

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2016 - 2017

Agency – Australian Building and Construction Commission

Department of Employment Question No. EMSQ17-001505

Senator Paterson asked on 02 March 2017 on proof Hansard page 70

Question

ABCC - Reduction in penalties

Senator PATERSON: Had Mr Shorten and the parliament, as Senator Cameron points out, not reduced the rate of the penalties and the rate that was in place prior to that had continued to be in place, what is the total difference between that \$7.9 million of fines and the rate that would have applied?

Mr Hadgkiss: Well, they were reduced by 60 per cent, so you can extrapolate that. I would have to take that on notice. Generally, they would reduce by 60 per cent.

Senator PATERSON: I see an officer standing behind you. Is that an answer you have there? Take that on notice. What I am interested to know is effectively how much unions that contravened the law saved thanks to that reduction in penalties. Had the penalties not been reduced, the figure would have been higher. How much higher would that have been? Effectively, what was the gift to those unions that allowed them to contravene the law at a lower cost?

Answer

Under the former *Building and Construction Industry Improvement Act 2005* (repealed 1 June 2012) the relevant maximum penalty for a contravention was 1,000 penalty units for a corporation or union and 200 penalty units for an individual. Under the *Fair Work Act 2009* (FW Act), the relevant maximum penalty for a contravention is 300 penalty units for a corporation or union and 60 for an individual. The penalties under the repealed legislation were 3.3 times higher than those that applied under the FW Act.

Penalties have been imposed against the CFMEU or its representatives under the FW Act in 12 matters in respect of conduct after 1 June 2012 that could have been actioned under the repealed legislation. Whilst some matters in respect of this period are still before the courts, in these 12 matters, the court has imposed penalties of **\$922,025**.

If it is assumed that the proportion of the maximum penalty the court imposed under the FW Act would have been applied under the repealed legislation, the penalties in those 12 cases would have been **\$3,073,417**. This amounts to a difference of **\$2,151,392**. Note, however, the imposition of a civil penalty is always a matter of discretion for the court.