



New South Wales

ATTORNEY GENERAL
MINISTER FOR INDUSTRIAL RELATIONS

OIR No: 09DOC0564

Mr John Carter
Committee Secretary
Senate Education, Employment and
Workplace Relations Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Carter

Thank you for the opportunity to provide a submission to the Senate Committee's inquiry into the *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009*.

The New South Wales Government made an extensive submission to the Inquiry undertaken by Mr Wilcox who was appointed by the Minister for Employment and Workplace Relations to undertake consultation and prepare a report on matters related to creation of a specialist division for the building and construction industry. The NSW submission can be found at <http://www.workplace.gov.au/NR/rdoonlyres/99668B30-75C1-444C-B640-5EECDC5857F9/0/NSWGovernment.pdf>.

The New South Wales Government considers there are significant positive elements with the introduction of this legislation that restores some balance to the legislative framework that currently exists for building industry participants.

The New South Wales Government supports the abolition of the Australian Building and Construction Commission with a transfer of its responsibilities to a specialist fair work inspectorate from 1 February 2010. The new Office of the Fair Work Building Industry Inspectorate (the Building Inspectorate) will ensure compliance with the general workplace relations laws, as prescribed in the *Fair Work Act 2009* by all building industry participants.

The removal of higher penalties for breaches of industrial law and removal of broader circumstances under which industrial action attracts penalties in relation to the building industry is a welcome step in the right direction and consistent with the New South Wales Government's view that building workers should be treated the same as all other workers.

The New South Wales Government understands that the Building Inspectorate created by this Bill will be headed by an independent director appointed by the Minister. The Director will manage the operations of the Building Inspectorate and will not be subject to oversight or control by other statutory office holders. The New South Wales Government has indicated to the Commonwealth Government a strong preference for the Building Inspectorate to form part of the Fair Work Ombudsman's portfolio.

It is the New South Wales Government's view that a specialist division should be established as a discrete entity within the Fair Work Ombudsman consistent with the Forward with Fairness policy but have full scope at operational level to be integrated within the wider organisation. In addition its inspectors should not be isolated from those employed generally by the Fair Work Ombudsman.

In relation to the creation of an Advisory Board to the new Building Inspectorate, the New South Wales Government is of the view that the Board should include state government representation. Such representation would recognise the significant role State governments undertake as the largest builders in the nation.

Both Ministerial Directions given by the Deputy Prime Minister on the day the Bill was introduced were welcomed by the New South Wales Government. It is now known that the Direction that would place safeguards over the use of current coercive powers and the conduct of compulsory interviews has been disallowed by the Senate. This is disappointing as the intent of the Direction had considerable merit and is consistent with the longer term aims of introducing significant safeguards for the use of these powers.

In relation to this point, the New South Wales Government understands that while building participants will be subject to the same penalties as other workers, the Bill retains the existing coercive interrogation powers with additional safeguards.

Though the New South Wales Government did not support the retention of coercive powers in its submission to the Wilcox Inquiry, the safeguards that have been proposed are an adequate way of mitigating the use of these powers and ensuring they will be used in only the most extraordinary circumstances. The fact that the Commonwealth Ombudsman will regularly report on the use of coercive powers in the Commonwealth Parliament is also welcomed as this will ensure more transparency and public accountability to the process.

It is also welcomed that an independent assessor can 'switch off' the use of coercive powers in relation to one or more specific projects. Industry participants should be encouraged to use this process to demonstrate that the requisite lawful culture is in place to ensure coercive powers are not extended beyond the five year sunset clause.

Of continuing concern are the restrictions on the availability of project awards and agreements which have been used with great success in NSW building and infrastructure projects. A more flexible approach to project agreements is needed which recognises that not all contractors will be known to the principal prior to the project's commencement.

I thank you for the opportunity to submit the views of the New South Wales Government on this important piece of legislation and trust that our views and concerns will be considered in the Committee's inquiry into the provisions of this Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Verity Firth', with a stylized, flowing script.

Verity Firth
A/Minister for Industrial Relations