

9 April 2015

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Dear Secretary

Senate Education and Employment Legislation Committee

Inquiry into the Construction Industry Amendment (Protecting Witnesses) Bill 2015

The Australian Mines and Metals Association (AMMA) writes in support of the Construction Industry Amendment (Protecting Witnesses) Bill 2015 (the Bill) which was introduced into the Senate on 25 March 2015.

Whilst AMMA continues to strongly support the passage of the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013, AMMA notes that the existing provisions under s.46 of the *Fair Work (Building Industry) Act 2012* are due to sunset on 30 May 2015. If the Bill currently being considered by this Committee does not come into force before 30 May, the Director of the Fair Work Building Industry Inspectorate will not be able to apply for an examination notice after 1 June 2015. AMMA is concerned that this would severely and negatively impact current and future investigations into contraventions of the *Fair Work (Building Industry) Act 2012*.

In 2008 the previous Labor Government initiated a review of the *Building and Construction Industry Improvement Act 2005* (now repealed). A former Federal Court judge, the Honourable Justice Murray Wilcox QC, recommended in his *Transition to Fair Work Australia for the Building and Construction Industry Report* (March 2009) that the former Australian Building and Construction Commission (ABCC) be transferred to a proposed Special Division of the Office of the Fair Work Ombudsman and that a proposed Director of a Building and Construction Division “be invested with a power, similar to that contained in section 52 of *Building and Construction Industry Improvement Act 2005*” with additional safeguards.

Importantly, Justice Wilcox recommended a five-year sunset clause on these coercive powers, which was conditional on there being a review to ascertain whether the powers were still required.

It should also be recalled by the Committee that Justice Wilcox noted in his report that *“there is still a level of industrial unlawfulness in the building and construction industry ... that it would be inadvisable not to empower the [proposed] BCD to undertake compulsory interrogation”*.

As canvassed in AMMA's submission to this Committee's earlier inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 and in light of the recent findings contained in the Interim Report of the Royal Commission into Trade Union Governance and Corruption, AMMA strongly submits that this level of industrial unlawfulness has unfortunately not abated to the extent that the existing powers are no longer required.

Therefore, AMMA strongly supports an expedited passage of the above Bill which would amend the *Fair Work (Building Industry) Act 2012* to extend the period during which the Director of the Fair Work Building Industry Inspectorate can apply to a nominated Administrative Appeals Tribunal presidential member for an examination notice by a further two years (until 1 June 2017).

AMMA believes that the extension of the existing coercive powers is essential for the reasons articulated in its previous submission to the Senate Standing Committee on Education and Employment on the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 (attached).

In addition to the Interim Report, AMMA also draws the Committee's attention to the findings of a recent Productivity Commission (PC) *Public Infrastructure* report (May 2014). The PC in its final report found that *“[u]nlawful conduct continues to be a significant problem in the construction industry”* and that the former *“ABCC is likely to have had its primary impact on unlawful conduct and on local productivity and costs at particular sites”*.

The PC made a number of specific recommendations including increasing the ceiling of penalties for unlawful industrial relations conduct in the construction industry and recommending that Australian State and Territory Governments consider adopting codes/guidelines (based on the previously applicable Victorian Government Code of Practice) for major infrastructure purchases. The PC also recommended that the specialist regulator have adequate resources to give genuine and timely effect to the enforcement regime.

There is a very real risk that a loss of these important investigative tools, even for a brief period of time, will negatively impact the current agency's ability to enforce the existing laws for building industry participants in light of the existing culture of unlawfulness that clearly and palpably exists within parts of the construction industry.

In conclusion, the loss of the coercive powers will limit the ability of the existing agency to effectively carry out its statutory objectives outlined in s.3 of the *Fair Work (Building Industry) Act 2012*.

Please contact myself or my colleague Daniel Mammone, Director – Government Relations in relation to this inquiry.

Yours sincerely

SCOTT BARKLAMB
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