



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

20th January 2012

Committee Secretary
Senate Education, Employment and Workplace Relations
Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email: eevr.sen@aph.gov.au

Dear Committee Secretary,

The Australian Chamber of Commerce & Industry thanks the Committee for the opportunity to provide this submission to the Committee's Inquiry into the *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011*.

The outcome of the Bill is a matter of particular significance, not just for the building and construction sector, but for the broader Australian economy. Approximately one million Australians work in the building and construction industry. Their output contributes around 10% of Australia's GDP. The industry also supports and contributes to growth and prosperity in other sectors as well.

This was emphasised by the Minister in his Second Reading speech to the Bill on 3rd November, 2011 when he indicated, "The building and construction industry remains a critical sector of our economy, with immediate and direct impact on jobs, growth and productivity. This was particularly so during the global economic recession, during which the Government's Nation Building and Jobs Plan ensured that the Australian economy remained one of the strongest in the developed world."

The Minister continued to indicate in that speech, "The Government understands that the industry contains unique challenges for both employers and employees, and as a result we have always supported a strong building industry regulator to ensure lawful conduct by all parties."

It is an unfortunate fact that intimidation, threatening behaviour and disregard for the law have long been part of some elements of the building and construction industry, particularly in more recent times Victoria and Western Australia, but in other parts of the country as well.

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Various inquiries, investigations and Royal Commissions have trawled over these issues and considered how best to respond to them. Different initiatives have been proposed, with recognition the powers exercised by the Industrial Relations Commission have not proven adequate to deal with these issues.

However, the only effective response has come from the establishment of the Australian Building and Construction Commission. It has had a dramatic impact on the industry and on the sorts of behaviour and attitudes we have referred to. That impact has been quantified in a range of different ways; in particular, by significant reductions in lost time in the industry, and big improvements in productivity and efficiency, estimated at more than \$5.5 billion per annum.

Whilst the industry is still in some areas a tough and demanding one to operate in, it is now an industry characterised by a much greater sense of predictability and certainty than was the case prior to the establishment of the ABCC. ACCL is very concerned about any changes that would put this hard-won position at risk and create the potential for a return to the past.

Clearly, there are also still ongoing issues that need an effective response. Recent issues to do with the relocation of the Melbourne Wholesale Market, the construction of the Victorian desalination plant, actions on Government sites in Queensland, and the abuse of right of entry entitlements and instances of unlawful industrial action in Western Australia, are some examples that confirm there is still a way to go in achieving a sustained change in culture and behaviour.

The changes proposed in the Bill are about much more than just a transfer of responsibility from the ABCC to the specialist Fair Work inspectorate. They would reduce existing fines and penalties to one third of their current levels. They would remove the industry-specific prohibitions upon unlawful industrial action that currently exist, place restrictions upon the use of the compulsory examination powers, and enable that mechanism to be switched off on application. Each has the potential to undermine and threaten what has been achieved by the ABCC.

It is particularly concerning that the Government is prepared to contemplate these changes at a time when there is already an increase in the level of industrial disputation in the Australian workforce, and significant and continuing economic uncertainty about the immediate future. These factors only emphasise that this is not the time to be contemplating the introduction of changes that have the clear potential to further increase levels of disputation and exacerbate the existing climate of uncertainty.

The ABCC has been a powerful regulator since it was established following the recent Royal Commission into the building and construction industry. It has been successful in responding to the worst excesses of behaviour in the industry, when industrial tribunals have previously struggled to rein in and deal effectively with coercive and unlawful behaviour.

Regrettably, it is also evident this type of behaviour persists in parts of the industry. The ABCC continues to have an important role in response to this situation. In the last financial year it conducted more than 402 investigations into alleged contraventions of workplace laws. This increase of approximately one – third on the previous year can be explained, in part, by the ABCC taking on what it describes as a “full service regulator” role.

However, in terms of the key area of focus and concern for employers in those numbers – the incidence of investigations into unlawful industrial action – the ABCC's figures indicate that 223 investigations into unlawful industrial action were carried out in the last financial year – an increase from 200 in the previous year.

ACCI believes the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011, which would effectively shut down the ABCC and hand over a watered down set of powers to a specialist Fair Work building inspectorate, sends all the wrong signals to industry participants. In this context we note recent media comments from union officials declaring "workers will continue to take whatever action, be it legal or illegal, to get their message across."

It is clear that the ABCC has an important ongoing role in continuing to enforce the *Building and Construction Industry Improvement Act 2005*. We accordingly strongly oppose the passage of the current Bill.

We further rely on our comprehensive written submission to an earlier Inquiry conducted by this Committee in 2009. A copy of that submission is attached.

We are also concerned that there has been no Regulation Impact Statement been prepared setting out the costs and benefits of the proposed changes and their impact on the wider community.

We are happy to provide any further information that the Committee may require.

Yours sincerely,

David Gregory
Director - Workplace Policy