

19 January 2012

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

**Submission regarding the Building and Construction Industry Improvement  
Amendment (Transition to Fair Work) Bill 2011**

AMCA is the pre-eminent organisation of air conditioning and mechanical services companies who joined to represent and promote the industry along with the well being of its members. AMCA is the only truly national employer/industry association that is exclusively dedicated to the air conditioning and mechanical services industry. Every major air conditioning and mechanical services company in Australia is a member of AMCA. All our member companies operate in the building and construction industry and therefore AMCA is well qualified to comment on proposed legislative changes in the that industry.

The BCII Act has its origins in the Cole Royal Commission into the Building and Construction Industry. Criticisms were levelled at the Royal Commission as being an anti union attack mounted by the former Howard government. Whether this is true or not misses the point. The evidence presented to the Royal Commission was compelling. Witness after witness provided evidence of "stand over" tactics used on construction sites by union officials especially from the CFMEU and ETU. Physically large and abusive union officials can be extremely intimidating to project managers who work for specialist subcontractors.

Based on all of the evidence the Royal Commission concluded that a change in the industry culture was needed. This change is happening now through the good work of the Australian Building Construction Commission and its officers. Cultural change does not occur in just a few years. It takes considerable time. For the government to weaken the ABCC and significantly reduce the penalties for breaking the law will send the wrong signal to the union movement.

AMCA believes the government is going too far to accommodate the union demands to weaken the ABCC. In support of this viewpoint we draw specific attention to the following issues:

- The financial penalties that can be imposed by the courts when unlawful behaviour is proven will be reduced significantly. We believe they have been reduced to the point they will no longer be a deterrent to change behaviour.

The record of industrial relations disputes particularly in Victoria and Western Australia remains poor. Recent disputes support this position. We believe that if the penalties are reduced, unlawful behaviour will increase markedly.

- Under the BCII Act the courts were able to award costs where the judge believed it to be appropriate. This will no longer be possible even in the case of the worst abuses of the law.

When this issue is added to the reduced penalties we believe the level of deterrent through the imposition of penalties will be almost non-existent.

- The Director of the proposed specialist division of Fair Work Australia must seek the approval of a Presidential Member of the AAT prior to undertaking an examination. We submit this process will have the effect of hampering and limiting the ability of the director to act in a timely manner in response to alleged breaches of the Act. AMCA does not believe this restriction on the exercise of the director's powers is warranted when Justice Wilcox was undertaking his review in 2009 he did not find any evidence the ABCC had misused its powers.
- AMCA submits there is an anomaly in the payment of legal expenses under the amendment Act. In those cases where a person voluntarily provides information to an investigation they are not entitled to receive reimbursement of costs including legal fees. However, if a person is required to give information under the direction of a Presidential Member of the AAT they will be entitled to receive payment of expenses which includes legal expenses.

This being the case, it seems to AMCA there is a clear disincentive for any person to provide information on a voluntary basis.

We submit that without the current coercive powers which are available to the ABCC there is unlikely to be any lasting cultural change in the building and construction industry.

AMCA also believes that the proposed regime of fines is inadequate for the purpose of ensuring compliance with the law. In our opinion the current level of fines and penalties should be retained.

One criticism of the BCII Act and the penalties which can be imposed is that building workers should not be treated differently to other workers in the economy. The Association response to this proposition is, if they behave the same way as other workers fine, but the reality is they behave differently.

As members of the Australian Chamber of Commerce and Industry (ACCI) AMCA has been involved in developing its submission and we support the position articulated by ACCI.

Yours truly,

David Eynon  
**National Director**