



The Honourable John Mickel MP  
Member for Logan

Min Ref No: E/06/00653



Queensland  
Government

Minister for State Development,  
Employment and Industrial Relations

09 OCT 2006

Mr Neil Laurie  
The Clerk of the Parliament  
Queensland Parliamentary Service  
[TableOffice@parliament.qld.gov.au](mailto:TableOffice@parliament.qld.gov.au)

Dear Mr Laurie

Thank you for your letter dated 5 September 2006 addressed to the then Minister for Employment, Training and Industrial Relations and Minister for Sport, the Honourable Tom Barton MP, in relation to Petition No. 603-05, calling for the creation of the Office of Employer Advocate (Queensland Building Construction Industry).

The petition calls for this new body to have powers to prosecute non-compliant employers within the building and construction industry for sham contracting arrangements, breaches of building awards and agreements, health and safety, environmental laws, payroll tax, superannuation and Australian Taxation laws.

Queensland does not have the power to impose penalties for Australian taxation laws or superannuation as these matters are covered by federal laws. It would not be possible to make valid and enforceable state laws to investigate breaches or impose penalties with respect to these matters. However, members of the public can report employer breaches to the Australian Taxation Office.

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While Queensland is challenging the validity of the *Workplace Relations Act 1996* (Work Choices) in the High Court, the employment of people in the building and construction industry by trading corporations is currently governed by both Work Choices and the *Building and Construction Industry Improvement Act 2005*. Queensland's industrial relations jurisdiction in this industry is limited to people employed by unincorporated employers. For those employees, there are a number of protections under Queensland legislation including:

- sections 275 and 276 of the *Industrial Relations Act 1999* (the Act) gives the QIRC powers to deal with sham contracting arrangements. This includes declaring persons to be employees or employers, and the power to amend or void contracts; and
- industrial inspectors in the Department of Industrial Relations (DIR) monitor compliance of awards and agreements in the building construction industry through wage complaints - Chapter 10 of the Act. DIR also provides a workplace health and safety inspectorate specific to the building and construction industry whose powers are received from the *Workplace Health and Safety Act 1995*, Part 9.

The Office of State Revenue and Department of Primary Industries and Fisheries also have existing regulatory compliance programs, which deal with payroll tax and environmental issues, respectively.

I also note that trading corporations will be affected by the provisions in the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*. This Bill is currently before the federal parliament. The Bill makes it an offence to misrepresent to an existing or prospective worker that their contract is or will be an independent contracting arrangement, when it is actually an employment contract.

Should you have any queries regarding my advice to you Carolynne Berry, Policy Officer in the Department of Industrial Relations on 3227 6306, will be pleased to assist you.

Yours sincerely

**JOHN MICKEL MP**  
**Minister for State Development,**  
**Employment and Industrial Relations**