



We speak for air-conditioning

17 July 2009

Mr John Carter
Secretary
Senate Standing Committee on Education,
Employment, and Workplace Relations
Po Box 6100
Parliament House
Canberra ACT 2600

By email eewr.sen@aph.gov.au

1. The Airconditioning and Mechanical Contractors' Association of Australia (AMCA) is the industry association representing and promoting the air conditioning and mechanical services industry along with the well being of its members.
2. AMCA acts as the voice of the industry in dealing with governments at all levels, other building and construction and service industry groups, and the unions.
3. AMCA is the only industry and employer association that is exclusively dedicated to the air conditioning and mechanical services industry. The Association represents its members in a range of ways. It actively participates in a wide range of policy and advocacy committees at the National and State levels. These committees deal with matters related to building and construction procurement, standards, regulation, industrial relations, and occupational health and safety.
4. Since its inception in the early 1960's, AMCA's objectives have been to promote and protect the interests and welfare of the air conditioning and mechanical services industry, its members, and the public they serve.
5. Our members design, install, and provide ongoing service of air conditioning and mechanical ventilation systems. In doing so they:
 - Have years of experience in the industry
 - A proven record of achievement in the installation of commercial and industrial plant
 - Have worked on the most complex projects in Australia.
 - Maintain all of the appropriate licences and the regulatory requirements.
 - Train and develop their staff.

- Have adopted sound occupational safety and health workplace-based programs that serve the interests of employers and employees.
6. AMCA has more than 500 companies as members Australia wide who employ thousands of employees including: sheetmetal workers, refrigeration mechanics, plumbers, drafting officers, clerical and administrative staff, supervisors and managers.
 7. Building and construction is a major industry in the Australian economy. Based upon the most recent data it accounts for 7% of GDP and 9% of total employment which represents some 900,000 workers.
 8. Prior to the establishment of the Building Industry Taskforce in October 2002 the industry was rife with coercive behaviour by trade unions officials in particular. Abuse of power was commonplace. Specialist subcontractor employers have very little power to resist unions where industrial action is taken. Delays in a project attributable to a subcontractor are likely to result in liquidated damages. With SMEs predominating in the sector, low profit margins being commonplace the specialist subcontractor simply cannot stand up to the unions who have in reality very little commercially at stake in a dispute.
 9. Based on experience fear of retribution from unions against specialist sub-contractors is always present.
 10. Our personal observation of some union officials is that they rely very heavily on their own personal power to influence colleagues and consequently physical intimidation and verbal abuse are the order of the day to achieve their objectives. We have noted that to achieve success within the union movement, domination by any means is applied and there is often a sense of paranoia about their own personal power and positions. We realize this statement is a generalisation, but it seems to be carried into the construction workplace. This type of behaviour requires a policeman approach to prevent the law of the jungle from prevailing.
 11. The evidence to the Cole Royal Commission documented this situation better than we can.
 12. Since the introduction of the Australian Building and Construction Commission and its predecessor the Building Industry Taskforce, extreme behaviour on construction sites has been curtailed but not removed in its entirety.
 - Statistics from the Australian Bureau of Statistics reveal that there was a significant decrease in industrial action from the time that the Taskforce and ABCC came into operation.
 - Feedback from our members is consistent with the findings of the Australian Constructor's Association report of August 2007, entitled

"Four Years On." The report however questioned whether the situation has improved permanently.

13. AMCA's policy approach to the ongoing need for a strong compliance body is based upon --
 - A primary position of there being no change to the current arrangements. However we accept the government will implement its election commitment to transfer the ABCC to a specialist division of Fair Work Australia.
 - At the completion of the change process AMCA wants a compliance body that has the same powers of investigation and prosecution as the ABCC. Maintenance of the resources presently available to the ABCC should be maintained.
 - The behaviour of trade unions has changed since the introduction of the Building Industry Task Force and the ABCC. Any diminution in the visible presence of a compliance body will signal that it is acceptable to return to the bad old days of unlawful industrial behaviour.
 - Commissioner Cole was correct to identify a culture of unlawful behaviour in the industry. Embryonic steps have been taken to change this culture. Any steps to lessen the penalties for a breach of an agreement or unlawful behaviour will be a signal to the parties that compliance is no longer important.
14. The Building and Construction Industry Improvement Act imposes obligations and penalties on the building and construction industry in excess of those that apply to other industries. The question arises as to whether these added obligations and penalties can be justified. Our submission is they can.
15. The government has been consistent about its goal of transferring the ABCC to a specialist division of Fair Work Australia. AMCA has never believed this is the best way to go forward and ensure lawful behaviour on construction sites. We support maintenance of the status quo. With reluctance we accept the government decision in this matter and therefore want to work in a constructive way to achieve the outcome that is consistent with the government's public commitments.
16. On numerous occasions both the Prime Minister and Deputy Prime Minister in her ministerial responsibility for this arm of government, has talked about the government commitment to ensure lawful behaviour on construction sites is the norm.

"The Rudd Labor Government is committed to ensuring that all participants in the building and construction industry comply with the workplace laws to the letter.

The Rudd Labor Government has no tolerance for conduct which breaks the law whether it be unlawful industrial action or underpayment of employees.

It is the intention of the Rudd Labor Government to always have a tough cop on the beat in the building and construction industry" (Media release 3 April 2009.)

17. AMCA submits that the Bill before the Senate establishes arrangements which are not in accord with these sentiments.
18. Union officials complain that building workers are treated differently to other workers. They ask the rhetorical question -- why should they be treated differently? The answer to the question in our view is simple -- because they behave differently. If they were to behave in a lawful manner like other employees, they would not be treated differently.
19. To support this viewpoint we direct attention to 2 disputes in Victoria in the recent past. First, the very public and violent actions taken over an extended period of time on the Westgate Bridge project. This dispute saw significant confrontation with police and attacks on property.
20. The second recent example that illustrates the continuation of unlawful conduct relates to a dispute involving the AWU, AMWU, CEPU and CFMEU at the Patricia -- Baleen gas plant at Newmerella, East Gippsland. There was a picket line there for some time harassing employees entering the site. Union action was directed at contractors who engaged employees under non-union collective agreements. The picket line installed padlocks on the company gates, engaged in verbal abuse, intimidation and threatening behaviour at the employees who endeavour to enter the site.
21. The unions often claim the ABCC adopts a discriminatory approach to prosecutions, that is, they take action against union officials more so than employers. We understand that 87% of all cases taken to the courts by the ABCC have been prosecuted successfully. Importantly on this point, Justice Wilcox in his report never suggested the ABCC had misused its powers.
22. Against this background, AMCA believes the government has gone too far to accommodate the union demands to weaken the ABCC. In support of this viewpoint we draw attention to the following issues.
 - The financial penalties that can be imposed by the courts when unlawful behaviour is proven have been reduced significantly. We believe they have been reduced to the point they will no longer be a deterrent to change behaviour.

The record of industrial relations particularly in Victoria and Western Australia remains poor. Recent disputes support this position. We believe that if the penalties are taken away as a deterrent, unlawful behaviour will increase markedly.

- Under the BCII Act the courts were able to award costs where the judge believed it to be appropriate. This will no longer be possible even in the case of the worst abuses of the law.

When this issue is added to the reduced penalties we believe the level of deterrent through the imposition of penalties will be almost non-existent.

- The Director of the specialist division of Fair Work Australia must seek the approval of a Presidential Member of the AAT prior to undertaking an examination. We submit this process will have the effect of hampering and limiting the ability of the director to act in a timely manner in response to alleged breaches of the Act. AMCA does not believe this restriction on the exercise of the directors powers is warranted when Justice Wilcox did not find any evidence the ABCC had misused its powers.
- AMCA submits there is an anomaly in the payment of legal expenses under the amendment Act. In those cases where a person voluntarily provides information to an investigation they are not entitled to receive reimbursement of costs including legal fees. However, if a person is required to give information under the direction of a Presidential Member of the AAT they will be entitled to receive payment of expenses which includes legal expenses.

This being the case, it seems to AMCA there is a clear disincentive for any person to provide information on a voluntary basis.

23. AMCA submits there will be a significant diminution of the powers of the "*..cop on the beat..*" if the Building and Construction Industry Improvement Act (Transfer to Fair Work) Bill is passed in its current form. AMCA submits there is likely to be a return to a level of unlawful behaviour on construction sites that prompted the actions that were taken by the government in 2002 to curtail such behaviour.

Yours truly,



David Eynon
National Director