



**Australian Government**  

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**Department of Employment**

**SENATE STANDING COMMITTEE ON  
EDUCATION AND EMPLOYMENT**

**BUILDING AND CONSTRUCTION INDUSTRY (IMPROVING PRODUCTIVITY) BILL 2013  
AND  
BUILDING AND CONSTRUCTION INDUSTRY (CONSEQUENTIAL AND TRANSITIONAL  
PROVISIONS) BILL 2013**

**SUBMISSION OF THE  
DEPARTMENT OF EMPLOYMENT**

## Table of contents

Introduction.....	3
Purpose of this submission.....	3
Key features of the ABCC Bills .....	4
Evidence that supports these measures .....	4
<i>The need for increased penalties</i> .....	5
Economic importance of the building and construction industry.....	5
<i>Impact on level of industrial disputes</i> .....	6
<i>Impact on labour productivity</i> .....	6
<i>Commissioned reports</i> .....	7
Why is the ABCC necessary?.....	8
<i>Expanding the powers of other regulatory bodies</i> .....	8
Safety .....	9
<i>Safety record in the building and construction industry</i> .....	9
<i>Government measures to improve safety in the building and construction industry</i> .....	10
<i>Improving safety on construction sites</i> .....	11
<i>Ability to address Work Health and Safety issues at the workplace</i> .....	11
Conclusion .....	11

## Introduction

1. The Department of Employment welcomes the opportunity to make a written submission to the Senate Standing Committee on Education and Employment Inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 (the ABCC Bills).
2. In recognition of the fact that the Parliament includes new Senators who have not previously had the opportunity to consider the ABCC Bills, the Department has chosen to make a further submission to this Senate inquiry.
3. The Department notes the Committee has considered the ABCC Bills on two previous occasions – first in late 2013 and more recently in March 2016.
4. In 2013, the Department made a substantive submission to the Committee's first inquiry. A copy of the Department's 2013 submission can be found at:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/ABC\\_C\\_2013/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/ABC_C_2013/Submissions).
5. The Department made a further submission as part of the 2016 Senate Inquiry. In addition to attaching the Department's 2013 submission, the 2016 submission provided supplementary information on matters relevant to the building and construction industry. A copy of the 2016 submission can be found at:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Building\\_and\\_Construction/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Building_and_Construction/Submissions).
6. The Department has also prepared responses to several Questions on Notice following a public hearing on 4 March 2016. These responses can be found at:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Building\\_and\\_Construction/Additional\\_Documents](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Building_and_Construction/Additional_Documents).
7. In April 2015, the Department made a submission to the Senate Committee in relation to its inquiry into the Construction Industry Amendment (Protecting Witnesses) Bill 2015. This submission explained the origins of the compulsory examination powers and the ongoing need for the powers. The submission also outlined the examination process and the range of measures available to protect the rights of individuals (including workers) who have been given a notice to provide information, produce documents, or attend before the Director to answer questions. The Department's submission can be found at:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Construction\\_Industry/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Construction_Industry/Submissions).
8. Given the Bills remain in the same form as they were introduced into Parliament on 14 November 2013, the Department relies on these earlier submissions as part of this current inquiry. The Department also relies on its submission to the Committee on the Protecting Witnesses Bill and notes all this information is available again to the Committee at the links provided above.

## Purpose of this submission

9. This submission deals with the significance of the building and construction industry to the national economy and why re-establishment of the Australian Building and Construction Commission (ABCC) is necessary to restore the rule of law in the industry. Specifically, this submission outlines the key features of the ABCC Bills, the economic importance of the building and construction industry, why the ABCC is necessary, and key issues concerning safety in the building and construction industry.

### Key features of the ABCC Bills

10. The ABCC Bills will restore the ABCC as the industry-specific regulator for the building and construction industry.
11. As outlined above, detail on the measures contained in the ABCC Bills has already been provided by the Department in earlier submissions, but notably the ABCC Bills will:
  - 11.1. restore penalties for unlawful conduct to their former level, by effectively tripling the maximum penalties to \$180,000 for a body corporate and \$36,000 for an individual, so as to deter unlawful behaviour
  - 11.2. retain compulsory evidence-gathering powers and remove the sunset clause on the use of these powers. Similar powers are held by other regulators such as the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office, the Australian Prudential Regulation Authority, Comcare and Medicare
  - 11.3. remove the inability for the ABCC to enforce the law where 'private settlements' occur. This prohibition significantly erodes the ABCC's regulatory role. No other Australian industrial regulator is prohibited from instituting or continuing proceedings because the parties affected by the alleged contravention of the law have reached a settlement (e.g. in relation to breaches of work health and safety (WHS) laws), and
  - 11.4. enable an effective Building Code to be made so the Government can use its influence as a client to drive improved conduct on taxpayer funded construction sites by setting out a range of best practice workplace relations arrangements for employers who tender for Commonwealth-funded building work.

### Evidence that supports these measures

12. Dozens of court decisions since 2005 have highlighted the lawless culture within the building and construction industry.
  - 12.1. For instance, Justice Vasta commented in a Federal Circuit Court decision earlier in 2016: *"The Third Respondent [the CFMEU] does have an unenviable history of breaching the Fair Work Act. It seems to treat being caught conducting such breaches as the present one simply as occupational hazards in the way in which they conduct their business."*<sup>1</sup>
  - 12.2. Justice White said in a recent Federal Court decision: *"In the period from December 2000 to October 2013, the CFMEU and its officials were dealt with by courts on 80 separate occasions for contraventions of industrial legislation. On any reasonable measure that is an appalling record. It bespeaks an attitude by the CFMEU of ignoring, if not defying, the law and a willingness to contravene it as and when it chooses."*<sup>2</sup>
13. At least two Royal Commissions, including the recent Royal Commission into Trade Union Governance and Corruption conducted by Justice Dyson Heydon, have uncovered evidence that Australia's construction industry is held back by systemic illegal industrial action.
  - 13.1. In particular, Justice Heydon found: *"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."*

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<sup>1</sup> Director of the Fair Work Building Industry Inspectorate v Vink & Anor [2016] FCCA 488.

<sup>2</sup> Director, Fair Work Building Industry Inspectorate v CFMEU [2016] FCA 413.

- 13.2. He went on to say: *“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.”*
- 13.3. Justice Heydon further said: *“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.”<sup>3</sup>*

14. At the end of July 2016, there were 107 representatives of the CFMEU before the courts, which in recent years have imposed fines of over \$8.25 million on this union and its officials for proven breaches of the law. However, this has been ineffective in deterring unlawful conduct by construction unions.

### ***The need for increased penalties***

15. The current penalty levels are ineffective in deterring unlawful conduct by industry participants. The higher penalties contained in the ABCC Bills are intended to deter unlawful behaviour.
16. A large number of judges have commented that the CFMEU appears to regard financial penalties as ‘simply a business cost like any other’ and that ‘there is plainly a need to impose punishment to deter the CFMEU and others like it from treating this country’s industrial laws as little more than an annoyance’.<sup>4</sup>
- 16.1. Justice Mortimer said in a recent Federal Court decision: *“There is a conscious and deliberate strategy employed by the CFMEU and its officers to engage in disruptive, threatening and abusive behaviour towards employers without regard to the lawfulness of that action and impervious to the prospect of prosecution and penalties.”<sup>5</sup>*, and
- 16.2. Justice Collier said in a recent Federal Court decision: *“A very real question arises as to whether penalties previously imposed on individual respondents has acted as a deterrent ... Penalties imposed on the CFMEU appear to have no impact – indeed the obvious inference to be drawn is that the CFMEU has ignored such penalties as inconsequential.”<sup>6</sup>*
17. Higher penalties are also intended to discourage employers from paying strike pay to employees who stop work, other than where there is a genuine safety concern. This is intended to discourage work stoppages for spurious safety reasons.

### **Economic importance of the building and construction industry**

18. The building and construction industry is a key driver of economic growth. It accounts for 8 per cent<sup>7</sup> of gross domestic product and directly employs more than one million Australians.
19. It is Australia’s third largest industry and provides many jobs for workers in both small businesses and large enterprises, with almost one in every ten Australian employees relying on this industry for jobs and income.<sup>8</sup>

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<sup>3</sup> Royal Commission into Trade Union Governance and Corruption, Final Report (2015) Chapter 8 of Volume 5, published December 2015.

<sup>4</sup> Director, Fair Work Building Industry Inspectorate v CFMEU [2016] FCCA 1692.

<sup>5</sup> Director, Fair Work Building Industry Inspectorate v CFMEU (No. 2) [2016] FCA 436.

<sup>6</sup> Director, Fair Work Building Industry Inspectorate v Bolton (No. 2) [2016] FCA 817.

<sup>7</sup> ABS (2016), *Australian National Accounts: National Income, Expenditure and Product, June quarter 2016*, (ABS Cat. No. 5206.0).

<sup>8</sup> ABS (2016), *Labour Force, Australia, Detailed, Quarterly*, ABS Cat. No. 6291.0.55.003, May 2016, trend.

20. It comprises over 300,000 small businesses, with small business accounting for around 99 per cent of all businesses within the industry.<sup>9</sup>

### ***Impact on level of industrial disputes***

21. According to Australian Bureau of Statistics (ABS) data for the June 2016 quarter, the rate of industrial disputation (working days lost per 1000 employees) in the construction sector is presently over eight times higher than the average across all industries.<sup>10</sup>
22. According to the same data, the construction industry had the highest number of working days lost by industry, accounting for 66 per cent of working days lost.
23. Since the ABCC was abolished in 2012, the rate of industrial disputation in the construction sector has increased by 40 per cent. This is in contrast to all other industries, where the rate of industrial disputation has declined by 33 per cent.
24. According to ABS data, in the five years before the ABCC was established in 2005 the rate of industrial disputation in the construction industry was five times the 'all industries average'. In comparison, during the operation of the ABCC from 2005 to 2012, this dropped to only twice the 'all industries average'. During the period since the ABCC was replaced by Fair Work Building and Construction (FWBC), the construction industry disputation rate has risen to over four times the 'all industries average'.
25. The Productivity Commission's 2014 Inquiry into Public Infrastructure noted that the ABS data does not capture many aspects of industrial disputation such as go-slows, work-to-rule, and overtime bans, and therefore underestimates the prevalence and severity of industrial relations disharmony in the construction industry and its resulting impact on the economy.<sup>11</sup>
26. The Productivity Commission has stated that, given the importance of the building and construction sector to many other industries, higher costs or delays in the provision of construction projects have widespread effects on the economy as a whole.<sup>12</sup>

### ***Impact on labour productivity***

27. When the ABCC existed, from 2005 to 2012, the economic and industrial performance of the building sector improved.
28. ABS data shows that during the operation of the ABCC, the labour productivity index in the construction industry increased by 21 per cent. This is in contrast to the 16 Market Sector industries index which increased by only 12 per cent.
29. The same ABS data shows that following the abolition of the ABCC, labour productivity in the construction industry has remained fairly flat.<sup>13</sup>
30. In common with developments in labour productivity, multifactor productivity has also been fairly flat since the abolition of the ABCC. Indeed, it has fallen slightly (at an average annual rate of 0.2 per cent) since 2011-12, the last financial year before the introduction of the FWBC.<sup>14</sup>

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<sup>9</sup> ABS (2016), *Counts of Australian Businesses, including Entries and Exits, Jun 2011 to Jun 2015* (ABS Cat. No. 8165.0), released 26 February 2016. Data as at 30 June 2015.

<sup>10</sup> ABS (2016), *Industrial Disputes, Australia, June 2016* (ABS Cat. No. 6321.0.55.001).

<sup>11</sup> Productivity Commission (2014), *Public Infrastructure*, Inquiry Report No. 7, Canberra, published 27 May 2014, p540.

<sup>12</sup> Productivity Commission (2014), *Public Infrastructure*, Inquiry Report No. 7, Canberra, published 27 May 2014, p539.

<sup>13</sup> ABS (2015), *Estimates of Industry Multifactor Productivity, 2014-15*, Cat No 5260.0.55.002.

<sup>14</sup> Calculated by the Labour Economics Section in the Department of Employment from statistics in ABS (2015), *Estimates of Industry Multifactor Productivity, 2014-15* (Cat No 5260.0.55.002). These statistics are in original terms, labour inputs are not quality-adjusted and the growth rate is a compound average annual growth rate.

### **Commissioned reports**

31. Reports commissioned recently by industry associations have found the current environment in the construction industry continues to drive up infrastructure costs. A brief summary of these reports is outlined below.
32. Deloitte Access Economics, in a report commissioned by the Master Builders Association (MBA), found that increases in labour costs, without corresponding productivity growth, would mean Queensland's infrastructure costs will increase by \$279 million in 2016-17.
  - 32.1. This report also found that: *"Over the period from 2016-17 to 2019-2020, the additional cost would amount to \$1,069 million in total over those four years."*<sup>15</sup> According to the report, this is equivalent to the cost of building 15 schools and spending an additional \$544 million on hospital expansions.
33. A similar report by Deloitte Access Economics commissioned by MBA Victoria on labour costs in the Victorian construction sector found that increases in labour costs, without corresponding productivity growth, would mean Victoria's infrastructure costs increase by \$148 million in 2015-16.
  - 33.1. This report also found that: *"Over the period from 2015-16 to 2018-19, the additional cost would amount to \$621 million in total over those four years"*, which is equivalent to the cost of building 11 schools and two hospitals<sup>16</sup>.
34. Research conducted by Independent Project Analysis for the Business Council of Australia (BCA)<sup>17</sup> shows that resource projects are 40 per cent more expensive to deliver in Australia than in the US Gulf Coast. The report also estimates that Australian projects require 30 to 35 per cent more labour input to deliver the same project compared to the US Gulf Coast.
35. The same report also notes that costs premiums are also evident for some infrastructure projects, which show the expense of building Australian hospitals is an estimated 62 per cent higher than in the US. For schools it is 26 per cent more, shopping centres 43 per cent more, and airports 90 per cent more when compared to the US.<sup>18</sup>
36. In its 2013 *Securing Investment in Australia's Future* report<sup>19</sup> the BCA reported the differential between the Australian enterprise bargaining agreement (EBA) and non-EBA wages rates for less skilled trades at 98 per cent, that is almost double, indicating this has a substantial effect on driving up overall construction costs. According to the BCA, this finding was evidenced by the fact that EBA ordinary time charge out rate for a labourer is about 98 per cent higher than for a non-EBA subcontractor.
37. Independent Contractors Australia estimates *"the cost of major Australian infrastructure construction is considerably higher than it should be, potentially in the order of 20 to 30 per cent"*.<sup>20</sup>
38. The Australian Mines and Metals Association (AMMA) recently said that in the mining, oil and gas sector, inflated construction costs and delays have helped drive investment and jobs to Australia's competitors.

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<sup>15</sup> Deloitte Access Economics (2016), *Construction sector – outlook, labour costs and productivity*, Queensland, published 17 June 2016.

<sup>16</sup> Deloitte Access Economics (2016), *Construction sector – outlook, labour costs and productivity*, Victoria, published 31 March 2016.

<sup>17</sup> Business Council of Australia (2012) *Pipeline or Pipe Dream? Securing Australia's Investment Future*, June 2012.

<sup>18</sup> *ibid.*

<sup>19</sup> Business Council of Australia (2013) *Securing Investment in Australia's Future: Report of the Project Costs Task Force*, August 2013, p.29.

<sup>20</sup> Independent Contractors Australia (2014) *ICA Submission to the Productivity Commission Inquiry into Public Infrastructure: Provision, Funding, Financing and Costs*, February 2014, p.1.

AMMA further said in the past two years alone \$160 billion in shovel-ready new resource projects have been cancelled.<sup>21</sup>

### **Why is the ABCC necessary?**

39. Re-establishing the ABCC is vital for jobs, productivity and growth in the Australian economy. The ABCC will improve productivity in the construction industry and reduce building costs by ensuring disputes are dealt with efficiently and effectively by a regulator with specialist expertise.
40. The ABCC will play a key role in dealing with the high levels of unlawful conduct in the industry. Meaningful penalties for unlawful behaviour will ensure workplaces are fair and productive and Australian taxpayers will benefit through receiving value for money on infrastructure investments.
41. The expanded coverage of the ABCC will ensure it can deal with disputes involving the supply and transport of essential building materials to construction sites, including sites located off-shore. This will help employers by ensuring such delays do not disrupt work on site, and will also help suppliers by ensuring that unions cannot target them to further a dispute with a particular builder.
42. Through the making of an effective Building Code, the ABCC Bills will help employers, in particular small employers, to achieve productive deals when negotiating enterprise agreements.
43. The ABCC will also help workers and small businesses in the construction industry as it will be able to take action in the courts where the person affected does not have the financial means of pursuing justice or where they have been intimidated, coerced or threatened by those engaged in a picket.
44. Finally, through its compulsory examination powers, the ABCC will be able to assess whether breaches of the law have occurred and determine whether to commence court proceedings.

### ***Expanding the powers of other regulatory bodies***

45. The majority of the issues arising in the building and construction industry relate to contraventions of workplace relations laws. For example, misuse of right of entry and coercion and intimidation when making enterprise agreements.
46. The ABCC is about ensuring workplace relations laws are complied with in the building and construction industry, as it is well documented that industry participants continually disregard those laws.
  - 46.1. The Royal Commission into Trade Union Governance and Corruption by Justice Heydon<sup>22</sup> found corruption and criminality is able to thrive in the building and construction industry because of the culture of intimidation and coercion that is created by the industrial unlawfulness of certain unions. He recommended the establishment of a separate building and construction industry regulator as a way to address unions' complete disregard for workplace relations laws.
  - 46.2. Justice Heydon concluded the degree of lawlessness in the building and construction industry provides a strong case for an industry-specific regulator that has information gathering powers equal to those of other major statutory regulators.
47. Expanding the powers of an existing body like the ACCC or ASIC, which have specifically been set up to deal with issues relating to consumer law and corporations law respectively, is not the best way of dealing with the disregard unions have for workplace relations laws and is also not feasible.

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<sup>21</sup> Australian Mines and Metals Association (2016) *New research shows why we need the ABCC*, media release, published 12 September 2016.

<sup>22</sup> Royal Commission into Trade Union Governance and Corruption, Final Report (2015) Chapter 8 of Volume 5, published December 2015.



48. ASIC and the ACCC do not have the necessary expertise in workplace relations laws or the building and construction industry.
49. Extending ASIC's reach to deal with workplace relations in the building and construction industry would potentially dilute ASIC's focus as an integrated financial services regulator. The 2015 Financial System Inquiry saw value in ASIC as an integrated consumer regulator for financial services and did not recommend any additions to ASIC's responsibilities. It also saw scope to separate ASIC's registry functions to enable it to focus on its core regulatory role.<sup>23</sup>
50. Similarly, expanding the role of the ACCC from its current focus on competition and consumer law to workplace relations law in the building and construction industry (a highly technical and specialist area) may dilute its focus and limit its ability to be an effective regulator.
51. Both ASIC and the ACCC already have a broad regulatory role and the ability to deal with certain corrupt practices in the building and construction industry that fall within their remit.

## **Safety**

### ***Safety record in the building and construction industry***

52. Safe Work Australia data indicates the rate of serious injuries and fatalities in the construction industry has trended down over the past decade.<sup>24</sup>
53. The downward trend in the rate of serious injuries and fatalities in the construction industry over the past ten years is not due to one factor but a wide range of factors. This suggests the various safety initiatives undertaken within the industry have had a positive impact on health and safety outcomes.
54. Factors that are more likely to have made a contribution to safety in the industry over the past decade include:
  - 54.1. introduction of improved WHS laws based on the model WHS laws developed through the tripartite Safe Work Australia processes
  - 54.2. effectiveness of safety campaigns and initiatives by Australian WHS Regulators, unions and industry bodies
  - 54.3. establishment of the Federal Safety Commissioner
  - 54.4. increased focus on the building and construction industry, with the industry having been identified as one of the 'priority industries' under Safe Work Australia's *Australian Work Health and Safety Strategy 2012-2022*<sup>25</sup> and its previous National Strategy
  - 54.5. increased skills levels
  - 54.6. advances in technology and safety practice
  - 54.7. increased regulator activity, and
  - 54.8. better awareness of safety issues and improved safety culture.
55. Notwithstanding this positive shift in the safety record of the construction industry, the Government has stated that it is concerned with preventing all deaths in workplaces and is committed to improving WHS across all industries, including the building and construction industry.

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<sup>23</sup> The Australian Government the Treasury (2014) *Financial System Inquiry Final Report*, published November 2014, p.235.

<sup>24</sup> Safe Work Australia (2015), *Work-related injuries and fatalities in construction*, Australia, 2003 to 2013, June 2015.

<sup>25</sup> Safe Work Australia (2012), *Australian Work Health and Safety Strategy 2012-2022*, October 2012.

***Government measures to improve safety in the building and construction industry***

56. While WHS regulation of construction sites remains the primary responsibility of the state and territory governments, the Government is addressing safety in the building and construction industry within its responsibilities, in several ways.
57. Using its influence as a client and provider of capital to drive improved safety standards and culture in the construction industry, the Government has shown its continued commitment to the Federal Safety Commissioner's Australian Government Building and Construction WHS Accreditation Scheme (the Scheme).
58. The role of the Federal Safety Commissioner is to use the influence of the Australian Government as a client and provider of capital to foster improved WHS performance in the building and construction industry. The Federal Safety Commissioner administers the Scheme. Only head contractors who are accredited under that Scheme can enter into a contract for building work that is funded directly or indirectly by the Australian Government, subject to certain thresholds.
59. The Scheme was established in 2005 in response to the Cole Royal Commission's conclusion that the safety record in the building and construction industry was unacceptable. The obligations for Commonwealth funding agencies, including 'downstream' recipients, to only use accredited builders are a legal requirement under the *Fair Work (Building Industry Act 2012)* and associated Regulations. It will remain a requirement under the ABCC Bills.
60. The Scheme is recognised by stakeholders as setting the highest safety standards in Australia and has been effective in improving safety at the individual business and whole of industry level. In particular:
  - 60.1. Accredited companies undertake around half the annual industry turnover yet in 2014, only 2 of the 30 fatalities related to an accredited company.
  - 60.2. More than 80 per cent of accredited companies consider that accreditation has improved safety, more than 94 per cent of small companies have the same view.
  - 60.3. 63 per cent of accredited companies have reduced Lost Time Injury Rates after accreditation with an average reduction of more than 75 per cent after being accredited for 6 years.
  - 60.4. Accredited companies have workers' compensation premium rates 24 per cent lower than the industry average.
61. The Australian Government is working with the states and territories, unions and employer associations through Safe Work Australia to continually improve WHS arrangements and laws in the building and construction industry. The development of the *Australian Work Health and Safety Strategy 2012-2022* by Safe Work Australia provides a nationally consistent 10 year framework to drive improvements in WHS and identifies the building and construction industry as a priority industry for action. Safe Work Australia and WHS regulators are focussing on reducing traumatic injury fatalities, injuries and disorders in this industry through collaborative partnerships with industry, unions, other organisations and the community.
62. As part of the model WHS laws developed by Safe Work Australia, there are specific regulations for construction work, which includes requirements for general construction induction training. In addition, there are regulations dealing with other risks and hazards which may apply to construction work including, among other things, confined spaces, falls, demolition work, hazardous chemicals and asbestos. Model WHS laws are supplemented by codes of practice and guidance material on specific activities and hazards including demolition work, excavation work, prevention of falls and safe design of structures.
63. In 2015, the Government made amendments to the Building Code 2013 which placed stricter drug and alcohol management obligations on those contractors who wish to undertake Commonwealth-funded construction work

64. Further, the Government is working to ensure these Bills provide a sound framework in relation to the taking of unlawful industrial action, while ensuring that workers continue to have a right to cease unsafe work.

***Improving safety on construction sites***

65. The ABCC Bills provide clarity and certainty around parties' rights and obligations in relation to industrial action. The aim is to create a simple prohibition on industrial action that is not protected industrial action to ensure that work stoppages on safety grounds only occur when concerns about safety are valid.
66. The misuse and abuse of right of entry for safety purposes by union officials has been well documented by two Royal Commissions and the Courts. The Cole Royal Commission, for example, found that the misuse of right of entry compromises safety by trivialising genuine safety concerns and deflecting attention and resources away from dealing with WHS issues.

***Ability to address Work Health and Safety issues at the workplace***

67. The ABCC Bills support the capacity for employees, unions, or WHS regulators to raise and address legitimate safety issues in the construction industry.
68. The ABCC Bills will not impact on the ability of an employee, health and safety representative (HSR) or union official to take action to help improve health and safety in the building and construction industry under WHS laws.
69. State and territory WHS laws provide workers in all industries, including the building and construction industry, with the right to cease work where they have a reasonable concern that carrying out the work would expose them to a serious health and safety risk. WHS laws also allow HSRs to direct that unsafe work cease.
70. State and territory WHS laws also provide unions with the ability to enter construction and building sites to inquire into safety issues and consult and advise workers on WHS matters. These laws acknowledge the role of unions in raising awareness of health and safety issues and the potential for union officials to assist with securing improved compliance with WHS laws.
71. The ABCC Bills, similar to the *Building and Construction Industry Improvement Act 2005*, contain no provisions that would prevent legitimate safety issues in the construction industry from being raised and addressed by employees, unions, or WHS regulators. But when a person engages in industrial action the ABCC Bills place the legal onus of proving the reasonableness of a safety concern on the person asserting it. An employee does not have to prove there is an actual safety issue, just that their concern was reasonable.

**Conclusion**

72. The re-establishment of the ABCC is necessary to deal with the high level of unlawful conduct in the industry and the entrenched disregard for industrial laws by industry participants, as highlighted by two Royal Commissions and numerous court cases.
73. A re-established ABCC will improve productivity and reduce building costs by ensuring disputes are dealt with quickly and effectively by a regulator with specialist expertise. A re-established ABCC will not have a negative impact on worker safety in the building and construction industry. The Government remains committed to working with the states and territories and building industry participants to continue to improve the safety performance of the industry.

74. I trust this further information will assist the Committee in its deliberations concerning the ABCC Bills.

75. The Department is happy to provide further information on request.