

Chapter 1

Introduction and Background

Reference

1.1 On 17 June 2009 the Minister for Education, Employment and Workplace Relations, the Hon. Julia Gillard MP, introduced the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009 (the bill) in the House of Representatives. On 18 June 2009, the Senate referred the provisions of the bill to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations for report by 10 September 2009.

Conduct of the inquiry

1.2 Notice of the inquiry was posted on the committee's website and advertised in *The Australian* newspaper, calling for submissions by 17 July 2009. The committee also directly contacted a number of interested parties, organisations and individuals to notify them of the inquiry and to invite submissions. 22 submissions were received as listed in Appendix 1.

1.3 The committee conducted a public hearing in Melbourne on 31 August 2009. Witnesses who appeared before the committee are listed at Appendix 2.

1.4 A copy of the Hansard transcript from the hearing is tabled for the information of the Senate. The transcript can be accessed on the internet at <http://aph.gov.au/hansard>.

Acknowledgements

1.5 The committee thanks those who assisted with the inquiry.

Background

1.6 The bill is familiar ground for this committee. In 2003 the government introduced the Building and Construction Industry Improvement Bill 2003 which lapsed in the Senate when Parliament was prorogued for the 2004 election. The committee produced a report in June 2004 covering the 2003 bill and industry related matters.¹ In 2005 the Building and Construction Industry Improvement Bill 2005 (BCII bill) was introduced and passed as the current *Building and Construction Industry Improvement Act 2005* (BCII Act). The committee reported on the 2005 bill

1 Senate Employment, Workplace Relations and Education References Committee, *Beyond Cole: The future of the construction industry: confrontation or co-operation?*, June 2004.

in May 2005.² In 2008, Senator Siewert introduced the Building and Construction Industry (Restoring Workplace Rights) Bill 2008. The committee reported on this bill in November 2008.³

1.7 The committee stands by the findings of the committee majority report in 2004, the Opposition senator's report in 2005 and the committee majority report in 2008. Rather than reproduce the various findings in this report, the committee refers readers who are unfamiliar with the history of the bill to the detail in the committee's reports. Briefly, regarding the Cole royal commission, the committee majority notes that the Cole findings were not accepted without question. The exercise was seen by many as politically motivated and directly aimed at weakening the unions representing employees in the industry. However, the committee acknowledged the need for reform in the industry to address practices which were clearly unacceptable. Government senators note that findings of the royal commission continue to influence opinions on the BCII Act and the Office of the Australian Building and Construction Commissioner (ABCC).

1.8 Prior to the 2007 election the Labor Party promised that it would retain the ABCC until 31 January 2010, when it would be replaced by a specialist division of the Inspectorate of Fair Work Australia.⁴

1.9 On 19 June 2008, the Hon Justice Murray Wilcox QC was appointed to consult and prepare a report by 31 March 2009 on matters related to the creation of the specialist Fair Work Inspectorate. The government has accepted the key recommendations of the report.

Purpose of the bill

1.10 This bill gives effect to the government's election commitment to retain the ABCC until 31 January 2010. It also implements the key recommendations of the Wilcox report through amendments to the BCII Act.

1.11 The key amendments include:

- creation of the Office of the Fair Work Building Industry Inspectorate; (the Building Inspectorate)
- removal of building industry specific laws that provide higher penalties for building industry participants for breaches of industrial law and broader circumstances under which industrial action attracts penalties;

2 Senate Employment, Workplace Relations and Education Legislation Committee, *Provisions of the Building and Construction Industry Improvement Bill 2005 and the Building and Construction Industry Improvement (Consequential and Transitional) Bill 2005*, May 2005.

3 Senate Employment, Workplace Relations and Education Legislation Committee, *Building and Construction Industry (Restoring Workplace Rights) Bill 2008*, November 2008.

4 Kevin Rudd, MP, Labor Leader, Julia Gillard MP, Shadow Minister for Employment and Industrial Relations, *Forward with Fairness, Policy Implementation Plan*, p. 24.

- capacity for the Director of the Building Inspectorate to compulsorily obtain information or documents from a person whom the Director believes has information or documents relevant to an investigation;
- introduction of safeguards in relation to the use of the power to compulsorily obtain information or documents;
- establishment of an Advisory Board that will make recommendations to the Director about policies, priorities and programs; and
- creation of the Independent Assessor, who may make a determination that the examination notice powers will not apply to a particular project.⁵

