Master Builders Australia

SUBMISSION ON *TREASURY LAWS AMENDMENT (TAXATION AND SUPERANNUATION GUARANTEE INTEGRITY MEASURES) BILL 2018*

16 February 2018

MASTER BUILDERS AUSTRALIA

CONTENTS

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Introduction

1. This submission is made on behalf of Master Builders Australia Ltd.

2. Master Builders Australia (Master Builders) is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders' members are the Master Builder State and Territory Associations. Over 127 years the movement has grown to over 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors; residential, commercial and engineering construction.

3. The building and construction industry ('BCI') is an extremely important part of, and contributor to, the Australian economy and community. It is the second largest industry in Australia, accounting for 8.1 percent of gross domestic product, and around 9 percent of employment in Australia. The cumulative building and construction task over the next decade will require work done to the value of $2.6 trillion and for the number of people employed in the industry to rise by 300,000 to 1.3million.

4. The building and construction industry:

   - Consists of over 340,000 business entities, of which approximately 97% are considered small businesses (fewer than 20 employees);
   - Employs over 1 million people (around 1 in every 10 workers) representing the third largest employing industry behind retail and health services;
   - Represents over 8% of GDP, the second largest sector within the economy;
   - Trains more than half of the total number of trades-based apprentices every year, being well over 50,000 apprentices; and
   - Performs building work each year to a value that exceeds $200 billion.

Background

5. This submission is made to Treasury which has released for consultation an exposure draft Bill that is intended to give effect to various Superannuation Integrity measures announced in the 2017/18 Federal Budget. The consultation exposure draft is titled *"Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018"* ('the draft Bill').

6. Master Builders understand that the draft Bill is proposed based on recommendations made to the Minister for Revenue and Financial Services by the Superannuation Guarantee Cross Agency Work Group on 31 March 2017, in a report entitled '*Superannuation Guarantee Non-compliance: A report to the Minister for Revenue and Financial Services'* ('the Report').

Summary of submission

7. Master Builders does not express a finalised view as to our support or otherwise for the draft Bill overall and will do so once the consultation process for the exposure draft has concluded and a final form Bill is introduced into Parliament.

8. However, the central concern to Master Builders outlined in this submission is that the proposed penalty provisions are excessive when considered in the context of

other legislative regimes that are relevant to the workplace, particularly those that have application to Registered Organisations and their officials.

9. It is our contention that it would be inappropriate for the Government to propose imprisonment of employers for Superannuation Guarantee ('SG') related oversights while officials of Registered Organisations remain immune from penalties of a similar magnitude for repeated and deliberate breaches of other workplace laws.

10. Not only is such a proposal inconsistent with the conventional approach of regulator enforcement through education where prevention is the primary focus rather than punishment, it would generate significant consternation amongst Building and Construction Industry ('BCI') employers (particularly SMEs) who on an almost daily basis witness illegal and unlawful conduct which goes unpunished.

11. The BCI has a long history of lawlessness in workplaces, particularly on large construction sites. The overwhelming majority of this history comes as a direct result of the conduct of building unions and their officials, such as the CFMEU. This history is the subject of extensive coverage, including three Royal Commissions, dozens of inquiries and reviews, and hundreds of court cases and judgements.

12. While the re-establishment of the ABCC has been a positive development for BCI participants, building unions and officials continue to maintain what appears to be an attitude of being above the law. Worse, they publicly encourage others to break laws and express no contrition when found guilty by courts or related tribunals.

13. As it stands today, building unions and their officials can be found guilty of:

    - Coercion;
    - Intimidation and hindering persons in the workplace;
    - Deliberate damage to workplace materials;
    - Illegal entry to worksites;
    - Wilfully breaching court orders;
    - Deliberate breaches of the Fair Work Act;
    - Denying the right to Freedom of Association;
    - Deliberate breaches of the Registered Organisations Act; and
    - Wilful contraventions of bargaining/dispute orders,

    …and yet they do not face the threat of imprisonment.

14. Indeed, many officials who are regularly found guilty of such breaches not only express pride in being found as such, they retain the right of entry to workplaces lawfully.

15. In this context Master Builders would urge Treasury and the Government to reconsider this aspect of the draft Bill and re-calibrate it accordingly so as to provide fairness and equity to BCI workplace participants.

Draft Bill – Key Elements

16. Key elements of the draft Bill are:

- The draft Bill will introduce criminal penalties for failure to comply with a direction made in accordance with the Act. Master Builders has concerns with the extent of the penalties, which are noted throughout the submission.
- The draft Bill will allow the ATO to disclose further information about SG non-compliance to employees who have been affected by contraventions. Master Builders does note concerns with the extent of disclosures, particularly with respect to whom information may be disclosed.
- The draft Bill will extend Single Touch Payroll to all employers, regardless of the number of employees. Master Builders would not oppose this extension.
- The draft Bill will facilitate more regular reporting by superannuation funds. Master Builders would not oppose this change.
- The draft Bill will improve the operation of the ATO's collection and compliance measures, including through strengthening the integrity requirements and increasing penalty provisions for non-compliant Director actions; and
- The draft Bill will streamline employee commencement processes by facilitating the pre-filling of tax-file number and superannuation standard choice forms. Master Builders would support this measure.

17. This submission later hereunder expands upon the above elements.

18. Overall, however, Master Builders believes that there are several improvements that can be made to the draft Bill in order to improve its proposed operation and intended effect. These improvements are, in summary, that the draft Bill:

- either remove the prospect of imprisonment from proposed penalty structures, or, not proceed with this element until related workplace measures proposed elsewhere in the Government's policy agenda are implemented so as to provide proportional outcomes for all parties involved in, and relevant to, the workplace;
- include protections regarding the proposed increased disclosure by ATO of SG non-compliance so as to ensure only relevant persons (such as affected employees) are advised of alleged non-compliance;
- ensure that persons to whom disclosure is made by the ATO are concurrently provided information that educates them as to the processes to be followed to ensure alleged non-compliance is rectified; and
- not take effect until there has been a sustained and comprehensive education and awareness campaign to educate workplaces as to new requirements.

19. In addition, Master Builders notes its support for other aspects of the Government's agenda insofar as it relates to superannuation including the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017 (Cth)* ('No. 2 Bill') and the *Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 (Cth) (Independent Directors Bill)* and believes these measures should remain a high Government priority.

Draft Bill – specific aspects

20. The draft Bill creates 6 key changes to the collective SG Laws.

Increased ATO powers issue directions for non-compliance:

21. The draft Bill will afford the Australian Tax Office ('ATO') powers to issue directions to employers in cases where the employer has failed to comply with legislated SG obligations.

22. Such directions may include orders to comply with the framework by paying unpaid SG entitlements and undertake SG education courses to facilitate compliance in the future.

23. Schedule 1 affords the ATO the power to issue directions where employers have failed to comply with SG obligations. Such directions will enable the ATO to order and employer:

- To undertake an approved course of education with respect to SG obligations; and
- Pay the outstanding SG amounts owed to employees.
- Failure to comply with a direction will attract an administrative penalty, which will increase as breaches accumulate. Penalties range from 20 to 50 penalty units, and/or up to 12 months imprisonment.

Introduce criminal penalties for failure to comply:

24. A key element of Schedule 1 is the introduction of criminal penalties for directors who fail to meet their SG obligations. In principle, Master Builders understands the policy objective sought by these proposals. However, we consider that the following observations should be adequately addressed before unequivocal support for the schedule can be considered.

25. Master Builders is concerned about the establishment of a further and comparably disproportionate pecuniary response against employers. In the past, and under the current legislative framework, actions of employees and employee associations are not held to account at an equal standard as director conduct. This is clearly evident from rampant union misconduct within the BCI.

26. Unions have regularly, openly and blatantly committed disruptive and industry damaging breaches of the *Fair Work Act*. These have been committed through abuse of right of entry permits, coercion of employers and employees, misappropriation of funds, financial fraud and illegal industrial action – though officials have not been, and indeed are not able to be, imprisoned for such conduct.

27. Noting this, Master Builders draws attention to pertinent proposed legislation which is currently before the Parliament - that is, the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017* (the FWEI Bill). We note that the FWEI Bill has been before the Parliament since August 2017, and it has not yet undergone significant Senate debate.

28. The FWEI Bill establishes a compliance and reporting regime for Registered Organisations (which includes both employer and employee representative bodies) with respect to funding and compensation arrangements and entitlements of office holders.

29. A key element of the FWEI Bill (which is also crucially relevant to the issues drawn from Schedule 2 to the Bill) is that it establishes criminal penalties, including heavy fines and terms of imprisonment for non-compliance with reporting obligations. Such breaches are, for example, refusal to, or improper disclosure of, the remuneration records of a Registered Organisation.

30. The Parliament's proposal of the draft Bill (and within it the characterisation of SG non-compliance offences as a criminal offence) whilst concurrently failing to prioritise the passing of the FWEI Bill, sends a message to Master Builders and our members – that is, Government considers non-payment of superannuation as a more serious social issue than Union misconduct.

31. This is simply not true. There are clear and consistent examples of breaches of the Fair Work Act, employee and employer rights at work, and financial crimes including misappropriation of funds and fraud within employer associations. All of these have been highlighted as serious social issues throughout volumes of material representing years of lack of union accountability, which has come to light as a result of the recent Royal Commission into Trade Unions.

32. The Final Report of the *Royal Commission into Trade Union Governance and Corruption*[1] (Heydon Royal Commission) devoted some 1160 pages to the building and construction sector alone. Of the five volumes in the Final Report, almost one and a half volumes were specific to the building and construction sector and the conduct of the CFMEU.

33. In respect of this conduct, the Royal Commissioner summarised:

> *"The conduct that has emerged discloses systemic corruption and unlawful conduct, including corrupt payments, physical and verbal violence, threats, intimidation, abuse of right of entry permits, secondary boycotts, breaches of fiduciary duty and contempt of court."*[2]

Then further observed:

> *"The issues identified are not new. The same issues have been identified in reports of three separate Royal Commissions conducted over the past 40 years: the Winneke Royal Commission in 1982, the Gyles Royal Commission in 1992 and the Cole Royal Commission in 2003."* [3]

And later:

> *"The continuing corruption and lawlessness that has been revealed during the Commission suggests a need to revisit, once again, the regulation of the building and construction industry."*[4]

34. These comments followed from earlier commentary in the Interim Report[5] which made the following observations about the CFMEU:

> *"The evidence in relation to the CFMEU case studies indicates that a number of CFMEU officials seek to conduct their affairs with a deliberate disregard*

[1] *Royal Commission into Trade Union Governance and Corruption Final Report, December 2015,*
[2] *Royal Commission into Trade Union Governance and Corruption Final Report, December 2015, Volume 5, Chapter 8, para 1*
[3] *Ibid at para 2*
[4] *Ibid at para 3*
[5] *Royal Commission into Trade Union Governance and Corruption, Interim Report (2014), Vol 2, ch 8.1, p 1008.*

> *for the rule of law. That evidence is suggestive of the existence of a pervasive and unhealthy culture within the CFMEU, under which:*
>
> *(a) the law is to be deliberately evaded, or crashed through as an irrelevance, where it stands in the way of achieving the objectives of particular officials;*
>
> *(b) officials prefer to lie rather than reveal the truth and betray the union;*
>
> *(c) the reputations of those who speak out about union wrongdoing become the subjects of baseless slurs and vilification."*

35. Noting that additional case studies were undertaken by the Commission subsequent to the Interim Report, it was found that:

> *"The case studies considered in this Report only reinforce those conclusions"*[6]

Further:

> *"The conduct identified in the Commission is not an isolated occurrence. As the list in the previous paragraph reveals, it involves potential criminal offences against numerous laws. It involves senior officials of different branches across Australia."*[7]

And:

> *"Nor is the conduct revealed in the Commission's hearing unrepresentative"*[8]

36. Of the seventy-nine recommendations made for law reform in the Final Report, seven were specific to the BCI. These recommendations largely went to addressing the conduct displayed by building unions.

37. With respect to the CFMEU, the Heydon Royal Commission found that it is home to *"longstanding malignancy or disease"*[9] within the CFMEU and that lawlessness within the union was commonplace, with over 100 adverse court finding against the union since 2000.

38. In the 2015–16 financial year for example, the courts issued $1.826 million in penalties in ABCC related cases. The vast majority were fines against the CFMEU ($1.732 million). The CFMEU have been penalised over $10 million in cases brought by the ABCC[10], the FWBC and their predecessors and building unions generally have been penalised over $12 million in total. Despite this, the conduct continues.

39. The ABCC has more than 50[11] current proceedings against building unions and industry participants for breaches of the law involving Adverse Action, Unlawful Industrial Action, Coercive Behaviour, and Right of Entry breaches.

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[6] *Heydon Report, Chapter 5, page 396*
[7] *Ibid*
[8] *Ibid*
[9] *Heydon Royal Commission, Volume 5, p401*

[10] *"Latest penalty takes CFMEU fines past $10m mark" Courier Mail, August 4, 2017*
[11] *https://www.abcc.gov.au/compliance-and-enforcement/outcomes-investigations/legal-cases*

40. Federal Court proceedings were launched on 9 August 2017[12] against the CFMEU and two of its representatives for allegedly preventing non-financial union members from working at a Melbourne construction site. The ABCC has alleged that:

    - Threats were made by a CFMEU delegate to *"shut the whole site down"* at the University College project unless a worker became a member of the union in March 2016.
    - The delegate had allowed one union member to start work but prevented two other non-financial members from working at the site.
    - The delegate approached a worker and said words to the effect: *"You can't do any work until you join up with the union"* and grabbed a worker's laptop and attempted to pull it from his grasp during a short struggle.
    - In May 2016, a CFMEU official threatened a contractor on the project that unless it paid *"union rates"* it could not continue its contract on the site.

41. On 8 August 2017, the ABCC launched legal action against the CFMEU and one of its officials for allegedly undertaking coercive and adverse action on a site by threatening to set up a picket line.[13] In the Statement of Claim, the ABCC has alleged that:

    - A CFMEU organiser threatened to set up a picket line at the construction site in August 2016 if a subcontractor's workers were sent back to work after a work meeting.
    - The organiser addressed a meeting of around 500 workers after which approximately 30 to 50 per cent of the workers left the site.
    - The action is alleged to contravene the coercion and adverse action provisions of the *Fair Work Act 2009 (Cth)* ('FW Act').

42. In May 2017, the CFMEU and one of its officials were penalised $86,000 after attempting to force two Brisbane construction workers to join their union or be turned away from the site.

43. The Federal Circuit Court found that the two workers had been told they could not work on an apartment project in January 2016 unless they paid fees to the CFMEU.

44. The court found that a CFMEU delegate had demanded each worker pay $1,290 in union fees. However both workers left after refusing to hand over the money. When a site manager reminded the delegate that workers had a right to not be in a union, the CFMEU official had replied: *"everybody's got to be in the union, this is an EBA site".*

45. In handing down his penalty decision, Judge Jarrett found that the delegate had breached workplace laws by attempting to force the workers to join the union. The CFMEU was penalised $80,000 while the delegate was ordered to pay a total of $6,000

46. Judge Jarrett said the penalties reflected: *"the CFMEU's deplorable history of compliance with industrial laws".*[14]

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[12] *https://www.abcc.gov.au/news-and-media/industry-update/latest-industry-update/court-summary-new-matters*
[13] *Ibid*
[14] *Australian Building and Construction Commissioner v Barker & Anor [2017] FCCA 1143 (30 May 2017)*

47. On 5 September 2017, a Brisbane landscaping firm was penalised more than $40,000 after it terminated the contract of another company which did not have a CFMEU EBA because it did not want *"trouble"* with the union.[15]

48. The situation giving rise to the penalty occurred in 2014 when a CFMEU official told workers at the waterproofing company they were not allowed to work on a site because their employer did not have a CFMEU EBA. The waterproofing company's contract was then terminated by the company.

49. In the Federal Circuit Court, Justice Vasta said the decision by the Company to terminate the contract was because it "*did not want to have trouble"* with the CFMEU.[16]

50. Justice Vasta said the waterproofing company had been unlawfully discriminated against because it did not have a CFMEU EBA. The company had a valid EBA and a right to work at the site. The Judge[17] said:

> *"It beggars belief that the CFMEU believe that they can act in a manner where they are the ones who dictate who can or cannot work on a construction site."*

51. The court imposed penalties totalling $101,745 for the breaches of the Fair Work Act. The company was penalised $40,800 and its project manager $6,120. The CFMEU was penalised $47,175 and CFMEU site delegate Kurt Pauls $7,650.[18]

52. Justice Vasta[19] went on to say:

> *"This was a very clear and deliberate action to illustrate to [the waterproofing company] that it was the CFMEU who alone decided who worked on that particular site."*
>
> *"It seems that the CFMEU feel that they can usurp Parliament and that they can set the law in this country. There is no place for such an attitude in Australian society."*

53. In May 2017, a Senior CFMEU official was ordered to pay the maximum penalty of $10,200 for his conduct on a construction site at Fortitude Valley in 2015.[20]

54. The official admitted in the Federal Circuit Court that when he was asked for his right of entry permit he raised his middle finger and said he didn't need one. When a site manager attempted to record the incident, the Official admitted saying:

> *"Take that phone away or* I'll f***ing bury it down your throat.*"*

55. He then squirted water at the person which struck him in the face, shirt and mobile phone. When another site manager asked the official words to the effect:

> *"What are you doing here, you are here illegally, why didn't you go through the right channels?"*

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[15] *Australian Building and Construction Commissioner v Dig It Landscapes Pty Ltd & Ors [2017] FCCA 2128 (5 September 2017)*
[16] *Ibid*
[17] *Ibid*
[18] *Ibid*
[19] *Ibid*
[20] https://www.abcc.gov.au/news-and-media/latest-news-and-media/judge-orders-maximum-penalty-against-former-queensland-cfmeu-boss

56. The official replied: *"I can do what I like."*

57. Also in May 2017, the CFMEU and seven of its officials were penalised $277,000 for unlawful conduct which halted work at the $1.2 billion Perth Children's Hospital project.[21]

58. The penalties arose in circumstances where the site was blockaded, one occasion where 400 people prevented a large concrete pour involving 45 trucks. The Court determined that CFMEU officials had organised, incited, and controlled the protest because the head contractor did not agree to a demand for an EBA.

59. Other incidents included a union organised a blockade which prevented 200 workers from entering the site, and a separate blockade where a CFMEU official admitted to attempting to prevent workers from entering the site by physical restraint.

60. In issuing the penalties, the Judge said that senior officials *"clearly provided endorsements to the unlawful action and gave it what might be called a misplaced legitimacy in the minds of the CFMEU members".* Justice Barker also took into account the "*prior extensive history of contraventions on the part of the CFMEU"* in determining the penalties imposed.

61. In April 2017, the Federal Court issue fines of $101,500 against the AMWU, CFMEU and AWU and three of their officials for their involvement in unlawful industrial action at a construction project in Victoria's Latrobe Valley.[22]

62. The unlawful action stopped work at the project for three days in March 2014, continuing on the third day in defiance of orders from the Fair Work Commission that industrial action stop. Whilst the officials contended the stoppages related to safety and therefore did not constitute unlawful industrial action, the Court found that *"[t]hat view was a mistaken one".*

63. The Court found instead that by involving themselves in the action, the officials *"took advantage of the employees' unlawful conduct to strengthen their hands in their negotiations with the companies*".

64. In the judgment, Justice Jessup singled out the CFMEU for what he described as its *"appalling"* prior record of non-compliance with industrial laws.

65. Justice Jessup noted the *"normalisation of contraventions"* by the CFMEU "*has been the subject of comment by Judges on so many previous occasions that any further observation on my part here would amount to little more than stating the obvious*".

66. His Honour continued:

> *"…if there is any union in the industrial universe which should be acutely aware of the importance of understanding the boundaries of lawful conduct in the prosecution of disputes, it is this one. Self-evidently, it does not care to do so."*

67. The CFMEU was penalised $45,000, the AMWU $25,000 and the AWU $20,000. Officials were penalised a total of $11,500.

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[21] *https://www.abcc.gov.au/news-and-media/latest-news-and-media/court-penalises-cfmeu-leaders-277000-perth-children%E2%80%99s-hospital-decision*

[22] *Australian Building and Construction Commissioner v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (The Australian Paper Case) (No 2) [2017] FCA 367 (11 April 2017)*

68. Also in April 2017, the CFMEU and ten officials were penalised $590,800 for co-ordinated unlawful industrial action across multiple construction projects worth nearly half a billion dollars.[23]

69. The coordinated unlawful action saw workers walk off the job at nine projects, including four hospitals and an aged care centre across Melbourne and Geelong in 2014.

70. The Federal Court decision highlighted that of the various stoppages "*in no instance was there any suggestion of an issue or grievance, specific to the site or workers on it that justified, or even explained, the organisation of the industrial action"*. Instead, the Court found the "*arrogant*" and "*high-handed*" approach of the CFMEU and its officials led to the irresistible inference that the unlawful conduct *"had the explicit object of inflicting commercial harm on* [the contractor]*".*

71. The Court also made comment about the "*transparently groundless invocation*" of workplace safety as a pretext for one of the unlawful stoppages. One official was penalised $7,600 for an "*unjustified and gratuitous*" disruption of work that had *"nothing to do with any issue or grievance which the workers [on site] had".*

72. In March 2017, the CFMEU and ten of its officials were given penalties totalling $242,000 after they blocked construction work on the $80 million Perth International Airport Arrivals Expansion Project. [24]

73. In a majority decision, Justices Rares and Dowsett described the officials' conduct as *"a clear instance of them taking the law into their own hands",* further noting:

> *"The conduct of the CFMEU in this case brings the trade union movement into disrepute and cannot be tolerated".*

74. In late 2017, during national protest action, a senior union official made the following comments in front of a rally causing public outrage[25] with respect to ABCC inspectors:

> *"Let me give a dire warning to them ABCC inspectors, be careful what you do. You're out there to destroy our lives."*
>
> *"We will lobby their neighbourhoods, we will tell them who lives in that house and what he does for a living, or she, and we will go to their local footy club, we will go to their local shopping centre, they will not be able to show their faces anywhere."*
>
> *"Their kids will be ashamed of who their parents are when we expose all these ABCC inspectors."*

75. In August 2017, the Federal Court handed down penalties totalling $430,000 for unlawful industrial action taken at the Lady Cilento Children's Hospital and two other Brisbane construction sites.[26]

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[23] *Australian Building and Construction Commission v Construction, Forestry, Mining and Energy Union (The Kane Constructions Case) (No 2) [2017] FCA 368 (11 April 2017)*

[24] *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union [2017] FCAFC 53, NORTH, DOWSETT AND RARES JJ*

[25] *"CFMEU boss John Setka threatened to expose personal details of ABCC inspectors" Genevieve Alison, Tom Minear and Matthew Johnston, Herald Sun, June 21, 2017*

[26] *https://www.abcc.gov.au/news-and-media/latest-news-and-media/federal-court-penalises-cfmeu-cepu-430000-unlawful-brisbane-action*

76. The Court found the actions of CFMEU officials was part of a *"highly coordinated and deliberately orchestrated campaign"* and that the CFMEU had a prior history that "*reveal a lamentable, if not disgraceful, record of deliberately flouting industrial laws*" (and was) "*a recidivist when it comes to contravening industrial laws."*

77. In awarding the penalties, the Court noted that *"it (the CFMEU) continues to thumb its nose at the industrial laws"* and "*the CFMEU's record of past transgressions means that there is no reason to afford it any particular leniency based on its past behaviour."*

78. In 2016, senior building industry union officials reportedly used the words *'We've got to get our hands dirty'* and '*You've got to break a few eggs to make an* omelette' at a union rally where it is alleged a non-union worker suffering a terminal disease was subsequently assaulted by a union official. [27]

79. In March 2016, a case in Queensland found building union officials entered a lunch shed, removed workers food from a fridge, then padlocked the door to the shed saying it was "*only for the use of union members."* [28]

80. In August 2016, the CFMEU in Melbourne was found to have not followed proper right of entry rules and refused to leave when asked. The Judge found this a *"demoralising lack of respect either for the law or their roles as officials". [29]*

81. In April 2016, the CFMEU and 15 union officials in Adelaide were fined for breaching entry laws, coercive conduct, and related breaches. These included unauthorised entry, accessing unsafe areas, becoming physical to force site entry, and coercion to force the flying of a union flag. [30]

82. Building unions are by far the most penalised category of union in Australia and courts have observed, on a more than regular basis, a predisposition for them to break the law. Building unions are more than willing to take advantage of the considerable rights and benefits associated with being a Registered Organisation, however they demonstrate a serial reluctance to do so in a manner where rights are evenly balanced against associated relevant obligations.

83. With this backdrop in mind, it is the position Master Builders, and the strong belief of our members, that the obligations and penalty regime established by the FWEI Bill will be a crucial component to the current industrial relations legislative regime. In the face of the Bill, we strongly urge the Parliament to prioritise legislative reform appropriately, by first focussing on ensuring a balanced penalty regime for all parties – including Unions. Doing so would ensure that the Parliament appropriately acknowledges the real social and economic concern of Trade Union misconduct.

84. It should be clearly noted that Master Builders believes that characterisation of SG offences does justify the level of deterrence afforded by the penalty regime established by the draft Bill; however, in the face of other serious breaches of worker rights the penalties cannot be considered proportionate on a broad scale.

85. The first priority of the Parliament, before consideration of the draft Bill, should be to establish an adequate penalty regime for unions and employee groups – the first place to achieve this will be through appropriate consideration of the FWEI Bill.

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[27] CUB Dispute: CFMEU boss John Setka urged workers to get 'hands dirty' at rally" Galloway A, Herald Sun, 16 September 2016
[28] [2016] FCCA 488 (9 March 2016)
[29] [2016} FCA 817
[30] [2016] FCA 415 (22 April 2016), [2016] FCA 414 (22 April 2016), [2016] FCA 413 (22 April 2015)

86. With the above matters in mind, the Government should either remove the prospect of imprisonment from proposed penalty structures, or, not proceed with this element until related workplace measures proposed elsewhere in the Government's policy agenda are implemented. This response would ensure proportional outcomes for all parties involved in, and relevant to, the workplace.

Allow ATO disclosure of information to employees affected by non-compliance:

87. Schedule 2 will significantly expand the ATO's powers to share information with employees that have been affected by employer non-contributions. The new Schedule will allow the ATO to share information with an employee or former employee of an employer which has failed, or which the ATO reasonably suspects to have failed in meeting their SG obligations to employees.

88. Master Builders' main concern about this Schedule is that it should limit disclosures to employees only (and not their representatives). If a system were implemented that facilitated mass disclosure to representatives, it would be open for abuse and exploitation.

89. Noting these concerns, Master Builders recommends that this schedule contain limitations on the persons to whom disclosure should be made, and mandate that clear and accurate education information is also provided so as to alleviate any concerns held by such persons.

90. Further, Master Builders recommends that the Government reconsider disclosing information to affected employees in circumstances where it is "reasonably suspected" that an employer has not met relevant SG obligations.

91. We are unaware of any other circumstance where a regulator or agency is given statutory power to advise a third party that a related party '*may not'* have complied with a legislative obligation, as opposed to 'has not' complied.

92. As noted earlier herein, the BCI experiences high levels of workplace disputation often involving volatile circumstances. Advice to employees that an employer may not have complied with the law will simply add to this air of volatility in circumstances that may turn out to be entirely unnecessary or wrong.

93. Put simply, in the context of other measures in the draft Bill, sophisticated agencies and regulators should be in a position to accurately determine if compliance has or has not occurred. Only in the latter circumstance should affected persons be advised.

94. Further, the consequences for BCI employers of an agency or regulator advising affected persons in circumstances where compliance has in fact occurred, are adverse and far reaching, particularly in relation to the delivery of infrastructure and project completion times.

95. For employers generally, there would be a significant adverse impact to their reputation as an employer that would be difficult to address.

96. Additionally, the Government has not outlined the benefit of disclosure in circumstances were non-compliance is 'reasonably believed' in terms of better achieving the intended policy outcome. Indeed, it is difficult to envisage where any benefit may exist, particularly when weighed against the significant adverse ramifications of such advice in incorrect circumstances.

97. Were the Government minded to continue pursuit of this measure, the draft Bill should clearly outline what steps an agency or regulatory would be required to follow to address and alleviate the adverse consequences arising from such advice in circumstances were compliance has in fact occurred.

98. Who may be responsible, for example, if advice to affected persons causes a worksite to cease work for a day in circumstances where that advice is mistaken or incorrect? In the BCI, a day long cessation of work would be the likely consequence causing the head project contractor exposure to contractual liquidated damages claims that, in some instances, exceed over $100,000 per day.

99. We urge the Government to reconsider this aspect of the draft Bill in the context of potential adverse and unnecessary outcomes it is likely to cause for the BCI and in the absence of any rationale justifying how such a measure will practically assist in achieving the desired policy outcome.

Extend Single-Touch Payroll to all employees:

100. Single Touch Payroll reporting ('STP') is a system of reporting which directly reports relevant employer contribution data to the ATO at the time of payments being made. The system is an efficient system which ensures transparency of employers with the ATO.

101. Currently, 'substantial employers', defined as those employing 20 or more employees, may report 'salary or ages', 'ordinary time earnings', taxes, superannuation contributions and other withholdings to the ATO under the standard STP electronic reporting system. From 1 July 2018, STP reporting will become compulsory for all substantial employers.

102. Schedule 3 makes two amendments to extend the STP reporting obligations:

- Extension of compulsory STP reporting to all employers, taking effect on 1 July 2019; and
- The creation of a requirement for employers to report salary sacrifice salary amounts which have been remitted directly to a superannuation fund (from pre-tax earnings).

103. These provisions streamline the reporting process and should not be contentious.

Improvements to the Fund Reporting regime:

104. Schedule 4 creates amendments to the current fund reporting regime, introducing a new 'events-based reporting' scheme. Where currently, superannuation funds report annually on contributions (in a 'Member Contributions Statement' due by 31 October each financial year), the events-based reporting scheme will mean that the ATO will have all information relating to a fund, updated whenever any changes occur (including, for example, through new contributions).

105. The amendment should alleviate employer stress relating to any reporting requirements, as the payment event will trigger the adequate reporting.

Improve ATO Collection and compliance measures:

106. Schedule 5 amends the current Taxation Administration Act 1953 (Cth) ('TA Act') to improve employer compliance with the TA Act reporting and taxation remittance regime. The proposed schedule amends the regime by:

- Simplifying the date structure to repay estimates and actual amounts of unpaid taxation and superannuation amounts; where:
    - In the case of an estimate of underpayment has been declared by the ATO, based on the underpayment of SG charges – through this amendment, the liability to repay will arise at the end of the quarter for an estimate, and 1 month and 28 days from the end of the quarter for an actual liability; and
    - In the case of an unpaid PAYG withholding, the estimate and debt liability will arise from the due date of the PAYGW payment;
- Removes the three-month period during which taking insolvency action removes directors' personal liability for unpaid SG estimates and charges. Where Directors' liability for these amounts previously ceased if insolvency action was taken within 4 months and 28 days from the date of the liability, the removal of this period means that Directors' liability to have the SG charge declared and paid to the ATO continues unless the company is put into administration or insolvency within 1 month and 28 days from the end of the quarter; and
- Empowers the ATO to apply to the Federal Court for an order to require a company to provide security over a payment (where currently security orders are only enforceable by fine which is often less than the value of the order).

107. Master Builders notes these proposed provisions.

Streamline employee commencement processes:

108. Schedule 6 extends the ATOs capacity to pre-fill fill an individual's TFN declaration and superannuation standard choice form for employers. This is an uncontroversial amendment which streamlines the commencement of new employees within organisations.

Conclusion

109. Master Builders is grateful for the opportunity to comment on the draft Bill.

110. We reiterate our concerns with the penalty regime provided for in Schedule 1, and the application of the disclosure principles in Schedule 2. Broadly, however, the proposed measures would not be the subject of opposition from Master Builders subject to the alterations proposed above being addressed adequately in the final form of the Bill should it be introduced into Parliament.

111. Master Builders appreciates the opportunity to make a submission regarding the T*reasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018*.