



MASTER BUILDERS
AUSTRALIA

SUPPLEMENTARY SUBMISSION TO
Senate Education, Employment and Workplace Relations
Committee

on

Building and Construction Industry Improvement Amendment
(Transition to Fair Work) Bill 2011

9 February 2012

Master Builders Australia Ltd

ABN 68 137 130 182

building australia



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1 INTRODUCTION

- 1.1 This submission is made by Master Builders Australia Ltd (Master Builders).
- 1.2 Master Builders represents the interest of all sectors of the building and construction industry. The association consists of nine State and Territory builders' associations with over 33,000 members.

2 PURPOSE OF SUBMISSION

- 2.1 Master Builders thanks the Committee for the opportunity to give oral evidence on 3 February 2012. We have examined the proof of the Hansard in respect of this matter and this submission emanates from some of the issues that have been raised during the course of providing evidence.
- 2.2 We have no corrections to make to the Hansard that has been made available in proof form to Master Builders.

3 WITHDRAWAL OF PART OF PARAGRAPH 6/7 OF PRIOR WRITTEN SUBMISSION

- 3.1 At the commencement of Master Builders' oral evidence, Master Builders sought to withdraw part of paragraph 6.7 of our submission. The Chair asked for that step to be undertaken in writing. Paragraph 6.7 is withdrawn to the extent that it includes the words "Master Builders considers that this might be so that the Parliament does not have the capacity to set aside relevant direction and on that basis opposes s12(3). We note that proposed s12(3) was not in the 2009 Bill".
- 3.2 Master Builders notes that the speculation contained in the words which we now seek to delete is incorrect in the context of s44 of the *Legislative Instruments Act* 2003, as mentioned in paragraph 1.6 of the submission from the Department of Education, Employment and Workplace Relations (the Department).

4 COMMENCEMENT OF PROCEEDINGS UNDER PARTICULAR STATUTES

- 4.1 Master Builders was asked at various points in the course of questioning about the issue of whether or not a significant percentage of successful cases had been brought by the Australian Building and Construction Commission (ABCC) under the provisions of the *Fair Work Act* or the *Workplace Relations Act*. Following further

research we have ascertained that these matters are not published by the ABCC as a matter of public record. Hence, the only manner in which this proposition could be further investigated would be to, first of all, separate each case undertaken by the ABCC since its inception, determine whether or not the ABCC had been successful in that particular case (a question of how that is measured might also arise) and then to analyse the particular grounds on which the case was pursued. This analysis could be distorted by a number of factors. For example, it might be that most of the employer cases were under the *Fair Work Act* simply because they might relate to either an alleged breach of a safety net instrument since the time the ABCC has taken that work from the Fair Work Ombudsman, or it might be in respect of the initiation of proceedings under the sham contracting provisions of the *Fair Work Act*. These matters could not, of course, as a matter of law be pursued under the *Building and Construction Industry Improvement Act, 2005 (Cth)*.

4.2 Accordingly, whilst Master Builders acknowledges that the Department indicated, through the evidence of Mr Willing, that in the Department's analysis, around 50 per cent of all successful cases would have been taken under the *Workplace Relations Act* or the *Fair Work Act*, this statistic in isolation does not show that relying on the *Fair Work Act's* provisions to advance the work of the ABCC would not suffer should the industry-specific legislation be repealed and the penalties available to the courts accordingly reduced.

4.3 Master Builders does not resile from the views in the written submission.

5 CONCLUSION

Master Builders again thanks the Committee for the opportunity to provide written and oral evidence to the Committee.
