

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

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

**Agency - Australian Building and Construction Commission**

**DEEWR Question No. EW0277\_12**

**Senator Abetz asked on 30/05/2011, Hansard page 79.**

**Question**

***Copy of Letter From ACTU And Response By ABCC***

Senator ABETZ: If you feel free to provide the letter requesting the apology and your response, if you consider it appropriate, take it on notice if you do. If you can provide those two letters to the committee, I would be obliged. But, undoubtedly, you might want to think about it. Mr Johns: I will take it on notice.

**Answer**

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

The letter is included at Attachment A.

ABC Commissioner Johns' response is included at Attachment B.



## Attachment A

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President Gerardino (Gad) Kearney  
Secretary Jeff Lawrence

23 February 2011

Mr Leigh Johns  
Australian Building and  
Construction Commissioner  
GPO Box 9927  
Melbourne VIC 3001

Dear Commissioner

### Your interview with *The Australian* newspaper

We refer to the article 'Building watchdog bares teeth at unions' by Ewin Hannan published in today's *Australian* newspaper.

The article quotes you 'querying' whether the CFMEU is acting in good faith in the course of enterprise bargaining, and indicates that you are prepared to intervene in applications for good faith bargaining orders which might be brought by employers against the CFMEU.

We take it that the reporting is accurate. If this is the case, we find it highly inappropriate for you to have made these comments.

First of all, the position of the CFMEU in bargaining has not been communicated to you. If you are responding to employer allegations about the union's position, you are clearly acting upon hearsay information, the accuracy of which you have taken no steps to verify. As such, it is wholly inappropriate for you to comment on the alleged position of the CFMEU.

By making these comments, you appear to have prejudged the issue, and endorsed the employer's position, without affording natural justice to the CFMEU.

Accordingly, we call upon you to acknowledge that you should not have made these comments and to publicly apologise to the CFMEU.

Further, because of this instance of bias (or at least the public perception of bias arising from your comments), you should not proceed any further in relation to this matter, lest you confirm the perception that you are not acting impartially.

Finally, I note that questions of whether parties have been bargaining in good faith are, under the *Fair Work Act*, a matter for Fair Work Australia to determine. As such, it is not appropriate for you to express views on these questions, particularly in the public domain, and especially in relation to specific cases. By doing so you are usurping the role of the tribunal and, indeed, may be seen as trying to improperly influence it.

If you persist in acting inappropriately, the ACTU, CFMEU and other parties reserve their rights.

Yours sincerely

Jeff Lawrence  
Secretary

Australian Unions  
  
Working for a  
better life.

**Attachment B**

**From:** JOHNS, Leigh  
**Sent:** Wednesday, 23 February 2011 5:32 PM  
**To:** 'Joel Fetter'  
**Cc:** 'Dave Noonan'; 'Jeff Lawrence'  
**Subject:** Re: Letter from Jeff Lawrence

Dear Mr Lawrence,

The premise of your letter is misplaced.

No reasonable reading of my comments as quoted in the article could give rise to the concerns expressed in your letter.

I would be very pleased to meet with you and Mr Noonan to discuss the matter further if that would be of assistance in your understanding of the matter.

Please do not hesitate to contact my office should you wish to arrange the same.

Kind regards,

Leigh

Leigh Johns  
Australian Building and Construction Commissioner

~ fair and productive building and construction work

A: GPO Box 9927 Melbourne VIC 3001

Find out more about the Australian Building and Construction Commission at [www.abcc.gov.au](http://www.abcc.gov.au)

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