



# **Master Builders Association of Victoria**

## **Submission to the Senate Employment, Workplace Relations and Education Reference Committee**

**On**

## **Building and Construction Industry Improvement Bill 2003**

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## **INTRODUCTION**

Master Builders Association of Victoria (hereinafter referred to as MBAV) acknowledges the opportunity to provide a submission and to speak to the submission at the Senate Employment, Workplace Relations and Education Reference Committee on the Building and Construction Industry Improvement Bill 2003.

MBAV as a member of Master Builders Australia Inc (MBA Inc.) supports the submissions made by MBA Inc. to the Cole Royal Commission, the Government and the Senate Reference Committee.

## **A BRIEF HISTORY OF THE MASTER BUILDERS ASSOCIATION OF VICTORIA**

The Master Builders Association of Victoria (MBAV) is an industry association and employer body for the building industry that was established in 1875. MBAV is a professional association that provides the building and construction industry with advice and services that include legal, training, human resources, industrial relations, occupational health and safety and technical advice.

## **AIMS AND OBJECTIVES**

MBAV aims to represent the professional and industrial interests of Victoria's building and construction industries. It is an advocate on behalf of the industries to all tiers of government and is the only organisation solely dedicated to delivering professional services in both the residential and commercial sectors of the industry. Our mission is to assist our members in their businesses by providing as wide a range of services possible. MBAV is the leading employer association in the building and construction industry. MBAV provides advice to both State and Federal Government departments on behalf of the industry. MBAV's membership is predominantly drawn from small to medium businesses that use the services offered by MBAV in industrial relations and occupational health and safety advice.

## **THE VICTORIA CONSTRUCTION INDUSTRY**

The Victorian building and construction industry employs 150,000 people and contributes 7.5 percent of the State Gross Product. Victoria contributes 30 percent of Australia's construction industry output, indicating the importance of Victoria's contribution to the economy. Despite this Victoria lost 43,300 working days to industrial action in 2002, which represented 42.5 percent of all days lost to industrial action in Australia's building and construction industry that year. It may be of interest to the Senate Committee that in MBAV's opinion this figure does not represent the total number of days lost to industrial action because there are instances where disputes are not reported or part of a day is lost.

## **KEY FINDINGS OF THE COLE ROYAL COMMISSION**

The principal finding of the Cole Royal Commission in respect to Victoria was the urgent need for reform and cultural change. Furthermore, the Commission found the rule of law failed to hold any significant application in the industry. This lack of regard for the law, amongst other things, took the form of misuse of right of entry, widespread unprotected industrial action and abuse of safety to pursue industrial aims.

MBAV provided a submission and statements were made by Mr Brian Welch, Executive Director and Mr Lawrie Cross, Manager, Industrial Relations on 10 December 2002.

In the evidence of Brian Welch, MBAV Executive Director, it was stated that it was the experience of MBAV and of its members operating in the commercial sector, that unions, in particular the Construction, Forestry, Mining and Energy Union (CFMEU), have conducted themselves in a manner which has resulted in disputes with a contractor and/or subcontractor which has caused delays, increased labour and other costs to the significant commercial disadvantage of individual members and the Victorian economy.

Of particular concern was evidence led by MBAV, and unchallenged by the unions, that unions ignored orders of the Australian Industrial Relations Commission (AIRC). Furthermore, evidence of MBAV detailed the problems members face in accessing legal remedies. These remedies are costly and time consuming.

Since MBAV's appearance in December 2001 at the Cole Royal Commission, MBAV has not seen any improvement in the industrial relations climate that would allow us to alter our original position.

### **THE NEED FOR REFORM: A CASE STUDY**

The following case study illustrates the ability of the unions to delay projects through unprotected illegal industrial action, the difficulties a company faces in seeking relief through the existing legal avenues and the ultimate costs to a company because of this action.

Grocon Constructors Pty Ltd (Grocon) is the principal contractor on the construction project at 11 Exhibition Street Melbourne. The offices when completed are to be occupied in part by the AIRC. Grocon and the CFMEU and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing & Allied Services Union Australia (CEPU) currently have in place two enterprise agreements which regulate work by members of the CFMEU and the CEPU. Both agreements include a dispute resolution procedure.

On two separate occasions Grocon sought relief in the AIRC seeking orders to prevent industrial action that was occurring on the project. This took place over a period between December 2003 and the ultimate decision of 22 March 2004.

At the hearing in March 2004 Grocon provided a detailed list of the industrial action that was occurring. The industrial action was characterised as falling into five broad categories:

- Weather related stoppages where concerns in relations to inclement weather were not justified;

- Alleged safety incident stoppages where the alleged incidents did not warrant a cessation of work;
- State wide industry stoppages;
- Working hours bans and limitations;
- Other site-specific stoppages.

In a decision of 22 March 2004, (Print 944890) the AIRC found that the 'actions of the CFMEU's site representatives show a persistent disregard for the dispute resolution procedures in the relevant industrial instruments' ..... 'there is a culture of pressing industrial objectives through unlawful activity rather than agreed process and merit.' 'The action of the CFMEU and its members was found to be in 'breach of its obligations under the Workplace Relations Act and the relevant industrial instruments.'

In conclusion the AIRC granted an order of some three months that industrial action not be taken. This order did not apply to Grocon's subcontractors and was of a period shorter than sought by Grocon.

MBAV provides this case study to illustrate critical factors to this Senate committee:

- The continued evidence of widespread unprotected industrial action by members of the CFMEU and its officials;
- The continued failure by members of the CFMEU and its officials to adhere to dispute resolution procedures, (in particular a failure to refer and utilise the Victorian Building Industry Disputes Board), industrial instruments, and the Workplace Relations Act;
- The delay for employers seeking orders to prevent illegal industrial action and the limitations of said orders;
- The cost to a project of unprotected industrial action and the lack of penalties for parties who take or initiate such action.

However, the most important reason for including this case study is to demonstrate the need for a member of MBAV to ultimately make a commercial decision to stop unprotected industrial action.

MBAV represents approximately four thousand small to medium businesses. They do not have the time or, critically, the finances to pursue the action taken by Grocon. They do not have the sufficient on site knowledge to prepare for such a battle. They face huge financial costs for any delay that is attributed to them for industrial relations reasons on a project. They rely on on-going work provided by principal contractors to survive, and are ill equipped to deal with on-going intimidation and thuggery. It is for this reason that we remind the Committee of our initial and ongoing commitment to an institution that produces a cheap, effective method of reducing unprotected industrial action, such as the proposed office of the Australian Building and Construction Commissioner proposed in the Bill. Currently MBAV cannot provide assurances that much needed remedies for members can be invoked, at least not at a commercially realistic cost. It is necessary for a well-resourced agency with appropriate powers to be formed that will assist to restore the rule of law in the industry.