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Committee Secretary
Senate Education and Employment Committees
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Canberra ACT 2600

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Dear Madam/Sir

UnionsWA submission to inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No. 2]

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 further submission on the above Bills. On 18 February this year we made a submission on these Bills which agreed with the ACTU that there is no compelling argument for a separate industrial relations policy framework for the building and construction industry. In the intervening period nothing has changed to alter the view expressed by the ACTU in their submission to this Committee made in January 2014, namely that

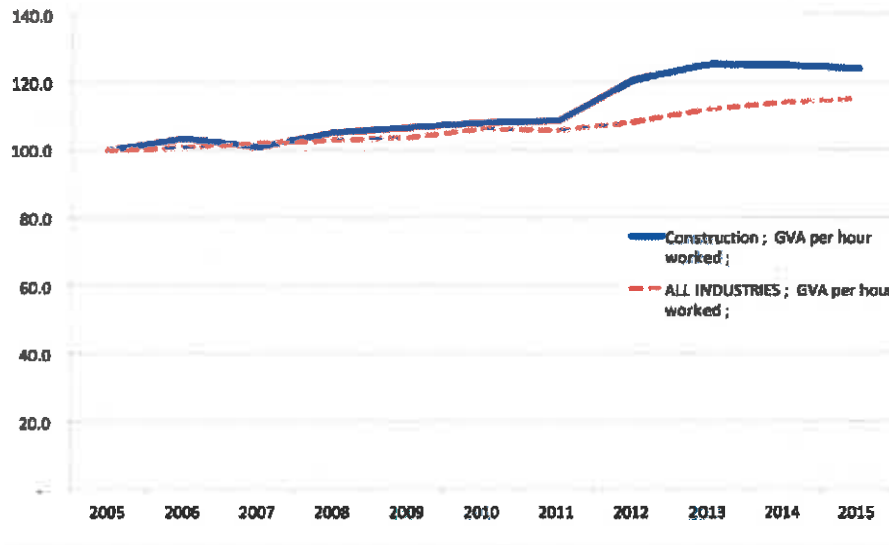
Workers in the building and construction industry should be subject to the same industrial laws as apply to other workers. This is consistent with the fundamental principle of equality of all persons before the law. To subject any group of workers or industry to special[,] more punitive laws is unnecessary and discriminatory, but this is exactly what this Bill does: it penalises conduct not because of the nature of that conduct or its effects, but because of who participates in it.

Since February 2016 the only change in the situation regarding these Bills has been the tempo and desperation of the half-truths used by the Federal Government to justify their passage. Their most recent questionable claims have involved productivity and safety.¹

The official ABS National Accounts data shows that labour productivity in in the construction industry and the broader economy essentially moved in tandem from 2005 to 2011. After 2012

¹ Senator Michaelia Cash 'ABCC is a proven fix for the construction industry', *the Australian*
<http://www.theaustralian.com.au/opinion/abcc-is-a-proven-fix-for-the-construction-industry/news-story/d53fb3f759eb47911603cda077f8add1>

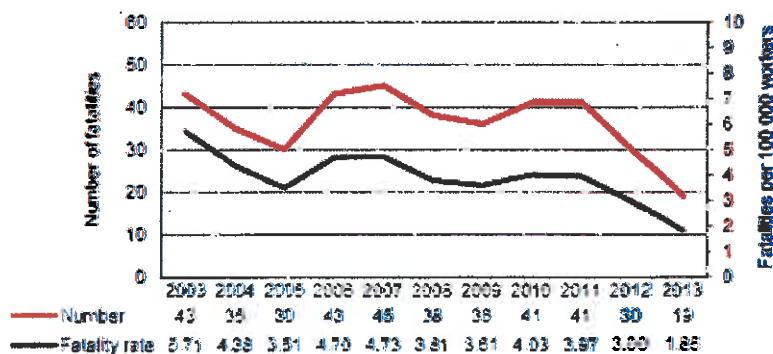
there was an improvement in construction industry productivity. However that period coincides with tenure of the Gillard Labor government’s Fair Work Building Industry Inspectorate (FWBC) – during which the use of compulsory interrogations dropped by 90%, and the pursuit of sham contracting by companies increased.²



If the Federal government was serious about increasing productivity in the construction industry, the conclusions of this information would be obvious: crack down on the bad practices of companies, not the civil rights of workers.

On the question of safety in the construction industry: the Safe Work Australia report *Work-Related Injuries and Fatalities in Construction, Australia, 2003 to 2013* found that, for worker fatalities in this period, the ‘series high of 46 fatalities’ was recorded in 2007 – during the operation of the Howard era ABCC. By contrast the lowest number of fatalities was recorded in 2013 – reflecting the period when the ABCC was replaced by the FWBC – which, in its early days at least, took the slightly more even-handed approach described above.³

Figure 3: Worker fatalities in the construction industry: number and fatality rate, 2003 to 2013



² David Peetz, ‘Sorry, Mal, here’s proof the ABCC was not good for productivity’, *Crikey* <https://www.crikey.com.au/2016/04/12/sorry-mal-heres-proof-the-abcc-was-bad-for-productivity/>

³ Safe Work Australia, *Work-Related Injuries and Fatalities in Construction, Australia, 2003 to 2013* (p.14) <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/926/fatalities-in-construction.pdf>

By contrast, the FWBC under its present Director Nigel Hadgkiss has shown no interest in any actual issues regarding productivity and safety in the construction industry, instead it has concentrated on unnecessary and discriminatory treatment of construction workers. UnionsWA's February submission outlined two cases from 2014 and 2015 in which the FWBC launched proceedings against CFMEU Construction and General Branch members. These prosecutions have been regularly thrown out of court due to lack of evidence and in many cases the FWBC incompetence. Nevertheless the cases are distressing and difficult for workers and their families, with no obvious benefit for either the rule of law, productivity in the construction industry, or for taxpayers who pay the FWBC's bills.⁴

A more recent example of pointless FWBC prosecution is from July 2016, when a Federal Court judge ruled that workers on the Lend Lease Joondalup Shopping Centre project in 2014 had engaged in 'unlawful action' – for being between seven and 22 minutes late back to work after an industrial meeting. Despite the CFMEU's attempts to settle the issue amicably on behalf of its members, the FWBC was far more interested in inflaming the dispute than resolving it. As Mick Buchan, the CFMEU WA State Secretary points out, if this ruling was '*applied to most workforces in Perth, half the state's workers would be docked half a day's pay for being a few measly minutes late*'.⁵

In our previous Submission, UnionsWA argued that there is

... no reason to be confident that the restoration of the ABCC will provide any benefit to the construction industry or to Australian industrial relations generally. Instead more public money will be wasted on disruptive prosecutions that ruin the lives of workers and their families who are exercising their rights in a free society.

The non-existent evidence about productivity and safety in the construction industry under the ABCC/FWBC, combined with its record of failed and pointless prosecutions, only reinforce this conclusion. UnionsWA therefore continues to urge the Committee to recommend rejecting these two Bills, and the flawed approach to regulation and law enforcement that they embody. Please contact me on _____ or _____ if you would like to discuss matters further.

Meredith Hammat
Secretary

⁴ UnionsWA submission (18 February 2016) <http://www.aph.gov.au/DocumentStore.ashx?id=e16f91e5-78e5-4ae6-befa-88375842734c&subid=409303>

⁵ 'CFMEU hit with \$61,000 in fines' (8 July 2016) <http://www.news.com.au/national/breaking-news/cfmeu-hit-with-61000-in-fines/news-story/a15f861deec27078850be33f932909df>

