

PRIVATE AND CONFIDENTIAL

3 February 2016

Senator Jacqui Lambie
Senator for Tasmania
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Sent via email to: senator.lambie@aph.gov.au
cc: fern.messenger@aph.gov.au

Dear Senator,

Re. Building and Construction Industry

I am writing to you regarding your consideration of the Federal Government's reintroduction of the Australian Building and Construction Commission (ABCC).

Undoubtedly, you will have formed your own opinions regarding the Heydon Royal Commission report and the recommendations contained within it. However, it is concerning that since the release of the report, examples of union behaviour continue to be reported.

Only this year, I have been informed by three MEA members of union organiser's using intimidating tactics towards employers, including:

- Requests that specific union members be employed as union delegates;
- Declarations that the union organiser can influence a building contractor's decisions about the awarding of contracts if an employer does not sign a Union EBA; and
- Insistence that unions be informed as to the operation of an employer's business.

Unfortunately, due to the reputation of unions and the intimidation tactics they employ, MEA members are reluctant to volunteer such information to the Fair Work Building Commission (FWBC) for fear of retribution and limited protection. As a representative for electrical contractors, MEA will meet with the FWBC to raise these issues and continue to encourage those members to report such incidences and have them addressed. However without the protection of the proposed legislation the industry will continue to suffer from an undercurrent of threats to person and business viability.

MEA has also been provided with the Electrical Trades Union (ETU) Log of Claims for the upcoming 2015 – 2018 agreement period. Their demands include:

- No changing RDO's from the Union calendar without the union's permission;
- No redirecting employees to alternative work sites in the event of wet weather even where work is available;

- Right of Entry to sites at the Unions initiation and a standing invitation for them to come on site at anytime;
- Paid meetings to attend non-work related rallies and issues;
- Employer only allowed to engage sub-contractors who have a Union EBA and been approved by the Union;
- Employer to pay for Union delegates IPads, wages and allowances if they attend union training and union functions out of hours;
- Contractors encouraged to use the union's job board to advertise for vacant positions; and
- Employees having a right to leave without pay for any reason with no ability for the employer to approve or reject.

Demands of this type hamper an employer's ability to operate their business. What has been lost in the argument over this issue is that to run a successful business in construction, deadlines are critical. In theory, an employer could simply refuse such demands. However, the reality of the building and construction industry means that a subcontractor faced with these issues and a principal contractor threatening liquidated damages of many hundreds of thousands of dollars for not meeting deadlines, may have no choice but to accept the union's demands.

Based on the growing incidences of unlawful behaviour on the part of trade unions, we are concerned that the FWBC neither has the resources nor the powers to deal with issues. For example, pattern bargaining occurs when a union representative seeks to make identical agreements with two or more employers. The intended outcome being that when the union gains a new and superior entitlement from one employer, they can then use that agreement as a precedent to demand the same entitlement from another employer. In Queensland, over 100 identical agreements have been completed in the CFMEU area of coverage since November 2015. This must raise serious doubts as to whether real consultation took place. Pattern bargaining of this kind is illegal and contrary to the provisions of the Fair Work Act. In fact, the Cole Royal Commission into the Building and Construction Industry recommended that pattern bargaining in the construction industry be prohibited entirely and this has not been altered by any government of any persuasion since.

The reality is that participants are fearful of taking a stand and of being placed on a black list by the Unions. Boral has won an out of court settlement for a secondary boycott in Victoria but many contractors in the electrical and construction industry do not have the resources, time or expertise to fight such battles.

As a national organisation, we know that these incidences are not isolated to Queensland. The same issues and processes are experienced on worksites across all states and territories.

Master Electricians Australia would respectfully request that you recognise the unique nature of the construction industry and support the reintroduction of the Code of Practice for the Building and Construction Industry and the reintroduction of the rule of law through the ABCC as an additional safeguard for the industry.

I would welcome an opportunity to meet with you to discuss this issue further on behalf of the electrical industry.

Yours faithfully,



Jason O'Dwyer
Manager Advisory Services