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The Secretary
Senate Employment, Workplace Relations
and Education References Committee
Suite SG.52, Parliament House
CANBERRA ACT 2600

E-MAIL TRANSMISSION

And by Facsimile: (02) 6277 5706 (6 pages)

Dear Secretary

Inquiry into the Building & Construction Industry Reform Bill and related matters

I refer to previous correspondence.

I enclose the UFU's submission to the inquiry.

Yours faithfully,

Peter Marshall
National Secretary

Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Building and Construction Inquiry

Submitter: Peter Marshall, National Secretary

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General Observations

The *Building & Construction Industry Improvement Bill* 2003 ("the Bill") is described in the Explanatory Memoranda as "the Government's legislative response to the workplace relations recommendations of the Royal Commission into the Building and Construction Industry".

As a preliminary matter, the United Firefighters Union ("UFU") wishes to register its unreserved opposition to the Government's reliance upon the Royal Commission as a policy making body. We have strong misgivings about the validity of the Royal Commission's findings and we adopt the commentary in this regard provided in paragraphs 18-30 of the Australian Council of Trade Union's submission on the Exposure Draft of the Bill.

In addition, we are opposed to the very notion of introducing legislation to regulate a single industry's industrial relations. It is unashamedly discriminatory and has the ultimate object of weakening the collective bargaining power of employees engaged in that industry.

Our specific concerns in relation to the Bill are outlined below.

The Australian Building and Construction Commissioner

The UFU is surprised to see the government proposing to expand its bureaucracy for the regulation of the Building and Construction Industry. It is difficult to imagine the reporting requirements imposed upon employers not having a negative impact on productivity, particularly for the smaller employers involved in the industry.

The UFU perceives the central roles of the Commissioner as being to investigate breaches of Industrial Legislation and enforce penalties. Within that paradigm, the Commissioner's powers are akin to those of an Ombudsman or indeed not dissimilar to the Police. However, a distinction is to be drawn in that whilst the Ombudsman, the Police and indeed most if not all statutory offices with investigative and/or prosecutorial powers have operational independence in the execution of those

functions, it would seem that the proposed Commissioner does not. Indeed, the Office is subject to Ministerial Directions. Furthermore, there is a distinction in relation to the privilege against self incrimination, which has been specifically eroded in relation to investigations by the Commissioner. The UFU submits that both of these points of difference are inappropriate.

The Building Code

Whilst the Commissioner is charged with compliance monitoring and enforcement of the Building Code, just what the Building Code is to contain remains somewhat of a mystery to the UFU. Whilst it is clear that the Building Code may contain some matters relevant to Occupational Health and Safety, it is unclear to the UFU whether this could lead to a conflict between State and Federal laws. Clearly, any inconsistency or indeed any overlap is best avoided in the interests of avoiding overly complicating compliance with OH&S standards.

Occupational Health & Safety

The UFU is again concerned by the Statutory Office of the Federal Safety Commissioner being subject to Ministerial Direction. As the powers and functions of the Federal Safety Commissioner are of a different character than those of the Australian Building and Construction Commissioner, the most dire consequence of political interference in the role is probably the reduction of its effectiveness.

The UFU has concerns about the obligations cast upon employees to be aware of the obligations *upon employers* to withhold payment in relation to particular "building OHS action". Failure to appreciate that the employer is making an illegal payment to employees may result in those employees facing a civil penalty. This is manifestly unjust. Similarly, employers mindful of the penalties facing them in the event of payment in connection with certain "building OHS action" are given an incentive to be overly pedantic in relation to judging compliance with relevant dispute resolution procedures, when the OH&S issues themselves are often more serious and pressing than the proscriptive procedures through which they must be pursued.

The notion of an OH&S based Accreditation System for employers who seek to be retained on Commonwealth Projects has merit, however the detail cannot be assessed until the proposed Regulations are examined. It is to be expected that there will be significant consultation with State authorities, industry and industrial organizations in relation to the content of any proposed Regulations.

Awards, Certified Agreements and Other Provisions About Employment Conditions.

The UFU opposes the reduction in allowable award matters for the Building & Construction Industry. This latest extension of Award "simplification" will generally add to Certified Agreement "complexity".

For the most disenfranchised of workers who will be unable to effectively protect their Award entitlements following further simplification, the bans on pattern bargaining will compound the simplification and ensure that the entitlements which were previously described as a "safety net" are gone forever.

The reforms in relation to Certified Agreements are sure to make the negotiation and certification of such agreements more complex, more regular, more time consuming and less effective. Given the high number of employers per building "project", it is likely that many projects will be delayed by the negotiation process for more comprehensive Certified Agreements with shorter life spans.

Industrial Action Etc.

The UFU is incensed that the Right to Strike is to be further curtailed in the Bill, particularly after the criticisms of the International Labour Organization regarding the status quo in this Country post the current Government's reforms.

The complex web of prohibitions, restrictions and penalties in relation to industrial action are no doubt intended to be a disincentive to take industrial action. In addition, the secret ballot requirements seem to be targeted toward reducing the bargaining

position of industrial organizations by reducing the immediacy of the threat of legitimate industrial action.

It seems the height of hypocrisy in a civilized society that the elected representatives of an industrial organisation are required to institute a secret ballot in order to exercise an internationally recognized right to strike, whereas the elected representatives of a nation can commit the people of that nation to war, exposing them to great personal risk against the force of international regulation, without such re-endorsement from their constituents.

Right of Entry

The changes to the existing right of entry provisions are misguided and are symptomatic of a paranoia of Union officials in the building and construction industry. There is little doubt that short of widespread regulatory failure, there can be no rational justification for tampering with one of the most fundamental and internationally recognized industrial right - the right of access to workplaces.

Conclusion

The UFU is widely critical of the intended reforms and their stated justifications. The UFU thanks the Committee for the opportunity to participate in this inquiry.