



Innes Willox
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Dear Senator

Re. **ABCC Bill and Registered Organisations Bill**

Congratulations on your election to the Senate. The Australian Industry Group (Ai Group) looks forward to working with you to achieve worthwhile reforms for the benefit of the Australian community. Ai Group is one of Australia's largest industry groups. We represent businesses in the manufacturing, construction, ICT, transport, defence, automotive, food, mining services, health, labour hire and many other industries.

As you are aware, the *Building and Construction Industry (Improving Productivity) Bill* (ABCC Bill) and the *Fair Work (Registered Organisations) Amendment Bill* (RO Bill) were double-dissolution triggers for the recent federal election and will shortly be put before the new Parliament.

We are writing to seek your support for both of these Bills and to seek a meeting with you to discuss why their passage is important and of course any other issues which may be of interest to you.

ABCC Bill

The ABCC Bill would deliver vital reforms to the building and construction industry and the broader community. The Bill has been the subject of a number of Senate Committee inquiries, each of which we have been heavily involved in. The case for reform is overwhelming.

Unlawful and inappropriate conduct is being constantly and widely displayed by the CFMEU and other construction unions. Numerous respected judges have expressed dismay at the blatant disregard that the CFMEU has for the rule of law.

In a judgment¹ 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 willingness to engage in contravening conduct supports the view that earlier penalties, some of them severe, had not had a deterrent effect*”.

¹ *Director of Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union* [2015] FCA 1213 at [62]-[63]:

In a judgment handed down a few months later in December 2015² imposing further fines on the CFMEU, Justice Jessup of the Federal Court described the CFMEU's record of unlawful behaviour as “*egregious*”.

In the final report of the Royal Commission into Trade Union Governance and Corruption, Justice Heydon said: “*The continuing corruption and lawlessness that has been revealed during the Commission suggests a need to revisit, once again, the regulation of the building and construction industry.*”³ In his report, Justice Heydon expressed strong support for the ABCC Bill.

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

- The re-establishment of the Australian Building and Construction Commission (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 industry had never been a better place for employees to work and never been a better place to invest.

The Bill would reinstate the ABCC and preserve the compulsory interview powers which are currently held by Fair Work Building and Construction (FWBC). These powers were recommended by the Cole Royal Commission. They have been in place since June 2005 – first with the ABCC and then with FWBC. Throughout this period, the powers have been used fairly and appropriately. The use of the powers is subject to oversight by the Commonwealth Ombudsman. 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 blatant disregard for the law.

The unions make ongoing attempts, through misleading information and spurious arguments, to convince people that the interview powers are draconian. 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. The powers are similar to those possessed by ASIC, the ACCC and the ATO.

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

³ Final Report, Chapter 8, paragraph 3.



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Prior to the interview powers being implemented in 2005, the CFMEU had adopted a blanket policy of refusing to allow its officers, staff and delegates to be interviewed by the ABCC, which frustrated many investigations into unlawful conduct.

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 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 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 they are coerced by unions 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. Employers, employees, subcontractors and the community are entitled to expect that Parliament will implement appropriate laws to address this unlawful and inappropriate behaviour.

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 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. A strong code is needed to stop employers capitulating when faced with union coercion. Employers will not capitulate when billions of dollars of government project work is at stake. When a strong building code is in place, even the unions understand the need to comply with it because many thousands of their members work on projects funded by the Federal Government.

We would be happy to provide any further information that you may require about the ABCC Bill.

RO Bill

The RO Bill has been the subject of a number of Senate Committee inquiries, each of which we have been 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 substantially amend.



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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 Bill was amended to address Ai Group's concerns including:

- Inserting a list of practical exclusions from the disclosure requirements, based on those in the *Corporations Act 2001*;
- Providing for 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.

Ai Group supports the RO Bill, as amended. We understand that the version of the Bill which will be introduced into Parliament will incorporate the above amendments. We urge you to support the Bill.

We would be happy to provide any further information that you may require about either Bill and, once again, congratulations on your election to the Senate.

Yours sincerely

A handwritten signature in blue ink that reads 'Innes Willox', with a horizontal line underneath.

Innes Willox
Chief Executive