



**SENATE STANDING COMMITTEE
ON EDUCATION, EMPLOYMENT
AND WORKPLACE RELATIONS**

**INQUIRY INTO THE BUILDING AND
CONSTRUCTION INDUSTRY
(RESTORING WORKPLACE
RIGHTS) BILL 2008**

ACCI SUBMISSION

10 OCTOBER 2008



LEADING AUSTRALIAN BUSINESS



ACCI – LEADING AUSTRALIAN BUSINESS

ACCI has been the peak council of Australian business associations for 105 years and traces its heritage back to Australia's first chamber of commerce in 1826.

Our motto is "Leading Australian Business."

We are also the ongoing amalgamation of the nation's leading federal business organisations - Australian Chamber of Commerce, the Associated Chamber of Manufactures of Australia, the Australian Council of Employers Federations and the Confederation of Australian Industry.

Membership of ACCI is made up of the State and Territory Chambers of Commerce and Industry together with the major national industry associations.

Through our membership, ACCI represents over 350,000 businesses nationwide, including over 280,000 enterprises employing less than 20 people, over 55,000 enterprises employing between 20-100 people and the top 100 companies.

Our employer network employs over 4 million people which makes ACCI the largest and most representative business organisation in Australia.

Our Activities

ACCI takes a leading role in representing the views of Australian business to Government.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally.
- Business representation on a range of statutory and business boards, committees and other fora.

- Representing business in national and international fora including the Australian Fair Pay Commission, Australian Industrial Relations Commission, Australian Safety and Compensation Council, International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, the Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, the Confederation of Asia-Pacific Chambers of Commerce and Industry and the Confederation of Asia-Pacific Employers.
- Research and policy development on issues concerning Australian business.
- The publication of leading business surveys and other information products.
- Providing forums for collective discussion amongst businesses on matters of law and policy affecting commerce and industry.

Publications

A range of publications are available from ACCI, with details of our activities and policies including:

- The ACCI Policy Review; a analysis of major policy issues affecting the Australian economy and business.
- Issue papers commenting on business' views of contemporary policy issues.
- Policies of the Australian Chamber of Commerce and Industry – the annual bound compendium of ACCI's policy platforms.
- The Westpac-ACCI Survey of Industrial Trends - the longest, continuous running private sector survey in Australia. A leading barometer of economic activity and the most important survey of manufacturing industry in Australia.
- The ACCI Survey of Investor Confidence – which gives an analysis of the direction of investment by business in Australia.
- The Commonwealth-ACCI Business Expectations Survey - which aggregates individual surveys by ACCI member organisations and covers firms of all sizes in all States and Territories.

- The ACCI Small Business Survey – which is a survey of small business derived from the Business Expectations Survey data.
- Workplace relations reports and discussion papers, including the ACCI Modern Workplace: Modern Future 2002-2010 Policy Blueprint and the Functioning Federalism and the Case for a National Workplace Relations System and The Economic Case for Workplace Relations Reform Position Papers.
- Occupational health and safety guides and updates, including the National OHS Strategy and the Modern Workplace: Safer Workplace Policy Blueprint.
- Trade reports and discussion papers including the Riding the Chinese Dragon: Opportunities and Challenges for Australia and the World Position Paper.
- Education and training reports and discussion papers.
- The ACCI Annual Report providing a summary of major activities and achievements for the previous year.
- The ACCI Taxation Reform Blueprint: A Strategy for the Australian Taxation System 2004–2014.
- The ACCI Manufacturing Sector Position Paper: The Future of Australia's Manufacturing Sector: A Blueprint for Success.

Most of this information, as well as ACCI media releases, parliamentary submissions and reports, is available on our website – www.acci.asn.au.



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1. INTRODUCTION

CONTEXT

1. Australia is part way through a major national policy conversation on the future form and operation of dedicated regulation of industrial relations in the economically vital building and construction industry.
2. ACCI has for many years maintained support for the findings of the Royal Commission into the Building and Construction Industry (the Royal Commission), for the creation and operation of the ABCC and associated agencies, and for legislation giving effect to the findings of that Royal Commission.
3. As set out in this submission we maintain this position.
4. The employers of Australia, across all industries and all States and Territories, consider the maintenance of existing regulation of industrial relations in the Australian building and construction industry to be essential. Employers consider the justification for establishment of the ABCC and its ongoing operation to be incontrovertible, as are the economic and industrial relations benefits of the ongoing operation of the ABCC/dedicated regulation of the industry.
5. The Rudd Government's 2007 *Forward With Fairness* policy statements propose for a different approach, which is in essence the following:

As previously indicated, Labor will maintain the existing arrangements for the building and construction industry, with the ABCC continuing until January 31, 2010. Following that date, responsibilities will transfer to the specialist division of the inspectorate of Fair Work Australia.¹

6. This was reiterated as recently as 17 September 2008 by the Deputy Prime Minister:

I can guarantee we'll deliver on our election commitment, which is that the ABCC will stay until 31 January 2010, with all of its powers and all of its budget. I can confirm we'll deliver on our election commitment that on 1 February 2010 it will be replaced by a specialist inspectorate within Fair Work Australia and, of course, His Honour Murray Wilcox, is undertaking a review for the Government to make a recommendation about that transition.²

¹ ALP (2007) *Forward With Fairness Implementation Plan*, p.24 - www.alp.org.au/download/070828_dp_forward_with_fairness_policy_implementation_plan.pdf

² Transcript, National Press Club, 1pm Wednesday, 17 September 2008

7. To begin to implement this policy intention, the Government has commissioned a review by former Federal Court Judge, the Hon Murray Wilcox QC (the Wilcox Inquiry), announced as follows by the Deputy Prime Minister on 24 July 2008.

Transition to Fair Work Australia for the Building and Construction Industry - Terms of Reference

The Australian Government has committed to establish a Specialist Division within the Inspectorate of Fair Work Australia with responsibility for the building and construction industry. The Specialist Division will commence operation on 1 February 2010 and will replace the Office of the Australian Building and Construction Commissioner.

The building and construction industry makes a critical contribution to the Australian economy, employment and productivity. The Specialist Division will ensure that all participants in the building and construction industry comply with Australia's workplace relations laws.

The Australian Government has committed to consult extensively with industry stakeholders to ensure the transition to the new arrangements will be orderly, effective and robust.

The Australian Government has asked the Honourable Murray Wilcox QC to consult and report on matters related to the creation of the Specialist Division including, but not limited to:

- The operational structure of the Specialist Division and its relationship with other parts of Fair Work Australia;
- The independence and accountability of the Specialist Division;
- The need, if any, for external monitoring, review or oversight of the Specialist Division;
- The scope of investigations and compliance activities to be undertaken by the Specialist Division;
- The powers required by the Specialist Division and its inspectors for the purpose of conducting investigations and compliance activities;
- The rights of persons who are subject to the investigations and compliance activities of the Specialist Division;
- The responsibilities of the officers of the Specialist Division;
- The reporting requirements of the Specialist Division;
- The resolution of disputes and complaints about the activities of the Specialist Division;

- The use of information collected by the Specialist Division in its investigations;
- The commencement of proceedings by the Specialist Division;
- The interaction of the Specialist Division with other federal enforcement agencies such as the Australian Securities and Investments Commission, the Australian Taxation Office, the Australian Competition and Consumer Commission and with relevant State enforcement agencies;
- The likely resources to be required by the Specialist Division and the ways of ensuring those resources are efficiently and effectively allocated;
- The best ways of ensuring high quality personnel are recruited to and retained by the Specialist Division and are properly trained and supervised; and
- The best manner of ensuring an orderly transition between the ABCC and the Specialist Division.

His Honour's consultations relate solely to the Specialist Division and are separate to the existing consultative processes established by the Government to inform the broader workplace relations framework and the establishment of Fair Work Australia. The Government intends legislation creating a new workplace relations system will be introduced into the Parliament in the second half of 2008.³

8. Justice Wilcox is to report by March 2009, with an Issues Paper and more detailed timeline anticipated shortly.
9. ACCI's primary position remains that change is unnecessary, and that as a consequence, the Wilcox review is not required.
10. However, if the Government's policy is to be further pursued, it is appropriate that this be by way of an appropriate review process preceding further detailed government consideration. The significance of this issue, and of the operation and foundations of the ABCC, dictate that its operations not validly be fundamentally altered without due consideration and review.
11. The bill being examined by this Committee proposes a course of action (altering the operation of the ABCC) that is part way through being examined by an extant, preceding inquiry process – and one which is being undertaken by an eminent former Australian jurist, according to an open submission process.

³ Deputy Prime Minister, Media Statement - 24th July 2008

12. ACCI's primary position on this Bill is that it should not be proceeded with in favour of consideration of the fate of the ABCC proceeding based on:
 - a. The Government's consistently articulated timetable for action (changes only from February 2010).
 - b. The Government's ongoing commitment to maintain specialist arrangements for the industry.
 - c. The already commenced Wilcox review.

THIS SUBMISSION

13. ACCI is strongly opposed to the abolition of the ABCC. This said, we intend to engage the detail of the issues raised in the Wilcox inquiry terms of reference in the context of that inquiry, and in response to the issues paper to be issued by Justice Wilcox.
14. The legislation being examined by this Committee is we believe premature, and would displace an inquiry process which is essential if any fundamental changes to the ABCC are under consideration.
15. Whilst ACCI does not see the need for the Wilcox Inquiry, such an inquiry is the minimum requirement, or indeed the inalienable starting point for policy change of the magnitude being considered. In particular, proper consideration is essential when such significant changes are being considered to an effective and proven regulator.
16. Employers can in no way support removing a proven, active and highly effective regulator outright prior to the finalisation of an extant inquiry into whether this should occur and the terms of any replacement arrangements. We do not consider sound public policy could lie in displacing or trumping an active, detailed inquiry with precipitous policy action.
17. On this basis - these are only short, preliminary submissions from ACCI.
18. We clearly favour this inquiry ceasing, in favour of at very least of the Government's proposed Wilcox inquiry running its course. We will engage the detailed considerations relating to the future of the ABCC primarily in the context of the Wilcox inquiry according to its timetable, and not in detail at this juncture.

19. On this basis we make out sole recommendations in response to this inquiry:

Recommendation 1:

The Senate Education, Employment and Workplace Relations Committee suspend its inquiry into the Building and Construction Industry (Restoring Workplace Rights) Bill 2008, and adjourn its proceedings until a date to be fixed (which would be a function of the introduction of any amendments flowing from the Wilcox inquiry).

Recommendation 2:

The Senate not further consider the Building and Construction Industry (Restoring Workplace Rights) Bill 2008, or if required to, it be negatived.



2. OUTLINE OF ACCI POSITION – ABCC

SUBMISSION TO THE WILCOX REVIEW

20. As foreshadowed, ACCI will address the considerations raised by the very detailed Wilcox review terms of reference in our submissions to that inquiry in due course. ACCI considers this is the most appropriate opportunity and forum to address the future of the ABCC and any replacement arrangements.
21. As such, it serves at this stage to provide this inquiry with an outline of some of the key points we will further develop in our submissions to Justice Wilcox, and in due course with the Government and members of this Parliament:
- a. Behaviours and underlying cultures in the Australian building and construction industry, established by the Cole Royal Commission and evidenced by ongoing developments in this industry, support the maintenance of the ABCC (and its extant budget, resources, Act and responsibilities).
 - b. The Royal Commission not only made findings on behaviours and conduct, but also specific recommendations to remediate these concerns. The Australian Parliament should continue to give effect to the findings and specific recommendations of such a Royal Commission.
 - c. The ABCC is doing a sound and effective job, and is changing behaviours in the Australian construction industry. The basis for its establishment in the wake of the Royal Commission findings has been borne out and remains valid.
 - d. The activities of the ABCC are delivering real economic and industrial benefits both the construction industry, other industries and to our wider economy and society.
 - i) This is evidenced in the various Econtech reports published by the ABCC⁴, and in the feedback of other industries reliant on construction.

⁴ “Economic Analysis of Building and Construction Industry Productivity: 2008” – ABCC Website

- ii) No valid basis has been advanced to doubt the findings of the Econtech reports, which come from one of Australia's foremost economic consultancies.
- e. The ABCC is observing the highest levels of probity and sound administration in its compliance and operational activities.

No URGENCY

- 22. We know of no basis in policy, or in the conduct ABCC in fulfilling its statutory task that would justify pre-empting the Wilcox inquiry in favour of the immediate abolition of the ABCC.
- 23. The only interests in this area which support such a course of action are those subject to the regulation of the ABCC (the construction unions) and those bodies whose conduct gave rise to unfavourable findings from the Royal Commission.
- 24. This Parliament, and the general community is rightly very sceptical of those regulated calling for the outright abolition of their regulator.
- 25. It should ever be thus. We invite the Committee to consider for example how it, and the wider community, would engage with:
 - a. A corporation seeking abolition of the ACCC without replacement.
 - b. Calls for the abolition of an independent regulator or standards body by a professional organisation.
 - c. Calls from law enforcement officers for the abolition of anti-corruption, or professional conduct bodies.
- 26. The regulated often dislike their regulator, and often hone in on particular powers and measures regulators use to do their regulatory work, as key points of criticism. Whilst not the most rigorous of points, some would suggest this is a sign of an effective regulator.

3. THE BILL

INTRODUCTION

27. ACCI notes that there are no specific terms of reference for this inquiry. This is explicable when regard is had to the terms of the proposed Bill, which constitute a simple, instant, outright repeal of an Act which:
- a. Establishes a statutory authority with statutory office holders.
 - b. Gives rise to complex criminal investigations, many of which are part way completed.
 - c. Gives rise to complex litigation, including active and part complete prosecutions – a number of which are part way through.

TOO SIMPLE AN APPROACH

28. This gives rise to a perhaps an ancillary criticism of the Bill as introduced; that it gives insufficient regard to consequences and is not a sufficiently detailed approach to undoing a Commonwealth agency and its activities. The Bill also pays no apparent regard to the future of the ABCC's appointees and staff. The operative elements of the Bill are:

Schedule 1—Repeal provisions

Building and Construction Industry Improvement Act 2005

1 The whole of the Act

Repeal the Act.

Building and Construction Industry Improvement (Consequential and Transitional) Act 2005

2 The whole of the Act

Repeal the Act.

29. There is nothing in the Bill on transitional arrangements, there is nothing in the Bill as to the status and future of existing prosecutions, and there is nothing in the Bill as to how this statutory agency and its office holders are to be “undone”. This is an illustration that the Bill is not appropriate for passage.

30. Aside from the issue of whether the ABCC should be abolished, when this should occur, or what the replacement arrangements should be; this Bill as introduced would not a proper discharge of the responsibilities of the Parliament.

OUTRIGHT REPEAL – CONSEQUENCES

31. The simple, stroke of a pen abolition of the ABCC proposed in the Bill is insufficiently detailed, even were it justifiable (which it could not be in advance of active inquiry, and employers maintain not at all).
32. Extant Matters: As at 31 August 2008, according to its website, the ABCC has 50 current investigations, and 24 current prosecutions as part heard / part completed matters. Many of these matters address serious alleged and suspected breaches of law, and involve part completed Court proceedings. They address major alleged contraventions of law, including:
- a. Freedom of association.
 - b. Abuse of the system.
 - c. Coercion.
 - d. Breaches of court and tribunal orders
 - e. Unlawful industrial action.
 - f. Strike pay
 - g. Discrimination
33. The proposed Bill says nothing about the fate and treatment of these matters. There are no transitional arrangements to address their future. These matters are a product of serious developments and significant allegations, and they have already cost the Government large amounts of money. This Bill would leave them in limbo, and perhaps discontinued. This would not represent sound public policy.
34. Public Servants: The ABCC has over 100 staff. The Bill says nothing about their future or transitional arrangements for these employees. This is not satisfactory, and it is not clear what would be intended to happen to these specialist staff, working in each State and Territory capital, if the Bill were passed.

35. Inspection: If this Bill were passed, there would no longer be the necessary inspectors to undertake the work required to deal with matters in this industry. The ordinary inspectorate staff of the Workplace Ombudsman would not be capable or trained to work in this industry, or on site. This includes a lack of:
- a. Specialist construction industry safety and site training, necessary to enter and work upon construction sites.
 - b. Specialist training in gathering evidence of potentially criminal conduct.
 - c. Specialist training in dealing with threatening or potentially violent situations.
36. This last point is not a fantasy or fairytale. There are genuine fears for the personal safety of those seeking to enforce the rule of industrial relations law in this industry, as the following example as recently as September 2008 illustrates:

Unions and watchdog ABCC at war⁵

HOSTILITIES between the building industry watchdog and unions are set to reignite, with a unionist due to face court on charges of assaulting and threatening to kill two construction commission inspectors.

Brian George Shearer is scheduled to appear in Melbourne Magistrates Court this month on two charges of unlawful assault, two of making threats to kill and two of threatening to cause harm to a public official.

The offences allegedly occurred at a construction site at the Melbourne suburb of Mill Park on December 6, 2006.

Police are expected to allege that Mr Shearer assaulted and threatened Australian Building and Construction Commission inspectors Graham Burgoyne and Terry Duffy.

Mr Shearer is expected to plead not guilty to the charges, which are due to be heard on September 22. If convicted, Mr Shearer faces a maximum penalty of 10 years' jail.

Mr Shearer is believed to be represented by prominent criminal lawyer Rob Stary.

⁵ Ewin Hannan | The Australian | September 03, 2008

The ABCC and the national secretary of the union's construction division, Dave Noonan, said it would be inappropriate to comment, given the matter was before the courts. Mr Noonan and commission chief John Lloyd yesterday continued to exchange barbs over claims by two inspectors that they were subjected to abuse and intimidation on a Brookfield Multiplex building site in Melbourne last month.

Mr Lloyd has alleged the inspectors, one of whom was female, were subject to intimidation and unacceptable abuse from building workers who barricaded them in a cafe and tried to block them from leaving a carpark.

Building workers have described the clash as "just a bit of banter", denying ABCC claims that they called the female inspector a "filthy black dog c..t".

Mr Noonan has accused Mr Lloyd of trying to smear and demonise building workers.

But Mr Lloyd, in a statement yesterday, rejected any suggestion that the ABCC "released the contents of its correspondence with Multiplex or any other party on this matter".

"Claims made by Mr Noonan that the ABCC leaked this correspondence are both unfounded and totally false," Mr Lloyd said.

Mr Noonan stood by his claim. "Someone leaked it. I don't believe Brookfield Multiplex leaked it. Mr Lloyd knows where the copies went so who does he think leaked it?"

"The ABCC is not an independent agency. They're a participant in the political process as they showed during the last federal election campaign."

A spokeswoman for the ABCC said yesterday that its inspectors had "noted a recent increase in negative behaviour displayed toward them when investigating matters on building sites, especially in Victoria".

"The ABCC is not prepared to discuss other similar incidents that are not in the public domain at this time," she said.

Mr Lloyd said ABCC staff had the right to work "without being intimidated or abused".

IGNORING A ROYAL COMMISSION

37. As we will develop in detail in our submissions to the Wilcox inquiry in due course, changes to the ABCC structure would potentially cease to give effect to the findings of the Cole Royal Commission. This is a course which, which whilst theoretically open to any government or Parliament, is not embarked upon lightly.
38. To cease to give effect to the specific remedial recommendations of a Royal Commission would be a very significant departure from established policy and would represent a departure from accepted governmental practice around the common law world.

39. Attachment A to this submission is Commissioner Cole's summary of the findings of the Royal Commission.

An Analogy

40. We invite the Committee to consider the following scenario by way of analogy, to illustrate how extraordinary the abolition of the ABCC would be:

- a. An incoming Government in Queensland, or a member of the Queensland Parliament, decides that the 1987 Fitzgerald Royal Commission was somehow flawed, is somehow now open to be ignored, or was somehow unfair on police and public officers.
- b. The Queensland Parliament considers a Bill in the following terms:

Schedule 1—Repeal provisions

CRIME AND MISCONDUCT ACT 2001

1 The whole of the Act

Repeal the Act.

- c. The immediate result of passing the Bill would be the instant abolition of Queensland's ICAC⁶, little or no effective regulation of criminal and corrupt conduct by the police and public officers of that state, and (potentially) the abandonment of serious criminal prosecutions launched by the now ceased agency.
41. ACCI will develop these propositions further in our submissions to Justice Wilcox.

No TRANSITIONAL ARRANGEMENTS

42. There are no transitional arrangements in this Bill and no appropriate consideration of undoing an operative Commonwealth agency, with a complement of over 100 staff, and a body of part completed litigation alleging breaches of Commonwealth law.

⁶ Independent Commission Against Corruption

43. Indeed the Bill proposes the specific abolition of the previous transitional legislation addressing precisely such concerns. The *Building and Construction Industry Improvement (Consequential and Transitional) Act 2005* is an illustration of the necessary range of complex considerations which are not sufficiently being taken into account in this instance.
44. This Parliament simply does not legislate in such a manner, and legislation which does not address transitional considerations is *prima facie* legislation which cannot be assented to.
45. Associated with this, the Bill does not address the range of consequential considerations it would be necessary to address in abolishing such an agency and its empowering legislation.

THIS WOULD REMOVE SAFETY PROTECTION

46. The following is drawn from the website of the Federal Safety Commissioner:

The Cole Royal Commission into the Building and Construction Industry concluded that it examined no more important subject than occupational health and safety (OHS), and found that the safety record for the industry was unacceptable. It recommended that the Australian Government use its influence as a client and provider of capital to foster improved OHS performance.

The Australian Government agreed to implement the majority of the Royal Commission's OHS recommendations, including establishing the Federal Safety Commissioner (FSC) to develop, implement and administer an OHS accreditation scheme for Australian Government building and construction work.

In June 2004 the Hon Kevin Andrews MP, then Minister for Employment and Workplace Relations, announced that the FSC would be administratively established within the then [Department of Employment and Workplace Relations](#). The FSC and the Scheme are provided for under the [Building and Construction Industry Improvement Act 2005](#), which received Royal Assent on 12 September 2005.

47. Chapter 4, and Chapter 7, Part 2, Div 3 of the *Building and Construction Industry Improvement Act 2005* establishes the Federal Safety Commissioner and empowers its work.
48. If this Bill is passed, at the stroke of a pen, the dedicated safety body in the Australian construction industry would be abolished and its contribution to safer construction industry workplaces would cease. Federal safety officers would cease to do their inspection and enforcement work in the industry.

49. This is unacceptable to Australia's employers – particularly in an industry in which safety is such a vital issue, as is clearly recognised at the highest levels by all parties.
 - a. Under Australia's National OHS Strategy (agreed by all Governments, unions and employers) the Construction industry is identified as a priority industry for improvement.
50. Australia's employers are unambiguously opposed to any course of action which would lead to less safe work and less safe workplaces in this key industry. On this basis alone we would steadfastly oppose this Bill.
51. This is a further illustration that this is not a Bill which could be considered for passage.



4. CONCLUSION

52. At most there is a Government intention to abolish the ABCC in 2010, which employers will contest directly and with vigour in due course.
53. We will also be heavily engaged with the form and derivation of replacement arrangements if the ABCC is abolished.
54. ACCI does not support the guillotining of an extant inquiry and bringing forward such a contentious course of action on the timeframe proposed in the current Bill / or the terms proposed in the Bill.
55. It is therefore perhaps best to conclude this submission, coming as it does before the work of the Wilcox review, with a recitation of our recommended approach, and the conclusions Australia's employers would have this Committee / the Senate reach:

Recommendation 1:

The Senate Education, Employment and Workplace Relations Committee suspend its inquiry into the Building and Construction Industry (Restoring Workplace Rights) Bill 2008, and adjourn its proceedings until a date to be fixed (which would be a function of the introduction of any amendments flowing from the Wilcox inquiry).

Recommendation 2:

The Senate not further consider the Building and Construction Industry (Restoring Workplace Rights) Bill 2008, or if required to, it be negatived.



ATTACHMENT A: ROYAL COMMISSION FINDINGS

FINDINGS REGARDING CONDUCT AND PRACTICES ⁷

In the building and construction industry throughout Australia, there is:

- (a) widespread disregard of, or breach of, the enterprise bargaining provisions of the Workplace Relations Act 1996 (C'wth);
- (b) widespread disregard of, or breach of, the freedom of association provisions of the Workplace Relations Act 1996 (C'wth);
- (c) widespread departure from proper standards of occupational health and safety;
- (d) widespread requirement by head contractors for subcontractors to have union-endorsed enterprise bargaining agreements (EBAs) before being permitted to commence work on major projects in State capital central business districts and major regional centres;
- (e) widespread requirement for employees of subcontractors to become members of unions in association with their employer obtaining a union-endorsed enterprise bargaining agreement;
- (f) widespread requirement to employ union-nominated persons in critical positions on building projects;
- (g) widespread disregard of the terms of enterprise bargaining agreements once entered into;
- (h) widespread application of, and surrender to, inappropriate industrial pressure;
- (i) widespread use of occupational health and safety as an industrial tool;
- (j) widespread making of, and receipt of, inappropriate payments;
- (k) unlawful strikes and threats of unlawful strikes;
- (l) threatening and intimidatory conduct;
- (m) underpayment of employees' entitlements;

⁷ Final Report of the Royal Commission into the Building and Construction Industry - Summary of Findings and Recommendations, Volume 1, pp.5-6

- (n) disregard of contractual obligations;
- (o) disregard of National and State codes of practice in the building and construction industry;
- (p) disregard of, or breach of, the strike pay provisions of the Workplace Relations Act 1996 (C'wth);
- (q) disregard of, or breach of, the right of entry provisions of the Workplace Relations Act 1996 (C'wth);
- (r) disregard of Australian Industrial Relations Commission (AIRC) and court orders;
- (s) disregard by senior union officials of unlawful or inappropriate acts by inferior union officials;
- (t) reluctance of employers to use legal remedies available to them;
- (u) absence of adequate security of payment for subcontractors;
- (v) avoidance and evasion of taxation obligations;
- (w) inflexibility in workplace arrangements;
- (x) endeavours by unions, particularly the Construction, Forestry, Mining and Energy Union (CFMEU), to regulate the industry; and
- (y) disregard of the rule of law.

These findings demonstrate an industry which departs from the standards of commercial and industrial conduct exhibited in the rest of the Australian economy.

They mark the industry as singular.

They indicate an urgent need for structural and cultural reform.

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Facsimile: 02 9691 2065

Australian Made, Australian Grown Campaign

Suite 105, 161 Park Street
SOUTH MELBOURNE VIC 3205
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Facsimile: 03 9686 1600
Email: ausmade@australianmade.com.au
Website: www.australianmade.com.au

Australian Mines and Metals Association

Level 10
607 Bourke Street
MELBOURNE VIC 3000
Telephone: 03 9614 4777
Facsimile: 03 9614 3970
Email: vicamma@amma.org.au
Website: www.amma.org.au

Australian Newsagents' Federation

Level 3
33-35 Atchison Street
ST LEONARDS NSW 2065
Telephone: 02 8425 9600
Facsimile: 02 8425 9699
Website: www.anf.net.au

Australian Paint Manufacturers' Federation Inc

Suite 1201, Level 12
275 Alfred Street
NORTH SYDNEY NSW 2060
Telephone: 02 9922 3955
Facsimile: 02 9929 9743
Email: office@apmf.asn.au
Website: www.apmf.asn.au

Australian Retailers' Association

Level 2
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Telephone: 1300 368 041
Facsimile: 03 9321 5001
Email: info@vic.ara.com.au
Website: www.ara.com.au

Live Performance Australia

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Website: www.liveperformance.com.au

Master Builders Australia

Level 1, 16 Bentham Street
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Email: enquiries@masterbuilders.com.au
Website: www.masterbuilders.com.au

Master Plumbers' and Mechanical Services Association of Australia

525 King Street
WEST MELBOURNE VIC 3003
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Facsimile: 03 9329 5060
Email: info@mpmsaa.org.au
Website: www.plumber.com.au

National Baking Industry Association

Bread House, 49 Gregory Terrace
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Email: nbia@nbia.org.au
Website: www.nbia.org.au

National Electrical and Communications Association

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Facsimile: 02 9439 8525
Email: necanat@neca.asn.au
Website: www.neca.asn.au

National Fire Industry Association

PO Box 6825
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Telephone: 03 9865 8611
Facsimile: 03 9865 8615
Website: www.nfia.com.au

National Retail Association Ltd

PO Box 91
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Telephone: 07 3251 3000
Facsimile: 07 3251 3030
Email: info@nationalretailassociation.com.au
Website: www.nationalretailassociation.com.au

Oil Industry Industrial Association

c/- Shell Australia
GPO Box 872K
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Facsimile: 03 9666 5008

Pharmacy Guild of Australia

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Website: www.guild.org.au

Plastics and Chemicals Industries Association

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Printing Industries Association of Australia

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Website: www.printnet.com.au

Restaurant & Catering Australia

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ARTARMON NSW 2604
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Website: www.restaurantcater.asn.au

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Victorian Automobile Chamber of Commerce

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