

LABOR SENATORS' DISSENTING REPORT

Key Issues

The use of special coercive powers in the building industry are unnecessary

1.1 If this Bill is rejected, from 1 June 2015, Fair Work Building Industry Inspectorate (FWBII) inspectors would have the same powers in respect of building matters as those available to inspectors of the Fair Work Ombudsman (FWO) under the Fair Work Act (FWA).¹ The Fair Work Building Industry Inspectorate has a full suite of appropriate investigative and prosecution powers to deal with any unlawful behaviour in the building and construction industry — whether by employers, employees, unions or contractors. The existing Fair Work (Building Industry) Act 2012 (Cth) is a secure, fair and adequate regulator of industrial relations in Australia that:

- Provides enforcement that is based on education rather than prosecution;
- Retains common law rights of workers; and
- Provides for a genuinely independent compliance unit.

1.2 We note that the FWBII's coercive notices have only been relied on four times in the 2013-14 period and twice in the period 2012-13² and are concerned that this does not support the Director's contention that the power is necessary. Labor Senators therefore continue to remind the Senate that no evidence exists to demonstrate that the powers currently conferred by the Fair Work Act are anything but adequate and proportionate for the purposes of industrial investigations.

The Government has failed to adequately consult

1.3 The former Labor Government abolished the draconian Australian Building and Construction and established the Fair Work Building Inspectorate.

1.4 In establishing the new body, Labor acted on our election commitment to consult widely, and as such appointed the respected former Justice, Murray Wilcox QC, to undertake consultation and prepare a report on matters related to the creation of a Specialist Division of the Inspectorate of Fair Work Australia, the report of which was presented to Government in 2009. The resulting Bill which gave effect to Mr Wilcox's principle recommendations, was legislated in 2012.

1.5 It is true as stated in the Chair's report that one of Mr Wilcox's recommendations was to retain coercive powers. We note that Mr Wilcox expressly recommended the powers be subject to a sunset clause and that the retention of those powers be the subject of a review. A sunset clause, by its nature, is placed in legislation to require the Government to justify with evidence the need to extend. The Government has not conducted any such review. A Senate Committee inquiry undertaken 'on the papers' does not suffice.

¹ see s. 59C of the Fair Work (Building Industry) (FWBI) Act 2012

² Fair Work Building Industry Inspectorate (FWBII) Annual Report 2013-14

Recommendation

1.6 Until the Government conducts an independent review into the extension of the sunset clause we will not support the extension of coercive powers. Labor Senators recommend that the Senate oppose the Bill.

Senator Sue Lines

Deputy Chair