

MASTER BUILDERS AUSTRALIA

RESPONSE TO QUESTIONS ON NOTICE

FAIR WORK LAWS AMENDMENT (PROPER USE OF WORKER BENEFITS) BILL 2019 [PROVISIONS]

Senator O'Neill asked:

Senator O'NEILL: *Aside from the matters examined in the royal commission, are you aware of any of the funds themselves being the subject of any allegations, inquiry or investigation as to alleged mismanagement of funds and breach of any governance or other legal obligation that applies to them?*

Mr Schmitke: *Yes, I am.*

Senator O'NEILL: *Do you want to provide that on notice?*

Mr Schmitke: *Yes, I will. Yes, absolutely.*

Response from Master Builders Australia:

It is understood that the Australian Securities and Investment Commission (ASIC) inquired into operation of the Building Employees Redundancy Trust ('BERT') at some point in 2016. Master Builders is not aware of the allegation or outcome of the investigation.

It is also understood that:

- Construction Charitable Works Limited (CCW) was referred to the Australian Charities and Not-for-Profits Commission in order that consideration be given to whether CCW's registration as a charity should be revoked.
- Creative Safety Initiatives and Construction Charitable Works were referred to the Australian Federal Police and the ACT Gaming and Racing Commission to investigate the commission of possible criminal offences against the Criminal Code (ACT) and s 65 of the Taxation Administration Act 1999 (ACT) in relation to matters concerning the Gaming Machine Act 2004 (ACT).
- In relation to the Building Trades Group Drug & Alcohol Committee, the Construction Forestry Mining and Energy Union – New South Wales (CFMEU NSW) was referred to the:
 - New South Wales Minister for Innovation and Better Regulation in order that consideration may be given to whether an inquiry should be conducted pursuant to Division 1 of Part 3 of the Charitable Fundraising Act 1991 (NSW) into all of the CFMEU NSW's practices concerning charitable fundraising; and
 - Australian Securities and Investments Commission so that consideration may be given to whether to institute proceedings against it for carrying on a financial services business without a licence contrary to s 911A of the Corporations Act 2001 (Cth); and
 - New South Wales Police in respect of whether its involvement with the Building Trades Group Drug & Alcohol Committee involved a 'corrupt commission' given and solicited in breach of s 249B of the Crimes Act 1900 (NSW); and
 - Australian Securities and Investment Commission (ASIC) in respect of whether its involvement with U/Plus and Coverforce contravened s 911A of the Corporations Act 2001 (Cth).
- In relation to an ACT training entity, the CFMEU ACT was referred for possible breaches of s 47 of the Competition and Consumer Act 2010 (Cth) insofar as its role in instances of pattern EBAs containing provisions requiring employers to procure training for their employees provided by a particular training authority operated for the benefit of the union, or to obtain income protection insurance for employees with an particular provider.

Senator O’Neill asked:

Senator O’NEILL: Could I take you to the question of phoenixing of companies, which, I’m sure you’re aware, is a very serious issue in the construction industry. Are you able to say what the total amount is that’s lost to workers and taxpayers each year because of company collapses?

Mr Schmitke: Over \$6 billion.

Clarification from Master Builders Australia:

Master Builders consulted the December 2015 Senate Economic References Committee Report “*Insolvency in the Australian construction Industry*” to determine the accuracy of the figure provided in the above answer.

The first page of the Executive Summary contained in the above-mentioned Report states as follows:

“As a result, the industry is burdened every year by nearly \$3 billion in unpaid debts, including subcontractor payments, employee entitlements and tax debts averaging around \$630 million a year for the past three years.”

Master Builders submits that the above figures are more accurate as they arise from considerations undertaken by the Senate itself. For this reason, the figures taken from the 2015 Report should replace the figure provided in the above answer and further at page 11 of the Proof Hansard where a related statement of Senator O’Neill was made which quoted the figure given in the original answer.