

23 June 2015

The Chair  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**Re: Inquiry into Work Health and Safety and Other Legislation Amendment Bill 2015**

We refer to your letter of 17 June 2015 seeking further information as proposed at the Committee hearing on 15 June 2015.

Question 1. With regard to allegations of misuse by right of entry provisions could you please provide real examples and case studies to support the evidence provided?

The Office of Safe and Fair Work Queensland has provided the Committee and other parties with a summary of 120 disputes on right of entry reported to OSFWQ in the past 12 months. (Attachment 1 ). The Committee would have noted that of the 120 individual cases reported, over 90 % were in the construction sector. The report also shows more than half of the investigations involve contested entry where the CFMEU official has not complied with 24 hour notice or argued they did not need to. The report records that CFMEU officials have entered sites without notice and claimed the entry was for the purposes of a safety matter. The unions deliberate misuse of right of entry has disrupted work, including unauthorized 'site inspections', unauthorized onsite union meetings and occasions when all CFMEU members took unprotected action and left site. In notes to the 115th dispute, it is alleged that the CFMEU members ceased work for the day order to punish the contractor for calling the investigators over the misuse right of entry provisions.

Master Builders can elaborate on many of the cases reported in the list of 120 disputes. However, one example will suffice. In late 2014 the CFMEU officer Mick Myles attended a construction site in Brisbane city, without complying with any entry requirements. When he was asked by the contractor's representative to leave the site Myles refused to do so. He said he was on site because of a safety issue. Myles said he required all the CFMEU members to attend a union meeting and refused to allow any CFMEU members to maintain support services to non CFMEU workers while the meeting was underway. Myles and the CFMEU members held a short meeting and all members then left the site. There was no imminent safety risk. Workers engaged in industrial action lost wages for the day.

Master Builders also refers the Committee to the cases outlined in our written submission to verify the repeated misuse of right of entry by the CFMEU.

Question 2. The Department of Justice and Attorney-General advised the Committee at the departmental briefing that whilst formal consultation was not undertaken, they spoke to key stakeholders. Could you please advise whether your organization was consulted as part of this process?

Yes, we met with senior staff of the OFSWQ, who explained the proposed amendments.

Question 3 Whilst your submissions indicates that there has been misuse of right of entry provisions, others have submitted that injuries and fatalities have been prevented. How would you respond to these observations?

Master Builders assumes the question relates to the CFMEU oral submission that CFMEU officials have deliberately ignored the requirement to provide 24 hour notice of entry because the officials needed to prevent injuries and fatalities on those sites the officials entered. That is the substance of the comments made by Mr Borg on page 26 of the transcript, where he describes the acts as 'technical breaches' of right of entry.

Our capacity to respond to the CFMEU statements is limited. The CFMEU has not put any evidence or examples before the Committee to support its position. We note that the CFMEU took it '*on notice*' to give examples in support of its submissions. (pg. 26). If there was a particular incident put forward to review, we would do so willingly.

However, we can comment on the matter in general. We don't believe any other union or organization other than the CFMEU has conceded its noncompliance with right of entry. The CFMEU disdain for laws of entry is evident in the list of breaches which show its officials repeatedly ignore the most basic of entry requirements- such as reporting to the site office or site gate, signing in to the visitors' book, showing their permits, and so on. In any language, disagreement with a law is not a defense nor justification for breaking the law.

However, is there any basis to the CFMEU submission that it had to break the law to ensure the safety of its members?

The Queensland commercial building sector has many hundreds of CFMEU pattern enterprise agreements, covering nearly 500 contractors and subcontractors combined. This would represent the large majority of builders and subcontractors engaged in construction of commercial offices, hotels, high rise apartments and industrial buildings. These projects are often referred to by the industry as 'union sites', due to the very high union membership and coverage by CFMEU enterprise agreements. On each of these union sites is at least 1 and often 2 CFMEU union delegates, who are usually 'non-working' delegate and who spend each day consulting with members, employers and union officials. Attachment 2 is the delegate's clause from the CFMEU pattern agreement. It shows union delegates have security to perform their role and generous conditions and equipment. The union delegate will be closely involved with and/or be aware of the activities of the WHS personnel, including the Safety Committee and HSRs. Any of these persons

can identify and raise a safety issue at any time. In addition, the OFSWQ inspectors are available on very short notice to address any safety issue.

This is a typical profile of a typical site, with multiple WHS specialists and safety monitors operating under in formal network for every working hour of every day. Underpinning these on-site 'safety focused' personnel and safety administration is a primary right; workers are legally entitled to cease work if they have a reasonable belief they are at imminent risk.

It is not plausible for the CFMEU to claim that the 24 hour notice poses a risk to workers and that the union had to break the laws to ensure the safety of workers.

Official reports show a YOY trend in a reduction in serious injury claims and fatalities. The trend in the key data for Queensland construction sector is extremely promising. It shows a steady reduction in the rate of injury and fatalities in the sector over time. Our written submission supports this with statistics from Safe Work Australia for the relevant period.

The case cited above and in our initial submission all concern alleged breaches of right of entry by CFMEU official on commercial building projects in Queensland. This is substantive material and demonstrates that Mr. Borg has been accurate in his description of 'arid noncompliance'. It is our firm view the removal of 24 hour notice will intensify the deliberate and unwarranted disruption of construction projects by the CFMEU, lead to more lost wages for workers, but will not improve the safety of workers.

Regards

A solid black rectangular box used to redact the signature of John Crittall.

John Crittall  
Director Construction and Policy