

SENATE STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT | References Committee

Inquiry into the Government's approach to re-establishing the Australian Building and Construction Commission

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We thank the Committee for the opportunity to appear, and to participate via teleconference.

The resource industry is one of the largest clients of our construction industry, and AMMA represents both constructors and their clients.

Built infrastructure being delivered on time and on budget is critical to the contribution our industry makes to the national economy and jobs.

Cost-effective construction is also vitally important to Australia's competitiveness and reputation as a place to invest and do business.

However - when we talk about efficiency and productivity we are not talking about cutting pay or conditions. Productivity, reliability and stability in construction is what Australian industry wants to be able to rely on into the future.

Our members have consistently supported the Australian Building & Construction Commission (ABCC) from the Cole Royal Commission Recommendations, through its years of successful operation and nascent cultural transformation of the industry, and following the watering down under the previous government.

Our industry remains unambiguously committed to the restoration of the ABCC.

A restored ABCC will again deliver an effective foundation for:

- Increasing productivity and efficiency in our resource and construction sectors.
- Ensuring proper respect for, and compliance with, the law.
- Addressing the unacceptable cultures and practices found by Commissioner Cole, and confirmed by former Justice Wilcox.

Royal Commissions enjoy a unique and influential status in our legal system – with very good reason.

The specific remedial recommendations of any Royal Commission must inherently enjoy the strongest of presumptions towards being followed by the parliament – and to be above the vagaries of political fortune.

There is no basis for this parliament to continue to fail to properly implement the specific remedial institutional recommendations the Cole Royal Commission handed down to begin to fix the proven culture of lawlessness in this industry.

We remind the Committee that the Royal Commission found evidence of:

- Widespread disregard for, and breaches of, the law.
- Widespread application of inappropriate industrial pressure.

- Widespread making of, and receipt of, inappropriate payments.
- Threatening and intimidatory conduct.
- An industry which departs from the standards of commercial and industrial conduct exhibited in the rest of the Australian economy.
- An industry in urgent need of structural and cultural reform.

These were clear findings of fact by our highest form of judicial inquiry.

Commissioner Cole ultimately recommended that:

*“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”.*¹

And that:

*...If the reforms recommended are adopted and implemented, the mechanisms will be in place to restore the rule of law to the building and construction industry.*²

Royal Commissioner Cole found a fundamental public policy wrong in this country – and he handed down specific prescriptions to fix it.

Our Parliament needs to again follow these recommendations and restore the ABCC.

¹ Report 1, Para 10.

² Report 1, Para 32.

In AMMA's written submission, we address each of the terms of reference, and we stress again that this Committee has a clear basis to recommend passage of the current Bills and restore the ABCC at the earliest possible opportunity.

I will not take you to the specifics of this material, but suffice to say:

- The impact of restoring the ABCC will be overwhelmingly positive. The ABCC will negatively impact only on those breaking the law.
- The need for a specialist regulator has been comprehensively determined by the Royal Commission. These findings were then confirmed in practice, by developments both under the ABCC and following its watering down in 2012.
- A restored ABCC will again contribute to a more productive, competitive industry which will benefit the wider Australian economy, employers, employees and the community.

Finally, recent revelations within the CFMEU cannot go unremarked upon:

- The Cole Royal Commission and experience in the operation of the ABCC more than justify the passage of these Bills, prior to anything being publicly revealed about the CFMEU's internal problems.
- However, Commissioner Cole found an unacceptable culture within this industry. It is of no surprise that an industry in which employment laws are not respected, and in which there is an endemic culture of intimidation and coercion, could give rise to personal impropriety and disrespect for members' interests and other areas of our laws.

- This also appears to be an industry in which particular vigilance needs to be maintained regarding potential exposures to organised crime.
- A properly restored ABCC will be very well-placed to pass on anything material it finds in this regard to law enforcement, and to do so in a way which will facilitate effective investigation, and where appropriate, prosecution.
- And with the benefit of the recent reports, the restored ABCC can focus on establishing even more effective links and protocols with the law enforcement agencies for addressing allegations of criminality, fraud and misappropriation.

We commend to the Committee our submission on these terms of reference and our earlier submission on the substance of the Bills.
