

Education Employment and Workplace Relations Committee, 3 February 2012

Questions on Notice

Question 1 – Provide a marked up copy of the proposed Act showing changes proposed by the Bill (refer page 17 Proof Hansard)

Senator Abetz - Can the Department provide to us a before and after schedule of the existing legislation and the changes?

Response to question 1:

A marked up copy of the proposed legislation showing the changes to the *Building and Construction Industry Improvement Act 2005* made by the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011 is provided at **Attachment A**.

Please note that Attachment A is an internal Departmental working document and should be relied on accordingly. In particular it is not an official consolidation prepared by the Office of Legislative Drafting and Publication.

Question 2 – Provide the ‘Objects’ in the Bill compared to ‘Objects’ of the *Building and Construction Industry Improvement Act 2005* (page 18 Proof Hansard)

Senator Abetz – *Efficiency, productivity, the Australian economy and pursuit of the full employment, which was part of the object of the existing act but, for whatever reason, I am told they have been removed from the bill. Is that correct and then, if it is correct, what was the thought process and public policy that went into suggesting that the objects of this bill should no longer include productivity or the pursuit of full employment?*

Response to question 2:

Following are the objects of the *Building and Construction Industry Improvement Act 2005* (BCII Act) and the objects outlined in the Bill.

BCII Act	Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011
<p>The main object of this Act is to provide an improved workplace relations framework for building work to ensure that building work is carried out fairly, efficiently and productively for the benefit of all building industry participants and for the benefit of the Australian economy as a whole.</p> <p>This Act aims to achieve its main object by the following means:</p> <ul style="list-style-type: none"> • improving the bargaining framework so as to further encourage genuine bargaining at the workplace level; • promoting respect for the rule of law; • ensuring respect for the rights of building industry participants; • ensuring that building industry participants are accountable for their unlawful conduct; • providing effective means for investigation and enforcement of relevant laws; • improving occupational health and safety in building work; • encouraging the pursuit of high levels of employment in the building industry; • providing assistance and advice to building industry participants in connection with their rights and obligations under relevant industrial laws. 	<p>The object of this Act is to provide a balanced framework for cooperative, productive and harmonious workplace relations in the building industry by:</p> <ul style="list-style-type: none"> • ensuring compliance with workplace relations laws by all building industry participants; and • providing information, advice and assistance to all building industry participants about their rights and obligations; and • providing an effective means of enforcing those rights and obligations; and • providing appropriate safeguards on the use of enforcement and investigative powers; and • improving the level of occupational health and safety in the building industry.

The proposed ‘Objects’ outlined in the Bill states, amongst other things:

*‘The object of this Act is to provide a balanced framework for cooperative, **productive** and harmonious workplace relations in the building industry...’ (emphasis added).*

As the proposed Act will operate in conjunction with the *Fair Work Act 2009* (the FW Act), its objectives complement those of the FW Act. The object of the FW Act, amongst other things, is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians.

Question 3 –Ministerial Directions (page 18 Proof Hansard)

Senator Abetz: *Under section 11 I understand ministerial directions are dealt with and the equivalent provision for the Fair Work Ombudsman exempts from a direction the Fair Work Ombudsman's powers under the Public Service Act. If that is correct, is there an equivalent provision in this legislation dealing with the building inspectorate?*

...

Senator ABETZ: *So that would make this position different to the Fair Work Ombudsman. Is there less or more independence than the Fair Work Ombudsman?*

Response to question 3:

Neither the *Building and Construction Industry Improvement Act 2005* or the Bill includes a provision equivalent to Section 684(4) of the *Fair Work Act 2009*.

Another significant difference between the provisions relating to Ministerial directions to the Director of the Inspectorate and the Fair Work Ombudsman is that under the Bill, Ministerial directions to the Director are disallowable instruments. This is not the case in respect of Ministerial directions to the Fair Work Ombudsman. Neither of these provisions affects the independence of either office.

Question 4 – Initiating a proceeding for failure to attend a compulsory examination (page 18 Proof Hansard)

Senator Abetz - Directors' functions, will section 10(c) and (d) allow the director to investigate and initiate a proceeding for failure to attend a compulsory examination?

Response to question 4:

No. The Director of the Fair Work Building Industry Inspectorate may, if he/she alleges that a person has not complied with a compulsory examination notice, provide a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP). The CDPP would decide whether the matter should be prosecuted. This reflects the current situation in relation to the Australian Building and Construction Commissioner under the *Building and Construction Industry Improvement Act 2005*.

Question 5 –Deputy Directors (page 19 Proof Hansard)

Senator Abetz - Why don't we have any deputy directors in this new regime?

Response to question 5:

It is the Government's view that multiple statutory office holders will not be required within the Fair Work Building Industry Inspectorate (the Inspectorate). The Bill provides that the Director of the Inspectorate will be a statutory office holder performing the role of agency head for the Inspectorate and a number of specific statutory functions and powers prescribed by the new Act.

Further, proposed section 13 of the new Act outlines, amongst other things, the Director's general power to delegate his or her functions or powers, functions and powers that must not be delegated, and functions and powers that may only be delegated to SES employees. The Bill also includes the capacity for the Minister to appoint a person to act as Director during periods of vacancy. In combination these provisions mean that statutorily appointed Deputy Directors will not be required.

Relevantly, under the *Building and Construction Industry Improvement Act 2005*, the ABC Deputy Commissioners do not have any statutory functions in their own right.