

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2017 - 2018

Agency - Australian Building and Construction Commission

Department of Employment Question No. EMSQ17-004182

Senator Cameron asked on 30 May 2017 on proof Hansard page 96

Question

ABCC - Recommendations process

Senator Cash: There is a process that is undergone before the recommendation of the ABCC comes to the minister. It is ultimately a decision for the minister. If you would like the commissioner to take you through the process, because it is quite a long and detailed process before it comes to the minister—

Senator CAMERON: Can you then table what that process—

Mr Hadgkiss: Very simply, Senator: in this case, Hutchinson, I wrote to—I think I gave evidence before—the managing director with what is called a 'show cause' as to why I should not take the matter to the minister with a view to recommending sanction. I give the party—indeed, as I think I mentioned in my opening statement, in recent days three contractors—a calendar month to reply. Their reply will be considered by me. If I believe there should be a sanction imposed, I will write to the minister accordingly. The minister, in turn, gives that party an opportunity to say why there should not be a sanction, and the minister will then deliberate.

Senator CAMERON: Is there an appeal process?

Mr Hadgkiss: The whole process is subject to administrative appeals.

Senator Cash: We can get the process set out for you—completely

Answer

1. The sanction against Hutchinson was imposed under the Building Code 2013. The process of imposing a sanction on a building contractor or building industry participant is set out in paragraphs 6.4 to 6.11 of the Building Code 2013 – Supporting Guidelines as follows:

Consequences of failing to comply with the Building Code

- 6.4 Sanctions will be considered where a building contractor or building industry participant has failed to comply with the Building Code, and in the view of the Director the failure is not or cannot be voluntarily rectified.
- 6.5 If the Director is of the view that a building contractor or building industry participant has failed to comply with the Building Code and the failure is not, or cannot be, satisfactorily rectified, the Director may exercise his or her functions under section 10 of the FWBI Act to refer the failure to the Minister for Employment with recommendations, if any, that a sanction should be imposed.

Sanctions

- 6.6 Where a failure to comply with the Building Code has been referred by the Director, the Minister for Employment may:
- (a) impose an exclusion sanction on the building contractor or building industry participant; or
 - (b) issue a formal warning that a further failure may result in the imposition of an exclusion sanction on the building contractor or building industry participant.
- 6.7 The Minister for Employment will consult with the relevant funding entity's Minister before imposing any exclusion sanction.

Exclusion Sanction

- 6.8 If the Minister for Employment proposes to impose an exclusion sanction, the Minister will provide a written notice to the building contractor or building industry participant:
- (a) informing the building contractor or building industry participant of the details of the alleged failure to comply with the Building Code; and
 - (b) advising the building contractor or building industry participant that they may, by a specified date (being not less than 14 days after giving the notice), make a submission in relation to the proposed exclusion sanction.
- 6.9 Where it is proposed to impose an exclusion sanction on a related entity, that entity will also be notified and provided with the same information in 6.8.
- 6.10 After the date specified in a notice under clause 6.8(b), the Minister for Employment will:
- (a) if the building contractor or building industry participant has made a submission—consider that submission; and
 - (b) whether or not the building contractor or building industry participant has made a submission—decide whether to impose an exclusion sanction; and
 - (c) within 14 days after making that decision, give the building contractor or building industry participant and any relevant related entity written notice of the decision, including the reasons for the decision; and
 - (d) publish the failure to comply and the identity of the non-complying building contractor or building industry participant.
- 6.11 The written notice issued by the Minister for Employment under clause 6.10 must specify the date on which the exclusion sanction commences and ends.
2. There is no appeal process set out in the Building Code 2013 – Supporting Guidelines. A decision of the Minister to impose an exclusion sanction is subject to judicial review.