



22 April 2022

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

Clarification to Hansard – Budget Estimates hearing on 6 April 2022

I am writing to provide clarifications to evidence given by the ABCC to the Education and Employment Legislation Committee during the Budget Estimates hearing on 6 April 2022.

On page 6 of the transcript, in response to Senator Pratt who asked “*why is it that, since 2016, the ABCC has sought to prosecute only 22 employers but 233 individual workers?*” I said:

Mr McBurney: *When you look at the number of cases brought against employers and employees, they're roughly comparable. I have 231 employees who have been put before the court by the ABCC since 2 December 2016...While we've put 231 employees before the court—and Mr Kelleher is right; it's less than 0.03 per cent—we have recovered wages for 8,444 employees. So our attention to wage recoveries from employees is much higher than the small number of cases we've put before the court relating to employees. What our litigation stats show—*

I wish to clarify that our records indicate the ABCC has put **252** employees before the court since 2 December 2016. This figure is as per the clarification provided in our response to a question on notice taken during Additional Estimates (EEC-AE22-071). The other statistics provided in the above statement are correct.

At the top of page 6 of the transcript, I made the following comment:

Mr McBurney: *We know how many workers are within our jurisdiction—approximately 1.15 million...*

It should be noted that this approximation is based on ABS data on the number of employees in the construction industry. Not all of these workers will fall within our jurisdiction. As such, this should read “*We know how many workers are within our **industry**—approximately 1.15 million.*”

On page 7 of the transcript, in response to Senator Pratt's question on proactive activities undertaken to investigate sham contracting, Ms Madeleine Jones said:

Ms M Jones: *In response to your question: in every wage proactive activity that we undertake, when we seek records from employers we also ask to see any documentation regarding contracting arrangements they have, and we make assessments as to those contracting arrangements. Of the \$2,065,874 that the ABCC has recovered to date this*



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*financial year, that amount will actually factor in arrangements where we found that the relationship has been mischaracterised as a contract **of** services, as opposed to an employee-employer relationship. Where we identify that that's the case, we work with the employer to rectify any underpayments.*

I wish to clarify that Ms Jones meant to say a contract **for** services which relates to a principal-contractor relationship. A contract **of** services is an employee-employer relationship which contradicts the second part of the sentence in Ms Jones' statement.

Yours sincerely

Stephen McBurney
Commissioner
Australian Building and Construction Commission

