

CHAPTER 2

Issues

2.1 The key purpose of the bill is to re-establish the Australian Building and Construction Commission (ABCC) in line with the Government's election commitment.¹

2.2 The committee notes the progress of the bills and the extensive work undertaken to date in inquiries about the bills, as outlined in Chapter 1 of this report.

2.3 The committee notes that while it received submissions criticising the bills, no fresh arguments have been made against the re-establishment of the ABCC since the committee previously considered this proposed legislation in 2013.

2.4 The main argument put forward to oppose the bills remains that there is no need for special laws for the building and construction industry and that such laws would unfairly single out the industry for treatment different to other industries.

2.5 The committee notes that arguments made against the bills suggest an aversion amongst unions towards special attention being paid to the building and construction industry, despite widespread and serious unlawful conduct identified during a range of inquiries.

2.6 The committee is disappointed that, in light of indisputable evidence, certain union officials in the building and construction industry continue to flout the law and deny that an industry-specific focus is required to combat this serious and persistent unlawful behaviour.

2.7 The Australian Council of Trade Unions (ACTU) states in its submission:

We do not suggest that the construction industry is immune from corruption, and in fact official statistics from the Australian Securities and Investment Commission suggest that it is a poor performing sector on that front.²

2.8 Similarly, the Construction, Forestry, Mining and Energy Union (CFMEU) acknowledges in its joint submission with the Australian Manufacturing Workers Union, Australian Workers Union and Transport Workers Union of Australia:

Over three hundred and fifty ordinary construction workers are currently facing prosecution by the FWBC.³

2.9 In spite of these admissions, these organisations remain unwilling to acknowledge that the industry faces significant challenges because of the unlawful behaviour of union representatives and thus, the industry requires special attention by

1 *Explanatory Memorandum*, p. 2.

2 Australian Council of Trade Unions, *Submission 2*, p. 3.

3 Construction, Forestry, Mining and Energy Union, *Submission 7*, p. 8.

a regulator designed to focus on the problems inherent to and unique in the building and construction industry.

2.10 The committee is not persuaded by the arguments against the bills, particularly in light of acknowledgements by some unions that problems exist within the building and construction industry.

2.11 The committee further notes that given these bills have been considered previously, many submitters drew the committee's attention to earlier submissions they had made, rather than employing additional time and resources towards extensive new submissions.⁴ The committee considers that this approach is indicative of a view amongst submitters that this inquiry is a waste of time and resources.

2.12 Given the previous inquiries about this proposed legislation, and related reference inquiry in 2014⁵, the committee considers that this inquiry constitutes a gross abuse of process, whereby the valuable time and resources of senators, submitters and others have been misused in pursuing matters already dealt with in full.

2.13 Further, this inquiry into matters already considered in full has unreasonably delayed the chamber from considering the bills.

2.14 The committee agrees with comments made by Senator Fifield, Manager of Government Business in the Senate, Minister for the Arts and Minister Assisting the Prime Minister for Digital Government, in relation to referral of the bills to this committee and the reporting date:

The government is disappointed that the chamber has chosen to set the reporting date that it has for the reference to the Senate Education and Employment Committee, and we are disappointed for the reasons well outlined by the Attorney and Minister Cash. This legislation has had extended, considered—sometimes thoughtful—examination by this chamber and by not one committee of the Senate but two committees of the Senate: the references committee and the legislation committee. In no way, shape or form can it be said that there has not previously been proper consideration and full debate in relation to this legislation. It cannot be said that it has not been considered and properly debated.

Despite the fact that that legislation has previously been defeated and is being reintroduced, nevertheless it is appropriate that there is proper consideration of this legislation, and the government is not suggesting for a moment that there should not be that proper consideration at each stage of the legislation through this chamber. What the government is saying is that this chamber should be given the opportunity to do that in a reasonable period of time. What the opposition and other colleagues, together, are seeking to do is unreasonably delay the consideration of this legislation and

4 For example: Construction, Forestry, Mining and Energy Union, *Submission 7*; Australian Chamber of Commerce and Industry, *Submission 1*; Department of Employment, *Submission 5*; Australian Industry Group, *Submission 10*.

5 Senate Education and Employment References Committee, *Governments approach to re establishing the Australian Building and Construction Commission*, March 2014.

unreasonably delay the opportunity for the chamber to pass judgement by way of a vote in this place.

There is no provision in this legislation that is different from that which has previously been through the House and which has previously been presented to this chamber, considered by this chamber and failed to enjoy the support of this chamber. There are no provisions which are different. This is the same legislation. It has had a thorough consideration by the committees of this Senate. I should also indicate that the Scrutiny of Bills Committee, another important organ of this place, has previously, in the ordinary course of events, also looked at this legislation. It is clear—as you, Mr Deputy President, would know from your own following of these matters—that this particular proposition, which we seek to give effect to in this legislation, is one that the coalition has been very clear about for a long period of time, both prior to the last election and during this term of government. There is good and sound reason for this legislation to be passed.⁶

2.15 Given the time already spent scrutinising the proposed legislation, the committee considers that the Senate's referral of these bills to the committee, especially with the reporting date of 15 March 2016, is outside the proper processes of deliberative debate in that chamber. It was an excessive indulgence in the processes of the Senate, beyond what is required to give the Senate a reasonable opportunity to debate and pass the legislation.

2.16 The committee considers that the referral of these bills constitutes an evasion of the Senate's proper law-making function. The Senate has unreasonably delayed consideration of the bills, engaging in an excessive use of otherwise appropriate parliamentary procedures.

2.17 The committee notes the significant workload of Senate committees at the present time, and the large number of inquiries under way.

2.18 The committee draws the Senate's attention to its previous report for a more in depth discussion, rather than explore in this report, issues previously dealt with in full.

Recommendation

2.19 The committee recommends that the Senate pass the bills.

Senator Bridget McKenzie

Chair

6 Senator the Hon Mitch Fifield, Manager of Government Business in the Senate, Minister for Communications, Minister for the Arts and Minister Assisting the Prime Minister for Digital Government, *Proof Senate Hansard*, 4 February 2016, p. 29.

