

Barton Deakin Brief: ABCC and Registered Organisations Bills

30 November 2016

Today, the [Building and Construction Industry \(Improving Productivity\) Bill 2013](#) ('ABCC Bill'), which re-establishes the Australian Building and Construction Commission (ABCC) and expands regulatory powers over the construction industry, passed the Senate.

Last week, the Government successfully passed the [Fair Work \(Registered Organisations\) Amendment Bill 2014](#) ('Registered Organisations Bill'), which establishes the Registered Organisations Commission and provides it with investigation and information gathering powers to monitor and impose higher standards of regulation on registered unions and similar organisations.

This Barton Deakin Brief outlines the major features of both bills which were key election commitments for the Coalition Government.

Background

The ABCC was first established in the [Building and Construction Industry Improvement Act 2005](#) as a response to the findings of the 2001-2005 Cole Royal Commission into the Building and Construction Industry, [here](#). The Cole Royal Commission reported widespread lawlessness and the need for structural and cultural reform.

In 2012, the Gillard government replaced the ABCC with [Fair Work Building and Construction](#) (FWBC) with reduced powers and lower penalties for breaches of prohibitions on unlawful industrial action and coercion.

The passing of the both pieces of legislation marks the third attempt at industrial relations reform since the Coalition formed government in 2013. The Registered Organisations Bill was part of the Coalition's 2013 election policy. The ABCC Bill was first introduced to Parliament in November 2013 under then-Prime Minister Tony Abbott. Attempts to reinstate the ABCC were refreshed following the findings of the 2015 [Royal Commission into Trade Union Governance and Corruption](#). The legislation was introduced again in May this year, with the lapsing of the Bills providing the trigger for the July double dissolution election.

The ABCC Bill

The ABCC bill passed the Senate this morning (30 November) by a vote of 36 to 33, with the support of Senator Derryn Hinch, Senator David Leyonhjelm, the Nick Xenophon Team and One Nation.

The primary aim of the [Building and Construction Industry \(Improving Productivity\) Bill 2013](#) is to re-establish the ABCC in order to combat illegal activity in the construction industry. The legislation requires the appointment of an Australian Building and Construction Commissioner with a broad scope



of powers to enable the obtaining of information and to conduct proceedings against industry lawlessness.

Other provisions of the legislation include;

- Issuing of Building Codes by the Minister;
- Appointment of a Federal Safety Commissioner;
- Prohibiting unlawful initial action, coercion, discrimination, and the creation of enforceable agreements;
- Protecting liability against officials;
- Inducing compliance with enterprise agreements in order to bid on Commonwealth projects; and
- Ensuring protected disclosure of information.

The ABCC bill was passed with a number of amendments, including:

- Reversing the onus of proof on accusations of wrongdoing on construction;
- A two-year transition period so that the new building code will not apply to existing agreements;
- New government procurement guidelines:
 - Australian standards must be met for procured goods and services, with requirements of certification and auditing of those standards;
 - For procurement over \$4 million the economic benefits of the procurement to the Australian economy must be considered;
 - The regulation involving labour regulations, including ethical employment practices, occupational health and safety, and environmental impacts must be considered in any procurement;
 - The establishment of a taskforce to establish a national approach to security of payments in the building sector, including better dispute resolution and considerations for a statutory trust to protect subcontractors; and
 - The Minister for Finance's media release detailing the new guidelines is [here](#).
- Curbs on the use of 457 visas for imported skilled workers in the construction sector.

The Registered Organisations Bill

The Registered Organisations Bill was passed by the Senate on November 22 by a vote of 33-30, with the support of Senator Derryn Hinch, the Nick Xenophon Team and One Nation.

The Registered Organisations Bill will establish the Registered Organisations Commission with exclusive monitoring and regulatory powers for union oversight, replacing the Fair Work Commission's responsibility for the registration of unions and employers organisations.

The bill also introduces tougher standards for material personal interest disclosure, financial reporting, and ineligibility for office for union officers and their organisations similar to the regulations imposed on corporations, as well as increasing civil penalties and criminalising breaches of duties and offences during the conduct of investigations.



Senator Derryn Hinch and the Nick Xenophon Team supported the bill on the condition of securing an amendment that would offer protection and compensation for union ‘whistleblowers’ and launching a parliamentary inquiry into extending whistleblower protections to corporations and the public sector. Further, the Senators supported the bill on the basis of ensuring mandated auditor independence and stricter non-compliance penalties.

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