



Submission to the

Senate Education and Employment Standing Committee

on

The Building and Construction Industry (Improving productivity)
Bill 2013 [No.2]

&

The Building and Construction Industry (Consequential and
Transitional Provisions) Bill 2013 [No.2]

NSW Farmers' Association
Level 6 35 Chandos Street
St Leonards NSW 2065

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NSW Farmers' Association Background

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.



1 About NSW Farmers Association

NSW Farmers Association is Australia's largest state farming organisation representing the interests of the majority of commercial farm operations throughout the farming community in NSW. Through its commercial, policy and apolitical lobbying activities it provides a powerful and positive link between farmers, the Government and the general public.

NSW Farmers is the key state representative body for both intensive and extensive industries ranging from broad acre, meat, wool and grain producers to more specialised producers in the horticulture, dairy, poultry meat, egg, pork, oyster and goat industries. As part of its services, NSW Farmers provides workplace relations services to its members, offering advice, assistance and representation in employment related matters.

Contact details

Level 6, 35 Chandos St., St Leonards, NSW, 2065

Ph. 02 9478 1000

Fax 02 8282 4500

Email: info@nswfarmers.org.au

Queries should be directed to:

Gracia Kusuma

Industrial Relations Manager



2 Introduction

- 2.1 The NSW Farmers Association (“the Association”) welcomes the opportunity to provide commentary to the inquiry on *The Building and Construction Industry (Improving productivity) Bill 2013 [No.2]* & *The Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]* (“the Bills”).
- 2.2 The Association believes that the conduct of operators in the Building and Construction Industry impacts upon the agricultural sector and other industries that are reliant on such operators to build infrastructure and complete projects that are relied upon by primary producers for the transport and carriage of goods including by road, rail, through ports and distribution channels. To this end, the agricultural sector believes that their conduct requires regulation.

3 Submissions

- 3.1 The Association believes that the level of regulation provided for in the Bills, including the re-establishment of the Australian Building and Construction Commission (ABCC), is necessary in order to ensure that:
- 3.1.1 Building and construction projects are carried out in a regulated manner, consistent with laws governing employee entitlements, industrial action, consumer law, anti-competitive behaviour and generally, building and construction standards;
 - 3.1.2 There is an increased level of consumer and public confidence in the building and construction industry;
 - 3.1.3 Building and construction sites/works proceed without undue or unlawful delay and in the event that they are disrupted for unlawful reasons, there is scope for such disruptions to be addressed quickly by a Regulator;
 - 3.1.4 Principals who engage building and construction operators are not impacted by rogue operators and damage or delay caused by such operators or their actions;
 - 3.1.5 Union activity in the building and construction industry is controlled and regulated in accordance with the laws relating to such activity (in conjunction with relevant standards established by legislation such as the *Fair Work Act 2009*);
 - 3.1.6 When building and construction is undertaken and it relates to infrastructure and other projects that are directly or indirectly used by agriculture in the distribution of primary industry products or machinery relevant to primary industry production, the delivery of such products or machinery is not adversely affected by any issues that could otherwise be avoided through regulation under the Bills or the ABCC.
- 3.2 The Association points to the findings arising out of the Heydon Royal Commission in support of its position with respect to the Bills and the re-establishment of the Australian building and Construction Commission.



3.3 The Heydon Royal Commission Final Report:

- 3.3.1 Stated that while it was not asked to make a finding with respect to Anti-Competitive behaviour in the building and construction industry, there was sufficient evidence to form a taskforce in conjunction with the Australian Competition and Consumer Commission to investigate allegations and evidence suggesting price fixing, collaborative behaviour and cartel behaviour;
- 3.3.2 Issued a warning to person involved in or suspected to be involved the behaviour mentioned in 3.3.1; and,
- 3.3.3 Made recommendations that:
 - 3.3.3.1 There should continue to be a building and construction industry regulator, separate from the Office of the Fair Work Ombudsman, with the role of investigating and enforcing the *Fair Work Act 2009* (Cth) and other relevant industrial laws in connection with building industry participants (Recommendation 61);
 - 3.3.3.2 Legislation be enacted conferring the building and construction industry regulator with compulsory investigatory and information gathering powers equivalent to those possessed by other civil regulators. The powers set out in the *Building and Construction Industry (Improving Productivity) Bill 2013* (Cth) appear appropriate in this regard (Recommendation 62); and,
 - 3.3.3.3 The building and construction industry regulator continue to investigate and enforce the *Fair Work Act 2009* (Cth) and other existing designated building laws. The power of the building and construction industry regulator to commence and maintain enforcement proceedings should not be constrained according to whether any other proceedings in respect of the same conduct have been settled. Accordingly, ss 73 and 73A of the *Fair Work (Building Industry) Act 2012* (Cth) should be repealed (Recommendation 65).

4 Conclusion

We submit that the review of the *Building and Construction Industry (Improving productivity) Bill 2013 [No.2]* & the *Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]* should be passed by parliament as soon as possible in order to, at the very least, implement a number of the recommendations suggested by the Heydon Royal Commission. The effects of the building and construction industry are not just confined to that industry but the actions of all those involved in the building and construction industry have ramifications and flow on effects to other industries, including agriculture.