

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2011-2012**

Agency - Australian Building and Construction Commission

DEEWR Question No. EW1099_12

Senator Thistlewaite asked on 15 February 2012 , Hansard page 62

Question

ABCC - Breakdown of prosecutions

Senator THISTLETHWAITE: Mr Johns, I think it was earlier that you stated that in terms of the number of prosecutions that have been brought, that 76 of 90 were successful. Is that correct? Mr Johns: Yes, 76 out of the 90. Senator THISTLETHWAITE: Is it the case that the majority of your prosecutions are brought under the provisions of the Fair Work Act or its predecessor, the Workplace Relations Act rather than the BCII Act? Mr Johns: I might ask our deputy commissioner legal to address that issue, thanks. Mr Corney: I think it is fair to say, without having the final figures in front of me, that there is often a combination of acts used. So that, if I go to one end of the spectrum, there may well be a series of cases where the action is brought under the BCII Act. There are other cases where there is an amalgam of both the Fair Work Act and the BCII Act. In previous times, before the— CHAIR: You guys want to go outside? Thank you. Now, back to Mr Corney. Mr Corney: Thank you, Chair. I think perhaps if I just recap what I just said for the assistance of the committee. I think there is a range of acts in which the civil prosecutions are taken. At one end of the spectrum, there will be matters under the BCII Act alone. There will be other matters, of course, that are under the BCII Act and the Fair Work Act. There are others under the Fair Work Act. There are others that would be a combination of the BCII Act and the old Workplace Relations Act when matters were well back. I think you have to see it across that whole spectrum. In respect of the assertion you make about most of the cases coming or not coming under the BCII Act, I would think, without having the final figures in front of me, that there would be something in the order of around 25 per cent of matters would be solely under the BCII Act. Senator THISTLETHWAITE: So the other 75 per cent would be either a combination of or solely under the Fair Work Act? Mrs Cornish: They would be a combination. I think it is taking it too far as a matter of fact, to say it is just under the Fair Work Act. I think that would give you an incorrect skew on what our matters are. As I say, they are broadly indicative, those figures. Mr Johns: Senator, it would also depend on what is being litigated. If it was unlawful industrial action, more likely than not that would proceed under the BCII Act as opposed to the Fair Work Act provisions because they are specific to the building and construction industry. If it was a right of entry matter, it would be exclusively under the Fair Work Act because those provisions do not exist in the BCII Act. It depends on what is being litigated. Senator THISTLETHWAITE: Perhaps you could take it on notice and give us a breakdown of those 90 matters. Do not go into any detail, but tell us what proportion were brought under the Fair Work Act or the Workplace Relations Act alone, what proportion were brought under the BCII Act alone and what proportion were brought under a combination of those acts. Mr Johns: We are happy to take that on notice.

Answer

The Office of the Australian Building and Construction Commissioner has provided the following response:

Of the finalised matters brought by the ABCC approximately:

- 36% have been solely under the *Building and Construction Industry Improvement Act 2005*;
- 16 % have been a combination of the *Building and Construction Industry improvement Act 2005 Act* and either the *Workplace Relations Act 1996* or *Fair Work Act 2009*;
- 37% have been solely under the *Workplace Relations Act 1996*,
- 10% have been solely *Fair Work Act 2009*