

**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. EW0994_12

Senator Cameron provided in writing.

Question

ABCC - Prosecutorial Fairness in Administrative Proceedings

The ABCC has previously said it is not bound by the rules of prosecutorial fairness in administrative proceedings before the AIRC/FWA. This means it takes the view that 'not everything favourable to the respondent has to find its way into witness statements.' Does the ABCC adhere to that view? Does the ABCC take the same view in relation to civil court proceedings? How can the ABCC hold itself out as an impartial regulator when it has said that it doesn't have to disclose matters to the tribunal of which it is aware but which is detrimental to its case? How is this consistent with its duty of disclosure to bodies like FWA? Is this consistent with the ABCC's 'Guidance Note No 1 Litigation Policy'?

Answer

This statement was contained in a letter from then ABC Commissioner John Lloyd to Mr Dave Noonan of the CFMEU on 17 July 2008.

Under the heading 'Lack of prosecutorial fairness', Mr Lloyd set out the then legal position on this question and the minimum legal position expected of all regulators.

On 23 November 2011, Commissioner Johns requested a review of these requirements in light of recent legal decisions.