



MASTER BUILDERS
A U S T R A L I A

2 March 2012

Ms Patricia Scott
Commissioner
Productivity Commission
PO Box 1428
CANBERRA ACT 2600

Dear Ms Scott

Thank you very much for meeting with Master Builders Australia recently regarding the Productivity Commission's inquiry into the Impacts and Benefits of COAG Reforms. Master Builders appreciated the opportunity to discuss the impact of these reforms on the building and construction industry.

Master Builders wishes to provide additional comments on the occupational health and safety chapter of the Commission's draft report. We regret that these comments have not been made earlier.

The report states (page 153) that in a number of studies union rights of entry have been associated with improvements in occupational health and safety outcomes. Master Builders considers that this misrepresents the nature of these studies. They are not narrowly focussed on union right of entry, but rather "unionised" workplaces where there is active worker participation and representation in occupational health and safety matters particularly through the presence of some form of worker organisation within the establishment that is independent of management. In other words, rather than being solely about entry by external trade union officials, they are about broader worker engagement with support from union officials.

Master Builders also wishes to note that such studies need to be used with some caution. In a research report on the role and effectiveness of safety representatives in influencing workplace health and safety, Cardiff University noted that there is enormous variation between the studies in terms of quality, consistency and reliability.¹ Master Builders also notes that this Cardiff University report attempted to replicate the influential study conducted by Reilly et al² - a study that is often cited as evidence of the importance of unions in influencing safety outcomes. The Cardiff University researchers were not able to replicate the results stated by Reilly et al and

¹ Walters, Nichols, Connor, Tasiran and Cam, *The role and effectiveness of safety representatives in influencing workplace health and safety, research report 363* which is available on the UK Health and Safety Executive web site <http://www.hse.gov.uk/research/rrpdf/rr363.pdf>

² Reilly, B, Paci, P, and Holl, P, (1995) 'Unions, safety committees and workplace injuries', *British Journal of Industrial Relations*, Vol 33, 273-88.

concluded “that the findings on the effects of various forms of joint arrangements and especially on the role of trade unions in influencing outcomes in terms of health and safety that are at the heart of the paper by Reilly et al, are unreliable in demonstrating the positive role of worker participation in health and safety arrangements.³ Master Builders also notes that one of the studies referred to in the Commission’s 2010 Report on Occupational Health and Safety⁴ (Litwin) is criticised in the University of Cardiff study as having been pursued in a statistically unconventional manner on only a fraction of the possible cases which, in its view, did nothing to add to the reliability of the Reilly et al study⁵ and calls into question the findings of Litwin.

Nonetheless, Master Builders acknowledges that unions can play an important role in occupational health and safety and supports worker participation in health and safety through consultation mechanisms appropriate to each workplace.

However, Master Builders is also concerned that in relying on the Consultation Regulation Impact Statement developed by Access Economics, the Commission’s report has given insufficient weight to genuine industry concerns about the impact of abuse of right of entry on safety outcomes.

The Royal Commission into the Building and Construction Industry noted that “OHS is often misused by unions as an industrial tool. This trivialises safety, and deflects attention away from real problems....The scope for misuse of safety must be reduced and if possible eliminated.”⁶

Many participants who gave evidence to the Royal Commission noted that “...safety matters are frequently raised by union officials whenever an industrial issue arises on a site. When the industrial relations processes have been exhausted in trying to resolve a dispute, safety issues are raised by the union. One reason for this, it was suggested, is that safety stoppages provide paid strike time, whereas industrial strikes do not.”⁷

In evidence, it was noted that “safety stoppages which are not genuine...have the potential to degrade the system because after a series of false alarms claims will not be taken as seriously. As a consequence, when a genuine safety issue arises, the response may not be as effective as it should.” This results in “mutual trust and cooperation [being] compromised by a perception by the employer that union officials sometimes have a vested interest in finding safety breaches. This practice is potentially harmful to employees as it merely serves to devalue OHS.”⁸

The evidence provided to the Royal Commission clearly demonstrates that in addition to the short term direction of resources away from safety to deal with disputed entry, misuse of OHS right of entry for other purposes has the potential to have a longer term detrimental impact on safety. Master Builders considers that the Consultation Regulation Impact Statement cited in the Commission’s report significantly understates this impact and that it should not be relied upon by the

³ Walters, Nichols, Connor, Tasiran and Cam, op cit, page 27

⁴ Productivity Commission Research Report, *Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety*, March 2010

⁵ Walters, Nichols, Connor, Tasiran and Cam, op cit, page 31

⁶ *Final Report of the Royal Commission into the Building and Construction Industry*, Summary of Findings and Recommendations, February 2003, volume 6, p 108.

⁷ Ibid, p 97.

⁸ Ibid, p 107.

Commission when assessing the impact of this aspect of the harmonisation of work health and safety laws.

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Yours sincerely

Wilhelm Harnisch
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