

Senate Education and Employment Legislation Committee Inquiry into Building and Construction Industry (Improving Productivity) Bill 2013

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Date: 27 September 2016

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27 September 2016

Senator Bridget McKenzie
Chair of the Senate Education and Employment Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator McKenzie,

**Re: Senate Education and Employment Legislation Committee Inquiry into the
Building and Construction Industry (Improving Productivity) Bill 2013**

Thank you again for the opportunity to provide comment to the Senate Education and Employment Legislation Committee Inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013, referred on 1 September 2016. Whilst we are grateful for the opportunity to express our support for this critical piece of legislation, we also note the short timeframe in which to respond diminishes our ability to more comprehensively submit a response.

The National Electrical and Communications Association (NECA) is the peak industry body for Australia's electrical and communications contracting industry that employs more than 145,000 workers with an annual turnover in excess of \$23 billion. We are a key component of the nation's economic fabric. Our 4,000 members operate businesses throughout Australia, across the building, infrastructure and commercial construction sectors including the provision of these services to all areas of Local, State and Federal Government.

Additionally, NECA through its Group Training and Registered Training Organisations maintains a significant presence within the industry training space, maintaining responsibility for the employment, learning and skilling of more than 5,000 apprentices who will develop into future electricians and contractors.

As the peak representative body for electrical contractors, NECA is well qualified to provide background input into this inquiry, given our strong credentials and the critical importance of this legislation for our membership, across Australia.

NECA believes that the reinstatement of the Australian Building and Construction Commission (ABCC) and the passage of the Building and Construction Industry (Improving Productivity) Bill 2013 are not only in the best interests of the construction sector, but also the national interest. Following the former Senate's rejection of this Bill and the Fair Work (Registered Organisations) Amendment Bill on two separate occasions, the Federal Government used Section 57 of the Australian Constitution to

call a Double Dissolution of both houses of Parliament with a subsequent election held on July 2nd, 2016.

Given the result of the election, NECA believes the Government has a mandate to see this legislation supported in the Senate, enabling the re-establishment of the ABCC¹.

Additionally, we argue that the findings of the Royal Commission into Trade Union Governance and Corruption (TURC) provide further, undeniable evidence of the urgent need for reforms and the return of the ABCC.

Why the ABCC should be reinstated

NECA has been a long term advocate for the return of the Australian Building and Construction Commission (ABCC). We strongly believe that the reinstatement of this body, which was removed by the introduction of the Fair Work (Building Industry) Act 2012, is in the national interest and will be a positive catalyst for change and transparency in the building and construction sector, assisting to underpin the growth in productivity that our industry requires².

The reinstatement of the ABCC is critical for electrical contractors and will lead to a range of positive outcomes, including:

- Increased productivity across the building and construction sector;
- Community and business confidence;
- A reduction in lost work days;
- Curtailing of unlawful behaviour;
- Lower construction costs
- More affordable infrastructure;
- Greater value for taxpayer/ratepayer expenditure on public buildings
- More affordable residential homes (units)

The ABCC was first established via the Building and Construction Industry Improvement Act 2005 (BCII Act), in response to the recommendations of the 2001 Cole Royal Commission into the Building and Construction Industry. At that time, NECA provided extensive evidence of unlawful behaviour within the sector and

¹ <http://neca.asn.au/content/re-elected-government-now-has-mandate-re-establish-abcc>

² <http://neca.asn.au/content/reinstating-abcc-national-interest>

called upon the Federal Government to take significant steps to curb coercion and stand over tactics, inappropriate activities and other illegal acts.

The final report of the Cole Royal Commission was tabled in March 2003 and found that the building and construction sector was characterised with “widespread disregard for the law” and noted that existing bodies lacked the sufficient power and resources to enforce and uphold the law.

NECA believes that the operation of the ABCC, from October 2005 until its dissolution in 2012, served to improve the productivity and performance of the sector, which enabled the broader economy to benefit through more efficient construction of new development and infrastructure and a reduction in lost working time through industrial action.

Prior to the establishment of the ABCC, the construction industry lost an annual average of 160,000 hours due to industrial stoppages, however during the tenure of the ABCC, this figure was reduced to an average of just 55,300 days.

NECA is concerned that the standards of behaviour, identified by both the Cole Royal Commission and the Trade Union Royal Commission have returned to the sector, following its abolition and replacement by the Fair Work (Building Industry) Act 2012 (FW(BI) Act). This behaviour threatens the viability and construction of nationally significant infrastructure projects and we support calls for its return, noting the potential benefits and savings that could be made to the national economy³.

The many instances of industrial stoppages and unlawful activity across the sector has led to low productivity and a rise in costs to deliver new public infrastructure. Local, State and Federal Governments are the largest funders of building projects and given their responsibility for the development of universities, hospitals, defence facilities, rail lines, roads, libraries and community centres using taxpayers’ funds, often as a means to provide a local economic stimulus, it is critical to ensure that these projects are delivered efficiently and without waste of taxpayers’ money.

The Building and Construction Industry (Improving Productivity) Bill 2013 re-establishes the ABCC by replacing the Office of the Fair Work Building Industry Inspectorate with an independent regulator with stronger and more effective powers to act against unlawful activities and coercion with stronger penalties for those found guilty.

³ <http://www.theaustralian.com.au/national-affairs/industrial-relations/bring-back-the-abcc-says-terence-cole/news-story/340f300e8bb63b78f234a4a3beea55c1>

The present Fair Work Building Construction (FWBC) Sector, whilst active with a record number of industrial court cases before it⁴, remains a heavily watered down version of the ABCC that lacks the real authority and teeth to discourage unlawful activity. The FWBC's Director, Nigel Hadgkiss, APM, is quoted in the attached media release as saying *"Unlawful conduct is worse than ever across the nation's building sites. Moreover, the majority of those we continue to put before the courts are repeat offenders, which the courts have noted have failed to show contrition."*

NECA strongly supports tougher penalties to discourage unlawful activities within the building and construction sector and in August 2015, in conjunction with other industry associations within the building and construction sector, called upon the Senate to ratify this legislation⁵.

Trade Union Royal Commission

NECA believes that the findings of the final report of the Royal Commission into Trade Union Governance and Corruption (TURC) serve to reinforce the need for the re-establishment of the ABCC⁶.

The Commission investigated 75 cases and conducted 189 days of hearings across Australia's capital cities over a 21 month period. During this time, 500 witnesses gave public evidence and more than 2,000 notices to provide documents and evidence were submitted. A total of 79 recommendations were made to improve the governance of registered organisations and improve the management of construction sites across Australia.

Given, Commissioner Justice Dyson Heyson QC's findings that the labour movement contained "widespread" and "deep seated" misconduct within its ranks and that this behaviour was not simply "isolated" or the work of a few "rogue officials", it is clear to our members and the wider electrical contracting industry that change will not be achieved without the enactment of the type of reform outlined within this bill.

The fact that 45 individuals were referred to authorities for possible criminal charges or civil action is a terrible indictment upon the building and construction sector and the present situation should not be allowed to continue without reform and legislative change.

⁴ <https://www.fwbc.gov.au/fwbc-has-record-number-cases-courts>

⁵ <http://neca.asn.au/content/neca-calls-senators-reinstate-abcc>

⁶ <http://neca.asn.au/content/royal-commission-findings-reinforce-need-abcc-return-0>

The re-establishment of the ABCC, the appointment of an ABCC Commissioner and an independent, stand-alone regulator with stronger powers to monitor unlawful activity with greater penalties for corrupt conduct, as per the range of recommendations made by TURC, will ensure greater levels of transparency, encourage lawful activity through harsher penalties and reduce corrupt activities. We are also clear in our belief that greater transparency will ultimately flow through to lower construction costs and stronger employment growth across the sector.

A recent example of last minute strike action by ETU workers in Queensland where threats were against small businesses who failed to approve leave applications for union strike action is the type of behaviour that needs to be stamped out by the ABCC and accompanying legislation.

Evidence uncovered in TURC and the Cole Royal Commission also highlighted breaches of Workplace Health and Safety Act (the Act) and we support legislation within this bill that seeks to increase civil penalties for contraventions of the Act.

In summary, NECA believes that the Senate must support this legislation. The evidence highlighted in both Royal Commissions strongly suggests that a return of the ABCC as an independent, stand-alone regulator with sufficient powers to deal with unlawful activities, is the best chance to create a positive change within the building and construction sector.

NECA argue that it's no longer an option to do nothing when it comes to this critical piece of legislation, particularly with regards to the delivery of public infrastructure being such a vital part of Australia's modern economy. It is critical that nationally significant projects are delivered with maximum efficiency.

NECA strongly believes that the Construction Industry (Improving Productivity) Bill 2013 should be passed as it's in Australia's national interest to see a return to lawful behaviour within a sector that is critical to the nation's future prosperity.

Thank you again for the opportunity to comment on this bill and we look forward to seeing its successful passage in the Senate.

Yours faithfully,

Suresh Manickam
Chief Executive Officer
National Electrical and Communications Association (NECA)