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10 February 2014

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Sent via email to: eec.sen@aph.gov.au

Dear Secretary,

Master Electricians Australia is grateful for the opportunity to comment on the Government's approach to re-establishing the Australian Building and Construction Commission.

Master Electricians Australia (MEA) is dynamic and modern trade association representing electrical contractors. Originating as the Electrical Contractors Association in 1937, we are the leading voice of the electrical and communications industry throughout Australia. The organisation's website is: <http://www.masterelectricians.com.au>

MEA commends the Federal Government's commitment to re-establishing the Australian Building and Construction Commission (ABCC). We wish, in principle, to support the submissions made by the Housing Industry Association, Master Builders, Australian Industry Group, Australian Mines and Metals Association and Senator the Hon Eric Abetz. Our comments on each of the terms of reference are provided below.

a. The potential impact of the re-establishment of the Australian Building and Construction Commission on the building and construction industry

Broadly, the re-establishment of the ABCC will greatly enhance the productivity of the building and construction industry, benefiting not only the industry itself but the broader economy which relies on the effective and efficient functioning of this industry for continued growth and prosperity.

The re-established ABCC is sure to achieve these ends through an enhanced workplace relations framework that will encourage genuine workplace bargaining and a means to investigate and enforce the Act, relevant building laws and the Building Code itself. Workers and employers alike will also benefit from the advice and support functions provided by the ABCC and an assurance that all building industry participants are accountable for unlawful conduct.

The availability of this kind of support for employers and workers is likely to result in increased employment levels.

In its previous incarnation the ABCC was an effective and efficient regulator, with a proven record of ensuring fairness and productivity in the building and construction industry. The impact of re-establishing the ABCC will return to industry to this high standard.

b. The need or otherwise for a specialist industrial regulator in the building and construction industry

The need for a specialist industrial regulator in the building and construction industry was confirmed by the findings of the Cole Royal Commission into the Australian building and construction industry as far back as 2001. A key finding of the Royal Commission was the destructive culture of industrial lawlessness present in this industry that only a dedicated regulator could properly address.

The ABCC as it was in place was an effective specialist regulator that must be re-established with urgency.

c. The potential impact of the bills on productivity in the building and construction industry

The Wilcox report released in 2009 details ample evidence of the improvements to productivity that can result from a specialist industrial regulator for the building and construction industry being in place. It is not necessary to list all of the examples cited in this report which included a drastic drop in industrial disputes at the sites of construction company, Grocon and improved industrial relations records at two sites of resource company, Woodside Energy. With far fewer days “off the job” and an improvement in workplace culture, employers can have renewed faith in the continued productivity and competitiveness of the building and construction industry that contributes so much to the growth of the Australian economy.

d. Whether the bills are consistent with Australia's obligations under international law

MEA supports the comments made by the Australian Mines and Metals Association in their submission on this point.

e. The potential impact of the bills on employees, employers, employer bodies, trade and labour councils, unions and union members

EMPLOYEES

Through these bills, employees will reap the benefits of an efficient and equitable industry that attracts more investment and generates long-term secure employment.

EMPLOYERS AND EMPLOYER BODIES

The benefits to employers that will result from these bills are numerous and have been outlined above as well as in the submissions of other industry groups.

Employer groups who represent businesses operating in the building and construction industry have long supported the re-establishment of the ABCC. The benefits provided to both the employers they represent and the productivity of wider industry are undeniable.

UNIONS AND THEIR MEMBERS

The re-establishment of a specialist regulator for the building and construction industry has been opposed by many union groups. However, it has never been the intention of the ABCC to see an end to the valuable representation provided by trade unions. The priority of the ABCC has always been to ensure lawful behaviour workplace equality and freedom of association for all concerned, which will continue to include the right for trade unions to represent their members in workplace matters. The only trigger for ABCC intervention will be unlawful actions by the parties involved. Those abiding by the law will only stand to benefit from the ABCC being restored as a regulator.

f. The extreme and heavy-handed proposed powers of the Australian Building and Construction Commission, including coercive powers, conduct of compulsory interviews, and imprisonment for those who do not co-operate

Referring to the proposed powers of the ABCC as “extreme and heavy-handed” indicates a concerning bias in the formulation of the terms of reference that MEA would not expect in an inquiry of this nature. Despite the fact that such wording suggests otherwise, MEA is optimistic that the Senate Education and Employment References Committee will conduct this inquiry in an impartial manner to ensure the best outcome for all who will be affected.

While the enforcement powers outlined in the Bill are comprehensive, they are necessary measures in light of the secretive and ultimately destructive culture of the building and construction industry. They are also powers designed to protect parties from known tactics of intimidation and coercion from third parties seeking to avoid compliance with established laws. The proposed enforcement powers of the ABCC are in clear proportion to the unlawful actions that would trigger the ABCC into action.

g. The provisions of the bills relating to requirements to provide information to the Australian Building and Construction Commission during interviews including provisions that interviewees have no right to silence

As discussed in the point above, the proposed powers of the ABCC are necessary to address the secretive nature of this specific industry.

It is also important to note that, as an added layer of protection, the Commonwealth Ombudsman will have power to oversee the examination notice process.

h. The provisions of the bills that introduce the law of conspiracy into the industrial regulation of the building and construction industry;

Describing laws that prohibit conspiracies to take unlawful actions as being “introduced” is a point of contention. The provisions of these proposed bills merely re-instate the approach adopted by the former *Building and Construction Industry Improvement Act 2005*. It is also true that other legislation enacted in Australia contains similar provisions on conspiracy to take unlawful action. This includes s.550 of the *Fair Work Act 2009*, s.256 of the *Model Work Health and Safety Bill* and s79 of the *Corporations Act 2001*. All of these laws, including those

proposed in the Bill re-establishing the ABCC, apply equally to all parties involved, including employers.

i. Whether the provisions of the bills relating to occupational health and safety in the building and construction industry are adequate to protect the health and safety of employees and contractors in the industry.

The inclusion of this term of reference for the Senate's inquiry seems misplaced given that work health and safety is primarily the legislative responsibility of state and territory Governments. The intention being re-establishing the ABCC is to focus on the regulation of workplace relations in the building and construction industry.

At the same time, the proposed Bill in no way prevents legitimate safety issues in the building industry from being addressed by employees, unions, or regulators and in this regard serves to protect the health and safety of employees and contractors.

j. Other related matters

Overall we would urge the Senate to pass the *Building and Construction Industry (Improving Productivity) Bill 2013 and related bills* as a priority. The ABCC was proven to be an effective regulator of the building and construction industry prior to being removed and it is imperative that it be re-established to ensure the productivity and growth of the industry.

Regards,

Jason O'Dwyer
General Manager – Workplace Policy