



SENATE PROCESS FOR BUILDING AND CONSTRUCTION INDUSTRY LEGISLATION

The Senate Committee considering the content of the changes to the BCIIA (the Bill seeks to amend the BCII Act and rename it the *Fair Work (Building Industry) Act*) has released its report and like the process for the fair work legislation, have suggested a range of amendments that may not progress.

“Stepping stone” to abolition

The committee’s ALP Senators referred to the Bill as a “stepping stone” to the abolition of industry-specific laws, saying the government Senators have issued a report, but the government’s position is contained in the legislation.

The ALP Committee members also indicated that they were opposed as a matter of principle to industry specific industrial legislation.

The Bill:

- seeks to abolish the ABCC from 1 February 2010;
- removes building-industry specific laws applying higher penalties for breaches and identifying broader circumstances under which industrial action will attract penalties;
- introduces safeguards on the use of the industry watchdog’s powers to compulsorily obtain information or documents; and
- creates an independent assessor to determine when compulsory interview powers will not be applied on a project.

The Bill reduces maximum penalties for those breaching industrial laws from \$110 000 to \$33 000 for corporations and from \$22 000 to \$6 000 for individuals, consistent with the *Fair Work Act*.

Expanded role for inspectorate

There is an expanded role for the Office of the Fair Work Building

Industry Inspectorate to ensure compliance with safety net contractual entitlements

The ALP Senators also made a number of further recommendations based on evidence given during the inquiry, including:

- creating a process for the Inspectorate’s director to inform the new advisory body which of its recommendations have or have not been adopted and why;
- requiring the director to inform the AAT of “all relevant circumstances” – for example, that information sought may be privileged - when applying for a notice to conduct a coercive examination;
- where an examination notice is issued for documents, requiring that the notice specify the documents sought to avoid “fishing expeditions”;
- limiting the obligation of an AAT member to consider the likely effect on a person of issuing a compulsory examination notice by requiring that the impact be considered only “in so far as it is known”;
- increasing the compensation for “reasonable expenses” a person required to attend a compulsory examination is entitled to by clarifying that it includes the loss of wages or ordinary income; and
- defining more clearly the role of the Commonwealth Ombudsman in overseeing the use of the powers and, more generally, to ensure it has adequate resources to do the job.

They also expressed support for the proposed mechanism to enable the Office of the Independent Assessor to switch-off the coercive powers, saying it will encourage cultural change and reward good behaviour by providing the industry with the opportunity to demonstrate that a lawful culture is in place.

Coalition amendments

The Coalition Senators recommended amendments to the provisions, in particular to the legislation’s proposed safeguards on coercive powers and the reduction of existing unlawful industrial action penalties. The Greens in the alternate called for the repeal of the BCII Act.

And just to get the full suite of views, Family First has identified key changes to the legislation, including the removal of the switching off powers and keeping existing industrial action penalties.

Debate on the Bill continues on 17 August 2009 when the SRS in the Senate occurs.

ACTU Organising, Education and Campaign Centre Course

General Protections in the new Fair Work Act 2009

**Brisbane: 2 October
9:00am - 4:00pm**

The ACTU Organising, Education and Campaign Centre will run this course in Brisbane on Friday 2 October. Come and learn about your members’ rights under the new Act, and where and when to make claims about breaches of the general protections provisions.

If you’re interested in attending this course, contact the ACTU Organising, Education and Campaign Centre at orgcentre@actu.asn.au