



**Submission**

**To**

**Senate Education Employment and Workplace  
Relations and Standing Committee**

**on**

**Inquiry into Building and Construction Industry  
(Restoring Workplace Rights) Bill 2008**

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**October 2008**

## **BACKGROUND**

1. The Electrical and Communications Association (ECA) is the peak industry body for contractors who operate in the electrical, data, communications and fire sector of the Building and Construction and domestic services industry in Queensland.
2. ECA is an industrial organisation of employers registered in the Queensland Industrial Relations Commission and is transitionally registered in the Australian Industrial Relations Commission.
3. The electrical contractor is second only to the principle contractor (builder) on site in terms of percentage of work performed and dollars generated by our sector of the industry, but unlike the builder the electrical contractor can find themselves working in any of eleven different areas, or types of workplaces throughout their normal working day.
4. ECA membership is over 1,750 (with approximately 85% defined as constitutional corporations) and is as diverse as the industry it represents, ranging from many small “Mum and Dad” businesses that employ only one or two people, right up to large multi national companies who employ more than 1,500 electricians in Queensland alone. This vast differential in size and demographic coupled with a need to stay competitive across a wide range of worksites has lead many of ECA’s members to fully embrace the flexibility that the *Workplace Relations Act 1996* and its most recent amendments, allowing them to move away from the “one size fits all” Award or Collective Agreement and towards a more logical outcome that provides benefits to both employer and employee.
5. The Association is appreciative of the opportunity to submit its views on the Bill. ECA has been an advocate of the Australian Building and Construction Commission (ABCC) since its inception in 2005, and of its predecessor the Building Industry Taskforce. ECA is of the opinion that the ABCC has brought stability, accountability and increased productivity to the building and construction industry, and is concerned that if the Bill is passed it would be detrimental to its members.
6. As such ECA’s submission will focus on the reasons why it believes the ABCC should be retained not only until 2010, but as a permanent part of the building and construction industry landscape and on the statement made by Senator Siewert in the second reading of the Bill.



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**ECA SUBMISSION**

7. In the Summary of Findings and Recommendations section of the Final Report of the Royal Commission into the Building and Construction Industry, paragraph 17 states;

“At the heart of the findings is lawlessness. It is exhibited in many ways. There are breaches of the criminal law. There are breaches of laws of general application to all Australians where the sanction is a penalty rather than possible imprisonment. There are breaches of many provisions of the *Workplace Relations Act 1996* (C'wth). The unsatisfactory record in respect of occupational health and safety indicates breaches of the various State acts addressing that matter. There is disregard of or breach of the revenue statutes, both Commonwealth and State. When courts or tribunals become involved and make orders, some union participants, particularly the CFMEU, regard such orders as not binding upon them. There is the commonly held view, translated into practice, that agreements entered into are binding upon unions only insofar as they confer upon the union or its members a benefit, but not insofar as they confer an obligation. Underlying all of this lawlessness is an understanding and expectation, which reflects the reality, that those engaging in unlawful conduct will not be held to account by criminal proceedings, proceedings for penalties, or for loss occasioned to others by unlawful conduct”

8. The Findings also state at paragraph 10;

“Fourth, there needs to be an independent body, free of the pressures on the participants in the industry, which will ensure that participants comply with industrial, civil and criminal laws applicable to all Australians, and thus operating on building and construction sites, as well as industry specific laws applicable to this industry only”

9. ECA is confident that if a Royal Commission were to be conducted into any other industry such as hairdressing, bakery or banking, such a damning finding of the cultural and attitudinal characteristics of the participants of that industry would not be the case.
10. ECA is appalled that the building and construction industry requires a body such as the ABCC to oversee the actions and operations of those who work within it, but it much prefers the cure that has been in place for the past six years than the lawlessness that was the practice for many years before.
11. Senator Siewert, in her second reading of her Bill to repeal the *Building and Construction Industry Improvement Act 2005* (BCII Act) claimed that the ABCC has sweeping powers that have no place in the regulation of workplaces. ECA would agree with this statement if it felt that the building and construction industry operated in the same fashion as any other industry.





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12. The findings of the Cole Royal Commission merely validated what those who had worked in the industry for many years already knew. The rule of law was neither adhered to nor considered by those who sought to negotiate industrial agreements and implement them on site. There was no level of accountability on anyone who worked in the industry and the leverages of fear, intimidation and reprisal were common place.
13. Very few people believed that the industry could continue on in this fashion, but to make the changes that would benefits all participants the culture of the industry needed to be broken down and rebuilt.
14. The view that it is an affront to democracy to have workplace relations laws that provide powers to compel evidence with the possibility of gaol for non compliance is at best naive when you are talking about the building and construction industry.
15. The level of fear and intimidation that was prevalent in the industry prior to the ABCC was palpable, with only those with “nothing to lose” speaking out. Those that did go public with information were treated harshly, with some small businesses losing everything. In order to obtain information relating to breaches of the code and of the law the legislation had to provide coercive powers so that the truth could be discovered.
16. A report entitled *The Coercive Information-gathering Powers of Agencies*, tabled in the Parliament on 4<sup>th</sup> June 2008 by Attorney General the Hon Robert McClelland investigated the coercive powers practices of six agencies including Centrelink, Medicare Australia, the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority, the Australian Taxation Office and the Australian Competition and Consumer Commission.
17. In all of the cases investigated in the abovementioned report, the trigger for the use of coercive powers was for the purpose of ensuring compliance of the legislation, and the investigation to certain alleged or suspected contraventions of legislation.
18. In a Media Release dated 4<sup>th</sup> June 2008 the Attorney General stated;

"This new report highlights the significance of coercive powers as administrative and regulatory tools for government"
19. ECA does not see how the use of these powers in the building and construction industry is any less democratic than using it to uncover Centrelink or Taxation fraud.





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20. The Senator's seconding reading speech also suggests that "building workers may be too intimidated to speak out about health and safety issues for fear of being investigated".
21. ECA does not believe that this scenario has eventuated with statistics from the Australian Safety and Compensation Council detailing how in 2005 – 06 (the year the ABCC was introduced) claims for serious incidences in the construction industry declined across all jurisdiction throughout Australia.
22. It is regularly claimed that the International Labour Organisation believes the BCII Act breaches international labour laws pertaining to the right to organise, the right to collectively bargain and the right to freedom of association.
23. ECA does not believe this to be the case and sites as evidence clause 3 (2) of the Act which states the objectives of the Act as;
  - (a) improving the bargaining framework so as to further encourage genuine bargaining at the workplace level;
  - (b) promoting respect for the rule of law;
  - (c) ensuring respect for the rights of building industry participants;
  - (d) ensuring that building industry participants are accountable for their unlawful conduct;
  - (e) providing effective means for investigation and enforcement of relevant laws;
  - (f) improving occupational health and safety in building work;
  - (g) encouraging the pursuit of high levels of employment in the building industry;
  - (h) providing assistance and advice to building industry participants in connection with their rights and obligations under relevant industrial laws.
24. Clause 3 (2) (h) is of significant relevance because it provides for the ability of workers in the industry to receive assistance on all aspects of their rights under relevant industrial laws including the Freedom of Association sections of the *Workplace Relations Act 1996* and strengthens an individual's right to a choice of lawyer which is galvanised in section 52 (3) of the BCII Act where it states;

A person attending before the ABC Commissioner, or before an assistant, as mentioned in paragraph (1)(e) may, if the person so chooses, be represented by a person who, under the *Judiciary Act 1903*, is entitled to practise as a barrister or solicitor, or both, in a federal court.

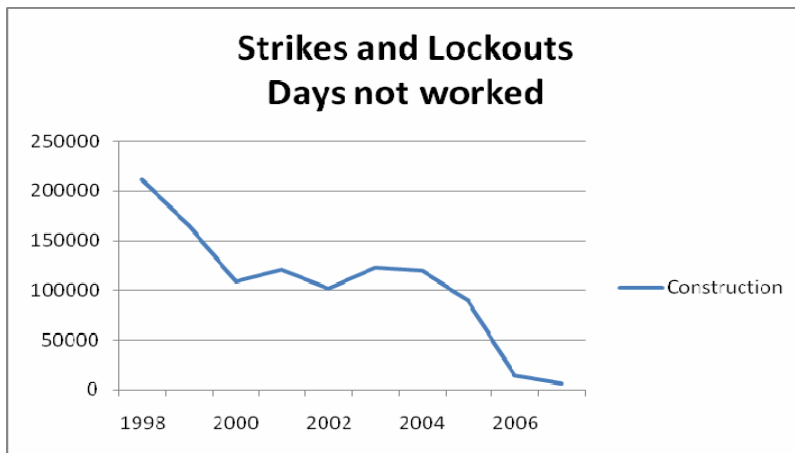




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- 25. Section 52 (3) puts to rest the erroneous statement made by Senator Siewert in the second reading when she stated that the Act denied people their choice of lawyer.
- 26. ECA knows of only one instance where a person's choice of lawyer had been brought into question. In *Bonan v Hadgkiss*, Deputy ABC Commissioner Hadgkiss excluded a particular legal representative because they had appeared for another witness. Mr Hadgkiss ruled that their appearance for a second witness may have prejudiced the investigation.
- 27. While everything mentioned above in this submission are compelling reasons why the BCII Act should not be repealed, the two main reasons for the continuation of the Act and therefore the ABCC are that industrial disputes are down and productivity is up.
- 28. The International Labour Organisation's own statistics show that over the past ten years but in particular over the past four the level of industrial disputes in the construction industry have dropped sharply as shown in the following graphs





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29. The reduction in the number of industrial disputes has assisted in raising the level of productivity in the building and construction industry.
30. In a report entitled *Economic Analysis of Building and Construction Industry Productivity: 2008 Report* prepared by Econtech Pty Ltd, the Year to Year comparison states;
- ABS data shows that, by 2007, construction industry labour productivity outperformed predictions based on its relative historical performance to 2002 by **10.5 per cent**
  - The Productivity Commission found that multifactor productivity in the construction industry was no higher in 2000/01 than 20 years earlier, but rose by **13.6 per cent** in the four years to 2005/06
  - The Allen Consulting Group, in a report to the Australian Constructors Association found a gain in non residential construction industry multifactor productivity of **12.2 per cent** in the five years to 2007
31. The report went on to say;
- “The latest evidence points to a significant productivity gain in the construction industry due to the ABCC (and its predecessor the Building Industry Taskforce) in conjunction with the related industrial relations reforms”
32. As well as the evidence being quantified in reports and statistics such as those from the ILO and the Ecnotech report, ECA has received much anecdotal evidence from members who are reporting that worksites are now operating in a more efficient manner and the relationship between employers and employees is (in the most part) very good.
33. Over the past four years confidence has returned to the Australian building and construction industry and that has lead to more capital works investment by both Australian and overseas investors, greater wages and conditions for employees and greater profits for employers.
34. In a media statement that ECA released on 11<sup>th</sup> September 2008 ECA claimed;
- “The ABCC has brought stability and accountability into the building and construction industry, which has been accompanied by increased building activity, improved productivity and higher wages for workers,”





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“By contrast, the destruction of the Commission would allow the unions to return to their lawless ways of thuggery and intimidation on building sites.

“The Federal Government must honour its election promise to retain the ABCC until 2010, and if it wants to ensure productivity and industrial harmony in the Australian economy it should commit to retaining the commission beyond that date.

“The Government certainly must not give in to this campaign to destroy the Commission or strip it of its ability to prevent illegal activity on building sites.”

35. ECA believes that these four paragraphs best sum up its view that the advent of the ABCC has assisted greatly in bringing the building and construction industry into the 21<sup>st</sup> century and helping to make it an industry that compares to the best in the world. .
36. No longer is the industry racked by rolling stoppages and intimidation. It is now better focussed on its primary role of building while providing well paid, safe employment to more than 9% of Australia’s workforce.
37. To repeal the BCII Act and thereby remove the ABCC and its powers would be greatly detrimental to the building and construction industry of Australia and ECA urges the Senate to dismiss the Private Members Bill out of hand.

### **ECA CONTACTS**

38. The Electrical and Communications Association would like to thank the Senate Committee for the opportunity to tender its submission to the Inquiry into Building and Construction Industry (Restoring Workplace Rights) Bill 2008.
39. Should the Committee have any queries on any issues raised in this submission please contact Mr Paul Daly the Manager of Workplace Policy on 07 3251 2444.

