



level 6 365 queen street
melbourne victoria 3000
t +613 9664 7333
f +613 9600 0050
w actu.org.au

President Gerardine (Ged) Kearney
Secretary Dave Oliver

The Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600
Via e-mail: eec.sen@aph.gov.au

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27 September 2016

Dear Secretary

Inquiry into the provisions of the *Building and Construction Industry (Improving Productivity) Bill*

The ACTU is vehemently opposed to this Bill and to the re-introduction of the Australian Building and Construction Commission.

We and our affiliates have made comprehensive submissions to past inquiries in support of our call for this Bill and its related transitional Bill to be emphatically rejected and we rely on that material to support that call in the present inquiry.

Based on that material, the Committee can and should make the following findings:

- 1) The Bill breaches Australia's obligations under International law. This of itself leaves Australia exposed to action by United Nations agencies. It is also a threat to our trading relationships given that it is a term of Free Trade Agreements recently agreed to that Australia will abide by the international obligations that this Bill will contravene. This entirely avoidable collision course has all the hallmarks of a government with a real internal communication problem.
- 2) There is no cogent argument in favour of the building industry having a different set of workplace laws to the rest of the country, and not even the \$46 million dollar Royal Commission into "Trade Union Governance and Corruption" was prepared to support such a step. No argument at all has been made in support of the Bill's potential reach into new sectors, including manufacturing, logistics and to scientific and supply vessels.
- 3) The industry specific laws that are introduced by the Bill may be broken down into three categories: Laws to restrict industrial action, coercive powers, and laws that restrict freedom of agreement between employers and their workers.
 - a. As to the first type of laws, it is to be noted there is no evidence to suggest that industrial action in the building industry is at historically high levels or that the rate of disputation in the industry has materially increased in the period since the ABCC was abolished. Indeed, the incidence of strikes in the industry remains extremely low relative to its historic levels and is on average less than when the ABCC was operating. These official statistics do not distinguish between lawful strikes and the

types of strikes targeted by the Bill so are likely an overestimate of the types of strikes that the provisions in the Bill might be used in response to. Where proven, striking workers face penalties in the order of those applicable to convicted sex offenders found loitering around schools. The provisions are so poorly drafted that that, among other things, they leave union delegates exposed to prosecution for *encouraging dissenting workers to remain at work* in accordance with a resolution at a members meeting.

- b. As to coercive powers, these impinge on the rights of individuals, including the right to protection of property and privacy, the right to silence and statutory rights to the protection of personal information. The powers proposed in the Bill are similar to those available in connection with the examination of suspected terrorists, save that compulsory interrogation of suspect terrorists requires a warrant to be issued by a Federal Judge or Magistrate, whereas the ABCC under this Bill will not require approval to issue its examination notices (the Bill will repeal the limited safeguards presently in place which apply to the issuing of these notices). Notably, the provisions of the *Building and Construction Industry (Consequential and Transitional Provisions) Bill* will allow the ABCC to use its powers to reach back in time up to 6 years and re-investigate matters that have already been resolved and even bring those settled matters back to Court, at taxpayers expense.
 - c. As to the laws that restrict freedom of agreement, these include the a prohibition on collective employment contracts, a prohibition on enterprise agreements allocating work to skilled, trained tradespeople (or proscribing safe staffing levels) and a prohibition on enterprise agreements ensuring that sub-contractors workers are not discriminated against in their rates of pay. This will lead to exploitative practices such as workers being replaced with cheaper visa labour from overseas and sham agreements being made with low paying “start up” contractors. Further, the common law right to invite a person onto property will be abolished, insofar as the property concerned is connected to building work and the person proposed to be invited is a union official (including, perplexingly, any union official that both the ABCC and the Fair Work Commission have accepted is a fit and proper person to enter a building site even *without* the consent of the builder). Most of these limitations arise from the *Building Code* which the Bill implements and which we oppose. The *Building Code* applies to builders while they perform government funded construction work however it also applies to any other work that those builders do privately for other clients (which on any reasonable view is none of the government’s business). On a related note, the ABCC will be given a power to intervene in any private matter in the Fair Work Commission, independently of the wishes of the parties to a dispute, so long as one of the parties is in the building industry.
- 4) The Bill contains no measures at directed to crime or corruption in any industry, let alone the building industry, and it is therefore highly misleading and deceptive for any person to seek to make an argument in support of the Bill by reference to alleged conduct of that kind.
 - 5) The ABCC, to put it bluntly, “has form”. In its last iteration it distinguished itself by the aggressive, coercive and biased manner in which it carried out its activities. It focused overwhelmingly on the investigation and prosecution of workers and trade unions, thus failing in its primary obligation as a regulator to enforce the law impartially. This is highly objectionable from a principled perspective but also as a matter of practicality: the industry has consistently ranked in the top two for highest in unpaid employee entitlements. Further, the extent of impact

of contrived insolvencies, phoenixing and other corporate misconduct on both business and employment relationships is truly staggering (a recent review of insolvency investigation reports in the industry found over three thousand possible cases of civil misconduct and nearly 250 criminal offences in the industry in a single year) . The ABCC did nothing, and will do nothing, to assist those persons affected by this disgraceful conduct.

- 6) There is no credible evidence that the ABCC led to improved productivity in the building industry when it was last in existence, nor is there any evidence that the introduction of this Bill will improve productivity. Such “evidence” that has trotted out in favour of it has been economic modelling that has been thoroughly debunked. It also important to bear in mind that, to the extent that industrial action in the industry is said to be an economic problem, the current average level of days lost to industrial action in construction is not even one sixth of the average level seen in key resource industries since the start of the mining boom.
- 7) The most notable observation from official statistics that distinguishes the ABCC period are not those about productivity or industrial action – they are those about workplace deaths. During the currency of the ABCC the number of workplace fatalities in the construction industry grew. The risk of workplace injury or death in the construction industry is high and a regulatory environment that discourages workers from speaking out or seeking assistance from their union to improve workplace safety concerns will potentially risk more lives.

In light of these findings, no reasonable Senator could in good conscience support the Bill.

Even if this Bill is approached purely on ideological grounds, there is ample reason for both libertarians and social democrats alike to be offended by its provisions. This is perhaps why the government took absolutely no steps to explain the Bill or its provisions during its marathon re-election campaign, notwithstanding that its non-passage in the last Parliament was the stated reason for going to the polls.

Yours faithfully,



Dave Oliver
Secretary