

# CHAPTER 1

## Introduction

### Reference

1.1 On 25 March 2015 Senator the Hon. Eric Abetz, Minister for Employment and Leader of the Government in the Senate, introduced the Construction Industry Amendment (Protecting Witnesses) Bill 2015 (the bill).<sup>1</sup>

1.2 On 26 March 2015 the Senate referred the bill to the Senate Education and Employment Legislation Committee (the committee) for inquiry and report by 8 May 2015.<sup>2</sup>

### Conduct of the inquiry

1.3 Details of the inquiry were made available on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from eight individuals and organisations, as detailed in Appendix 1.

### Background

1.4 In November 2011 the former Labor Government introduced the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2012<sup>3</sup> that, when passed in 2012, abolished the Australian Building and Construction Commission (ABCC).

1.5 The compulsory investigative powers that are being extended in the current bill have existed since 2005. They are contained in previous legislation such as section 712 of the *Fair Work Act 2009*. Other agencies including the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority, the Australian Taxation Office, Centrelink and Medicare are invested with similar powers.<sup>4</sup>

1.6 In November 2013 the Coalition Government introduced the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 (the 2013

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1 *Journals of the Senate No. 89*, 25 March 2015, pp 2400–2401.

2 *Journals of the Senate No. 90*, 26 March 2015, p. 2458.

3 The Hon. Simon Crean, Minister for Regional Australia, Development and Local Government and Minister for the Arts, *House of Representatives Hansard*, 3 November 2011, p. 12686.

4 Senator the Hon. Eric Abetz, Minister for Employment, Construction Industry Amendment (Protecting Witnesses) Bill 2015, Second reading speech, *Senate Hansard*, 25 March 2015, p. 68.

ABCC bills).<sup>5</sup> The committee inquired into the ABCC bills jointly. In its report of December 2013, the committee recommended the Senate pass the 2013 ABCC bills.<sup>6</sup>

1.7 The 2013 ABCC bills would re-establish the ABCC to replace the Office of the Fair Work Building Industry Inspectorate, and would govern the appointment and functions of the Australian Building and Construction Industry Commissioner (ABC Commissioner).

1.8 The Building and Construction Industry (Improving Productivity) Bill 2013, which includes enforcement provisions, provides powers to either the Minister or the ABC Commissioner and staff to:

- issue a Building Code (the Code) which includes providing the ABC Commissioner with the power to require a person to report on his or her compliance with the Code;
- prohibit unlawful industrial action if the action has a connection to a constitutionally-covered entity;
- prohibit coercion of persons in relation to the engagement of contractors and employees or choice of superannuation fund;
- prohibit coercion or undue pressure on persons in relation to Commonwealth industrial instruments; and
- obtain information.

1.9 The Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 is consequential to the Building and Construction Industry (Improving Productivity) Bill 2013. It would wholly repeal the *Fair Work (Building Industry) Act 2012* (Fair Work (Building Industry) Act) and amend the following Acts:

- *Administrative Decisions (Judicial Review) Act 1977*;
- *Fair Work (Registered Organisations) Act 2009*;
- *Jurisdiction of Courts (Cross-Vesting) Act 1987*; and
- *Building and Construction Industry (Improving Productivity) Act 2013*.

1.10 The Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 also provides administrative arrangements relating to the transition from the institutions, functions and powers contained in the Fair Work (Building Industry) Act to those proposed in the Building and Construction Industry (Improving Productivity) Bill 2013.

1.11 The 2013 ABCC bills were passed by the House of Representatives in December 2013 and are currently before the Senate.

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5 *Journals of the Senate No. 3*, 14 November 2013, p. 124.

6 Senate Education and Employment Legislation Committee, *Building and Construction Industry (Improving Productivity) Bill 2013, Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013*, December 2013.

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## Purpose and overview of the bill

1.12 The bill seeks to amend the *Fair Work (Building Industry) Act 2012* (the FW(BI) Act) to extend a sunset provision from three years to five years after the date section 45 of the Act commenced.

1.13 Due to the sunset provision, the Director of the Fair Work Building Industry Inspectorate (the Director) can only apply to a nominated Administrative Appeal Tribunal (AAT) presidential member for an examination notice relating to an investigation into suspected breaches of the FW(BI) Act or a designated building law up until 1 June 2015. This bill would extend that power until 1 June 2017.<sup>7</sup>

1.14 The bill also inserts a note to explain that the effect of section 46, as amended, is that application cannot be made under section 45 after 1 June 2017.<sup>8</sup>

1.15 As noted by the minister, the effect of the bill would be to continue existing arrangements 'until the Senate has had an opportunity to consider the legislation to re-establish the ABCC'.<sup>9</sup>

## Compatibility with human rights

1.16 The bill engages the following human rights: the right to a fair trial contained in Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR); and the right to privacy and reputation under Article 17 of the ICCPR.<sup>10</sup>

1.17 The bill's statement of compatibility with human rights notes that to the extent that the amendments may limit human rights and freedoms, those limitations are reasonable, necessary and proportionate in the pursuit of legitimate objectives, and therefore the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>11</sup>

1.18 The committee notes that the statement of compatibility provides a detailed justification of why these powers are considered reasonable and necessary. With particular regard to the right to not to incriminate oneself (right to a fair trial), the committee notes that subsection 53(2) of the FW(BI) Act provides a use and derivative use immunity. This means that information, answers or documents given or produced (either directly or indirectly) under an examination notice is not admissible in evidence against the person except for proceedings relating to compliance with the examination notice itself.

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7 Construction Industry Amendment (Protecting Witnesses) Bill 2015, Item 1.

8 Construction Industry Amendment (Protecting Witnesses) Bill 2015, Item 2.

9 Construction Industry Amendment (Protecting Witnesses) Bill 2015 second reading speech, *Senate Hansard*, 25 March 2015, p. 68.

10 Construction Industry Amendment (Protecting Witnesses) Bill 2015, *Explanatory Memorandum*, p. iii.

11 Construction Industry Amendment (Protecting Witnesses) Bill 2015, *Explanatory Memorandum*, p. viii.

**Financial impact statement**

1.19 The explanatory memorandum states that the bill will have no financial implications.<sup>12</sup>

**Acknowledgment**

1.20 The committee thanks those individuals and organisations who contributed to the inquiry by preparing written submissions.

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12 Construction Industry Amendment (Protecting Witnesses) Bill 2015, Explanatory Memorandum, p. ii.