, like every other law, is directly binding on every individual and every governmental agency within the Commonwealth. Every person, every office, every political organ has a duty of complying with its provisions and must, in the exercise of that duty, interpret its provision in the first instance to the best of his ability and on his own responsibility.

Every citizen is entitled to the protection of their Constitution and is bound not to infringe it. Every officer and department of every government, State or Federal, has similar rights and obligations. The Federal Parliament and the State parliaments are bound not to exceed the authority conferred or reserved by the constitution.

The Federal and State parliaments are not sovereign bodies. They are legislatures with limited powers. Any law which they attempt to pass in excess of those powers is no law at all and is simply a nullity entitled to no obedience.

Rights, privileges and immunities: a constitution not only deals with this partition and limitation of governing powers, the mode in which those powers are exercised and with the structure of the governing organs, it generally enumerates certain cardinal rules, principles and maxims which are to be the indices of public policy that should guide or bind the executive, the legislature and the judiciary.

From the *Hansard* of 17 March 1898 - Mr Deakin, Victoria:

'What a charter of liberty is embraced within this bill of political liberty and religious liberty, the liberty and the means to achieve all to which men in these days can reasonably aspire. A charter of liberty is enshrined in this constitution, which is also a charter of peace, order and good government for the whole of the peoples whom it will embrace and unite'.

Mr Gordon, 1 March 1898:

'We must postulate of all our parliamentarians that they will pass laws which are ethically indefensible. We must also postulate that they will pass laws which may do injuries to individuals, but I contend that if any serious individual injury is done or injuries done to a number of persons whose interest really requires to be protected, the State will intervene and assist them. On the other hand, the Federal Parliament will intervene and assist them if it is an infringement of the State Parliament'.

The High Court has ruled:

'Courts do not impute to the legislature an intention to abrogate or curtail fundamental rights or freedoms unless such an intention is clearly manifested by unmistakable and unambiguous language. General words will rarely be sufficient for that purpose. What courts will look for is a clear indication that the legislature has directed its attention to the rights or freedoms in question and has consciously decided upon abrogation or curtailment. The high court, in handing the above decision, has upheld the Australian Constitution.'

One of the main problems with legislative draughtspersons and parliamentary debate is tunnel vision. Major issues that arise around the peripheral of the main objective are dismissed as insignificant or unworkable to the objective, and constitutional requirements and natural law constraints are dismissed as irrelevant.

The flow-on effects of the unresolved and non-compliance issues of the Constitution and natural law do not disappear. They become major problems for government, particularly where civil rights have been severely abrogated or curtailed. The Building Act 2000 is one such case.

The already mentioned suicides and loss of employment statistics make the issue of civil rights, human rights, the major issue for consideration of this inquiry. Whether Parliament recognises it or not, Parliament has not been granted the power to cause such widespread damage to Australian citizens. Should the State fail to provide peace, order and good government, State law may automatically be invalidated under section 109 of the Constitution for there is no legislative right to be employed and no unconditional right to social security benefits to compensate for any illness caused by bad legislation.

When a law of the State is in conflict of the law of the Commonwealth, the law of the Commonwealth shall prevail and the law State shall be invalid.

Section 2 - business classification. Businesses can be classified into two categories: companies and partnerships and sole-traders. The Office of Fair Trading in New South Wales provides the number of building licences in each category, giving companies

20.3 per cent of the market, partnerships 7.81 per cent and sole-traders 71.8 per cent. These percentage figures would be reasonably consistent across all States.

The economic component of any legislation written for companies varies considerably in legislation format from the economic and financial component drafted for a partnership of sole-traders. Companies and corporations do not age, and do not suffer physical disabilities or sickness. They are able to hire and retrench staff during building booms and recessions, are able to trade 24/7 and have no civil rights, whereas legislation written for partnership and sole-traders - 79.7 per cent of the workforce - must comply with the constitutional requirement of peace, order and good government. That includes the recognition of civil rights, birthrights, and natural law capacity and limitations.

Insurance issues: insurance companies must comply with the constitution when assessing applications as defined below. Insurance cannot be linked to building registration. Government must comply with civil and human rights when legislating insurance requirements; 99.9 per cent of all policies do not meet the eligibility criteria to make a claim.

The Housing Indemnity Act: the Building Act 2000 requires all building works over \$12 000 to be covered by homeowners warranty insurance. When an act of Parliament required its citizens to purchase a supply from a private commercial entity, the principles and maxims which guide and/or bind the legislature transfer to the private commercial entity. In other words, when a private entity accepts to provide a legislated supply, that private entity has a duty to comply with the provisions of the Constitution and is bound to accept the principles, conditions and maxims set out in the Constitution. Any commercial decisions that they attempt to execute, if they exceed the authority conferred or reserved by the Constitution, including the violation of any citizen's rights or freedoms, would nullify the law and the law would be deemed ultra vires.

Insurance companies require a list of assets to determine the competency of the building practitioner before providing insurance. A person without assets is either denied insurance or their insurance requirement may be severely limited. The use of assets to determine the competency of the building practitioner is a violation of the provisions of the Constitution, particularly in the area of civil rights and freedom, where Australian citizens are deemed to be innocent until proven guilty, with no fines or forfeitures before conviction. Insurance companies are deeming building practitioners who do not hold sufficient assets to be incompetent without proof of evidence or court convictions. This is a violation of building practitioner's constitutional civil rights and freedoms and of the right to work.

The Tasmanian Compliance Corporation requires a letter of eligibility to purchase insurance before accreditation is granted. A letter of eligibility to comply with the law is an interesting legal requisite. A law can either be complied with or it cannot.

Statistical human casualties: the suicide of a young builder, as recorded by New South Wales *Hansard* for 9 May 2003, demonstrates that the Housing Indemnity Act is acting outside the provisions of the Constitution. A further seven known cases of suicide can be attributed to the Housing Indemnity Act. Both Federal and State Governments have failed to meet the constitutional requirement in protecting the rights and freedoms of builders.

The Grellman Report, conducted by the New South Wales Government in 2003, shows full building licences to be at a level of 30 221 at June 2003, a loss of 59 per cent of the work force that was at 162 000 registrations in October 1999, a loss of 131 779 tradesmen. The Grellman Report shows there were 39 000 buildings under construction in 2002-03. Consultancies, bankruptcies in the financial year 2002-03 totalled 39 events. On the basis that a claim can only be made if a builder dies, disappears or becomes insolvent, a New South Wales statistical fact will show that 99.9 per cent of all policies issues under the Housing Indemnity Act will not meet the insurance criteria for eligibility to make a claim. In other words, the consumer is still required to recover damages through the legal system, even though the builder has taken out homeowner's insurance policy against faulty workmanship.

Continued professional development: psychologists have thoroughly researched the learning capacities of humanity and proven statistically that short-term memory has a memory span of approximately two seconds and a memory capacity to hold seven digits. Information can only be encoded into long-term memory by either repetition or deep understanding. To encode the information there needs to be a positive attitude and capacity to learn. The person who does not want to learn will not learn. The qualification level that a person has attained provides an indication of a person's responsiveness to learning. Manual skills are learnt by making mistakes and then rectifying that behaviour to avoid repeating the same mistake. Inversely, academic knowledge is learnt through research skills. This principle of learning can be easily demonstrated. The principle of learning to ride a bike is by mistake, falling off, until the desired balance is achieved. Inversely, learning to ride a bike from academic lectures will fail.

The education demarcation line between the two learning methods is an AQF6. That is, above AQF6 is academic or research, and below AQF6 is manual skills. Trade certificates are AQF4. Passing legislation that causes a person to learn by the wrong method is futile. As a result, current compulsory CPD of the Building Act 2000 is relatively ineffective.

Some demographics are included. Figure 1 provides data of workers participating in the Tasmanian Construction Industry by age. Figure 2 provides statistics of the male participation rate in the work force. Figure 3 provides statistics by age of the number of registered plumbers in the State. This graph shows the shortage of tradesmen that will occur in 15 years. The three graphs statistically show the loss of full-time work force after age 50. With 50 per cent of the industry work force over 50 and moving into part-time work, the legislated charges must be directly linked to the hours worked to ensure that workers' and consumers' civil rights are protected from the increased hourly rate to recover the legislative charges.

Ms FORREST - I am interested in the approach that you have taken to highlight some of the issues of concern here. I just want to ask if you are aware of the Queensland model. How do you think that compares and does it adequately address the issues that you have raised here?

Mr FULTON - For a lot of the issues, yes. I have not worked since last November because the statutory charges have stopped me from working. That has created problems because

I cannot get social security benefits, so I am left without an income on one hand and I am not allowed to work on the other. So we have a major situation here and that is why we have suicides. I am running on my superannuation at the moment but I am going to have to work; something has to be done about that. As far as your question is concerned, dealing with new houses, when they have a card they ring up and they quote their number on the card. They are charged a fee for their insurance and all the compliance costs go onto that card, so they goes onto that job. If you do not work it does not matter. Annual charges are a major problem because my annual charges are up to about \$7-8000 to get all the statutory charges to be able to work. If you have a job and you ring up and you start that job then you can pay all your statutory charges to that one job; that eliminates this problem of annual charges. That is number one of the issues.

Ms FORREST - In relation to the Queensland model, though, does that address these issues?

Mr FULTON - A lot of them. It will not address every issue but it will address the majority of them.

Ms THORP - Is it the Queensland model where you ring up?

Mr FULTON - Yes; you have a card, you ring up, you give your credit card number and automatically a fee for your insurance for that job is deducted. Public liability, home owners' warranty - it all comes out of that one phone call. Everything is done by just having a card, and everything goes on it. That eliminates a lot of these problems. If we turn over to page 17, my problem is that I am multiskilled. I have quite a few qualifications and I use them; I have about three trade certificates and I have a diploma of engineering. I work across the range and I pick up a lot of statutory charges that other people don't have. Table 1 sets out all my statutory charges. They come to \$6300 and that is without the Local Government Act. It comes out at about \$3.85 per hour to recover those statutory charges of \$1600. Going back to those statistics and the graphs on page 15, what you have to realise is that once we get to 50 our body starts to deteriorate and we cannot work full time.

Mr WILKINSON - I would not dwell on that for too long.

Laughter

Mr FULTON - Being in a manual job it does become very pronounced. By the time you get to 60 it is really starting to be pronounced that we cannot work full time. Then you have these statutory charges running at \$6000. On table 2 I have calculated how much you recover: at 200 hours you are only recovering \$770 out of the \$6600. So if we hit an economic recession, and I have been through four, it's tough. In 1982 I did not even have the \$20 to pay for one of my licenses because everything that I had was going into food and clothing. So with licensing fees, you have to realise that there is an economic recession coming up; we have had our boom and we will go down into recession. As the work drops off so does our income and our ability to recover the statutory charges. If you are only getting 200 hours, and I have worked less than 200 hours, and you are in an economic recession, then you are only getting \$770 back from the consumer to pay for \$6-8000 worth of statutory charges. So the whole issue snowballs.

Page 18 has a hypothetical charging regime to show how the charges can go up to \$60 per hour if you are only getting 100 hours in a year. Someone at 65 might only want to do 100 hours a year.

Mrs SMITH - If someone at 65 only wanted to do 100 hours a year, why would they not subcontract to an accredited builder who has paid all these costs and do the work under the umbrella of that 45-year old who is still able to run his company for 40 hours per week?

Mr FULTON - I would not, if I had the accreditation, let anyone I did not know work under my licence.

Mrs SMITH - That you did not know?

Mr FULTON - You are working on the hypothetical that he does know someone, but everyone has to have autonomy.

Mrs SMITH - I will give you an example. I know a very good builder who was 62 and I asked him to do a job. He said that at 62 he is not going through this accreditation. He was subcontracting to another builder who is quite prepared to do that. He was working under him as a subcontractor, so he was his own boss, but the other builder ticks off if he is happy with the work or otherwise. That is what he will do until he is 65 and retires, so that he is his own master. Is that not an option for someone who wants to downsize?

Mr FULTON - For some people it would be, if they have someone to sign off for them, but what happens if they do not have someone to sign off for them? We still have an issue that people have to work. I think that everyone has the right to be registered and accredited in their own right. With statutory charges, the Constitution argues that civil rights are not in the hands of the Government, so actually the charges are not really within the rights of the Government.

Mrs SMITH - If you had part-time workers who pay less for an accreditation, who would police whether I went out and worked a 40-hour week or a four-hour week?

Mr FULTON - This is a problem. Take plumbing; we have had licence registration since 1952 and it has been linked to the cost of employing a person for one hour. So at the moment it is about \$40 to register. Now, that has worked quite well for 55 years without any real complaints. Now, as we get extensions on top of that the cost does not go up; it stays at \$45. That has worked for 50-odd years so why cannot the same system work in building. I have worked with a heap of guys out there and not many of them are accredited, but if it was \$45, the same as plumbing, everyone would be accredited. They want to be accredited, they want to pay a fee but they are not going to pay these fees that are being charged at the moment.

Mrs SMITH - So your argument really is about the high cost for the lack of service for that fee.

Mr FULTON - Yes. If the plumbing and electrical industries can do it for \$45, why can't the builders do it for \$45? You have to. During recessions there is just no work. Around 80 per cent of the industry are sole-traders. When there is a recession we can't get any work

but we also can't get social security because we are still self-employed, so we get knocked straight out again. We have to pick up the little bits, and you might only get 100 or 200 hours in a year, but you have to live. I have lived on bread, raisins and cheese for nine months because that is all the money I had.

Mrs SMITH - But you would accept that is cyclical in every industry and every business. It is not just in the building industry; it can be the rural industry or whatever. They have good and bad times and we hope that we set ourselves up in the good times to survive the bad.

Mr FULTON - But the issue is, where is the money going to come from to pay it in the bad times? It will just knock the industry around terribly in a recession. If we get a bad recession nobody is going to have the money to pay the statutory charges.

Mrs SMITH - But the issue is, where is the money going to come from to pay it in the bad times? It will just knock the industry around terribly in a recession. If we get a bad recession nobody is going to have the money to pay the statutory charges.

Mrs SMITH - So is your fear, then, that some builders will not accredit themselves because there will not be the work there? As such, we may lose skills over a period and get to the stage where we are now where we have a shortage of skills in lots of areas.

Mr FULTON - We have a major shortage. I rang Bryan Green, because he was the minister, to say that the issue is really not so much about apprentices - because you have not got the tradesmen to train them. Half of the industry is over 50 and they have got to the stage where they are not taking on apprentices, and the smaller guys cannot afford to have an apprentice. There is a massive shortage, particularly in plastering, bricklaying and plumbing, and no-one is training any of them.

Mrs SMITH - I put to you a scenario that some builders have put to me. In the tougher times they quite clearly did not take on an apprentice because they did not think they had the work, and they would query whether or not they could afford to train them, but now in the tough times they wish they had because they can get plenty of work and they would have had all these skilled people to expand their business. Is that a fair comment from builders?

Mr FULTON - We have got to keep them coming through. Page 15 is a graph about plumbing. They did a survey; 66 per cent responded, so it might be 33 per cent out, but it basically matches the ABS statistics. We have a massive problem down here coming through. These people will not be carrying apprentices because they are at the end of their working life and they will not want them. The only people who are going to carry apprentices are a few sole-traders, other than the big companies. The companies will survive anyway because they just retrench staff during recessions. We have a major problem that has to be addressed in a number of trades.

Of course, you cannot train apprentices quickly; it would take nearly 10 years to get an apprentice up to working proficiently. The first five years gets the silliness out of them and then the next five years teaches them to think and reason. One of the basic problems I have found with apprentices I have had of late is they have lost their manual skills. When I was younger, we used to build things like billycarts and use all the manual skills.

That does not happen today. Everyone is playing around with computers and they have lost all their manual skills. That is becoming an issue as well.

Mr DEAN - Have you had any direct contact with TCC?

Mr FULTON - No, it is not viable for me to go down that track. Insurance is \$2 000, plus another \$600, so it was \$2 600. I would not recover it. I could not load those costs onto any job I did - that would be design drafting - so I have not bothered. Then I have had problems with the heavy vehicles, as Ivan knows, and that has basically stopped me moving my tools from home to the workplace. Each time the charge goes on you start losing work until it becomes totally unviable.

CHAIR - Mr Fulton, thank you for providing that extra information today in support of your first written submission and indeed for appearing before the committee. We produce a report after our deliberations. We table that in Parliament and you will receive a copy of that as an interested person in this process.

THE WITNESS WITHDREW.