EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE
2007-08 ADDITIONAL ESTIMATES HEARING

Agency   Office of the Australian Building and Construction Commissioner

DEEWR Question No. EW132_08

The Chair (Senator Marshall) asked on 21 February 2008, EEWR Proof Hansard page 81 & 85.

Question

Examinations.

I would like to see the letter that you provide to people under these circumstances (when called to examinations).

Answer

See Attachment.

ABCCC####/200#

<Date>

Contact Officer: <**Name**> <**Phone number**>

<Title> <Full Name>
<Address>
<Suburb/Town> <State> <Postcode>

Dear <Title> <Last Name>,

Notice issued under section 52(1)(e) of the *Building and Construction Industry Improvement Act 2005*

You have been served with a notice (**the notice**) to attend before a Deputy ABC Commissioner of the Office of the Australian Building and Construction Commissioner (**ABCC**) to answer questions relevant to an investigation pursuant to s 52(1)(e) of the *Building and Construction Industry Improvement Act 2005* (**BCII Act**).

You should read the notice accompanying this letter carefully. You will see that it requires you to attend at <**Address**> at <**Time**> on <**Day**>, <**Date**>. When you attend you will be asked to answer questions relevant to an investigation being conducted by the ABCC (**the investigation**). Details of the investigation are included in the notice.

You have been served with this notice because the ABC Commissioner has reasonable grounds to believe that you are capable of giving evidence that is relevant to the investigation.

The examination will be conducted by the Deputy ABC Commissioner, Mr <Full Name of Dep Cmmr>. He may be assisted by counsel and/or an instructing solicitor. Other ABCC staff will also be present.

You may, if you choose, be represented by a barrister or solicitor at the examination, subject to any reasonable conditions the Deputy ABC Commissioner may wish to impose (such as a requirement that your legal adviser provide a confidentiality undertaking).

The question of legal representation has been the subject of a recent Federal Court decision in *Bonan v Hadkgiss* [2006] FCA 1334. This confirmed that the Deputy ABC Commissioner

may exclude a particular legal representative in certain circumstances. If you choose to have legal representation at the examination, your lawyer should contact the contact officer listed above as soon as possible to advise of their intention to attend your examination.

At the examination, your legal representative will only be permitted to:

(a)   object to questions asked if they are unclear or irrelevant to the subject matter of the examination;
(b)   re-examine you to clarify your response to an earlier question;
(c)   make submissions at the completion of the examination as to any relevant matter.

Any legal representative on your behalf will not be permitted to interrupt or disrupt the examination and to this end the Deputy ABC Commissioner will generally not allow you to consult with your representative prior to answering particular questions.

The examination will be held in private and you will be required to give evidence on oath or affirmation.

You may request an extension of the time or a change of time if you believe that there are exceptional circumstances that prevent or unreasonably impede your attendance at the examination. Such a request must be in writing and must also set out reasons for the request. Any written request should be provided to the contact officer (listed below) at least 7 days prior to the examination. The Deputy ABC Commissioner may, at his discretion, reschedule the examination.

Should you require further interpretation or clarification of the notice, you or your lawyer may request this from the contact officer (listed below).

If you refuse or fail to comply with this notice you may contravene subsection 52(6) of the BCII Act. **A person who contravenes subsection 52(6) of the BCII Act is guilty of an offence. The penalty is imprisonment for 6 months.**

You may contravene subsection 52(6) of the BCII Act if you fail:

o   to attend to answer questions at the time and place specified in the notice;
o   to take an oath or make an affirmation, when required to do so subsection 52(4) of the BCII Act; or
o   to answer questions relevant to the investigation while attending the examination.

It is also a serious offence if you knowingly give false or misleading information or evidence to the Deputy ABC Commissioner.

Any evidence you provide will not be available for use against you other than in proceedings for failing to attend the examination, refusing to take an oath or affirmation at the examination, failing to answer questions relevant to the investigation at the examination, knowingly giving information that is false or misleading or obstructing, hindering, intimidating or resisting a Commonwealth public official in the performance of his official functions.

If you give information, produce a document or answer questions in good faith, as required by the notice, you will not be liable to any proceedings for contravening any other law because of that conduct. Nor will you liable in civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

A copy of *Guidelines in relation to the exercise of Compliance Powers in the Building and Construction Industry* is available free of charge from the contact officer below.

If you have any questions about the notice please ring the contact officer on the number below, who would be happy to discuss the matter:

Contact Officer: <**Full Name**> <**Phone Number**>

Yours sincerely

<Full Name of Dep Cmmr>
Deputy ABC Commissioner