

Ai Group's Opening Statement to the Senate Committee 31 August 2009

We welcome the opportunity to express our views on the *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009*.

It is essential that legislative amendments to implement the Government's construction industry workplace relations policy should not lose sight of the recommendations of the Cole Royal Commission.

The reforms introduced after the Royal Commission have largely removed the unlawful and inappropriate conduct that permeated the industry and which cost project owners (including Governments), employers and the Australian community vast sums.

The industry has never been a better place in which to work and invest as is evident in the current low level of industrial disputation, high wages growth and higher productivity.

However, whilst behaviour has changed, in our opinion a new culture has not yet been achieved.

The industrial laws arising from the Royal Commission treat employers and employees in the construction industry differently to those in other sectors. The different approach reflects the fact that behaviour in the construction industry was so far removed from the standards in other industries, that strong measures were required.

At some point in the future the special provisions applying to employers and employees in the construction industry may be able to be removed but not until a new culture has been achieved and conduct in the industry reflects the standards of contemporary Australian society.

The compulsory examination powers are clearly still needed, as found by Justice Wilcox. Under the Bill, the powers will be subject to very substantial safeguards (see attached).

We believe that some important amendments need to be made to the Bill to ensure that the reforms, which have been so vital to the industry, are not lost. These amendments include the following:

1. The provisions relating to the **Independent Assessor** need to be deleted. This aspect of the Bill is inconsistent with the recommendations of Justice Wilcox;

2. The **five year sunset provision** applicable to the compulsory examination powers should be deleted and replaced with a review after five years. A review after five years (say, through a Senate Committee inquiry) is appropriate, but a provision which automatically removes the powers after five years unless further legislation is passed by both Houses of Parliament is not appropriate;
3. The existing **higher penalties** which apply to building industry participants for breaches of industrial law should be retained, given that an enduring change in behaviour has not yet occurred. It would be risky to reduce maximum penalties to only one third of what they currently are as proposed in the Bill;
4. The Fair Work Building Industry Inspectorate needs to focus upon ensuring appropriate and lawful industrial behaviour and preventing unlawful industrial action, similar to the Australian Building and Construction Commission (ABCC). It should not have its resources diverted to dealing with **underpayment claims** which are best addressed by the Fair Work Ombudsman.

If the Fair Work Building Industry Inspectorate proves to be ineffective, the risks associated with industrial lawlessness will again be priced into construction contracts, at great cost to project owners (including Governments) and the Australian community.

The amendments which we have proposed would result in a more balanced and workable piece of legislation.

We are happy to discuss our proposals with the Senate Committee.

Thank-you

Safeguards on the use of the compulsory examination powers

The Director of the Fair Work Building Industry Inspectorate will be subjected to very substantial oversighting, if the Bill is passed, including the following:

- The Minister for Employment and Workplace Relations may, by legislative instrument, give directions to the Director about the policies, programs and priorities of the Director and the manner in which the Director is to perform functions and exercise powers;
- An Advisory Board will make recommendations to the Director about policies, priorities and programs and any matter that the Minister requests the Advisory Board to consider;
- The Fair Work Ombudsman is a member of the Advisory Board;
- The Commonwealth Ombudsman must monitor and review the exercise of the compulsory examination powers, including receiving a copy of all examination notices, plus receiving a report, video recording and transcript of every examination;
- A Presidential Member of the Administrative Appeals Tribunal must issue an examination notice before the Director is able to use the compulsory examination powers; and
- The Independent Assessor may determine that the compulsory examination powers do not apply to particular building projects.

Whilst some safeguards are warranted, it is extremely important that the Director and the Fair Work Building Industry Inspectorate are able to perform their functions effectively and without undue delays.