



Master Builders Association  
of South Australia Inc

**Submission by the  
Master Builders Association of South Australia Inc**

**to the**

**Senate Employment, Workplace Relations and Education  
Reference Committee**

**on the**

**Building and Construction Industry Improvement Bill 2003 and  
Related Matters**

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## **1. INTRODUCTION**

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- 1.1 The Master Builders Association of South Australia Inc (the Master Builders) welcomes the opportunity to provide this submission to the Senate Employment, Workplace Relations and Education Reference Committee on the *Building and Construction Industry Improvement Bill 2003* and related matters.
- 1.2 The Master Builders is a member of Master Builders Australia Inc (MBA Inc) and, as well as producing this document, supports the submissions made by MBA Inc to the Government, the Cole Royal Commission and to this Senate Reference Committee.
- 1.3 To this extent, this submission does not cover all facets of the *Building and Construction Industry Improvement Bill 2003* which have already been covered by MBA Inc, but instead focuses on a number of key issues that are pertinent to the issues in South Australia.

## **2. ABOUT THE MASTER BUILDERS**

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- 2.1 The Master Builders was established in 1884 as a result of a meeting convened in the Exchange Room of the Adelaide Town Hall.
- 2.2 The Master Builders is the peak employer body representing the South Australian building and construction industry.
- 2.3 The Master Builders represents all sectors of the building and construction industry including Commercial Builders, Civil Contractors, Residential Builders, Specialist Contractors as well as Industry Suppliers and Manufacturers.
- 2.4 Currently there are around 2,000 members across South Australia. All members are required to be appropriately licensed and are bound by a National Code of Practice that is endorsed by the Australian Competition Consumer Commission.
- 2.5 The Master Builders provides members with representation in industrial and workplace relations, lobbying Federal, State and Local Government, legal and contractual advice, training, insurance and business marketing.
- 2.6 With a long and proud heritage, the Master Builders continues to be the voice of the building and construction industry in South Australia.

## **3. REFORMING THE INDUSTRY**

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- 3.1 The Master Builders strongly supports workplace relations reform in the building and construction industry and welcomes the Government's initiatives in this area.
- 3.2 The Master Builders strongly believes that any new system of workplace relations and occupational health and safety for the building and construction industry must be based on a range of objectives, such that:
  - 3.1.1 it provides a legal framework that is simple, readily accessible and easily understood.

- 3.1.2 it avoids excessive legalism as well as delays in and associated costs of the legal process.
  - 3.1.3 it covers the field to the extent of Federal constitutional power and eliminates union jurisdiction swapping.
  - 3.1.4 it provides effective sanctions to eliminate coercion as well as illegal and inappropriate behaviour by all industry participants.
  - 3.1.5 it provides rapid access to effective enforcement and compliance measures of industrial instruments, legislation and orders of relevant tribunals.
  - 3.1.6 it establishes a one-stop-shop for all government agencies, avoiding overlaying bureaucracies, an agency that can stand in the shoes of employers and employees who are unable to fund litigation.
  - 3.1.7 it establishes adequate and timely remedies for damages arising from industrial action taken outside a bargaining period or in breach of dispute settlement provisions.
  - 3.1.8 it promotes the effective operation of competitive market forces (changing the culture of expediency) and fair competition.
  - 3.1.9 it promotes the Federal Government as a major investor in the industry to lead by example in a consistent application of legislative codes and policies that exemplify best practice in the industry.
  - 3.1.10 it promotes uniform contract conditions to be applied by the Federal Government and its agencies for all works where the Federal Government is a principal or contributor of funding.
- 3.3 In this regard, the Master Builders supports the Bill's terms as overall promoting these objectives.
- 3.4 The Master Builders makes this statement because while we general support the view that a legal framework should be simple, readily accessible and easily understood, the Master Builders acknowledges that problems in the building and construction industry – as identified in the Cole Royal Commission – requires a stronger regulatory regime that will reinstitute the rule of law.
- 3.3 The Master Builders continue to have serious concerns that illegal and criminal conduct is occurring in the building and construction industry, despite the findings of the Cole Royal Commission.
- 3.4 The Master Builders believe that the Bill's terms will assist in changing the culture of the industry.

#### **4. PATTERN BARGAINING**

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- 4.1 The Master Builders supports Recommendation 2 from the Royal Commission and its consequential provisions in the Bill<sup>1</sup> which is aimed at stopping pattern bargaining as a means to undermine the objects of the *Workplace Relations Act 1996 (WRA)* and by which terms and conditions of employment are “imposed upon” rather than “freely negotiated” by employers and employees.<sup>2</sup>
- 4.2 However, because the principle means of enforcing the prohibition against this illegitimate use of pattern bargaining is by way of injunction and that the costs associated with such action can be expensive for small and medium enterprises (SME), the Master Builders believes that the recommendation should be strengthened to give the ABCC the power to ‘stand in the shoes’ of the affected party.
- 4.3 The Master Builders believe that a SME should be able to make a complaint to the ABCC, who must then investigate and, where the allegation of pattern bargaining can be sustained, initiate the injunction proceedings.
- 4.4 The Master Builders also supports Recommendation 4, however, the role of the ABCC to intervene in Commission proceedings to help determine whether an agreement constitutes a pattern bargain should be strengthened.
- 4.5 Overall, the Master Builders supports the restriction on pattern bargaining as proposed by the Bill and the prohibitions on protected industrial action in support of pattern bargaining claims.

#### **5. PROJECT AGREEMENTS**

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- 5.1 Project agreements present a difficult issue for the building and construction industry because of economic conditions, size of projects and union practices.
- 5.2 A project agreement is one where the head contractor, sub-contractors and employees on a site or project are covered by an agreement or a series of agreements that are identical in terms and conditions.
- 5.3 The Master Builders believe that there are numerous problems with project agreements, including:
  - 5.3.1 they are imposed by unions rather than as a result of genuine enterprise bargaining;
  - 5.3.2 they are not project specific with regard to the attributes of that project to achieve productivity benefits defined by that project;

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<sup>1</sup> See, for example, to s 3(2)(a), 8, 62, 67, 211 of the *BCII Bill 2003*.

<sup>2</sup> See, for example, to the objects of the WRA, specifically s 3(b) and (c).

- 5.3.3 they seek to leverage common rates from those trades that have the higher rates and have them applied across all industries, irrespective of classification or work value principles;
- 5.3.4 they result in anomalies between rates of pay and other conditions for the same employee from site to site;
- 5.3.5 they have a tendency to extend the market power of unions; and
- 5.4 The Master Builders strongly believes that project agreements arrived at under these conditions are inappropriate.
- 5.5 In this regard, while the Master Builders agrees with Recommendation 13 and its consequential Bill provisions<sup>3</sup>, when a change of culture is effected in the industry, a review should be held to examine the practicality of expanding the categories of project agreements recognised under the WRA.

## **6. BARGAINING PERIODS**

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- 6.1 Following on from our submissions, it has become obvious to the Master Builders that since the enterprise bargaining process was introduced there is a urgent need to address the use of the bargaining period process because current legislation fails to prescribe any form of time limit on the bargaining period.
- 6.2 The concerns about this process are that a bargaining period could remain in place for an indefinite period even when there is no genuine bargaining taking place.
- 6.3 The Master Builders are concerned about the unwarranted economical pressures that can be placed on SME under these situations.
- 6.4 In this regard, the Master Builders supports the Bill's attempts to erode industrial action being taken during a bargaining period before negotiations<sup>4</sup> have taken place and the strengthening of when industrial action can be taken under Part 3.

## **7. RIGHT OF ENTRY**

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- 7.1 The provisions of the WRA regulating the granting of entry permits allows any person employed by a union or registered organization to apply for an entry permit in accordance with regulations.
- 7.2 The Master Builders consider that union officials routinely abuse their right of entry.
- 7.3 The Master Builders believe that the WRA should be amended to:
  - 7.3.1 make applications for permits conditional on an organization disclosing whether or not a person has previously had a permit revoked and to require the Registrar to be satisfied that the person to whom a permit is to be issued is a fit and proper person to be issued with a permit, taking into account the purposes for which the permit is to be issued;

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<sup>3</sup> Refer ss 68, 60 of the *BCII Bill 2003*.

<sup>4</sup> See s 83 of the *BCII Bill 2003*.

- 7.3.2 enable a permit to be revoked because the holder has used it for purposes other than those for which it was issued;
  - 7.3.3 require a permit holder investigating a suspected breach of that Act to specify the relevant employer, the nature of the breach to be investigated and the grounds upon which such suspicion has been formed.
  - 7.3.4 that there should be an alignment of Commonwealth and State right of entry laws.
- 7.4 In this regard, the Master Builders supports the Right of Entry provisions proposed in Chapter 9 of the Bill.

## **8. CLOSING**

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- 8.1 Overall, the Master Builders supports the Bill and believes that the Bill will contribute markedly to the improving productivity and efficiency.
- 8.2 Moreover, the Master Builders submits that it is necessary for the new, strengthened workplace relations laws to be enacted in order to restore the rule of law to the industry.