



The home of building

31 July 2018

Committee Secretary
Education, Employment and Small Business Committee
Parliament House
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INQUIRY INTO WAGE THEFT IN QUEENSLAND

Thank you for the opportunity to respond to the Inquiry. Master Builders strongly supports lawful and ethical practices in employment and contracting.

Scope of Submission

The Terms of Reference for the Inquiry (the Inquiry) appear to rest on the hypothesis that there is a tendency amongst employers for misappropriation of employee entitlements and other avoidance practices which demands an intervention by the Queensland Government. We don't subscribe to this point of view. The vast majority of employers act fairly and lawfully.

Master Builders objects to any state government intervention unless it is established beyond doubt that:

- there is a crisis of institutional mismanagement and regulatory failure; and
- the Queensland Government is better placed than the federal agencies to remedy any 'wage theft'.

Recent Inquiries and the building and construction industry.

The Inquiry continues the theme of investigating alleged underpayment of wages. This issue was considered most recently in the Labour Hire Licencing Inquiry, which canvassed the exploitation of workers, allegations of sham contracting and underpayment of wages in general. The issues are essentially the same for this Inquiry.

Master Builders' submissions to the Labour Hire Inquiry stressed the importance of a robust building construction sector which needs to be flexible and capable of responding to rapid changes in demand for labour. We cautioned the Government in unfairly equating genuine subcontracting activity with sham contracting.

The pattern of engagement through a subcontracting model is natural to the industry and it must not be depicted as flawed. Subcontracting requires flexibility, both in multiple work sites, but also in methods of engagement of workers. Short term engagement, casual and daily hire, is provided for in the *Building and Construction General On-Site Award 2010*.

We urge the Inquiry to avoid misrepresenting legitimate employment options in the building and construction industry.

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Intrusion into employment related matters

The Inquiry must not overlook the fundamental aspect of power. More specifically, the Inquiry must acknowledge that it is not within the state government's jurisdiction to fix, enforce or recover wages of a national system employer. Consequently, a state government official should not require a national system employer to provide any information that relates to national system industrial laws, as defined in section 26 of the *Fair Work Act 2009* (FWA).

The jurisdiction is limited by the following definition of the FWA:

Section 26. Act excludes State and Territory Industrial Laws.

(2) A State or Territory industrial law is:

- b) *an Act of a State or Territory that applies to employment generally and has one or more of the following as its main purpose or one or more of its main purposes:*
 - i. *regulating workplace relations (including industrial matters, industrial activity, collective bargaining, industrial disputes and industrial action);*
 - ii. *providing for the establishment or enforcement of terms and conditions of employment;*
 - iii. *providing for the making and enforcement of agreements (including individual agreements and collective agreements), and other industrial instruments or orders, determining terms and conditions of employment;*
 - iv. *prohibiting conduct relating to a person's membership or non-membership of an industrial association;*
 - v. *providing for rights and remedies connected with the termination of employment;*
 - vi. *providing for rights and remedies connected with conduct that adversely affects an employee in his or her employment;*
- c) *a law of a State or Territory that applies to employment generally and deals with leave (other than long service leave or leave for victims of crime);*
- d) *a law of a State or Territory providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal or comparable value;* or
- e) *a law of a State or Territory providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair;*

(4) A law or an Act of a State or Territory **applies to employment generally** if it applies (subject to constitutional limitations) to:

- a) *all employers and employees in the State or Territory;* or
- b) *all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory.*

For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies

Significant concerns about referred matters

The Inquiry has the potential to lead to a raft of employment related measures enacted and administered by the State Government. Master Builders submits that this places the Inquiry at odds with the federal government's *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (the Referral Act). The Inquiry is reviewing matters which also apply to national system employers, despite the Fair Work Ombudsman, Fair Work Commission and Federal Court holding primary jurisdiction. This is contrary to the Referral Act's intention. The Inquiry is flawed in this aspect.

The Inquiry is advised to respect the carefully drafted exclusions and exemptions which accommodate the transition from State jurisdictions of the industrial relations powers.

A crowded field of regulation

We note the following list of federal and Queensland laws which currently regulate employers in the building and construction industry:

Anti-Discrimination Act 1991.

Bankruptcy Act 1966.

Building and Construction Industry Payments Act 2004

Competition and Consumer Act 2010

Corporations Act 2001

Fair Work (Building Industry) Act 2012

Fair Work Act 2009,

Fair Work Amendment (Protecting Vulnerable Workers) Act 2017

Further Education and Training Act 2014

Holidays Act 1983

Industrial Relations Act 1996

Payroll Tax Act 1971

Queensland Building and Construction Commission Act 1991

Subcontractors' Charges Act 1974.

Superannuation Guarantee Charge Act 1992

Taxation laws , including reportable payments

Trusts Act 1973

Work Health and Safety Act 2011

Workers' Compensation and Rehabilitation Act 2003.

If the Queensland Government is considering intervention over and above these laws, it must establish without doubt that the current laws and regulators are inadequate for the purposes of supporting the interests of employers, employees and the community. It serves no purpose to duplicate federal regulators.

Conclusion

The Inquiry should not be used for the purposes of providing the Queensland Government with an apparent jurisdiction to determine any matter that involves national system employers and employees, unless there is no other opportunity under the FWA to have the matter so dealt with.

We urge the Committee to limit the Inquiry to those matters that are state responsibilities under the Referral Act and related provisions in the FWA.

Master Builders appreciates the opportunity to provide comment and trusts that these comments are of assistance in your consideration of this matter.

We would welcome the opportunity to be involved in any further consultation on the issue.

Yours sincerely,

A handwritten signature in dark ink that reads "Paul Bidwell". The signature is written in a cursive, slightly slanted style.

Paul Bidwell
Deputy CEO