

17 July 2009

Mr John Carter
Committee Secretary
Senate Education, Employment and Workplace Relations Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: eewr.sen@aph.gov.au

Business
Council of
Australia



Dear Mr Carter

INQUIRY INTO BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT AMENDMENT (TRANSITION TO FAIR WORK) BILL 2009

I wish to make a submission on behalf of the Business Council of Australia (BCA) to the inquiry into the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009. The Business Council of Australia comprises the chief executives of Australia's top 100 companies and has a strong interest in policy affecting the business environment.

The BCA is concerned to ensure that recent improvements in the industrial climate and stability of the building and construction industries are maintained, especially at a time of general economic downturn. Ensuring that this important industry sector operates effectively and safely is critical to Australia's overall capacity to recover and grow in the future. The objects of the Act are therefore supported.

The BCA is concerned however about how these objects will be implemented. It notes, for example, the warning by the current Australian Building and Construction Commissioner (ABCC) about the possible adverse impact of the proposed dilution of penalties and powers that he believes have provided a strong deterrent to rogue behaviour in the industry in recent years.

The Wilcox Review provided guidance as to how the transfer of the functions of the ABCC to the Fair Work Authority should be organised to ensure that the overall goal of maintaining a 'tough cop on the beat' was realised. The BCA notes that the Bill accepts much of this guidance, but also introduces the new concept of exemption from the interrogation powers of the Director of the Office of the Fair Work Building Industry Inspectorate by means of application to a newly-established position of Independent Advisor.

The BCA views this proposal with great concern. Mr Wilcox was of the clear view that the interrogation powers of the ABCC should be retained for a period of at least five years. The government has not provided any clear and persuasive explanation of why it is appropriate that the Director should be deprived of these powers on the application of "interested parties".

These concerns are compounded by the lack of detail in the Bill about how this exclusion process would operate. For example:

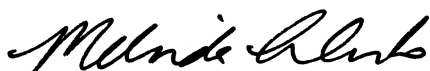
- What would constitute a 'project' for purposes of obtaining exemption?
- Who would be an 'interested party' for purposes of applying for exemption?
- Who would be entitled to be notified of an application for exemption?
- Who would be able to make representations in relation to applications (and to applications for reconsideration of the grant of exemption)?
- Would there be public hearings in relation to applications, or would the matter be dealt with only "on the papers"?
- Would the Independent Assessor be required to give reasons for her/his decision?
- Would the Independent Assessor's decisions be subject to appeal or another form of review? and
- What criteria would the Independent Assessor be required to apply in dealing with applications for exemption?

The BCA notes that at a meeting of the Committee on Industrial Legislation (CoIL) on 15 July 2009, Departmental officials provided some level of detail in relation to: the definition of "interested person"; what would constitute an "existing project" (in relation to which, exemption would not be available); the criteria to be used by the Independent Assessor in considering applications for exemption; and the criteria to be used by the Presidential Member of the Administrative Appeals Tribunal in deciding whether to issue a coercive notice.

Whilst this further information was helpful, it did nothing to allay the BCA's concerns about the concept of exemption, and did not provide clear and comprehensive answers to the points of detail raised by business representatives at CoIL, and as outlined above.

In light of the foregoing, the BCA considers that the most appropriate course would be for the Bill to be delayed until such time as the government can provide clear answers to the detailed issues raised above – bearing in mind that the BCA remains of the view that the entire concept of exemption is inappropriate. If the Bill is to pass in something like its present form, the BCA strongly urges that the operation of the legislation be reviewed by the Senate Committee after a period of 12 months.

Yours sincerely



Melinda Cilento
Deputy Chief Executive