Ai GROUP SUBMISSION

Senate Education and Employment Legislation Committee

Building and Construction Industry (improving Productivity) Bill

Fair Work Amendment (Registered Organisations) Bill

27 September 2016

About Australian Industry Group

The Australian Industry Group (Ai Group) represents industries with around 440,000 businesses employing around 2.4 million people. Ai Group and its affiliates have approximately 60,000 members and employ in excess of 1.25 million employees. Ai Group has a large membership in the construction industry including both major builders and large and small subcontractors.

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Background

The Australian Industry Group (**Ai Group**) supports the *Building and Construction Industry (improving Productivity) Bill* (**ABCC Bill**) and the *Fair Work Amendment (Registered Organisations) Bill* (**RO Bill**). Both Bills have obvious merit and it is essential that they are passed by Parliament without any further delays.

Ai Group made the following submissions on the ABCC Bill during the last term of Government:

- Inquiry by the Senate Education and Employment Legislation Committee:
    - Written submission of 22 November 2013;
- Inquiry by the Senate Education and Employment References Committee:
    - Written submission of 17 January 2014;
    - Oral submissions at a public hearing in Sydney on 6 February 2014;
- Inquiry by the Senate Education and Employment Legislation Committee:
    - Written submission of 19 February 2016;
    - Oral submissions at a public hearing in Canberra on 4 March 2016.

Ai Group also made a submission on 10 April 2015 on the *Construction Industry Amendment (Protecting Witnesses) Bill 2015*. This Bill related to the examination powers of Fair Work Building and Construction (**FWBC**) – the body that would be replaced by the Australian Building and Construction Commission (**ABCC**) if the ABCC Bill is passed. The Bill was passed by Parliament.

Ai Group made the following submissions on the RO Bill during the last term of Government:

- Inquiry by the Senate Education and Employment Legislation Committee:
    - Written submission of 22 November 2013;
    - Oral submissions at a public hearing in Melbourne on 26 November 2013;
- Inquiry by the Senate Education and Employment References Committee:
    - Written submission of 17 January 2014;
    - Oral submissions at a public hearing in Sydney on 6 February 2014;
- Inquiry by the Senate Education and Employment Legislation Committee:
    - Written submission of 30 June 2015.

Rather than repeating all of the detail in the above earlier submissions, in the sections which follow we have set out the key reasons why each Bill should be passed, and why various spurious union arguments about the ABCC Bill are false.

ABCC Bill

As mentioned above, the ABCC Bill was the subject of three Senate Committee inquiries during the last term of Government, each of which Ai Group was heavily involved in.

The ABCC Bill will deliver vital reforms to the building and construction industry and the broader community. The case for reform is overwhelming.

Unlawful and inappropriate conduct is being constantly and widely displayed by the CFMEU and other construction unions.

The ABCC Bill includes important protections against the unlawful behaviour that is currently occurring. The protections include:

- The re-establishment of the ABCC with its former powers;
- Higher penalties to deter unlawful conduct; and
- A strong federal building code.

The current inadequate laws and arrangements are resulting in higher construction costs which of course reduce the ability of Federal and State Governments to deliver vital community infrastructure like hospitals, schools and roads.

The reforms in the Bill are very similar to those that successfully operated between 2005 and 2009 following the Royal Commission into the Building and Construction Industry (**Cole Royal Commission**). During this period the construction industry had never been a better place for employees to work and had never been a better place to invest.

The ABCC Bill would reinstate the ABCC and preserve the examination powers which are currently held by FWBC.

The reforms in the Bill would apply equally to employers and unions. Those who comply with the law have nothing to fear from the ABCC.

The CFMEU is currently displaying a blatant disregard for the industrial laws that have been passed by Parliament. The rule of law needs to be re-established in the construction industry without delay to protect employers, employees, independent contractors and the community from unlawful and inappropriate conduct.

The existing laws are operating as a major barrier to small subcontractors carrying out work on major construction projects. The existing laws are not effective in preventing union coercion of small subcontractors to sign up to very costly and inflexible industrial arrangements. The laws are also not effective in stopping unions coercing major contractors to only subcontract with those who have agreements with unions.

The unions make ongoing attempts, through misleading information and spurious arguments, to convince people that the ABCC Bill is unwarranted. Some of their spurious arguments are addressed below.

Spurious union argument 1 – There is no need for a separate regulator for the construction industry

The establishment of the ABCC was a central recommendation of the Cole Royal Commission. In his final report, Commissioner Cole said: *"There is widespread disrespect for, disregard of, and breach of the law in the building and construction industry"*.[1] Commissioner Cole decided that *"there should be an independent monitoring and prosecuting authority in the industry to monitor conduct, and uphold the rule of law"*.[2]

The ABCC was replaced by the FWBC in 2012 under the *Fair Work (Building Industry) Act 2012*.

The recent Royal Commission into Trade Union Governance and Corruption (**Heydon Royal Commission**), supported the maintenance of a separate regulator for the construction industry. Commissioner Heydon made the following relevant comments in his final report:

> "83. One consideration which supports the need for an industry specific regulator is the high level of unlawful conduct in the industry. This is demonstrated by Appendix A to this Chapter. The sustained and entrenched disregard for both industrial and criminal laws shown by the country's largest construction union further supports the need. Given the high level of unlawful activity within the building and construction sector, it is desirable to have a regulator tasked solely with enforcing the law within that sector."[3]

Numerous respected judges have expressed dismay at the blatant disregard that the CFMEU has for the rule of law.

In a judgment[4] handed down last year, Justice Tracey of the Federal Court remarked that the CFMEU has a *"deplorable attitude…to its legal obligations and the statutory processes which govern relations between unions and employers in this country."* He went on to say that: *"Their continued*

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[1] *Royal Commission into the Building and Construction Industry*, February 2003, Final Report, Volume 1, page 155.

[2] *Royal Commission into the Building and Construction Industry*, February 2003, Final Report, Volume 1, page 155.

[3] *Royal Commission into Trade Union Governance and Corruption*, December 2015, Volume 5, paragraph 83.

[4] *Director of Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union [2015] FCA 1213* at [62]-[63]:

willingness to engage in contravening conduct supports the view that earlier penalties, some of them severe, had not had a deterrent effect".

In a judgment handed down a few months later in December 2015[5] imposing further fines on the CFMEU, Justice Jessup of the Federal Court described the CFMEU's record of unlawful behaviour as *"egregious".*

The ABCC is vital to the re-establishment and maintenance of the rule of law in the construction industry.

All Australian citizens have a strong interest in the rule of law being maintained. Justice Merkel of the Federal Court made the following relevant comments about this some years ago when imposing fines on two militant Victorian union leaders for ignoring a Court order:

> "The rule of law in a democratic society does not permit any member of that society, no matter how powerful, to pick and choose the laws or court orders that are to be observed and those that are not." *Australian Industry Group v AFMEPKIU and others* [2000] FCA 629 (12 May 2000)

As stated by Commissioner Heydon in his final report: *"Having regard to all of the available material, the argument that there is no need for an industry specific regulator cannot be sustained."*[6]

Spurious union argument 2 - The ABCC's examination powers are unfair

The construction industry regulator's examination powers have been in place since June 2005 – initially with the Building Industry Taskforce, then with the ABCC and now with FWBC.[7] The powers have operated fairly and appropriately throughout this whole period.

The ABCC / FWBC examination powers are similar to those possessed by the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Australian Taxation Office (ATO). Accordingly, there is nothing particularly exceptional about the ABCC / FWBC examination powers, but it is vital that they be maintained.

The examination powers were a key recommendation of the Cole Royal Commission.[8]

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[5] *Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (The Red & Blue Case) (No 2)* [2015] FCA 1462.

[6] *Royal Commission into Trade Union Governance and Corruption*, December 2015, Volume 5, paragraph 97.

[7] Originally the powers were given to the Building Industry Taskforce which was replaced by the ABCC on 1 October 2005 under the *Building and Construction Industry Improvement Act 2005.* The *Building and Construction Industry Improvement Act 2005* was replaced by the *Fair Work (Building Industry) Act 2012*. The powers are currently held by FWBC under the *Fair Work (Building Industry) Act 2012.*

[8] Final Report, Recommendation 184.

In March 2009, the Hon Murray Wilcox QC reviewed the examination powers and found that the Regulator *"will need a power of coercive interrogation; at least under present conditions".*[9] Notably the conditions at the time were much better than they now are. Since 2009, the conduct of the CFMEU has deteriorated markedly as is evident from the large number of recent prosecutions and the large number of cases currently before the Courts.

The examination powers are subject to very substantial protections, including oversight by the Commonwealth Ombudsman.

On 26 September 2016, the Commonwealth Ombudsman released its annual report under s.54A(6) of the *Fair Work (Building Industry) Act 2012* for the period 1 July 2014 to 30 June 2015 . The Ombudsman's report found that the FWBC was compliant with the relevant provisions of the *Fair Work (Building Industry) Act 2012* and the Regulations (see section 5.1 of the report on page 6). Also, the FWBC was assessed as being compliant with the best practice principles set out by the Administrative Review Council (see section 5.2 of the report on page 7). The report found that examinees were treated at all times in a courteous and professional manner (see page 13 of the report). The report made two recommendations and some best practice suggestions, which the FWBC Director, Mr Nigel Hadgkiss, had responded to (see Annexure A to the report).

History shows that the CFMEU will not cooperate with the Regulator unless the examination powers exist. Prior to the powers being implemented in June 2005, the CFMEU adopted a blanket policy of its officers, staff and delegates refusing to be interviewed by the Regulator, which frustrated many investigations into unlawful conduct.

The truth is that the powers have been mainly used by the ABCC / FWBC to interview employer witnesses, who fear retaliation by the CFMEU if they voluntarily give evidence about unlawful union conduct.

Due to a sunset provision in the current legislation, the powers will come to an end on 1 June 2017, i.e. in less than 12 months' time, unless the ABCC Bill is passed. Clearly, there is an ongoing need for the powers given the CFMEU's ongoing blatant disregard for the law.

The examination powers are fair, appropriate and essential.

Spurious union argument 3 – Higher penalties for breaches of workplace laws in the construction industry are not warranted

The higher penalties in the ABCC Bill are consistent with the recommendations made in 2003 by the Cole Royal Commission. Commissioner Cole decided that *"unlawful conduct must attract serious consequences so that the rule of law may be re-established"*.[10]

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[9] Justice Wilcox, *Transition to Fair Work Australia for the Building and Construction Industry*, March 2009, Paragraph 5.109.

[10] *Royal Commission into the Building and Construction Industry*, February 2003, Final Report, Volume 1, page 155.

Similar views were expressed by Commissioner Heydon:

> "185. There is an obvious need for laws that ensure an effective deterrent against unlawful conduct. In an environment where union officials openly acknowledge that they will take industrial action to achieve the union objectives without regard to whether that action might break the laws governing protected and unprotected industrial action, there is a need for laws that expressly address what is prohibited conduct and provide strong penalties for contravention of them.[11]

The Heydon Royal Commission supported the quantum of the penalties in the ABCC Bill and commented that: *"There are strong arguments that even these penalties are too low, and that the increase should be much greater"*.[12]

The penalties in the ABCC Bill are similar to those which operated between 2005 and 2009 when there was a significant reduction in unlawful conduct in the construction industry.

The CFMEU receives millions of dollars each year in revenue from construction industry redundancy funds and from insurance products (e.g. income protection insurance) which employers are forced to purchase through pattern agreements that the CFMEU coerces employers to sign. This revenue enables the CFMEU to pursue a business model involving regular law breaking and budgeting for the consequent fines with revenue from these inappropriate sources.

As discussed above, numerous respected judges have expressed dismay at the blatant disregard that the CFMEU has for the rule of law.

Employers, employees, subcontractors and the community are entitled to expect that Parliament will implement appropriate laws to address the unlawful and inappropriate behavior that is occurring. Higher penalties are an important component of the necessary legislative changes. The existing penalties are obviously inadequate.

Spurious union argument 4 – The ABCC Bill would not lead to higher productivity

This argument was analysed and rejected by the Heydon Royal Commission. The following extract from Commissioner Heydon's final report is relevant:

> "85. Another matter that is often advanced for the restoration of the ABCC is that it led to productivity improvements. If that could be established, that would be a significant matter supporting the existence of an industry specific regulator.
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> 86. Various economic reports by Independent Economics, previously Econtech, have been advanced in support of the proposition that the introduction of the Building Industry Taskforce and the ABCC led to increased aggregate productivity in the construction industry. However, a 2007 version of those reports was heavily criticised in the Wilcox Report and later reports have been criticised by others, including the ACTU.

[11] *Royal Commission into Trade Union Governance and Corruption*, December 2015, Volume 5, paragraph 185.

[12] *Royal Commission into Trade Union Governance and Corruption*, December 2015, Volume 5, paragraph 188.

87. The various claims and counter claims were considered by the Productivity Commission Public Infrastructure inquiry report which is the most comprehensive analysis available to the Commission on this topic at the time of writing

88. One measure of productivity considered by the Productivity Commission was Australian Bureau of Statistics data on the number of working days lost due to industrial action per 1,000 workers.

89. Relevantly for present purposes, the Productivity Commission concluded, having regard to the days lost measure for the construction industry over time that 'a direct connection of lower industrial disputes to the operations of the ABCC appears highly plausible' and 'on balance, it is likely that the ABCC reduced industrial disputes'. The report also noted that days lost 'nearly doubled after the establishment of [FWBII], although again one-off events may have contributed to this'.

90. The report also noted that compared with all industries generally, there was a considerably higher number of days lost due to industrial disputation within the construction industry. Those figures are also confirmed by the Australian Bureau of Statistics data presented in the Productivity Commission's draft report concerning the Workplace Relations Framework, which shows that from 2001–2013, the construction industry had the highest average number of days lost to industrial action of any industry, and from 2010–2014 had the second highest number, being second to coal mining. However, the Productivity Commission did note in its Public Infrastructure report that the number of industrial disputes in the construction industry has substantially declined since the very high rates of the 1970s and 1990s, and further that on the basis of the data from the Australian Bureau of Statistics, 'set against the size of the construction industry, the apparent economic impacts of industrial disputes are very low'.

91. However, the report also noted that the days lost measure is unlikely to capture the full costs to businesses from industrial activity for a variety of reasons including:

    (a) the data from the Australian Bureau of Statistics does not include industrial actions such as work-to-rule, go-slows, partial work bans or secondary boycotts (nor does it distinguish between protected and unprotected industrial action);

    (b) the data only includes a dispute if it amounts to 10 or more working days lost, the result being that some brief work stoppages among large workforces, or longer stoppages by a small number of employees (not causing a stoppage of all work on a project) might not be counted in the data;

    (c) the cost of industrial action is not necessarily proportionate to the working days lost, particularly on a construction site where a short delay in relation to a time critical step will have a substantial productivity effect on the whole site;

    (d) threats of action and aborted action are not reflected in the statistics yet they may have a substantial productivity cost; and

    (e) much of the construction industry, particularly dwelling construction, is not affected by industrial action.

92. In terms of the claims concerning economic modelling of the productivity gains, the Productivity Commission's conclusions were as follows:

> [N]otwithstanding the likelihood that the [Building Industry Taskforce] and the ABCC had net positive productivity and cost impacts, the degree to which their impacts did, or even reasonably could, show up as large improvements in aggregate construction industry productivity is another matter. …
>
> The Commission's view is that given the case studies, industry surveys and other micro evidence, there is no doubt that local productivity has been adversely affected by union (and associated employer) conduct on some building sites, and that the [Building Industry Taskforce]/ABCC is likely to have improved outcomes. However, when scrutinised meticulously, the quantitative results provided by [Independent Economics] and others do not provide credible evidence that the

> [Building Industry Taskforce]/ABCC regime created a resurgence in *aggregate* construction productivity or that the removal of the ABCC has had material aggregate effects. Indeed, the available date suggests that the regime did not have a large aggregate impact.
>
> This is neither surprising, nor inimical to the need for further reform. By its nature, it is hard to isolate numerically the effects of workplace arrangements, including industrial relations, from all the other factors shaping workplace productivity, especially given small and inadequate datasets and statistical noise.

93. The report went on to explain how a 5% productivity improvement in the non-dwelling building sector – what was described as 'an extremely positive outcome' – would be nearly indiscernible in the *aggregate* productivity numbers.

94. The overall findings of the report in relation to productivity were summarised in this way:

> [T]he more stringent IR regime commencing with the establishment of the Building Industry Taskforce … is likely to have increased productivity for parts of the industry, but these effects cannot be robustly identified for the entire industry.

95. These findings, particularly those in relation to the effect of the ABCC on industrial disputes, support the continued existence of a separate industry regulator on productivity grounds. So, too, do the case studies and survey results considered in the Wilcox Report:

    (a) Comparisons put forward by Grocon Pty Ltd and Woodside Energy Limited, both of which compared major projects undertaken before the commencement of the *Building and Construction Industry Improvement Act* 2005 (Cth) and after, showed a marked reduction in lost time due to industrial disputation.

    (b) Survey results obtained by an employer body indicated that the perceptions of a significant number of industry participants were that there had been improvements in industrial harmony and productivity since the commencement of the *Building and Construction Industry Improvement Act* 2005 (Cth), that this was in part attributable to the presence of an industry watchdog, and that it was important that there be an industry monitor to ensure that workers and employers behave suitably, which accorded with the views expressed by those with whom Mr Wilcox had consulted anecdotally.

96. Moreover, the logic of events indicates that the conduct of unions in imposing blockades and work stoppages has a negative influence on productivity. When a union official causes employees to stop work, or blocks supply of goods or delivery of services to a construction site, work on the site is not done in accordance with the project works schedule. The Commission heard evidence of the means by which delay and disruption on building sites can cost the project a lot of money, for example, disruption of a simple concrete pour on a relatively small project can cost in the vicinity of $10,000-$15,000. The costs associated with acceleration of works to overcome delays may also be high. Once such occasions (should they occur over a period of a single day or several days) are multiplied in accordance with the course of conduct that the unions have adopted, the impact on productivity for individual projects, and the building and construction industry, is obvious. Moreover, delays are likely to result in damage to the commercial reputation of the contractor, with an impact on future work opportunities. In that context, the pressure on the contractor to agree to terms and conditions in enterprise agreements that may not be economically efficient is high. Indeed, if industrial disruption had no effect on the productivity of a building project and therefore its bottom line, there would be little point in the unions engaging in it.

97. Having regard to all of the available material, the argument that there is no need for an industry specific regulator cannot be sustained."[13]

[13] *Royal Commission into Trade Union Governance and Corruption*, December 2015, Volume 5, paragraphs 85-97.

Unlawful industrial action, unlawful coercion, bogus safety disputes, unlawful picketing, breaches of union entry rights, and the many other types of unlawful conduct that are commonly occurring obviously have a large, negative impact on productivity. This is common sense. It is also common sense to conclude that there will be significant productivity improvements if this unlawful conduct is effectively addressed.

Spurious union argument 5 – The ABCC Bill would adversely impact upon workplace safety

Perhaps the most spurious of all union arguments about the ABCC Bill is that it would adversely impact upon workplace safety.

Work health and safety is a matter that is largely regulated by State and Territory laws and Regulators. The ABCC is responsible for investigating and prosecuting breaches of industrial laws, not WHS laws. However, there are two areas where the ABCC has an important role in respect of alleged WHS issues:

1. Bogus safety disputes; and

2. Misuse of WHS entry rights by union officials.

Bogus safety disputes are a major problem in the construction industry. Construction unions very frequently use bogus safety disputes as an industrial weapon against employers. This has a negative impact on the safety of workers because these union tactics breed employer cynicism about safety issues raised by construction union officials.

As stated by Commissioner Cole in his final report: *"Occupational health and safety is often misused by unions as an industrial tool. This trivialises safety, and deflects attention away from real problems."*[14]

The Heydon Royal Commission also identified this problem. In his final report, Commissioner Heydon said:

> "79. Safety on work sites is paramount. No rational person would dissent from that view. It does not follow from that view, and it is not presently the law, that union officials should be permitted untrammelled access to work sites to ensure that they are safe. To say that safety is paramount merely begs the question of how it should be regulated.
>
> 80. The ACT CFMEU and CEPU case studies strongly suggest that the trust that underpins the rights conferred on permit holders has been abused. The scheme has fallen into disrepute in the sense that participants in the industry in the ACT believe that the CFMEU exercises its rights of entry to apply industrial pressure, and in particular pressure to seek to ensure that all industry participants are signed up to CFMEU EBAs. For example, a scaffolder, in the course of explaining why he agreed to sign a CFMEU EBA, said that he felt that if he didn't the CFMEU would 'maybe go around the builders saying, recommending to use someone else or finding safety issues for an excuse to get on to sites'. There was other evidence to similar effect.

[14] *Royal Commission into the Building and Construction Industry*, February 2003, Final Report, Volume 6, page108.

81. The threat made by the Secretary of the ACT Branch of the CFMEU to the principal of a building company in 2014 spells out the approach adopted:

> 'If you don't sign up [to a CFMEU EBA], you will find you can't get access to a cement pour, there will be trades you can't access – you won't be able to build … there will be all sorts of authorities and officials visiting to check you over and close you down'.

82. Statements such as this indicate that a perception that the CFMEU uses safety as an industrial tool is well justified.

83. There were examples of these apprehensions in other case studies. Part of the strategy implemented by the Thiess John Holland Joint Venture on the Eastlink Project (one of the AWU case studies) was to avoid non-working delegates because of their tendency to 'create often bogus safety issues'. In the Maritime Employees Training Fund case study, an employer was prepared to make large payments to a union controlled training fund because of a fear that fictitious industrial issues ('fabricating issues that are maybe not really there'), some of which were related to safety, would be raised.

84. Concerns from industry participants of this kind are rationally based. The conduct of officials in the case studies referred to above reveals a lack of motivation by genuine safety concerns and defeats the purpose for which rights of this kind are conferred.

The Bill addresses the problem of bogus safety disputes by implementing a definition of "*industrial action*" with a reverse onus of proof. Persons who stop work and allege that their actions are based on a reasonable concern about an imminent risk to their health or safety (and hence is not unlawful *"industrial action")* would bear the onus of proving that such imminent risk existed. The reverse onus of proof is consistent with the successful laws that were in place between 2005 and 2009, following the Cole Royal Commission.

An issue closely connected to bogus safety disputes, is the misuse of WHS entry rights by union officials. Under the *Fair Work Act 2009* and State WHS laws, less stringent union right of entry requirements apply for WHS purposes, than those that apply to entry for industrial purposes (e.g. the requirement to give 24 hours' notice does not apply where the entry is for WHS purposes). This provides an incentive to union officials to claim that there are safety problems on site and they are entering the site for this reason. To address this problem, Commissioner Heydon recommended the following:

> "85. The solution this Chapter recommends is that entry without 24 hours' notice only be permissible in circumstances where a permit holder has a reasonable concern (a) that there has been or is contravention of the Act and (b) that that contravention gives rise to a 'serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard'."

The existing WHS right of entry provisions give unions too much power to enter workplaces on the basis of bogus claims about WHS matters. These powers should be tightened through appropriate legislative changes as recommended by the Heydon Royal Commission. The ABCC Bill does not deal with right of entry issues and therefore this issue is best addressed in a different Bill. It is extremely important that the existing WHS right of entry provisions are not expanded any further.

Apart from the definition of *"industrial action"* (which is discussed above), the other provisions of the ABCC Bill which deal with WHS matters are very similar to those in the current *Fair Work (Building Industry) Act 2012*. The provisions in the Bill and the equivalent existing provisions are identified in the following table:

Provision in ABCC Bill	*Provision in Fair Work (Building Industry) Act 2012*
37 – Federal Safety Commissioner	29 – Federal Safety Commissioner
38 – Functions of Federal Safety Commissioner	30 – Functions of Federal Safety Commissioner
39 – Minister's directions to Federal Safety Commissioner	31 – Minister's directions to Federal Safety Commissioner
40 – Delegation by Federal Safety Commissioner	32 – Delegation by Federal Safety Commissioner
41 – Acting Federal Safety Commissioner	33 – Acting Federal Safety Commissioner
42 - Consultants	34 – Consultants
43 – WHS Accreditation Scheme for Commonwealth building work	35 – WHS Accreditation Scheme for Commonwealth building work

Spurious union argument 6 – The Building Code under the ABCC Bill would impede enterprise bargaining in the construction industry

A key recommendation of both the Gyles Royal Commission in New South Wales and the Cole Royal Commission was the importance of using the substantial purchasing power of Government to stimulate reform and ensure that construction industry participants operate within the law.

The final report of the Cole Royal Commission recommended a strengthening and extension of the National Construction Code and the Implementation Guidelines for the National Code, as well as greater rigour in the Australian Government's implementation of these instruments. The 2006 Implementation Guidelines implemented the Cole Royal Commission's recommended approach. Unfortunately, between 2009 and early 2013 the Implementation Guidelines were progressively watered down with a consequent reintroduction of many inappropriate and unproductive enterprise agreement provisions and site practices as a result of union coercion.

The current *Building Code 2013*, which was made under the *Fair Work (Building Industry) Act 2012*, is inadequate. The ABCC Bill provides for the making of a new Building Code.

A strong and effective Building Code would have real and measurable impacts on the behaviour of building industry participants with consequent benefits for the whole community.

Unions in the construction industry routinely use the commercial risk faced by contractors as a lever to secure industrial concessions. This results in restrictive work practices and cost burdens which drive up project costs to the detriment of Governments, industry and the wider community. The importance of an appropriate Building Code in breaking this cycle cannot be understated. An appropriate Building Code would have the effect of imposing a commercial risk on contractors that far outweighs the cost of capitulating to the unreasonable demands of unions. To be removed from future tender lists would have catastrophic implications for a major contractor. Billions of dollars of work would be at stake.

The 2006 version of the Implementation Guidelines empowered contractors to remain steadfast when faced with union coercion. Code-compliance was essential. Unions came to realise that it was pointless trying to coerce a contractor to breach the Implementation Guidelines because the contractor had no choice other than to comply. Unions also came to realise that the jobs of their own members relied on Code-compliance.

The pattern enterprise agreements which the construction unions are currently coercing employers to sign contain very unproductive and inflexible provisions, and give far too much power to the unions on building sites. This needs to be addressed through a strong and effective Building Code, as is provided for in the ABCC Bill.

It is important that the new Building Code only apply to enterprise agreements made after the date when the Code comes into effect under the ABCC legislation. This will enable everyone to understand the Code requirements when they are making a new enterprise agreement, and enable the construction industry to move forward in a productive manner.

Conclusion

Ai Group strongly supports the ABCC Bill and urges the Committee to recommend that the Bill is passed.

RO Bill

As mentioned above, the RO Bill was the subject of three Senate Committee inquiries during the last period of Government, each of which Ai Group was heavily involved in.

Unlike most other peak councils, Ai Group is a registered organisation in its own right. We are governed under the *Fair Work (Registered Organisations) Act 2009*, the legislation that the RO Bill would substantial amend. Ai Group's predecessor organisations were first registered in the NSW industrial relations system in 1902 and federally in 1926. We have maintained continuous registration ever since.

Given the unacceptable and unlawful conduct that was uncovered by the Heydon Royal Commission in respect of some (but not all) unions, it is evident that the existing laws which regulate registered organisations are inadequate. Registered organisations which comply with the law and have appropriate standards of governance have nothing to fear from the RO Bill.

When the original RO Bill was introduced into Parliament in 2013, Ai Group expressed a number of practical concerns about the original version of the Bill. While supporting the objectives of the RO Bill, we were keen to ensure that the regulatory burden imposed on registered organisations and their officers was reasonable. Ai Group's officers are CEOs / senior executives of Ai Group member companies who give up their time for no compensation, to represent the interests of industry.

The RO Bill was amended to address Ai Group's concerns, consistent with Senate Committee recommendations, including:

- Inserting a list of practical exclusions from the disclosure requirements, based on those in the *Corporations Act 2001*;
- Providing a threshold for financial disclosure obligations;
- Providing that material personal interest disclosures will only be required by officers whose duties relate to the organisation's financial management; and
- Allowing the Registered Organisations Commissioner to grant exemptions from the statutory training requirements for officers if an individual can demonstrate significant knowledge in the relevant areas.

The above amendments were included in the *Fair Work Amendment (Registered Organisations) Bill 2014 [No.2]* which was introduced into Parliament on 19 March 2015 and they have been included in the version of the RO Bill that was introduced into Parliament on 31 August 2016.

Ai Group supports the RO Bill, as amended, and urges the Committee to recommend that the Bill is passed.