

Senate Education and Employment Legislation Committee
Questions on Notice – Friday, 4 March 2016
Canberra, ACT

Building and Construction Industry (Improving Productivity) Bill 2013 [No.2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]

Question number	Hansard page number	Witness	Question asked by	Answered
1	2	Department of Employment	Senator Lines	Yes
2	3	Department of Employment	Senator Rice	Yes
3	3	Department of Employment	Senator Rice	Yes
4	4	Department of Employment	Senator Lines	Yes
5	4	Department of Employment	Senator Lines	Yes
6	5	Department of Employment	Senator Lines	Yes
7	7	Department of Employment	Senator Rice	Yes
8	7	Department of Employment	Senator Cameron	Yes
9	7	Department of Employment	Senator Cameron	Yes
10	7-8	Department of Employment	Senator Cameron	Yes
1	12	AiGroup	Senator Cameron	YES
1	13	ACCI	Senator Cameron	Yes
1	13	ACCI	Senator Cameron	Yes
1	14	MBA	Senator Cameron	Yes
1	21	ACTU	Senator Cameron	Yes
3	21	CFMEU	Senator Cameron	Yes
4	27	CFMEU	Senator Reynolds	Yes



Australian Government
Department of Employment

Group Manager
Steve Kibble

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

Dear Secretary

Building and Construction Industry (Improving Productivity) Bill 2013 [No.2]
Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]

Please find attached the Department of Employment's response to the questions on notice from members of the Senate Standing Committee on Education and Employment at the hearing on 4 March 2016 into the above Bills, as provided to the Department by the Committee Secretary on 7 March 2016.

Please contact me if you have any questions about the attached responses or require further information.

Yours sincerely

Steve Kibble

9 March 2016

Senate Education and Employment Committee

Building and Construction Industry (Improving Productivity) Bill 2013 [No.2] and Building
and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]

Canberra, 4 March 2016

Department of Employment

Responses to Questions on Notice

Question 1

Hansard, Page 2

Senator LINES: What is your definition of the construction industry?

Mr Kibble: It is not my definition—

Senator LINES: Sorry, what is the broad definition that we all use?

CHAIR: The accepted definition.

Senator LINES: Thank you, Senator McKenzie.

Mr Kibble: I can take it on notice but—

Ms Ross: Going on information from Safe Work Australia, and what they put out on the construction industry and its profile, they say that the construction industry comprises work involved in the construction, alteration and demolition of buildings and other structures or in the preparation of building sites. They break it down in that way. Then they have categories as well. They have building construction, which is the residential building construction and non-residential building construction sector, they have the heavy and civil engineering construction sector and then they have construction services.

Answer

The *Construction Industry Profile*¹ prepared by Safe Work Australia states that the industry comprises work involved with the construction, alteration or demolition of buildings and other structures or the preparation of building sites.

In its report *Work-related Traumatic Injury Fatalities Report 2014*, Safe Work Australia defines an industry as “a grouping of businesses that carry out similar economic activities. Fatalities data in this publication have been coded to the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006 (ABS cat. no. 1292.0) and unless specified are shown at the industry division level.”²

¹ Safe Work Australia, *Construction Industry Profile*, May 2015, p1,
www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/construction-industry-profile

² Safe Work Australia, *Work-related Traumatic Injury Fatalities Report 2014*, October 2015, p32,
www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/work-related-traumatic-injury-fatalities-australia-2014

Question 2

Hansard, Page 3

Senator LINES: In relation to the top table, per 100,000, is there not a cautionary note which cautions against using those? Because when you look at deaths per 100,000, that can conflate or inflate particular industries on their employment numbers. You can take that on notice. I am fairly certain there is a cautionary note at the bottom of that table.

Mr Kibble: We will take that on notice. I would note that that table which we draw the top line from of fatality rate deaths per 100,000 workers, we have got figures there for construction and also for all industries. I would note they have a rate for each industry as well as all industries so we have just drawn that from—

Senator LINES: So you have just taken a portion of that table?

Mr Kibble: It is relevant to the building bills. It gives you a figure of all the industries.

Senator LINES: If you have the whole table there, it shows a different figure. We have had this argument before, Mr Kibble.

Mr Kibble: It does not contain a different figure. It just contains—

Senator LINES: Actually it shows a different analysis when you use the full figure. What you have done here—

Mr Kibble: I will take it on notice.

Answer

The note provided to the table at Appendix A4 in the Safe Work Australia report *Work-related Traumatic Injury Fatalities Australia 2014*³ states:

Movements in fatality rates in industries with 5 or fewer fatalities each year should be viewed with caution.

The explanation provided at page 14 (.docx file) of the report states:

Fatality rates, expressed as fatalities per 100 000 workers, are best used when comparing risk across industries.

³ Safe Work Australia, *Work-related Traumatic Injury Fatalities Report 2014*, October 2015, p27, www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/work-related-traumatic-injury-fatalities-australia-2014. Please note that the caution is only provided in the .docx file and not in the .pdf file of the report published online by Safe Work Australia.

Question 3

Hansard, Page 3

Senator LINES: Do you not think in the interests of transparency, Mr Kibble, that with you take two tables out of a report that somewhere in your submission you should note exactly what you have done and exactly what has been constructed? Otherwise, I put it to you that you are misleading this Senate inquiry.

Mr Kibble: I will take that on notice.

Hansard, Page 4

Senator LINES: Excuse me, Mr Kibble, but if I was reading that—and when I looked at it, because I am familiar with both of these tables, I thought, 'I don't remember seeing that table in the report.' Then, when I looked at both of them, I realised that you had put both of the tables together. So that simply reinforces to me that that is an actual table out of the report, when it is not.

Mr Kibble: Just to be clear, for the committee's benefit, I will take it on notice and clearly indicate which table each of those figures come from.

Senator LINES: I would like you also to take on notice to present the full tables for the fatality rates per 100,000.

Hansard, Page 4

Senator LINES: Mr Kibble, the whole point of the exercise here is not Safe Work Australia's report. You know and I know that those two tables are separate. In fact, one is on the bottom left-hand side of a page and one is another. What is dishonest here is you taking a tiny section of fatalities per 100,000 and representing them here—which you may have a right to do, but you certainly also then have to refer the reader to the fact that you have conflated tables and made no evidence of that. I want you to consider making an addendum to the committee and pointing out that your table on page 7 is a conflation of two other tables. That is what I want on notice, not Safe Work Australia's report.

...

Mr Kibble: All I was going to say was that I will provide both of those tables on notice.

Senator LINES: And I would like you to consider making that addendum in your submission.

Mr Kibble: And we will make it clear where the tables come from.

Answer

The table at page 7 of the Department's written submission has been updated to reference the source of each set of data and is provided below.

The full tables from the Safe Work Australia report *Work-related Traumatic Injury Fatalities Report 2014*, from which this data was sourced, are provided as [Attachment A](#) and [Attachment B](#) to this response.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Construction (Fatalities per 100,000 workers) ⁴	5.77	4.42	3.56	4.77	4.81	3.85	3.66	4.11	4.04	3.05	2.18	2.98
All industries (Fatalities per 100,000 workers) ⁵	2.75	2.97	2.60	2.80	2.96	2.62	2.38	2.06	1.99	2.01	1.71	1.61
Construction (Actual number of worker fatalities) ⁶	43	35	30	43	45	38	36	41	41	30	22	31
Number of construction workers (millions) ⁷	0.753	0.799	0.855	0.915	0.951	0.998	0.996	1.017	1.033	1.000	1.029	1.046

⁴ Safe Work Australia, *Work-related Traumatic Injury Fatalities Report 2014*, October 2015, p27.
www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/work-related-traumatic-injury-fatalities-australia-2014

⁵ Safe Work Australia, *Work-related Traumatic Injury Fatalities Report 2014*, October 2015, p27.

⁶ Safe Work Australia, *Work-related Traumatic Injury Fatalities Report 2014*, October 2015, p26.

⁷ Australian Bureau of Statistics, *6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2015*, Table 04.
www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003Nov%202015?OpenDocument

Question 4

Hansard, Page 5

Senator LINES: Is this a whole table or which bit of this handout is from Safe Work Australia and which is your input, if any.

Mr Kibble: You will see from the footnote that the source is Safe Work Australia.

Senator LINES: Have you conflated tables?

Mr Kibble: I will take that on notice.

Answer

The data provided in the table titled 'Construction industry: Serious injuries and fatalities 2003-2013' is the Department's compilation of data obtained from the following sources:

- Fatalities: Safe Work Australia, *Work-related Injuries and Fatalities in Construction, Australia, 2003 to 2013*, June 2015;
- Fatalities: Safe Work Australia, *Work-related Traumatic Injury Fatalities Report 2014*, October 2015; and
- Serious injury and musculoskeletal incidence rate: Safe Work Australia - from its *National Data Set for Compensation-based Statistics*, provided directly to the Department of Employment.

Question 5

Hansard, Page 7

Senator RICE: I am interested in the element of retrospectivity that seems to be in the bill, because it allows the opening up and relitigation of cases that have been settled by the parties to disputes. Can the department provide any legislative precedent in Australian industrial law that is retrospective and also has the effect of opening up previously settled industrial disputes?

Mr Kibble: I might take on notice to look at other legislation et cetera, to give you a complete answer. It might be more helpful to do that. I would note—

Senator RICE: But do you agree that it does have that element of retrospectivity?

Mr Kibble: Yes. I will give a more complete answer on notice, but it does change the position. The legislation that was passed in 2012, which currently exists—the Fair Work (Building Industry) Act—provides that if there is a settlement then the regulator cannot take action for a breach of the laws, in short. And the current bill before the committee would repeal that. It also indicates that it would allow the regulator to intervene in building matters that have already been settled by the regulator.

Answer

Removing the prohibition on instituting or participating in settled matters would allow the Australian Building and Construction Commissioner (the Commissioner) to take action in relation to alleged contraventions of the law in situations where the Director of the Fair Work Building Industry Inspectorate would have been precluded from doing so because the parties to the matter had reached a settlement.

The Bills do not upset settlements reached between the parties, or prevent them from occurring.

Removing this prohibition was a key recommendation in the final report of the Royal Commission into Trade Union Governance and Corruption (Recommendation 65). His Honour Justice Heydon AC QC considered that, in the context of the building and construction industry, 'it is important for the regulator to be able independently to maintain enforcement proceedings in relation to unlawful conduct without being subject to the private concerns of those affected by the conduct'.⁸ (Volume 5, Chapter 8, Paragraph 192)

This prohibition has also been criticised by the Law Council of Australia on the grounds that it would 'significantly erode the regulator's independent regulatory role' and that it gave 'precedence to the interests of private litigants over the application and enforcement of Australian law'.⁹

⁸ Royal Commission into Trade Union Governance and Corruption, December 2015, Final Report, Volume 5, Chapter 8, Paragraph 192

⁹ Law Council of Australia Media Release, *Law Council raises concerns about dilution of building and construction industry regulator's role*, 8 March 2012

The Department of Employment has not identified any other examples in Australian industrial law of a regulator being prohibited from instituting or continuing proceedings because the parties affected by alleged contraventions of the law had reached a settlement. The Fair Work Ombudsman, for example, is not subject to a similar restriction on the performance of his or her functions under the *Fair Work Act 2009*.

For completeness, there is no equivalent prohibition contained in the legislation governing the conduct of other Commonwealth regulators, such as the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission.

Question 6

Hansard, Page 7

Senator CAMERON: Has the department done any work on the cost of these deaths and injuries to the industry?

Mr Kibble: The department has not, but Safe Work Australia publishes figures on the costs of injuries and deaths, and I would be happy to provide more information to the committee on that.

Senator CAMERON: That would be good, if you could take that on notice.

Mr Kibble: Yes.

Hansard, Page 7

Senator CAMERON: Has the department done any work on the cost to productivity of the deaths and injuries?

Mr Kibble: Again, the department has not, but Safe Work Australia publishes information on the cost of deaths and injuries. I could provide that on notice.

Senator CAMERON: Specifically for the building and construction industry?

Mr Kibble: I would have to take that on notice. They certainly do it at an economy-wide scale, but I would have to have a look at that, and if it does anything for construction then I will provide that as well.

Senator CAMERON: I am quite surprised, given the argument that this bill has improved productivity and that we have been raising the issue—and you have raised the issue—of deaths and injuries, that you have not done any work to actually give us a cost of death and injury in the industry to productivity or financial cost to the industry.

Mr Kibble: Well, as I said, Safe Work Australia has done that work, and we will provide that on notice.

Hansard, Page 8

Senator CAMERON: All right. Could you then provide, on notice, details of the cost to the industry of deaths and injuries in the industry? Can you provide the cost to productivity or the implications for productivity for both deaths and injuries in the industry? And do you have any idea of what the cost is to families—whether any analyses have been done of the financial impact of deaths and injuries in the industry on families?

Mr Kibble: We will take that on notice.

Answer

Safe Work Australia published 'The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community 2012–13' in November 2015 on the cost of work-related injury and illness for 2012–13. A copy of the report can be found at the following link:

www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/cost-injury-illness-2012-13

Table 1.9, at page 26 of the report, shows the average cost of a work-related incident to the employer, the worker, and the community.

Table 2.3b, at page 30 of the report, shows the estimated cost of work-related injury and illness, by industry of workplace, including for the construction industry.

Appendix A3: Worker fatalities: number by industry of employer, 2003 to 2014¹⁰

Industry of employer	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	% of 2014	Total	% of total
Transport, postal and warehousing	68	66	55	62	83	71	64	44	48	61	46	46	24%	714	24%
<i>Road transport</i>	45	50	41	52	62	52	56	32	29	52	39	39	21%	549	18%
<i>Road freight transport</i>	40	47	37	47	58	50	51	31	25	45	34	36	19%	501	17%
Agriculture, forestry and fishing	60	77	62	46	52	68	62	55	59	53	49	43	23%	686	23%
<i>Agriculture</i>	46	54	44	35	40	44	45	46	45	35	37	38	20%	509	17%
Construction	43	35	30	43	45	38	36	41	41	30	22	31	16%	435	15%
Manufacturing	20	23	23	29	25	30	23	21	22	18	12	15	8%	261	9%
Arts and recreation services	3	5	6	5	10	3	1	5	6	5	7	10	5%	66	2%
Mining ^a	11	11	9	15	7	12	10	5	6	8	8	10	5%	112	4%
Public administration and safety	9	11	14	13	13	4	11	6	11	8	11	6	3%	117	4%
Wholesale trade	7	10	10	8	8	11	4	10	3	9	7	6	3%	93	3%
Accommodation and food services	5	4		8	6	2	3	2	1	1	2	5	3%	39	1%
Electricity, gas, water and waste services	5	8	6	8	4	4	5	1	2	3	4	5	3%	55	2%
Administrative and support services	4	9	12	8	12	10	12	12	8	6	5	4	2%	102	3%
Other services	4	7	10	7	4	7	4	2	4	3	7	3	2%	62	2%
Health care and social assistance	3	3	3	2		2	6	4	2	2	4	2	1%	33	1%
Education and training	2	1	2	8	4	2	2	2	2	4		1	1%	30	1%
Rental, hiring and real estate services	4	2	6	4	10	4	2	4	2	3	3	1	1%	45	2%
Financial and insurance services	1			1		3	3						0%	8	0%
Information media and telecommunications	1	1		1	3		1	3	3	2			0%	15	1%
Professional, scientific and technical services	2	6	2	6	7	5	4	4	2	8	2		0%	48	2%
Retail trade	7	5	7	10	17	6	5	7	2	5	8		0%	79	3%
All industries	259	284	257	284	310	282	258	228	224	229	197	188	100%	3000	100%

^a Mining fatalities include those that occur in coal and metal ore mining, oil and gas extraction, sand and gravel quarrying, exploration and support services.

¹⁰ Safe Work Australia, *Work-related Traumatic Injury Fatalities Report 2014*, October 2015, p26.

Appendix A4: Worker fatalities: fatality rate (fatalities per 100 000 workers) by industry of employer, 2003 to 2014¹¹

Industry of employer	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Agriculture, forestry and fishing	16.35	21.64	17.58	13.37	15.05	19.73	17.79	15.49	18.72	16.71	16.33	13.25	16.85
<i>Agriculture</i>	14.48	17.50	14.55	11.70	13.31	14.80	14.62	14.82	16.48	12.67	14.24	13.54	14.40
Transport, postal and warehousing	14.62	13.74	11.10	12.38	15.48	12.52	10.99	7.70	8.29	10.89	7.76	7.71	10.94
<i>Road transport</i>	20.18	22.44	19.47	23.25	26.39	22.09	23.38	14.80	12.67	23.05	16.58	16.17	20.06
<i>Road freight transport</i>	26.14	31.97	27.26	32.02	38.04	29.13	29.96	19.63	15.60	29.00	20.66	21.02	26.56
Construction	5.77	4.42	3.56	4.77	4.81	3.85	3.66	4.11	4.04	3.05	2.18	2.98	3.87
Manufacturing	1.94	2.21	2.25	2.87	2.43	2.87	2.30	2.15	2.32	1.90	1.30	1.62	2.19
Administrative and support services	1.16	2.66	3.41	2.29	3.39	2.93	3.38	3.13	2.02	1.52	1.29	1.05	2.33
Arts and recreation services	2.06	3.24	3.51	2.86	5.24	1.61	0.50	2.63	2.88	2.40	3.37	4.75	2.93
Public administration and safety	1.55	1.86	2.31	2.10	2.04	0.62	1.65	0.87	1.54	1.14	1.48	0.82	1.48
Mining	12.40	10.98	7.59	11.44	5.15	7.34	6.14	2.67	2.73	3.02	3.00	3.99	5.36
Wholesale trade	1.87	2.64	2.70	2.05	2.07	2.72	0.98	2.43	0.73	2.21	1.66	1.55	1.96
Retail trade	0.63	0.45	0.60	0.86	1.42	0.49	0.42	0.59	0.17	0.42	0.66	0.00	0.56
Health care and social assistance	0.33	0.31	0.30	0.19	0.00	0.18	0.51	0.32	0.15	0.15	0.29	0.14	0.24
Other Services	0.95	1.68	2.48	1.69	0.91	1.54	0.91	0.44	0.90	0.66	1.52	0.61	1.17
Professional, scientific and technical services	0.32	0.96	0.29	0.82	0.94	0.63	0.51	0.48	0.23	0.89	0.22	0.00	0.51
Accommodation and food services	0.78	0.61	0.00	1.22	0.86	0.28	0.41	0.27	0.13	0.13	0.26	0.64	0.45
Information media and telecommunications	0.45	0.46	0.00	0.42	1.25	0.00	0.46	1.42	1.45	0.88	0.00	0.00	0.56
Electricity, gas, water and waste services	5.48	8.83	6.04	7.58	3.83	3.29	3.76	0.71	1.35	2.01	2.72	3.42	3.72
Rental, hiring and real estate services	2.38	1.14	3.39	2.07	5.04	1.97	1.10	2.09	1.02	1.44	1.55	0.46	1.95
Education and training	0.29	0.14	0.28	1.09	0.52	0.25	0.25	0.24	0.24	0.46	0.00	0.11	0.31
Financial and insurance services	0.29	0.00	0.00	0.26	0.00	0.74	0.76	0.00	0.00	0.00	0.00	0.00	0.17
Total	2.75	2.97	2.60	2.80	2.96	2.62	2.38	2.06	1.99	2.01	1.71	1.61	2.35

^a Mining fatalities include those that occur in coal and metal ore mining, oil and gas extraction, sand and gravel quarrying, exploration and support services.

* Movements in fatality rates in industries with 5 or fewer fatalities each year should be viewed with caution.

¹¹ Safe Work Australia, *Work-related Traumatic Injury Fatalities Report 2014*, October 2015, p27.

Senate Education and Employment Committee

Building and Construction Industry (Improving Productivity) Bill 2013 [No.2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]

Canberra 4 March 2016

Questions taken on notice – AiGroup

1. HANSARD, PAGE 12

Senator CAMERON: Can anyone provide any details of the cost to the industry of workplace deaths and injuries in the building and construction industry.

...

Senator CAMERON: Has AiG done any analysis?

Mr Smith: There would be statistics available and I am happy to take that on notice. The major constructors do a lot of work in the area of workplace health and safety.

Senator CAMERON: Have you looked? Is AiG aware of where they are?


Mr Smith: No, but I can certainly take that on notice.

ANSWER

Ai Group has not identified any source of information on the cost to the construction industry of workplace deaths and injuries, but information is readily available on the number of incidents and accidents in the industry. For example, the following publication is relevant:

<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/926/fatalities-in-construction.pdf>

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Supplementary Submission – Inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013 and a related Bill

8 March 2016



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1 Introduction

The Australian Chamber thanks the Senate Committee for the opportunity to respond to questions on notice. During the course of the hearing on 4 March 2016 into the Building and Construction Industry (Improving Productivity) Bill 2013 and a related Bill, the Australian Chamber took two matters on notice. The Secretary of the Committee has extracted the two matters from the proof Hansard where the Committee is seeking a response by 8 March 2016. One seeks information on the matters other than industrial relations that the Productivity Commission took into account in its Public Infrastructure Report¹ when examining productivity issues in the construction industry. The second is in relation to any studies about the productivity effects of work health and safety (or in particular the effect on productivity of deaths and serious injuries) and the productivity effects of the failure to make payments.

2 The Public Infrastructure Report

The Secretary of the Committee has provided the following as indicating the need for a response on notice:

Senator CAMERON: Mr Calver, what were the other areas that the Productivity Commission pointed to in relation to productivity issues in the building and construction industry?

Mr Calver: I was focusing before on the findings that arose from the focus on industrial relations in the public infrastructure—

Senator CAMERON: Yes, I know. But I am asking you what other areas did the Productivity Commission point to.

Mr Calver: I will probably have to take that on notice to revisit it. I focused on—

Senator CAMERON: You will have to take it on notice—

Mr Calver: I focused on the industrial relations—

Senator CAMERON: I know what you focused on, but you used the Productivity Commission to say there was an issue with industrial relations.

Mr Calver: Yes.

The Productivity Commission was asked by the Government to undertake a root and branch examination of public infrastructure.² Most of the recommendations in the final report arising from this reference are aimed at advising government about how the processes around creating public infrastructure are able to be undertaken more efficiently. In its report, the Productivity Commission also investigated the proposition that:

¹ <http://www.pc.gov.au/inquiries/completed/infrastructure/report>

² Ibid

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Australia's infrastructure construction cost performance is poor by international standards, and that Australia has become a 'high cost, low productivity' location for major project construction. They suggest that project costs have escalated strongly over the past decade. If true, this would increase the prices for public infrastructure and reduce Australia's capacity to invest in public infrastructure.³

The Productivity Commission indicated that the situation was more nuanced than suggested by the assumption in this proposition. It called for better information systems and recommended that the Australian Government should introduce a detailed benchmarking framework in order to better measure productivity costs and to better compare the sources and nature of cost pressures in 'like-with-like' projects in Australia and overseas: Recommendation 10.1.

The Productivity Commission was also concerned to examine construction industry productivity because one of the major drivers of long-run construction costs in infrastructure is the achievement of productivity gains. Accordingly, the Productivity Commission noted that it is important to understand Australia's performance in this area, and to assess the factors contributing to it. Chapter 10 of Volume 2 of the inquiry report is devoted to examination of productivity. That chapter examines:

- the macro and micro evidence on recent productivity performance in the construction sector, together with some international comparisons (section 10.1)
- some of the main challenges faced by the sector in improving productivity, and the implications for the role of government (section 10.2). (Industrial relations issues, which are a vital part of the productivity debate, are discussed in detail in chapter 13.)

3 WHS and Unpaid Monies

As indicated by the Secretary of the Committee, the second question from Senator Cameron was thus:

Senator CAMERON: I do not want your report—it is on the public record. What I am asking about is that no-one can tell me about the economic or productivity impacts of deaths in the industry or injuries in the industry. Not one of these three peak bodies can tell me about the economic or the productivity impacts of \$3 billion worth of non-paid bills in the industry. But they can all tell me about the CFMEU and industrial relations. Why can you not tell me about these other massive areas where productivity is affected?

Mr Calver: We can on notice, but they are—

³ Id at Vol 1 p22

4 | Supplementary Submission – Inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013 and a related Bill – 8 March 2016

There is no material that can be located which informs the Committee about “the productivity impacts of \$3 billion worth of non-paid bills in the industry.” In the report from which Senator Cameron derived the figure of \$3billion⁴, it is noted that:

Despite the evidence that the high rate of insolvencies in the construction industry is highly likely to affect productivity in the construction industry negatively, no submissions presented quantified data as to the total or estimated economic cost. Mr Rob Heferen, Deputy Secretary Revenue Group Treasury, informed the committee that Treasury has not examined this issue.[27] Mr Heferen continued, warning the committee that because of 'such an uncertainty' around its impact, any precise figure 'would be potentially misleading'.⁵

The Australian Chamber agrees with the latter proposition in the quoted extract.

There is, however, work that has been undertaken regarding work health and safety and productivity. In this context, it is, however, difficult to ascertain how best to measure productivity. Obviously, in its broadest sense, productivity measures the ratio of inputs to outputs. Accordingly, it is sometimes easier to link poor WHS to lower levels of workplace productivity and more difficult to link high levels of WHS performance with positive productivity outcomes. The Bill the subject of the committee’s consideration is linked with the notion that increased productivity will arise from better workplace relations, particularly the restoration of the rule of law. The Bill also, in Chapter 4, re-establishes the Federal Safety Commissioner (FSC) under the legislation, a body that assists the industry to achieve better WHS outcomes. Of course, the work of the FSC has continued since the enactment of the *Building and Construction Industry Improvement Act, 2005 (Cth)* and its role is currently defined in the *Fair Work (Building industry) Act, 2012 (Cth)*.

In the context of linking WHS performance with positive productivity outcomes. Safe Work Australia (SWA) commissioned a report from the Centre for Workplace Leadership at the University of Melbourne to advance that research.⁶ The relevant assessment of the extensive literature looking at the impact of WHS on business performance is that, done well, better WHS can support better business performance. The research showed that healthy and safe workplaces are more productive and make businesses more sustainable. The research supports the idea that investment in better WHS provides a positive return on that investment through reduced costs. There is no evidence to suggest that this proposition would not apply to the construction industry.

There are, however, a number of caveats to this general conclusion:

- Beyond the direct and more immediate economic costs and benefits, businesses need to look to the broader strategic and longer-term value associated with better WHS outcomes.
- The strength of the business case is likely to vary significantly and be contingent on a number of factors often outside of the direct control of the business in question.

⁴ Senate Economics Committee *Insolvency in the Australian Construction Industry* December 2015
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Insolvency_construction/Report

⁵ Id at para 4.28

⁶ Gahan et al *Workplace Health and Safety Business Productivity and Sustainability* October 2014
<http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/cost-injury-illness-2012-13>

5 | Supplementary Submission – Inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013 and a related Bill – 8 March 2016

- The strength of the business case for investing in better WHS may also vary over time with changing business conditions. As a consequence, the time period over which a business case is constructed needs to be sensitive to the dynamic nature of the business environment, economic fluctuations and changing needs of the enterprise.

In the context of calculating the costs of deaths and serious injuries, SWA has also published material that assists⁷. Table 2.3b of the relevant publication contains comparative data about the cost of work-related injury and illness, by industry of workplace, inclusive of the construction industry.

4 About the Australian Chamber (heading 1)

4.1 Who We are (heading 2)

The Australian Chamber of Commerce and Industry speaks on behalf of Australian business at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

We speak on behalf of the business sector to government and the community, fostering a culture of enterprise and supporting policies that keep Australia competitive.

We also represent Australian business in international forums.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses also get involved through our Business Leaders Council

4.2 What We Do

The Australian Chamber strives to make Australia a great place to do business in order to improve everyone's standard of living. We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety and employment, education and training.

⁷ Safe Work Australia *The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community 2012–13* November 2015

6 | Supplementary Submission – Inquiry into the Building and Construction Industry (Improving Productivity) Bill 2013 and a related Bill – 8 March 2016

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

Australian Chamber Members

AUSTRALIAN CHAMBER MEMBERS: BUSINESS SA CANBERRA BUSINESS CHAMBER CHAMBER OF COMMERCE
NORTHERN TERRITORY CHAMBER OF COMMERCE & INDUSTRY QUEENSLAND CHAMBER OF COMMERCE &
INDUSTRY WESTERN AUSTRALIA NEW SOUTH WALES BUSINESS CHAMBER TASMANIAN CHAMBER OF
COMMERCE & INDUSTRY VICTORIAN CHAMBER OF COMMERCE & INDUSTRY **MEMBER NATIONAL INDUSTRY**
ASSOCIATIONS: ACCORD – HYGIENE, COSMETIC & SPECIALTY PRODUCTS INDUSTRY AGED AND COMMUNITY
SERVICES AUSTRALIA AIR CONDITIONING & MECHANICAL CONTRACTORS' ASSOCIATION ASSOCIATION OF
FINANCIAL ADVISERS ASSOCIATION OF INDEPENDENT SCHOOLS OF NSW AUSTRALIAN SUBSCRIPTION
TELEVISION AND RADIO ASSOCIATION AUSTRALIAN BEVERAGES COUNCIL LIMITED AUSTRALIAN DENTAL
ASSOCIATION AUSTRALIAN DENTAL INDUSTRY ASSOCIATION AUSTRALIAN FEDERATION OF EMPLOYERS &
INDUSTRIES AUSTRALIAN FEDERATION OF TRAVEL AGENTS AUSTRALIAN FOOD & GROCERY COUNCIL
AUSTRALIAN HOTELS ASSOCIATION AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP
AUSTRALIAN MADE CAMPAIGN LIMITED AUSTRALIAN MINES & METALS ASSOCIATION AUSTRALIAN PAINT
MANUFACTURERS' FEDERATION AUSTRALIAN RECORDING INDUSTRY ASSOCIATION AUSTRALIAN RETAILERS'
ASSOCIATION AUSTRALIAN SELF MEDICATION INDUSTRY AUSTRALIAN STEEL INSTITUTE AUSTRALIAN
TOURISM AWARDS INC AUSTRALIAN TOURISM EXPORT COUNCIL AUSTRALIAN VETERINARY ASSOCIATION
BUS INDUSTRY CONFEDERATION BUSINESS COUNCIL OF CO-OPERATIVES AND MUTUALS CARAVAN
INDUSTRY ASSOCIATION OF AUSTRALIA CEMENT CONCRETE AND AGGREGATES AUSTRALIA COMMERCIAL
RADIO AUSTRALIA CONSULT AUSTRALIA CUSTOMER OWNED BANKING ASSOCIATION CRUISE LINES
INTERNATIONAL ASSOCIATION DIRECT SELLING ASSOCIATION OF AUSTRALIA ECOTOURSIM
AUSTRALIA EXHIBITION AND EVENT ASSOCIATION OF AUSTRALASIA FITNESS AUSTRALIA HOUSING INDUSTRY
ASSOCIATION HIRE AND RENTAL INDUSTRY ASSOCIATION LTD LARGE FORMAT RETAIL ASSOCIATION LIVE
PERFORMANCE AUSTRALIA MASTER BUILDERS AUSTRALIA MASTER PLUMBERS' & MECHANICAL SERVICES
ASSOCIATION OF AUSTRALIA MEDICAL TECHNOLOGY ASSOCIATION OF AUSTRALIA NATIONAL DISABILITY
SERVICES NATIONAL ELECTRICAL & COMMUNICATIONS ASSOCIATION NATIONAL FIRE INDUSTRY
ASSOCIATION NATIONAL RETAIL ASSOCIATION NATIONAL ROAD AND MOTORISTS' ASSOCIATION NSW TAXI
COUNCIL NATIONAL ONLINE RETAIL ASSOCIATION OIL INDUSTRY INDUSTRIAL ASSOCIATION PHARMACY
GUILD OF AUSTRALIA PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA PLASTICS & CHEMICALS
INDUSTRIES ASSOCIATION RESTAURANT & CATERING AUSTRALIA SCREEN PRODUCERS
AUSTRALIA VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE

Senate Education and Employment Committee

Building and Construction Industry (Improving Productivity) Bill 2013 [No.2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]

Canberra 4 March 2016

Questions taken on notice – MBA

1. HANSARD, PAGE 14

Senator CAMERON: All those issues I have raised that you do not know the answer to—that is, the cost in both economic and productivity terms of deaths in the industry, injuries in the industry, the \$3 billion worth of non-payment in the industry, the tax evasion in the industry and the phoenixing in the industry—would you take on notice and provide details to this committee of your estimation of the cost of those issues to productivity and economic outcomes in the industry. I will tell you why I am asking that. You cannot just look at industrial relations on its own; productivity is an issue that goes across a whole range of areas. I want to know why we are focusing so much on one aspect of productivity while ignoring massive areas where we could make productivity gains. This committee is entitled to weigh up the balance between all of the issues on productivity, not just one aspect. This bill is supposed to be about productivity in the industry.

Answer:

Master Builders Australia cannot provide the Committee with an estimate of both the (a) economic cost and (b) productivity cost of:

- industry deaths; and
- industry injuries; and
- invoice non-payment; and
- tax evasion; and
- phoenixing,

to the Building and Construction industry in the required timeframe (on or before the closing date for responses to QONs of 8 March 2016.)

Master Builders Australia does not restrict its focus to industrial relations when discussing matters affecting productivity in the building and construction industry and have made various submissions on other factors, including those above, which are available publicly.

However, the Bills which are the subject of Committee consideration propose alterations to industrial relations laws and submissions lodged in this regard appropriately note the impact on productivity such alterations will deliver. We also note that Mr Harnisch did not, when making an opening address to the Committee during proceedings on 4 March 2016, make reference to the term ‘productivity’ or similar phrase.

Ms Julia Agostino
Committee Secretary
Senate Standing Committee
on Education and Employment

8 March 2016

Via e-mail: eec.sen@aph.gov.au

Dear Ms Agostino,

Questions on Notice: Inquiry into Building and Construction Industry (Improving Productivity) Bill 2013 [No.2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]

I refer to the Questions on Notice received in relation to the above inquiry heard on 4 March 2016. Specifically, the question raised by Senator Cameron for the ACTU and CFMEU to look at the statistics relevant to work health and safety in the construction industry (Hansard at page 21).

It is clear that everyone accepts that the building and construction industry is higher risk than most other industries. In 2014, the fatality rate in the construction industry is still almost twice the national fatality rate for all industries. Further, the Construction industry accounts for 15% of all workplace fatalities. This is unacceptably high.

The Safe Work Australia Report, *Work-Related Injuries and Fatalities in Construction 2003-2013*, published in June 2015 ('SWA Report') points to the volatility of fatality and injury rates in the construction industry (refer to Figure 3 SWA Report). There is no consistent downward trend that can be gleaned from the data. Whilst 2013 marked a 10-year low in the number of fatalities (22), this figure subsequently rose again in 2014 (31) which was the highest figure recorded since 2011.

We note the number of worker fatalities in 2006 and 2007 marked the highest number of fatalities (43 and 45 fatalities respectively) over the 10 year period. We also note that the same pattern is evident when you consider the number of fatalities per 100,000 workers (refer to Figure 3 SWA Report). Even where the fatality figures rise again in 2010 and 2011, at no time do they reach the 2007 peak.

To the extent that any consistent downward trend is evident from the data, it more accurately described as a downward trend that commences on or from 2012, the same year that the ABCC was replaced by the Fair Work Building Commission.

Further, the number of serious workers compensation claims in the construction industry has remained fairly steady since 2003 (refer to Figure 7 SWA Report). A serious claim is one where a compensation payment for one or more weeks off work was made. However the median time off work and compensation paid has risen over the same period (refer to Figure 8 SWA Report). Since 2003-04 the

amount of time off work following a work-related injury or illness has increased 39%. This suggests that there is little or no improvement in the severity of injuries that workers suffer in the industry.

We reiterate our previous submissions that the data does not support a conclusive finding that there are fewer workplace deaths and that there is any consistent or sustained improvement industry wide with respect to safety. Rather it remains clear that safety in the industry is still at problematic levels and that the risk borne by workers is too high.

Safety remains a critical issue for the industry and will remain a priority for the trade union movement.

We trust that this additional information will assist the Committee and would be happy to provide further information on request.

Yours faithfully,



Michael Borowick
Assistant Secretary.

Ms Julia Agostino
Committee Secretary
Senate Standing Committee
on Education and Employment

8 March 2016

Via e-mail: eec.sen@aph.gov.au

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Assistant Secretary.

Senate Education and Employment Committee

Building and Construction Industry (Improving Productivity) Bill 2013 [No.2] and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 [No.2]

Canberra 4 March 2016

Questions taken on notice – CFMEU

1. HANSARD, PAGE 21

Senator CAMERON: Yes, that is right—that is why I am not going to do it. Could I ask the ACTU and the CFMEU to have a look at these statistics and analyse these against the submission that you made, Mr Borowick, in terms of the submission we have from the department for safety and workplace deaths? The department's submission is that there are fewer workplace deaths and safety is improving. They are using these ABS statistics and statistics from Safe Work Australia. It would be really helpful if you could have a look at this, because it is a key issue. You argue that safety has declined as a result of the ABCC introduction of the Fair Work Building Construction and the department is arguing the opposite. So we really need to give you an opportunity to have a look at this and to analyse it. So could you come back to us on that on notice?

ANSWER:

In relation to the second question, the CFMEU refers to and relies on the response of the ACTU.

2. HANSARD, PAGE 27

Senator REYNOLDS: Mr Noonan, I do not know whether you heard recent evidence by Mr Hadgkiss, but he stated—and this is just my recollection—that there were at least 80 CFMEU officials now before the courts. Are you able to advise us of what the number is?

Mr Noonan: No, I cannot advise you specifically as to the number. But when you say 'before the courts', let's be very clear—there is a range of civil penalties that are being brought in relation to alleged industrial disputes. That is a very different thing, of course, to criminality.

Senator REYNOLDS: I would be very happy for you to provide that to us.

Mr Noonan: Yes, we can provide that on notice.

ANSWER:

As at 4 March 2016, the CFMEU was aware that there were 61 current officials who were respondents to civil penalty proceedings brought by the FWBC.