



10 April 2015

Committee Secretary
Senate Education and Employment Committees
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Parliament House
Canberra ACT 2600

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Dear Madam/Sir

UnionsWA submission to Inquiry into the Construction Industry Amendment (Protecting Witnesses) Bill 2015

UnionsWA is the governing peak body of the trade union movement in Western Australia, and the Western Australian Branch of the Australian Council of Trade Unions (ACTU). As a peak body we are dedicated to strengthening WA unions through co-operation and co-ordination on campaigning and common industrial matters. UnionsWA represents around 30 affiliate unions, who in turn represent approximately 140,000 Western Australian workers.

UnionsWA thanks the Committee for the opportunity to make a submission to this inquiry. We support the Combined Construction Unions position that this Bill should be opposed.

UnionsWA has consistently opposed the excessive and unnecessary powers over industrial matters given to both the Australian Building and Construction Commission (ABCC) and the Fair Work Building Industry Inspectorate (FWBII) since the creation of these organisations.

Their coercive powers, and the criminal sanctions attached to them are, as stated in the Combined Construction Unions submission, *'inconsistent with internationally recognised labour standards and the industrial norms of a modern democracy'*.

The existence of two separate and separately funded, statutory agencies enforcing one set of industrial laws (namely the Fair Work Ombudsman [FWO] and the FWBII) is particularly egregious given the Federal government's repeated claims that Australia has faced a 'budget emergency' that justified severe cuts to the public sector. Clearly there is no 'budget emergency' when the government feels motivated to attack organisations in civil society with which it disagrees.

As the Combined Union's submission says, *'[d]espite having the same statutory functions, in practice the FWO and FWBII perform their functions in very different ways.'*

In particular

*The FWO carries out the full range of functions that would ordinarily be expected of a labour inspectorate and does so in a way that is consistent with Australia's international obligations as a signatory to ILO Convention 81 - Labour Inspection. This Convention describes the central role of any labour inspectorate as securing 'the enforcement of the legal provisions relating to conditions of work **and the protection of workers while engaged in their work**, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters' (emphasis added).*

By contrast both the FWBII, and its predecessor the ABCC, put little to no priority on the enforcement of employee entitlements. Instead they have acted as a prosecutor first and foremost of union workers. The infamous 'Ark Tribe' case was ample demonstration that these agencies cannot exercise in a responsible manner the powers given to them.

Furthermore, at a Senate hearing in 2014, Victoria Police revealed that, between 2005 and 2012, the ABCC gave them 15 referrals, only one of which led to a finding of guilt. Even then the offender was placed on a diversion program rather than convicted.¹ It is therefore unclear what value the community gains from the FWBII having such oversized powers.

If the *Construction Industry Amendment (Protecting Witnesses) Bill* is rejected, then from 1 June 2015, FWBII inspectors will have the same powers as the FWO for the building industry. These are entirely appropriate powers for an industrial relation regulator.

UnionsWA fully agrees with the Combined Unions that there is '*no good reason to extend the coercive powers of the FWBII for a further two years*'. Therefore this Bill should be opposed.

Please contact me on
discuss matters further.

if you would like to

Yours sincerely

Meredith Hammat
Secretary

¹ 'Building watchdog's 15 police referrals in 7 years score no convictions' (24 May 2014)
<http://www.smh.com.au/federal-politics/political-news/building-watchdogs-15-police-referrals-in-7-years-score-no-convictions-20140323-35bto.html>