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

Submission on the *Building and Construction Industry Improvement Amendment (Transition to Fair Work)* Bill 2009 by Chris White

1. I oppose this Bill as it is embedded in the *Fair Work* Act. The *Fair Work* regime is fatally flawed in that it needlessly and unfairly represses - with penal powers- the right to strike.

   Outside of a narrowly constructed and most risky form of lawful strike 'protected action' for an enterprise bargaining agreement, any other legitimate industrial action by all workers including building and construction workers and their unions is unlawful.

   Building unionist Charlie Isaac proudly affirmed in the film 'Constructing Fear':
   'I ain't no slave…the only thing I had to offer Leightons, what they wanted from me, was my labour. If they weren't going to listen to me, the only thing I could take from them that they wanted, was my labour. So I withdrew my labour which I thought in a democratic society you would be able to do.'[i] He was pursued by the ABCC and fined along with others in the 'Perth 107' for withdrawing labour in protest against the unfair dismissal of their union shop-steward and this Bill does not change this.[ii]

   The *Fair Work* Act breaches ILO minimum standards.

   'The right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests. These interests not only have to do with obtaining better working conditions and pursuing collective demands of an occupational nature but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers.'[iii]

   I urge Senators to read the research by the Australian Parliamentary Library Romeyn, J. (2008) 'Striking a balance: the need for further reform of the law relating to industrial action' to see that the *Fair Work* Act and this Bill does not achieve any fair balance of power for employees in bargaining with the more powerful employers.

   I add as supporting argument addendum 1 my paper on the failure to firewall the right to strike in the *Fair Work* Act.

Public policy so far does not address the merits that the level of industrial action is the lowest for 100 years and that industrial action does not deserve the penalties for all employees. Furthermore, the incessant right wing cry against building and construction strikes ignores the building sites reality that in the last decade 99.8% of working time workers were not taking industrial action. Each building worker spent a fraction of a day, each year, on strike. Since the BCII Act there has been less industrial disputation - now in these changed circumstances of global capitalist recession strikes are even less likely. This is in stark contrast to employer, government and opposition decrying 'militant unlawfulness.' This is just political 'spin'.

My criticisms are the same as in my submission to Senators on the *Building and Construction Industry Improvement Act*(2005) and in my earlier analysis.[iv]

I agree with Professor Glasbeek (2009)[v] who argues that the *Fair Work* Act (2009) is a sell-out of the *YRAW* movement and Durbridge (2009)[vi] who advocates the ACTU's unfinished business.

I support the substantive academic criticism of the ABCC, such as from George Williams and Nicola McGarrity.[vii] This Bill has only minor reforms, but the repressive regime is not warranted nor needed. Even with the so-called 'safeguards', the coercive powers are not justified and should be removed.

This Bill's so-called 'reforms' with new legal reviews add more legalisms and further entrenches the juridification of industrial relations favouring employers against building and construction unions - more 'spin' than fairness (addendum 1 part A 3).

Building and construction workers with this Bill are without reasonable justification still subject to coercive investigation and penalties and fines by the 'reformed' state institutions into union bargaining activity on legitimate grievances.

Socially responsible union campaigns, such as the world-leading environmental green bans and campaigns on global warming are still subject to 'unlawfulness.' With community support, green bans and industrial action to save the environment are supported for socially responsible building development. Socially responsible bans allow unions to substitute a social decision for a market determination. There should not be penalties against unions protesting about global warming(addendum1 iv p.12). International labour law justifies green bans as a legitimate right to strike, Novitz (2002).

Unionists attending political protests against global warming are an important civic freedom of political communication in a democracy.

The ILO considers the political protest strike as legitimate.[viii]Building unionists stared down the threat of the ABCC prosecution by attending ACTU protest rallies against *Work Choices* but such attendance ought to be lawful.

The Wilcox report and this Bill accept without question the unsound industrial relations assumptions that led to making unlawful most building and construction union organising and bargaining in order to weaken the building and construction unions.

This unsoundness began with the then Minister Abbott's politically motivated anti-union Report of the Cole Commission[ix]Cole provided a cloak of legitimacy to union busting. He found "inappropriate union behaviour", namely short stoppages over legitimate grievances with poor site working conditions, minor union infringements of the right of entry process and established industry bargaining.

Cole's 'reasoning' was like George Orwell's *1984*'doublethink'. This is ability of holding two contradictory beliefs in one's mind simultaneously, and accepting both of them. 'Doublethink involves the forgetting of any fact that has become inconvenient, and then, when it becomes necessary again, drawing it back from oblivion for just so long as it is needed. This denies the existence of objective reality (and all the while taking account of that reality which one denies).'

'Behaviour which is not 'unlawful', or to be more specific, which is lawful, can be deemed 'inappropriate'. Legislative changes can be recommended which will transform that which is 'inappropriate' into that which is 'unlawful'. Through the interplay of 'unlawful' and 'inappropriate' in the Commission, the vice of doublethink is played out. That which is lawful is unlawful.'

Cole found little 'inappropriate employer behaviour' ignoring evidence of global construction corporations and contractors not paying workers' legal entitlements, evading tax and breaching OHS standards.

Cole failed to consider the collaborative IR model that built the Sydney Olympic Games. Government, unions and employers worked together without dispute for world-class socially and environmentally responsible outcomes.

Cole recommended prosecuting unionists. But no unionist was prosecuted. Instead, Abbott introduced the first building legislation. It was defeated on its merits in a Senate Enquiry (2004) *Beyond Cole. The Future of the Construction Industry: confrontation or cooperation?*But returned when PM Howard got control of the Senate.

In 2005 the *Building and Construction Improvement* Act (improvement only for employer power) established the ABCC whose compliance practices is reasonably condemned as like a Construction Stasi.

Proponents of this Bill repackage the Howard government's and corporate political ideology, 'spin', serving only the interests of the corporations and their profit making. When there is protest strike action, it should not be unlawful and penalised. Industrial relations in the building industry in the future would be improved with the right to strike.

2. Senators ought not continue to follow the very biased–wing focus on unions as the issue rather than on the more powerful employers, with breaches of OHS and labour law ignored.

   I request Senators to ignore employers and their powerful associations, politicians and journalists citing so-labelled union 'unlawfulness' and 'coercion'. Such union organising and workers withdrawing their labour power in a dispute is in a democracy supposed to be lawful - respect for the human right to strike ought to be afforded. Politicians are used to threats of all kinds of coercion but these are not made unlawful and fined!

   Senators have the opportunity to support the widespread union, academic and community opposition for many years to the repression of building and construction unions, and any so-called 'militancy'.

   I urge you to listen to the reality of their working lives, listen to the delegations of the families of building workers killed at work and the workplace difficulties faced.

   The union submissions should be supported. I support the continuing contest *Rights On Site* campaign www.rightsonsite.org.au andwww.arkstribe.org.au.as can be seen in references in my published writings. My blog http://chriswhiteonline go to ABCC and right to strike has numerous comments and analysis.

   Senators may not read the range of reasonable criticisms, so I add addendum 2, which I agree with, by labour historian Humphrey McQueen. I recommend as important his 2009 book 'Framework of Flesh. Builders' labourers battle for health and safety' www.framework-of-flesh.com.au

   I argue that the building and construction laws repressing industrial action do not have the political legitimacy required in a democracy in that citizens, particularly those directly affected, are not able to

reasonable concur to be bound. I question our democracy that denies freedoms, here the right to strike.

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[i] In the DVD 'Constructing Fear'. www.constructingfear.org.au

[ii] White C 'The Perth 107 Right to Strike Contest' the Australian Institute of Employment Rights www.aierights.com.au Also: Ross L (2005) 'Building Unions and Government 'Reform': The Challenge for Unions' *Journal of Australian Political Economy* No 56, 172. www.jape.org White C (2005d) 'WorkChoices: Removing the Choice to Strike' *Journal of Australian Political Economy* No 56, 66. www.jape.org

[iii]Novitz T (2003) *International and European Protection of the Right to Strike, A Comparative Study of Standards Set by the International Labour Organization, the Council of Europe and the European Union.* (Oxford University Press).

[iv] White, C. (2006) 'Provoking Building and Construction Workers' 20th Conference AIRAANZ 21st Century Work: High Road or Low Road? http://www.aomevents.com/conferences/AIRAANZ/papers.php.
Similarly see my (2009) Senate submission the *Fair Work* Bill No 122 http://www.aph.gov.au/Senate/committee/eet_ctte/fair_work/submissions.htm and White C (2008) 'The right to strike' chapter in Evatt papers Sheil, C (ed) '*The State of Industrial Relations*', Vol. 5, No. 1, Evatt Foundation, Sydney, 2008, pp. 91-102. Also showing that repression of strikes is the same as *WorkChoices* in McCrystal, S. 2009 'A New Consensus: The Coalition, the ALP and the Regulation of Industrial Action' in Fair Work The new Workplace Laws and the WorkChoices Legacy edited A. Forsyth and A Stewart (Federation Press, Sydney 2009).

[v] H. Glasbeek 'Rudderless in a Sea of Choices: The Defeat of Your Rights At Work—Analysis and a Possible Response' Dissent Autumn/Winter 2009.

[vi] Rob Durbridge (2009) 'Temperature Rising: Labor's *Fair Work* Act and the new union agenda' Australian Options No 57 Winter 2009.

[vii] George Williams and Nicola McGarrity '·The Investigatory Powers of the ABCC' (2008) 21 Australian Journal of Labour Law.

[viii] White C (2005) 'The Right to Politically Strike?' *AIRAANZ 2005* Sydney University, http://airaanz.econ.usyd.edu.au/papers.html

[ix] Marr J (2003) *First the Verdict: The Real Story of the Building Industry Royal Commission* (Pluto Press). White, C. (2004) Review Jim Marr, Australian Options, No. 35, Summer 2004 www.australian-options.org.au.