

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

**QUESTIONS ON NOTICE
Additional Estimates 2010-2011**

Agency - Australian Building and Construction Commission

DEEWR Question No.EW0697_11

Senator Cameron asked on 23/02/2011, Hansard page 99.

Question

ABCC - NO PROTECTION FROM LITIGATION OF PARTICIPANTS

Senator CAMERON—Mr Johns, I will finish on this. Can you take on notice to come back to the committee or to me in relation to the allegations that have been made about the process that you have put in place—that is, no protection from litigation of participants; open-ended and unclear inquiry rules leading to potential risk exposure; silencing online debate of participants; and (a) the inquiry lacks a clear focus; (b) the inquiry has the appearance of being assumption driven rather than fact driven; (c) pretence of narrow investigation but actually very broad; and (d) the inquiry is looking at issues that are beyond ABCC's jurisdictional authority. I am going to leave it at that and ask you to come back to us in terms of those very serious allegations that have been made in relation to the inquiry. Thanks.

Answer

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

1. Claim One – No protection from litigation of participants

This is correct. The discussion paper states that 'Persons submitting a response or otherwise participating in the Roundtable conference must understand that, unless specific arrangements are made to the contrary, the information disclosed may be used either as a trigger to commence an investigation by the ABCC or as evidence in civil penalty litigation.'

The process does not offer lesser legal protection than other government inquiries.

In accordance with the ABCC litigation policy people who are concerned that they may have committed a breach could request a type of immunity. Where building participants have inadvertently been engaged in sham contracting and are willing to regularise their arrangements, less punitive compliance options would be considered as alternatives to litigation.

Claim Two – Open-ended and unclear inquiry rules leading to potential risk exposure

The Sham Contracting Inquiry is not an investigation into specific cases but

a discussion about regulatory options, as set out in the scope, purpose and terms of reference in the discussion paper.

Claim Three – silencing online debate of participants

This claim is false. Clause 7 of the terms of use for the inquiry's website states:

7. Subject to these Terms, you are permitted to download, display, print and reproduce content on this Website in unaltered form only for your personal, non-commercial use or for your non-commercial use within your organisation, provided you keep intact all copyright, trade mark and other proprietary notices and acknowledge that the content is provided by us.

Clause 11 also states that permission may be given for use outside of the Terms by applying to the ABCC.

Other Claims

- a) The Terms of Reference set out in the Discussion Paper released on 22 December 2010 state that matters considered in the Inquiry will be sham arrangement provisions in sections 337-359 of the Fair Work Act 2009.
- b) The ABCC is unable to give testimony as to the perceptions/claims of stakeholders.
- c) There is no investigation. The inquiry is a discussion about regulatory options.
- d) The matters to be considered by the Sham Contracting Inquiry are consistent with the objects of the BCII Act.

In accordance with section 3(1) of the BCII Act, 'the main object of this Act is to provide an improved workplace relations framework to ensure that building work is carried out fairly, efficiently and productively for the benefit of all building industry participants and for the benefit of the Australian economy as whole.'

Section 3(2)(h) also states that the main object may be achieved by 'providing assistance and advice to building industry participants in connection with their rights and obligations under relevant industrial laws.'

In accordance with Section 10(f) a function of the ABC Commissioner is to disseminate information about this Act, the *Independent Contractors Act 2006*, the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the Building Code, and about other matters affecting building industry participants, including disseminating information by facilitating ongoing discussions with building industry participants