



Australian Government
**Australian Building and
Construction Commission**

Commissioner Nigel Hadgkiss - Senate Estimates Opening Statement

2 March 2017

Firstly, I welcome the opportunity to provide the committee with a brief overview of the work of the ABCC regarding the transition from Fair Work Building and Construction, or FWBC, to the ABCC. Working on the transition has been a top priority and we have balanced this alongside our business as usual work on the ground. Since 2 December, the ABCC has responded to almost 1,000 hotline calls, online inquiries and emails, mostly about the building code. We have also delivered 29 formal presentations to a total of 760 attendees and held an additional 42 stakeholder meetings with 138 attendees.

I would like to first provide an update about our progress with regard to wages and entitlements. The ABCC has taken steps to put in place policies and procedures for investigating compliance with the Fair Work Act in our jurisdiction—that is, the commercial building and construction industry. That includes wages and entitlements, misclassification issues and sham contracting. My agency's approach has been both reactive and proactive. Whilst we will react and respond to inquiries and requests for assistance and advice about wages and entitlements, we will also be undertaking proactive audits of employers. In planning to undertake these functions, we have met with senior representatives of the Fair Work Ombudsman a number of times. The ABCC is replicating Fair Work Ombudsman processes and practices in relation to wages and entitlements inquiries. This approach will help to ensure consistency of advice from government and maintain the high standard of service that the Fair Work Ombudsman has provided to date. It has been agreed between our two agencies that the ABCC can utilise Fair Work Ombudsman resources and materials. We have also made arrangements with the Fair Work Ombudsman to ensure a smooth referral from them to us of matters relating to our jurisdiction. I wish to publicly acknowledge my gratitude to Fair Work Ombudsman Natalie James and her staff for making themselves available to provide assistance to my agency in recent months.

I will now turn to the building code. As soon as the Minister for Employment published the 2016 code, the agency began to provide advice and guidance to stakeholders about the new building code. As early as 8 December, we published explanatory material about the codes and the new processes. Along with answering inquiries, formal presentations and meetings with stakeholders, extensive material has been published on our website. The publications include three things: firstly, model clauses for tender and contract documentation to help funding entities and contractors comply with the new code; secondly, explanatory guidance and scenarios on the interaction between the two codes; and, thirdly, a model workplace relations management plan for use by contractors when tendering for Commonwealth funded building work. As the committee would know, legislative amendments were passed two weeks ago along with amendments to the code shortly afterwards. These amendments shortened the transition period for industry to achieve compliance with the code.

In coming days, we will publish guidance material containing the ABCC's advice on whether more than 500 clauses are compliant with the code. This new resource is a substantial body of work which will continue to evolve as the ABCC provides new advice to stakeholders. It will give interested parties clear guidance on the advice the ABCC is giving industry about agreement compliance with the code. The resource will also streamline the assessment process as it will enable industry to undertake a preliminary review of their agreement and then seek assessment and confirmation from the ABCC once

they consider their agreement is likely to be compliant. Industry's response to the agency's decision to make this advice public has been extremely positive. To date, the ABCC has provided a means for over 1,000 eligible contractors to ensure that they can continue to tender for Commonwealth funded projects.

We have recently expanded the ABCC's specialist agreement assessments team, adding expertise from the Department of Employment. The 2016 code contains new requirements on a range of issues that are also regulated by other agencies, including sham contracting, collusive tendering, security of payments, workplace safety, unlawful phoenixing activity and immigration and visa requirements. We have written to or met with a number of these agencies and relevant industrial associations, including the Fair Work Ombudsman, the ACCC, Safe Work Australia, Standards Australia, the tax office, ASIC, the Federal Safety Commissioner and the Department of Immigration and Border Protection.

I now want to make special mention of security of payments and my role as a member of the working group established under the new act. In preparation for that role, and to establish the best methods for the ABCC to monitor security of payments, I have written to and met with Mr John Murray AM on a number of occasions. Mr Murray, as you would be aware, has been appointed by the minister to conduct a review of security of payment laws in the building and construction industry. I have offered my assistance, including gathering information, as appropriate. I have also written to the ACTU, the CFMEU, other unions and building industry associations seeking to engage with them. I received several responses, including a response from the CFMEU which referred three wages and entitlements issues to my agency. We are in the process of investigating those three matters.

Finally, on the question of resourcing, the minister and I have commenced a dialogue in relation to the agency's resourcing. As you would be aware, the ABCC is a small agency, and working through the transition has required significant effort by all my staff. I wish to publicly acknowledge their efforts and commend them for their dedication in working through the transition and dealing with the additional demands on the agency. Thank you.