



12 April 2005

Mr John Carter
Secretary
Senate Employment, Workplace Relations
and Education Legislation Committee
Parliament House, Suite SG.52
Canberra ACT 2600

51 Walker Street,
North Sydney NSW 2060
Australia

ABN 76 369 958 788

Tel: 02 9466 5566
Fax: 02 9466 5599

Dear Mr Carter

RE. BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2005

Ai Group welcomes the opportunity to express its views to the Senate Committee on the *Building and Construction Industry Improvement Bill 2005* ("the BCII Bill").

Background

Since the Final Report of the Royal Commission into the Building and Construction Industry was released, Ai Group has made a number of comprehensive submissions to the Federal Government on the need for workplace relations reform in the building and construction industry and the approach which should be taken to reform. Ai Group's July 2003 submission on the Final Report of the Royal Commission and its October 2003 submission on the BCII Bill were provided to the Senate Committee during its earlier inquiry into the Bill.

On 25 February 2005, Ai Group, in conjunction with the Australian Constructors Association, made a further detailed submission setting out its views on the BCII Bill. A copy of that submission is attached. The submission expresses strong support for the objects of the Bill but argues that amendments need to be made to the Bill to make it workable.

Latest Version of the BCII Bill

On 9 March 2005 the Government reintroduced the BCII Bill into Parliament. This version of the Bill replicates, with some modifications four of the Chapters of the earlier far more comprehensive BCII Bill. The other nine chapters of the earlier version of the Bill have been removed, together with some of the content of the remaining four chapters.

The four chapters of the earlier Bill, included in the latest version of the BCII Bill are:

- Chapter 1 - Preliminary - which defines the coverage of the Bill and sets out a series of key definitions;
- Chapter 6 - Industrial Action - which clarifies when industrial action is lawful (ie. during enterprise bargaining negotiations) and when it is not;
- Chapter 12 - Enforcement - which significantly increases penalties for unlawful industrial action and provides immediate access to Courts to pursue damages;
- Chapter 13- Miscellaneous - which provides for various Courts to be conferred with the jurisdiction to deal with matters relating to the BCII Bill.

The Bill provides for maximum penalties of \$110,000 for a body corporate and \$22,000 for an individual, where unlawful industrial action is taken.

When the Bill was introduced into Parliament, Workplace Relations Minister, Kevin Andrews, announced that the Bill, when passed, will operate retrospectively from 9 March 2005.

Ai Group's Position on the Latest Version of the BCII Bill

Ai Group's position on the latest version of the BCII Bill is set out in the relevant sections of the attached submission, together with the relevant sections in the earlier submissions which we have provided to the Senate Committee.

In summary, Ai Group supports the Bill but believes strongly that the definition of "building work" and some other key definitions which determine the coverage of the Bill, need to be amended. Our concerns about the current definitions and our proposed amendments are set out on pages 3, 21, 22, 23 and 24 of the attached submission.

With regard to the proposed retrospective operative date, as a matter of principle Ai Group is of the view that retrospective legislation should only be enacted in exceptional circumstances. The proposed retrospective operation of the legislation would be fairer if Ai Group's proposed amendments to the definitions which determine the coverage of the legislation are adopted. The existing very broad definitions incorporate large segments of the manufacturing and services industries within the coverage of the Bill. Few employers, employees, unions or other parties in these industries are likely to be aware that the Bill covers their operations.

Ai Group urges all political parties to support the passage of the Bill with the amendments proposed by Ai Group.

Yours sincerely

A handwritten signature in black ink, appearing to read "Heather Ridout", is written on a white background. The signature is cursive and somewhat stylized. To the right of the signature is a vertical line.

Heather Ridout
CHIEF EXECUTIVE