

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE

Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017

Department of Employment Question No. 1

Senator Cameron asked on 12 April 2017 on proof Hansard page 64

Question

I would like a clear delineation of the differences between the coercive powers—the checks and balances—in the ABCC Act and what is being proposed here. And it is more than the AAT, I can tell you that now. I would like the department to provide the committee with a detailed, cross-referenced analysis of the differences.

Answer

The table below compares the proposed new evidence-gathering powers of the Fair Work Ombudsman (FWO) with those of the Australian Building and Construction Commission (ABCC).

SAFEGUARD	ABCC	FWO (Bill)
Trigger for use of power The decision-maker must have ' <i>reason to believe</i> ' a person has information or documents relevant to an investigation	✓	✓
Notice to attend The legislation requires that a person required to attend to answer questions is given at least 14 days written notice, subject to extension	✓	✓
Express right to legal representation The legislation includes an express entitlement for an attendee to be represented by a lawyer during the examination	✓	✓
Reasonable expenses reimbursed (examinations only) A person who attends an examination is entitled to be reimbursed for prescribed, reasonable expenses	✓	✓
Attendees cannot be required to give a confidentiality undertaking The examiner is expressly prohibited from requiring an attendee to give a confidentiality undertaking in relation to their examination	✓	X—there is no express prohibition in relation to ASIC or the ACCC, the corporate regulators
Additional Commonwealth Ombudsman oversight The legislation requires the Commonwealth	✓	X—based on powers given to ASIC and the ACCC, the corporate regulators.

SAFEGUARD	ABCC	FWO (Bill)
Ombudsman to: <ul style="list-style-type: none"> • be notified when an examination notice is issued • be provided with a recording/transcript of all examinations, and • report to Parliament at least annually on the exercise of the powers 		The FWO will be subject to the general oversight of the Commonwealth Ombudsman
AAT oversight The legislation: <ul style="list-style-type: none"> • requires examination notices to be issued by a nominated AAT presidential member, upon application, and • provides a notice (which is not served) expires within 3 months of issue 	✓	X—based on powers given to ASIC and the ACCC, the corporate regulators