



AUSTRALIAN CONSTRUCTORS ASSOCIATION

ABN 63 065 806 948

22 January 2009

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

Dear Mr Carter,

**Re. Fair Work Bill 2008**

I write on behalf of the Australian Constructors Association (ACA), in support of the submission made to the Senate Education, Employment and Workplace Relations Committee by the Australian Industry Group.

The ACA is particularly concerned with the *Fair Work Bill's* provisions related to:

- Greenfields agreements; and
- Right of entry.

**Greenfields Agreements**

Current *Workplace Relations Act* provisions make it possible for an employer to bargain with one or a few unions that have legitimate coverage of the employees who will undertake work on a prospective greenfields project.

The Bill enables a greenfields agreement to be negotiated but requires the employer to give notice of its intention to make the agreement to each and every union which is entitled to represent the interests of even one employee who will be employed on the site. Each union is then deemed to be a bargaining representative and the employer has a statutory obligation to bargain in good faith with every one of them.

On a major project a very large number of unions would be required to be notified and potentially bargained with. Any union would have the ability to apply for a bargaining order and substantially delay the settling of a project agreement and the commencement of work.

The proposed process removes the flexibility and dexterity that this instrument afforded employers and employees in initiating major projects on a greenfields site.

This will most certainly impede the commencement of construction projects, increase costs and discourage innovation in agreement-making.

### **Right of Entry**

The Government gave a commitment to Australian employers that existing right of entry provisions would be retained in the new legislation.

This was a particularly important commitment for the construction industry given the industrial history of the sector. Abuses of union entry rights figured prominently in the evidence provided to the Royal Commission into the Building and Construction Industry and in the Commission's findings and recommendations – see Recommendations 60 – 77.

The Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry also make special provisions in relation to abuses of right of entry provisions.

Despite the public undertakings given by the Government, the Bill disturbs the provisions contained within the *Workplace Relations Act* by providing union access to employees who are eligible to be members even though that union is not a party to the enterprise agreement/s covering the project.

With regard to workplaces covered under enterprise agreements, the ACA cannot see any relevance in the Government's argument that union entry rights can no longer be linked to the concept of unions being a party to collective industrial instruments. Whilst it is true that the Australian Industrial Relations Commission has decided not to specify union parties in modern industry and occupational awards, this issue has no relevance to entry rights in workplaces where an enterprise agreement applies.

Under the *Workplace Relations Act*, where an enterprise agreement is in place, a union is only entitled to enter to hold discussions with the employees where the union is covered by the collective agreement. The *Fair Work Bill* retains the concept of unions being covered by enterprise agreements and therefore there is no impediment to the Government keeping its commitment to maintain the existing entry rights.

For example, giving the CFMEU the right to enter a construction project which is covered by an agreement with the AWU (or vice versa) is not sensible or in the public interest. The Bill, as presently drafted, will undoubtedly lead to an outbreak of coverage disputes in the construction industry.

Another significant concern to the ACA is the provision that allows union officials to access the confidential records of employees who are not union members and may not wish to be union members.

The ACA believes the Bill is deficient in a number of other ways and these have been identified in the Australian Industry Group's submission. We support the amendments proposed by the Australian Industry Group.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Barrett', with a long horizontal flourish extending to the right.

**Jim Barrett**  
**EXECUTIVE DIRECTOR**