

Senate Education and Employment Committee

**Inquiry into the
Building and Construction Industry (Improving Productivity) Bill 2013, and the
Fair Work (Registered Organisations) Amendment Bill 2013**

**Melbourne
4 October 2016**

Responses to questions taken on notice by the Department of Employment

5. HANSARD, PAGE 23

Question:

Senator CAMERON: When did the department become aware that Mr Hadgkiss was refusing to provide any funding to the Ombudsman for oversight purposes?

Mr Kibble: I do not think he is refusing to provide funding to Commonwealth Ombudsman.

Senator CAMERON: What is he doing?

Mr Kibble: The Ombudsman has indicated—I think he said this in his submission—that he considers that he would have slightly more work to do if the ABCC bill is passed. I think Mr Hadgkiss has said to the Ombudsman that he will renegotiate the MOU once the ABCC bills are passed. If it is in fact the case that the Ombudsman would have more work to do under the bills, then he would renegotiate the MOU.

Senator CAMERON: Can we come back to my question? When were you first aware that he was not providing funding?

Mr Kibble: Last year some time.

Senator CAMERON: What time?

Mr Kibble: I cannot remember.

Senator CAMERON: Can you take that on notice?

Mr Kibble: I will, Senator.

Response:

The department has regular communications with Fair Work Building and Construction. As part of those regular communications the department became aware that the memorandum of understanding (MOU) with the Commonwealth Ombudsman expired in June 2015 and that negotiations were taking place regarding a replacement MOU.

Question:

Senator CAMERON: Was there any correspondence between the department and Mr Hadgkiss on this issue?

Mr Kibble: I am not aware of any correspondence between the department and Mr Hadgkiss.

Senator CAMERON: Could you take it on notice and provide all correspondence, file notes and details of telephone conversations with Mr Hadgkiss if they have taken place?

Response:

There was no correspondence between the department and Mr Hadgkiss on the issue.

6. HANSARD, PAGE 25

Question:

Senator CAMERON: Yes, but you have only indicated 38(b), which is about the accreditation. There are another four aspects of it. What funding does the Federal Safety Commissioner have?

Mr Kibble: I could take that on notice, but it is budget funded.

Response:

The 2016/17 budget allocation for the Office of the Federal Safety Commissioner is \$5.6m.

7. HANSARD, PAGE 26

Question:

Senator CAMERON: What type of promotion of health and safety in relation to building work, covered in 38(a), will they do?

Mr Kibble: The Federal Safety Commissioner will do what he does now. He promotes health and safety in the building industry, he accredits companies and, in doing that, he encourages good health and safety practices.

Senator CAMERON: Could you provide on notice some details of how that has been working and how that works on a practical basis?

Mr Kibble: Yes.

Response:

The role of the Federal Safety Commissioner (FSC) and the Australian Government Building and Construction WHS Accreditation Scheme were established in 2005 in response to a recommendation of the 2003 Cole Royal Commission.

The FSC has statutory functions and powers under the *Fair Work Building Industry Act 2012*. The FSC is supported by staff within the Department of Employment.

Only companies that are accredited by the FSC under the scheme can undertake Commonwealth funded building work as a head contractor.

Accredited companies represent more than 50 per cent of industry turnover annually - creating broad safety improvements across the country. The majority of accredited companies have significant declines in injury rates within three years of accreditation by the FSC. After six years, around 65 per cent of companies have reduced injury rates by an average of more than 50 per cent.

To gain accreditation companies must demonstrate they have in place a rigorous work health and safety management system which is verified by the conducting of an on-site audit. The FSC's Federal Safety Officers conduct annually over 400 full day or two day audits of building sites.

As part of promoting sustainable work health and safety cultural change in the building and construction industry, the Office of the FSC regularly undertakes education activities including conducting seminars and presentations. It also conducts formal and informal stakeholder consultation, including through industry and government agency reference groups, industry associations, regulators and companies.

The Office of the FSC also produces facts sheets, case studies and plain English guidance to assist stakeholders in the building and construction industry to improve work health and safety.

Question:

Senator CAMERON: Can you also tell me if they have ever referred a matter to another relevant agency or body?

Mr Kibble: Yes. If they come across breaches of laws, they—

Senator CAMERON: No I am asking: have they?

Mr Kibble: Yes.

Senator CAMERON: Have you got details of that?

Mr Kibble: I do not have details with me.

Senator CAMERON: Do you want to take that on notice and provide details?

Mr Kibble: Yes.

Response:

The Office of the FSC conduct on-site work health and safety audits of accredited companies. Where an issue of immediate risk is identified during an audit, the audit is typically stopped and immediate action is taken to rectify the situation. There have been a small number of occasions (less than 10 since 2006) where a significant incident has been notified by the FSC to the relevant Commonwealth, state or territory work health and safety regulator.

8. HANSARD, PAGE 29

Question:

Senator KAKOSCHKE-MOORE: I understand that when the ABCC was a full service regulator it was able to recover approximately \$2 million in unpaid wages and other entitlements on behalf of some 1,500 workers. I understand that the Fair Work Ombudsman is now responsible for recovering such payments. How much has the Fair Work Ombudsman recovered in underpayments for building workers?

Mr Kibble: We can take that on notice.

Response:

The Fair Work Ombudsman has recovered a total of \$6,076,325 in unpaid wages and entitlements in the building and construction industry since 1 July 2013.

9. HANSARD, PAGE 29

Question:

Senator PATERSON: I think Mr Roberts' evidence, the ACTU's evidence, was correct. But I think he misunderstood that legal professional privilege and public interest immunity—I think that is what he was referring to—are not abrogated by this bill; they continue to have effect, just as they do under the current legislation. Steven, are you able to give a list of those agencies? It might even be useful if we table it.

Senator PATERSON: That would be very helpful.

Senator CAMERON: I would be happy for it to be tabled. Do you have a break-up in terms of whether those agencies apply to civil breaches or criminal breaches of the law?

Mr Kibble: I do not have that.

Senator CAMERON: Can you do that?

Mr O'Sullivan: We can take that on notice. My experience is that they apply to both, but we can take that on notice.

Response:

The attachment sets out the main Commonwealth regulatory agencies with compulsory information gathering powers, the relevant key provisions and in broad terms their application, and whether their investigations are carried out in relation to matters that are criminal or civil in nature.

Comparative Compulsory Powers of the Main Commonwealth Agencies

Agency and key legislation	Coercive powers	When can coercive investigatory powers be used and for what type of investigations (i.e. civil or criminal)?
ABCC <i>Building and Construction Industry (Improving Productivity) Bill 2013 (Cth)</i>	Coercive powers require a person capable of giving evidence in relation to an investigation to give information or produce documents or attend before the ABC Commissioner (s61).	<p>Where ABC Commissioner reasonably believes that a person has information or documents relevant to an investigation into a suspected contravention of the Act or a designated building law (including the <i>Fair Work Act 2009</i>) by a building industry participant (s61).</p> <p>Mainly civil; some ancillary criminal matters (e.g. s678 FW Act - giving false or misleading evidence).</p>
ASIC <i>Australian Securities and Investments Commission Act 2001 (Cth)</i>	Coercive powers include requiring the appearance of a witness for examination on oath (s19) inspection of documents without warrant (s29), requiring production of documents (ss30-34) and the power to apply for search warrants (s35).	<p>Where ASIC suspects a contravention has occurred of the Act, the <i>Corporations Act 2001</i> or certain other laws relating to bodies corporate, managed investment schemes or financial products (s13, 28, 40).</p> <p>ASIC can also be directed by the Minister to commence an investigation in the public interest (s 14).</p> <p>Both criminal and civil.</p>
ACCC <i>Competition and Consumer Act 2010 (Cth)</i>	Coercive powers require a person to furnish information, produce the documents or appear before the Commission (s155).	Where the ACCC has reason to believe that a person is capable of furnishing information, producing documents or giving evidence relating to a matter that constitutes or may constitute contravention of the Act (and other relevant Acts) or designated communications matter (s155).

Agency and key legislation	Coercive powers	When can coercive investigatory powers be used and for what type of investigations (i.e. civil or criminal)?
		Both criminal and civil.
APRA <i>Banking Act 1959</i> (Cth) Insurance Act 1973	<p>Coercive powers require a person to give the information or documents relating to the business of an ADI (s14AD).</p> <p>Coercive powers require certain persons to produce information, books, accounts or documents</p>	<p>Where APRA has reasonable ground to believe a person has information or documents relating to an Authorised Deposit Institution (ADI) and APRA requires that information or documents to protect depositors (s14AD).</p> <p>Mainly criminal.</p> <p>For the purposes of the Act or Part 2 of the <i>Medical Indemnity (Prudential Supervision and Product Standards) Act 2003</i>.</p> <p>Mainly Criminal</p>
Medicare <i>Human Services (Medicare) Act 1973</i> (Cth)	<p>Coercive powers require a person to give information or appear before a departmental employee or produce documents relating to the offence or civil contravention being investigated (s8P(1) and 8Q(3)).</p>	<p>Where Medicare has reasonable grounds for believing a relevant offence or civil contravention (under a number of Acts) has been committed and that the information or document is relevant to the offence (s8P(1)).</p> <p>Both civil and criminal.</p>
Centrelink <i>Social Security (Administration) Act 1999</i> (Cth)	<p>Coercive powers require a person to give information, or produce a document that is in the person's custody or under the person's control (s192).</p>	<p>Where the Secretary considers that the information or document may be relevant to a claim for a social security payment, whether a social security payment is or was payable, the rate of social security payment etc. (s192).</p> <p>Criminal.</p>

Agency and key legislation	Coercive powers	When can coercive investigatory powers be used and for what type of investigations (i.e. civil or criminal)?
Comcare WHS Inspectorate <i>Work Health and Safety Act 2011 (Cth)</i>	Coercive powers require a person to provide information, produce documents, appear before a person appointed by Comcare to give evidence (s155).	Where Comcare has reasonable grounds to believe a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of the Act or will assist the regulator to monitor or enforce compliance with the Act (s155). Both civil and criminal.
ATO <i>Taxation Administration Act 1953 (Cth)</i>	Coercive powers require a person to give the Commissioner any information that the Commission requires, attend and give evidence before the Commissioner, or to produce to the Commissioner any documents in the person's custody or control (s353-10)	Powers may be exercised 'for the purpose of the administration or operation of a taxation law' (s353-10). Both civil and criminal.
Commonwealth Ombudsman <i>Ombudsman Act 1976 (Cth)</i> <i>Public Interest Disclosure Act 2013 (Cth)</i>	Coercive powers require a person to give information (in writing) or produce documents or records or to attend before a person to answer questions (s9).	Where the Ombudsman has reason to believe that a person is capable of giving information or producing documents or other records relevant to an investigation under the Act (s9). The functions of the Ombudsman include investigating action relating to matters of administration by a Department or prescribed authority where a complaint has been made to the Ombudsman. Criminal, civil and administrative wrongs (i.e. that which may give rise to disciplinary action)