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Committee Secretary
Senate Education and Employment Committees
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Canberra ACT 2600

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Dear Madam/Sir

UnionsWA submission to inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]

UnionsWA is the governing peak body of the trade union movement in Western Australia, and the Western Australian Branch of the Australian Council of Trade Unions (ACTU). As a peak body we are dedicated to strengthening WA unions through co-operation and co-ordination on campaigning and common industrial matters. UnionsWA represents around 30 affiliate unions, who in turn represent approximately 140,000 Western Australian workers.

UnionsWA thanks the Committee for the opportunity to make a submission to the inquiry into the above Bills. We agree with the ACTU that there is no compelling argument for a separate industrial relations policy framework for the building and construction industry. UnionsWA urges the Committee to recommend rejecting these two Bills, and their flawed approach to regulation and law enforcement.

Regarding the re-establishment of the Australian Building and Construction Commission (ABCC) envisioned in these Bills, UnionsWA agrees with the points made by the ACTU in their submission to this Committee made in January 2014, namely that

Workers in the building and construction industry should be subject to the same industrial laws as apply to other workers. This is consistent with the fundamental principle of equality of all persons before the law. To subject any group of workers or industry to special[,] more punitive laws is unnecessary and discriminatory, but this is exactly what this Bill does: it penalises conduct not because of the nature of that conduct or its effects, but because of who participates in it.

Building and construction workers in Western Australia have unfortunately been victims of this unnecessary and discriminatory treatment at the hands of the Fair Work Building and Construction (FWBC) agency – the current incarnation of the ABCC. We would like to draw the Committee's attention to recent cases in Western Australia which demonstrate our concern with having different sets of laws for the building and construction industry.

In 2014 the FWBC launched proceedings against 76 CFMEU Construction and General Branch members who were employed at the new Children's Hospital project in Nedlands, WA. These workers were employees of Crown Construction Services, a sub-contractor to builder John Holland. They were charged with not being at work to attend a rally on 28 February 2013.

More than 5,000 people attended this rally to show support for local jobs, more apprenticeships and more support for the construction industry and the sector in general. However, only 76 construction workers were singled out for prosecution by the FWBC.

At no stage did the workers' employer indicate they were concerned with attendance at the rally, nevertheless the Federal Court in Perth ruled that 74 of the 76 were engaged in unlawful industrial action. This was despite there being no evidence the employer had an issue with the attendance, and not producing any evidence at all to the courts about the rally. The principal contractor did not bring any proceedings against the workers.

A further 76 workers were charged with breaching an Order of the Fair Work Commission. That charge was dismissed by the Court who found no evidence the Order had even been served on the workers.

These proceedings and the appeals arising from them are distressing and difficult for the workers and for their families. Yet there is no obvious benefit for either the rule of law, or productivity in the building industry, for taxpayers money to be used on pursuing a prosecution that neither the employer nor the principal contractor supported.

A further example relates to the FWBC case before the Federal Court in Perth against 101 workers charged with attending a union meeting two years previously.

Just prior to Christmas 2015, five of these workers had their cases withdrawn due to 'lack of evidence'. A further 28 cases have subsequently been withdrawn because the FWBC discovered that the charged workers were not rostered on the day in question. No apology has been offered by FWBC for pursuing these flawed prosecutions at taxpayers' expense.

The conduct of these two cases gives no reason to be confident that the restoration of the ABCC will provide any benefit to the construction industry or to Australian industrial relations generally. Instead more public money will be wasted on disruptive prosecutions that ruin the lives of workers and their families who are exercising their rights in a free society.

If the Federal government is serious about taking steps to address corruption or unlawful behaviour in Australia, it should not single out particular industries and individuals. Rather it should investigate allegations of corruption and lawbreaking wherever such activity occurs.

At its 2015 Congress the ACTU called for a national ICAC (Independent Commission Against Corruption) and transparency in campaign donations. The Congress resolution states that

... we need a national ICAC with powers to examine Federal MPs, public servants and party officials. And we need a new wave of donations reform – with maximum transparency, real-time disclosures and scrutiny of who donates and why.

UnionsWA agrees with the ACTU about the need for a proper ‘watchdog’ with a comprehensive mandate to seek out wrongdoing in all parts of Australian life. This is a total contrast to the selective approach of the FWBC and ABCC – which single out workers in one industry for attention, and seek to use (and misuse) industrial relations laws against ordinary workers who are exercising their rights.

Accordingly, UnionsWA urges the Committee to recommend rejecting these two Bills, and the flawed approach to regulation and law enforcement that they embody.

UnionsWA and its affiliates would be happy to give evidence directly to the Committee.

Yours sincerely

Meredith Hammat
Secretary