

Senate Education, Employment and Workplace Relations
Committee

Supplementary Estimates 2010-11

DEEWR



Australian Government
Australian Building and
Construction Commissioner

Tabled document no: 1

By: Mr Nicholas Wilson, FWO

Date: 20/10/2010

GPO Box 9927
Melbourne VIC 3001
t. 03 8509 3002
f. 03 8509 3020

11 October 2010

Mr Nicholas Wilson
Fair Work Ombudsman
By email: nicholas.wilson@fwo.gov.au

Dear Mr Wilson,

Re: Exchange of letters

I refer to the exchange of letters between the predecessor to the Fair Work Ombudsman (FWO), the Office of Workplace Services, and the Australian Building and Construction Commission (ABCC) in June/July 2006 about the referral of work between our two agencies.

First, let me thank and congratulate the staff of the FWO for the excellent citizen service they have provided in resolving, investigating and litigating matters involving building industry participants.

However, noting that:

- as was predicted at the time, the exchange of work between the two agencies has been fairly low (the ABCC referred only 8 matters to the FWO in 2009-10); and
- Royal Commissioner Cole expressly recommended that "the types of conduct with which the ABCC should be concerned include [amongst other matters] ... underpayment of employees' entitlements",

I advise that the ABCC will, with effect from today, cease to refer matters to the FWO which relate to 'building work' and 'building industry participants' as defined by the *Building and Construction Industry Improvement Act 2005 (BCII Act)*.

I note also that in the period from March 2006 to the end of April 2010 (the most recent period for which I have data), the FWO and its predecessors finalised more than 5,700 underpayment matters involving building and construction employees and commenced legal proceedings against 19 duty-holders.

I recognise that a portion of this work likely relates to building industry participants (within the meaning of the BCII Act) and that such work has been of considerable benefit to the Australian community.

The ABCC agrees with the FWO that, while this arrangement has produced an acceptable arrangement for clients it would be inconsistent with the ABCC ceasing to refer 'building work' matters to the FWO if, at the same time, we did not move to take on work associated with underpayment activity for building industry participants.

Because of this, I agree with you that it would be beneficial for our respective senior staff to discuss the existing arrangements and agree a suitable time and methodology for a change to be made.

I suggest that it would be appropriate for our agencies to work towards agreeing these new arrangements at least by the end of the year for implementation at least by 1 March 2011.

Until then, the existing arrangements will remain in place, whereby the FWO commences and completes the investigation and associated activity without reference to the ABCC.

www.abcc.gov.au

Hotline 1800 003 338

ABN 68 003 725 098

Until these new arrangements are in place, I would ask that the FWO:

- continue to keep a record of those matters involving building industry participants;
- report to the ABCC about its activities in this regard; and
- notify the ABCC of any proposed civil penalty litigation that the FWO plans to commence in relation to building industry participants. In some circumstances the ABCC would be prepared to assume responsibility for the conduct of the litigation.

Please let me know if you are content with these proposed arrangements.

Yours sincerely,

L.A.H. Johns

Leigh Johns
ABC Commissioner