

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
SUPPLEMENTARY BUDGET ESTIMATES HEARINGS— OCTOBER 2016

Prime Minister and Cabinet Portfolio

Department/Agency: Office of the Commonwealth Ombudsman

Outcome/Program:

Outcome 1. Fair and accountable administrative action by Australian Government entities and prescribed private sector organisations, by investigating complaints, reviewing administrative action and statutory compliance inspections and reporting.

Topic: Fair Work Building Construction

Senator: Senator Abetz

Question reference number: 68

Type of question: FPA Committee - 17 October 2016

Date set by the Committee for the return of answer: 2 December 2016

Senator ABETZ: Because I have a document in front of me that might suggest otherwise. How many reviews have you undertaken all up for the FWBC?

Mr Glenn: The total number we would have to take on notice. I don't have that information—

...

Mr Neave: The approach that we have taken is that, where those powers are used, we will review that which is done in using those powers on the part of the organisation.

Senator ABETZ: Do you review each one of them?

Mr Neave: Yes, we understand we do. But we will, again, make sure of that.

Senator ABETZ: If you can check that for me, I would be much obliged, because in the document I have in front of me there seems to have been no review undertaken in the first year and a bit, and then there was a flurry of activity between January and April 2015, and then there has been nothing further since then.

Mr Glenn: We can check.

Senator ABETZ: If you can take that on notice and if that assertion is correct, can I be provided with an explanation as to why there was that flurry of activity and why there has been nothing since? Can I also be provided with an explanation, because, if I understand correctly—and on this occasion I am sure I am correct because I am quoting from a document entitled *Submission by the Commonwealth Ombudsman: Inquiring into government's approach to re-establishing the Australian Building and Construction Commission*—in section 2 of that document we are told that the legislation:

... requires the Ombudsman to report to Parliament as soon as practicable after the end of each financial year about the examinations conducted by the Director and the results of our reviews. It has been suggested to me that the report that should have occurred as soon as practicable after June 2015 only found its way to the parliament in September 2016, which was, very conveniently, at the same time that the government was trying to pursue the issue of re-establishing the Australian Building and Construction Commission. I am wondering if there is

an explanation for this 15-month hiatus and if I am correct as to that. I am going on information provided. I do not seek to make allegations, but if the information provided is correct, I would have to say it is concerning.

Mr Neave: We need to take that on notice in order to provide you with an explanation of the delay in that case.

Number of pages: 3

Question:

Senator ABETZ:

Questions relating to your oversight of the FWBC and its compulsory powers:

1. How many reviews have you undertaken all up for the FWBC?
2. Do you review each of them?
3. Why was there a delay between reviews?

Answer:

1. As of 24 October 2016 the Office of the Commonwealth Ombudsman (the office) had completed in total 33 reviews.
2. Yes. Under s 54A(3) of the *Fair Work (Building Industry) Act 2012* (the FWBI Act) the Commonwealth Ombudsman must review the exercise of powers under Division 3, Part 1 Chapter 7, which includes the power to apply for an examination notice prior to the examination taking place.

As a result, the Commonwealth Ombudsman also reviews the documentation prepared for each proposed examination, including the affidavit and the application for the examination notice.

Regarding the reviews conducted so far, in the two instances when an examination notice has been withdrawn, the office has reviewed the documentation prepared in order to obtain the examination notice. Accordingly the number of reviews undertaken aligns with the number of examination notices issued.

3. For some reviews, the documentation pertaining to the examination, which is required for the Commonwealth Ombudsman to conduct the review, was not provided by the FWBC until the following financial year.

The following table provides a breakdown of reviews undertaken by the office by each financial year:

Table 1: Reviews Undertaken by the Office of the Commonwealth Ombudsman

Review period	Number of examinations which took place in the review period	Number of reviews undertaken in the review period	Comments
1 – 30 June 2012	1 (June 2012)	0	Section 54A documents not received until the following financial year.
1 July 2012 – 30 June 2013	0	1	This was for the examination undertaken in the previous financial year.
1 July 2013 – 30 June 2014	4	2	The s 54A documents for the two examinations undertaken in June 2014 were not received until the following financial year.
1 July 2014 – 30 June 2015	14 15 examination notices were issued and one was withdrawn.	13	Two examinations conducted in the previous year were reviewed along with 11 examination notices from the review period. The remaining four examinations required further documents to be provided and for two of those examinations, s 54A documents were not received until 24 June 2015 and 18 August 2015.
1 July 2015 – 30 June 2016	17 18 examination notices were issued and one was withdrawn	17	Four examinations conducted in the previous year were reviewed along with 13 examination notices [as one was withdrawn, so the examination did not take place] from the review period. The remaining five examinations required follow up for service documents and s 54A documents were not received until July 2016.
1 July 2016 – 30 June 2017	As of 17 October 2016 the office had been advised of three examination notices being issued	0	The office has prioritised the preparation of the 2015 – 16 Annual report and will conduct reviews in the new year.

4. The Commonwealth Ombudsman presented its 2014 – 15 Annual Report to Parliament in September 2016.

- FWBC funding for the 2014-15 financial year was not provided until 14 January 2015. This funding delay resulted in the office not being able to commence reviews until late January 2015, with some documentation not being provided to the office by FWBC until August 2015.
- A draft report in 2014-15 was provided to the Director of FWBC for comment in April 2016, following which the report was in the final stages; however on 8 May 2016 a double dissolution election was called and the report could not be presented until the 45th Parliament was opened. The report was presented to the President of the Senate on 22 September 2016.