



Building and Construction Industry Improvement Act 2005 Fair Work (Building Industry) Act 2011

Act No. 113 of 2005 as amended

This compilation was prepared on 8 February 2010
taking into account amendments up to Act No. 54 of 2009

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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Internal Working Document

An Act to improve workplace relations practices in the building and construction industry, and for related purposes

Chapter 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Building and Construction Industry Improvement Act 2005*. *Fair Work (Building Industry) Act 2009*.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act's previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1, 2 and 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 September 2005
2. Sections 4 to 8	9 March 2005.	9 March 2005
3. Chapters 2, 3 and 4	The day on which this Act receives the Royal Assent.	12 September 2005

Section 2

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Sections 36, 37 and 38	9 March 2005.	9 March 2005
5. Sections 39 and 40	The day on which this Act receives the Royal Assent.	12 September 2005
6. Sections 41 and 42	9 March 2005.	9 March 2005
7. Chapter 6	The day on which this Act receives the Royal Assent.	12 September 2005
8. Chapters 7 and 8	The day on which this Act receives the Royal Assent.	12 September 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
<u>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</u>	<u>The day on which this Act receives the Royal Assent.</u>	
<u>2. Schedule 1</u>	<u>A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</u>	
<u>3. Schedule 2</u>	<u>The day on which this Act receives the Royal Assent.</u>	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3—Main object of Act

- ~~(1) The main object of this Act is to provide an improved workplace relations framework for building work to ensure that building work is carried out fairly, efficiently and productively for the benefit of all building industry participants and for the benefit of the Australian economy as a whole.~~
- ~~(2) This Act aims to achieve its main object by the following means:~~
- ~~(a) improving the bargaining framework so as to further encourage genuine bargaining at the workplace level;~~
 - ~~(b) promoting respect for the rule of law;~~
 - ~~(c) ensuring respect for the rights of building industry participants;~~
 - ~~(d) ensuring that building industry participants are accountable for their unlawful conduct;~~
 - ~~(e) providing effective means for investigation and enforcement of relevant laws;~~
 - ~~(f) improving occupational health and safety in building work;~~
 - ~~(g) encouraging the pursuit of high levels of employment in the building industry;~~
 - ~~(h) providing assistance and advice to building industry participants in connection with their rights and obligations under relevant industrial laws.~~

3 Object of this Act

The object of this Act is to provide a balanced framework for cooperative, productive and harmonious workplace relations in the building industry by:

- (a) ensuring compliance with workplace relations laws by all building industry participants; and
- (b) providing information, advice and assistance to all building industry participants about their rights and obligations; and
- (c) providing an effective means of enforcing those rights and obligations; and

(d) providing appropriate safeguards on the use of enforcement and investigative powers; and

(e) improving the level of occupational health and safety in the building industry.

4 Definitions

(1) In this Act, unless the contrary intention appears:

AAT presidential member means a person who is a presidential member of the Administrative Appeals Tribunal under the Administrative Appeals Tribunal Act 1975.

~~*ABC Commissioner* means the Australian Building and Construction Commissioner referred to in section 9.~~

~~*ABC Inspector* means an Australian Building and Construction Inspector referred to in section 57.~~

accreditation scheme means the accreditation scheme referred to in section 35.

Advisory Board means the Fair Work Building Industry Inspectorate Advisory Board referred to in section 23.

~~*AIRC* means the Australian Industrial Relations Commission established by section 8 of the Workplace Relations Act.~~

Australian Fair Pay and Conditions Standard has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

AWA has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

award has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

~~*bargaining representative* has the same meaning as in the FW Act.~~

building association means an industrial association whose eligibility rules allow membership by at least one of the following groups:

- (a) building employers;
- (b) building employees;
- (c) building contractors;

whether or not those rules also allow membership by other persons.

Building Code means the code of practice referred to in section 27.

building contractor means a person who has entered into, or who has offered to enter into, a contract for services under which the person:

- (a) carries out building work; or
- (b) arranges for building work to be carried out.

building employee means:

- (a) a person whose employment consists of, or includes, building work; or
- (b) a person who accepts an offer of engagement as an employee for work that consists of, or includes, building work.

building employer means an employer who employs, or offers to employ, building employees.

~~**building enterprise agreement** means an enterprise agreement that applies to building work (whether or not it also applies to other work).~~

building industry participant means any of the following:

- (a) a building employee;
- (b) a building employer;
- (c) a building contractor;
- (d) a person who enters into a contract with a building contractor under which the building contractor agrees to carry out building work or to arrange for building work to be carried out;
- (e) a building association;
- (f) an officer, delegate or other representative of a building association;
- (g) an employee of a building association.

~~**building matter** has the meaning given by subsection 59C(3).~~

building work has the meaning given by section 5.

Section 4

~~**civil penalty provision** means:~~

- ~~(a) a Grade A civil penalty provision; or~~
- ~~(b) a Grade B civil penalty provision.~~

~~**collective agreement** has the meaning given by the Workplace Relations Act.~~

~~**Commissioner** means the ABC Commissioner or a Deputy ABC Commissioner.~~

~~**Commonwealth authority** (except in section 35) means:~~

- ~~(a) a body corporate established for a public purpose by or under a law of the Commonwealth; or~~
- ~~(b) a body corporate:~~
 - ~~(i) incorporated under a law of the Commonwealth or a State or Territory; and~~
 - ~~(ii) in which the Commonwealth has a controlling interest.~~

Commonwealth industrial instrument means any of the following:

- (a) an award or transitional award;
- (b) a workplace agreement;
- (c) a pre-reform certified agreement or a pre-reform AWA;
- (d) an order of the AIRC Australian Industrial Relations Commission;
- (e) the Australian Fair Pay and Conditions Standard;
- (f) a fair work instrument;
- (g) the National Employment Standards.

Commonwealth Ombudsman means the person for the time being holding office as Ombudsman under the Ombudsman Act 1976.

Commonwealth place means a place referred to in paragraph 52(i) of the Constitution, other than the seat of government.

conduct includes an omission.

constitutional corporation means:

- (a) a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) a body corporate that is incorporated in a Territory.

~~**Deputy ABC Commissioner** means a Deputy Australian Building and Construction Commissioner referred to in section 9.~~

designated building law means:

- (a) ~~this Act~~, the *Independent Contractors Act 2006*, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or
- (b) a Commonwealth industrial instrument.

Director means the Director of the Fair Work Building Industry Inspectorate referred to in section 9.

eligibility rules means rules that relate to the conditions of eligibility for membership.

~~**eligible condition** means a condition relating to:~~

- ~~(a) the times or days when work is to be performed; or~~
- ~~(b) inclement weather procedures; or~~
- ~~(c) any other matter prescribed by the regulations for the purposes of this paragraph.~~

~~**employee organisation** means an organisation of employees.~~

~~**enterprise agreement** has the same meaning as in the FW Act.~~

examination has the meaning given by subsection 51(1).

examination notice means an examination notice issued under Division 3 of Part 1 of Chapter 7.

Fair Work Building Industry Inspector means:

- (a) the Director; or
- (b) a person appointed as a Fair Work Building Industry Inspector under section 59.

Fair Work Inspector has the same meaning as in the FW Act.

fair work instrument has the same meaning as in the FW Act.

Fair Work Ombudsman has the same meaning as in the FW Act.

Federal Court means the Federal Court of Australia.

Section 4

Federal Safety Commissioner means the Federal Safety Commissioner referred to in section 29.

Federal Safety Officer means a Federal Safety Officer referred to in section 60.

~~**full-time Commissioner** means:~~

- ~~(a) the ABC Commissioner; or~~
- ~~(b) a Deputy ABC Commissioner appointed on a full time basis.~~

FWA has the same meaning as in the FW Act.

FW Act means the *Fair Work Act 2009*.

~~**Grade A civil penalty provision** means:~~

- ~~(a) a section of this Act (other than a section that is divided into subsections) that has a note at its foot stating “Grade A civil penalty”; or~~
- ~~(b) a subsection of this Act that has a note at its foot stating “Grade A civil penalty”.~~

~~**Grade B civil penalty provision** means:~~

- ~~(a) a section of this Act (other than a section that is divided into subsections) that has a note at its foot stating “Grade B civil penalty”; or~~
- ~~(b) a subsection of this Act that has a note at its foot stating “Grade B civil penalty”.~~

~~**Independent Assessor** means the Independent Assessor—Special Building Industry Powers referred to in section 36B.~~

independent contractor has the same meaning as in the FW Act.

industrial association means:

- (a) an association of employees or independent contractors, or both, or an association of employers, that is registered or recognised as such an association (however described) under a workplace law (within the meaning of the FW Act); or
- (b) an association of employees, or independent contractors, or both, a purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors (as the case may be); or

(c) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment, independent contractors or both;

and includes:

- (d) a branch of such an association; and
- (e) an organisation; and
- (f) a branch of an organisation.

~~*industrial body* has the same meaning as in the FW Act.~~

~~*industrial instrument* means an award or agreement, however designated, that:~~

- ~~(a) is made under or recognised by an industrial law; and~~
- ~~(b) deals with the relationship between employers and employees, concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.~~

~~*industrial law* means:~~

- ~~(a) this Act, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or~~
- ~~(b) a law, however designated, of the Commonwealth or of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.~~

~~*inspector* means a Fair Work Building Industry Inspector.~~

~~*investigation* means an investigation to which Part 1 of Chapter 7 applies.~~

~~*lawyer* means a person who is admitted to the legal profession by a Supreme Court of a State or Territory.~~

~~*National Employment Standards* has the same meaning as in the FW Act.~~

~~*nominated AAT presidential member* means an AAT presidential member in respect of whom a nomination is in force under section 44 to issue examination notices under Division 3 of Part 1 of Chapter 7.~~

Section 4

occupier has the same meaning as in the FW Act.

Office means the Office of the Fair Work Building Industry Inspectorate referred to in section 26J.

office, in relation to an organisation or industrial association or a branch of an organisation or industrial association, has the meaning given by section 6.

officer, in relation to an organisation or industrial association, means a person who holds an office in the organisation or association.

organisation has the same meaning as in the *Fair Work (Registered Organisations) Act 2009*.

~~**part-time Commissioner** means a Deputy ABC Commissioner appointed on a part-time basis.~~

~~**penalty unit** has the meaning given by section 4AA of the *Crimes Act 1914*.~~

premises has the same meaning as in the FW Act.

pre-reform AWA has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

pre-reform certified agreement has the same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

~~**protected industrial action** has the same meaning as in the FW Act.~~

safety net contractual entitlement has the same meaning as in the FW Act.

Secretary means the Secretary of the Department.

this Act includes the regulations.

~~**transitional award** has the meaning given by the Workplace Relations Act.~~ same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

~~*unlawful industrial action* has the meaning given by section 37.~~

workplace agreement means a workplace agreement within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, and includes an AWA.

~~*Workplace Relations Act* means the *Workplace Relations Act 1996*.~~

- (2) In this Act, unless the contrary intention appears:
- (a) a reference to *employee* has its ordinary meaning; and
 - (b) a reference to *employee* with its ordinary meaning includes a reference to an individual who is usually an employee with that meaning; and
 - (c) a reference to *employee* with its ordinary meaning does not include a reference to an individual on a vocational placement; and
 - (d) a reference to *employer* has its ordinary meaning; and
 - (e) a reference to *employer* with its ordinary meaning includes a reference to a person or entity that is usually an employer with that meaning.

5 Definition of *building work*

- (1) Subject to subsections (2), (3) and (4), *building work* means any of the following activities:
- (a) the construction, alteration, extension, restoration, repair, demolition or dismantling of buildings, structures or works that form, or are to form, part of land, whether or not the buildings, structures or works are permanent;
 - (b) the construction, alteration, extension, restoration, repair, demolition or dismantling of railways (not including rolling stock) or docks;
 - (c) the installation in any building, structure or works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;
 - (d) any operation that is part of, or is preparatory to, or is for rendering complete, work covered by paragraph (a), (b) or (c), for example:

Section 5

- (i) site clearance, earth-moving, excavation, tunnelling and boring;
- (ii) the laying of foundations;
- (iii) the erection, maintenance or dismantling of scaffolding;
- (iv) ~~the prefabrication of made-to-order components to form part of any building, structure or works, whether carried out on-site or off-site; the on-site prefabrication of made-to-order components to form part of any building, structure or works;~~
- (v) site restoration, landscaping and the provision of roadways and other access works;

but does not include any of the following:

- (e) the drilling for, or extraction of, oil or natural gas;
 - (f) the extraction (whether by underground or surface working) of minerals, including tunnelling or boring, or constructing underground works, for that purpose;
 - (g) any work that is part of a project for:
 - (i) the construction, repair or restoration of a single-dwelling house; or
 - (ii) the construction, repair or restoration of any building, structure or work associated with a single-dwelling house; or
 - (iii) the alteration or extension of a single-dwelling house, if it remains a single-dwelling house after the alteration or extension.
- (2) Paragraph (1)(g) does not apply if the project is part of a multi-dwelling development that consists of, or includes, the construction of at least 5 single-dwelling houses.
- (3) Subject to subsection (4), **building work** includes any activity that is prescribed by the regulations for the purposes of this subsection.
- (4) **Building work** does not include any activity that is prescribed by the regulations for the purposes of this subsection.
- (5) In this section:
- land** includes land beneath water.

6 Definition of *office*

- (1) In this Act, *office*, in relation to an association, means:
- (a) an office of president, vice president, secretary or assistant secretary of the association; or
 - (b) the office of a voting member of a collective body of the association, being a collective body that has power in relation to any of the following functions:
 - (i) the management of the affairs of the association;
 - (ii) the determination of policy for the association;
 - (iii) the making, alteration or rescission of rules of the association;
 - (iv) the enforcement of rules of the association, or the performance of functions in relation to the enforcement of such rules; or
 - (c) an office the holder of which is, under the rules of the association, entitled to participate directly in any of the functions referred to in subparagraphs (b)(i) and (iv), other than an office the holder of which participates only in accordance with directions given by a collective body or another person for the purpose of implementing:
 - (i) existing policy of the association; or
 - (ii) decisions concerning the association; or
 - (d) an office the holder of which is, under the rules of the association, entitled to participate directly in any of the functions referred to in subparagraphs (b)(ii) and (iii); or
 - (e) the office of a person holding (whether as trustee or otherwise) property:
 - (i) of the association; or
 - (ii) in which the association has a beneficial interest.

In this subsection, *association* means an organisation or branch of an organisation, or an industrial association or branch of an industrial association.

- (2) In this Act, a reference to an *office* in an organisation or industrial association includes a reference to an office in a branch of the organisation or association.

Section 7

7 Extension to Christmas Island

- (1) This Act extends to the Territory of Christmas Island.
- (2) This Act applies in relation to the Territory of Christmas Island with such modifications as are prescribed by the regulations.
- (3) In this section:
modifications includes additions, omissions and substitutions.

8 Act to bind Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) Nothing in this Act renders the Commonwealth or a State or Territory liable to be prosecuted for an offence.

~~Chapter 2—Australian Building and Construction Commissioner~~

~~Part 1—Australian Building and Construction Commissioner~~

~~9—ABC Commissioner and Deputy ABC Commissioners~~

- ~~(1) There is to be an Australian Building and Construction Commissioner (the *ABC Commissioner*).~~
- ~~(2) The ABC Commissioner is to be assisted by such number of Deputy Australian Building and Construction Commissioners (*Deputy ABC Commissioners*) as are appointed from time to time.~~

~~10—Functions of ABC Commissioner~~

~~The ABC Commissioner has the following functions:~~

- ~~(a) monitoring and promoting appropriate standards of conduct by building industry participants, including by:
 - ~~(i) monitoring and promoting compliance with this Act, the *Independent Contractors Act 2006*, the *FW Act* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; and~~
 - ~~(ii) monitoring and promoting compliance with the Building Code; and~~
 - ~~(iii) referring matters to other relevant agencies and bodies;~~~~
- ~~(b) investigating suspected contraventions, by building industry participants, of:
 - ~~(i) this Act, the *Independent Contractors Act 2006*, the *FW Act*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or a Commonwealth industrial instrument; and~~
 - ~~(ii) the Building Code;~~~~
- ~~(c) instituting, or intervening in, proceedings, or making submissions, in accordance with this Act;~~

Section 11

- ~~————— (d) providing assistance and advice to building industry participants regarding their rights and obligations under this Act, the *Independent Contractors Act 2006*, the *FW Act* and the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;~~
- ~~————— (e) providing representation to a building industry participant who is, or might become, a party to a proceeding under this Act, the *Independent Contractors Act 2006*, the *FW Act* or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, if the ABC Commissioner considers that providing the representation would promote the enforcement of this Act, the *Independent Contractors Act 2006*, the *FW Act* or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;~~
- ~~————— (f) disseminating information about this Act, the *Independent Contractors Act 2006*, the *FW Act*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the Building Code, and about other matters affecting building industry participants, including disseminating information by facilitating ongoing discussions with building industry participants;~~
- ~~————— (g) any other functions conferred on the ABC Commissioner by this Act or by another Act;~~
- ~~————— (h) any other functions conferred on the ABC Commissioner by the regulations.~~

~~11 Minister's directions to ABC Commissioner~~

- ~~————— (1) The Minister may give written directions to the ABC Commissioner specifying the manner in which the ABC Commissioner must exercise or perform the powers or functions of the ABC Commissioner under this Act.~~
- ~~————— (2) The Minister must not give a direction under subsection (1) about a particular case.~~
- ~~————— (3) The ABC Commissioner must comply with a direction under subsection (1).~~
- ~~————— (4) A direction under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.~~

~~(5) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a direction under subsection (1) of this section.~~

~~12 Minister may require reports~~

~~(1) The Minister may, in writing, direct the ABC Commissioner to give the Minister specified reports relating to the ABC Commissioner's functions.~~

~~Note: See also section 66, which restricts the disclosure of personal information in a report.~~

~~(2) The ABC Commissioner must comply with the direction.~~

~~13 Delegation by ABC Commissioner~~

~~(1) The ABC Commissioner may, in writing, delegate all or any of his or her powers and functions under this Act to:~~

~~(a) a Deputy ABC Commissioner; or~~

~~(b) an ABC Inspector; or~~

~~(c) an SES employee or acting SES employee; or~~

~~(d) a person prescribed by the regulations for the purposes of this paragraph.~~

~~(2) Powers or functions under section 52 may only be delegated to a Deputy ABC Commissioner.~~

~~(3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the ABC Commissioner.~~

~~(4) As soon as practicable after delegating any power or function under this section, the ABC Commissioner must publish details of the delegation.~~

~~14 Annual report~~

~~(1) As soon as practicable after the end of each financial year, the ABC Commissioner must prepare and give to the Minister a report on the operations of the ABC Commissioner during that year.~~

~~(2) The report must include:~~

Section 14

- ~~(a) details of the number, and type, of matters that were investigated by the ABC Commissioner during the financial year; and~~
- ~~(b) details of assistance provided during the financial year to building employees and building contractors in connection with the recovery of unpaid entitlements; and~~
- ~~(c) details of the extent to which the Building Code was complied with during the financial year.~~

~~Note: See also section 66, which restricts the disclosure of personal information in a report.~~

- ~~(3) The report must also include:~~
 - ~~(a) details of directions given by the Minister during the financial year under section 11 or 12; and~~
 - ~~(b) details of delegations by the ABC Commissioner under section 13 during the financial year.~~
- ~~(4) The Minister may notify the ABC Commissioner in writing of particular occupational health and safety matters that need not be covered in the paragraph (2)(c) part of the report.~~
- ~~(5) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.~~

~~Part 2 — Administrative provisions~~

~~15 — Appointment~~

- ~~(1) A Commissioner is to be appointed by the Minister by written instrument.~~
- ~~(2) The appointment:
 - ~~(a) is to be on a full time basis for the ABC Commissioner; and~~
 - ~~(b) is to be on a full time basis or part time basis for a Deputy ABC Commissioner.~~~~
- ~~(3) The Minister must not appoint a person as a Commissioner unless the Minister is satisfied that the person:
 - ~~(a) has suitable qualifications or experience; and~~
 - ~~(b) is of good character.~~~~
- ~~(4) A Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.~~
- ~~(5) A Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.~~

~~16 — Acting ABC Commissioner~~

- ~~(1) The Minister may appoint a person to act as the ABC Commissioner:
 - ~~(a) during a vacancy in the office of ABC Commissioner (whether or not an appointment has previously been made to the office); or~~
 - ~~(b) during any period, or during all periods, when the ABC Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.~~~~
- ~~(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - ~~(a) the occasion for the appointment had not arisen; or~~
 - ~~(b) there was a defect or irregularity in connection with the appointment; or~~~~

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- ~~———— (c) the appointment had ceased to have effect; or~~
- ~~———— (d) the occasion to act had not arisen or had ceased.~~

~~17 Remuneration~~

- ~~———— (1) A Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a Commissioner is to be paid the remuneration that is prescribed.~~
- ~~———— (2) A Commissioner is to be paid the allowances that are prescribed.~~
- ~~———— (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.~~

~~18 Application of the Judges' Pensions Act to a former Judge of the Federal Court who becomes the ABC Commissioner~~

- ~~———— (1) If:~~
 - ~~———— (a) a person is or has been the ABC Commissioner; and~~
 - ~~———— (b) the person is a former Judge of the Federal Court; and~~
 - ~~———— (c) the person ceased to hold office as such a Judge immediately before the beginning of the person's term of appointment, or first term of appointment, as the ABC Commissioner; the provisions of the *Judges' Pensions Act 1968* (including provisions relating to spouses and children) apply to and in relation to the person as though:~~
 - ~~———— (d) the ABC Commissioner were or had been a Judge; and~~
 - ~~———— (e) the person's service as the ABC Commissioner were service as a Judge; and~~
 - ~~———— (f) the appropriate current judicial salary of the person were the salary for the time being payable to a Judge, other than the Chief Judge, of the Federal Court.~~
- ~~———— (2) Pensions or other benefits paid as a result of this section are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.~~

~~**19 Application of the Judges' Pensions Act to a former member of the AIRC who becomes the ABC Commissioner**~~

- ~~(1) If:~~
- ~~(a) a person is or has been the ABC Commissioner; and~~
 - ~~(b) the person is a former member of the AIRC to whom the *Judges' Pensions Act 1968* applied; and~~
 - ~~(c) the person ceased to hold office as such a member immediately before the beginning of the person's term of appointment, or first term of appointment, as the ABC Commissioner;~~
~~the provisions of the *Judges' Pensions Act 1968* (including provisions relating to spouses and children) apply to and in relation to the person as though:~~
 - ~~(d) the ABC Commissioner were or had been a Judge; and~~
 - ~~(e) the person's service as the ABC Commissioner were service as a Judge; and~~
 - ~~(f) the appropriate current judicial salary of the person were the salary that would have been the person's appropriate current judicial salary if the person had remained such a member.~~
- ~~(2) Pensions or other benefits paid as a result of this section are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.~~

~~**20 Leave**~~

- ~~(1) A full-time Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.~~
- ~~(2) The Minister may grant a full-time Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.~~
- ~~(3) The Minister may grant a part-time Commissioner leave of absence (including recreation leave) on the terms and conditions as to remuneration or otherwise that the Minister determines.~~

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~~21 Engaging in other paid employment etc.~~

- ~~———— (1) A full time Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's approval.~~
- ~~———— (2) A part time Commissioner must not engage in any paid employment that conflicts or may conflict with the proper performance of the Commissioner's duties.~~

~~22 Disclosure of interests~~

- ~~———— A Commissioner must give written notice to the Minister of all interests (financial or otherwise) that the Commissioner has or acquires and that could conflict with the proper performance of the Commissioner's functions.~~

~~23 Resignation~~

- ~~———— A Commissioner may resign his or her appointment by giving the Minister a written resignation.~~

~~24 Termination of appointment~~

- ~~———— (1) The Minister may terminate the appointment of a Commissioner if:
 - ~~———— (a) the Commissioner:
 - ~~———— (i) becomes bankrupt; or~~
 - ~~———— (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or~~
 - ~~———— (iii) compounds with his or her creditors; or~~
 - ~~———— (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or~~~~
 - ~~———— (b) the Commissioner fails, without reasonable excuse, to comply with section 21 or 22; or~~
 - ~~———— (c) the Commissioner is a full time Commissioner and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.~~~~
- ~~———— (2) Subject to subsections (3), (4) and (5), the Minister may terminate the appointment of a Commissioner on the ground of misbehaviour or physical or mental incapacity.~~

- ~~(3) If a Commissioner:~~
- ~~(a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and~~
- ~~(b) has not reached his or her maximum retiring age (within the meaning of that Act);~~
- ~~his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given a certificate under section 54C of that Act.~~
- ~~(4) If a Commissioner:~~
- ~~(a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and~~
- ~~(b) is under 60 years of age;~~
- ~~his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given a certificate under section 13 of that Act.~~
- ~~(5) If a Commissioner:~~
- ~~(a) is an ordinary employer sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and~~
- ~~(b) is under 60 years of age;~~
- ~~his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.~~

25 Staff and consultants

- ~~(1) The staff required to assist the ABC Commissioner in the performance of the ABC Commissioner's functions are to be persons engaged under the *Public Service Act 1999*.~~
- ~~(2) For the purposes of the *Public Service Act 1999*:~~
- ~~(a) the ABC Commissioner and the APS employees so assisting the ABC Commissioner together constitute a Statutory Agency; and~~
- ~~(b) the ABC Commissioner is the Head of that Statutory Agency.~~
- ~~(3) The ABC Commissioner may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the ABC Commissioner. The terms and conditions~~

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~~of the engagement of a person are such as are determined by the ABC Commissioner in writing.~~

~~Note: — See also section 71 of the *Public Service Act 1999*, which makes provision for State employees to perform services in an Agency (as defined in that Act).~~

~~26 Office of the Australian Building and Construction Commissioner~~

- ~~(1) The Office of the Australian Building and Construction Commissioner is established by this subsection.~~
- ~~(2) The Office of the Australian Building and Construction Commissioner consists of:~~
 - ~~(a) the ABC Commissioner; and~~
 - ~~(b) the Deputy ABC Commissioners; and~~
 - ~~(c) the staff mentioned in subsection 25(1); and~~
 - ~~(d) the consultants engaged under subsection 25(3).~~

Chapter 2—Fair Work Building Industry Inspectorate

Part 1—Director

9 Establishment

~~There is to be a Director of the Fair Work Building Industry Inspectorate.~~

10 Functions

~~The Director has the following functions:~~

- ~~(a) to promote:~~
 - ~~(i) harmonious, productive and cooperative workplace relations in the building industry; and~~
 - ~~(ii) compliance with designated building laws and the Building Code by building industry participants;~~

including by providing education, assistance and advice to building industry participants;

(b) to monitor compliance with designated building laws and the Building Code by building industry participants;

(c) to inquire into, and investigate, any act or practice by a building industry participant that may be contrary to a designated building law, a safety net contractual entitlement or the Building Code;

(d) to commence proceedings in a court, or to make applications to FWA, to enforce designated building laws and safety net contractual entitlements as they relate to building industry participants;

(e) to refer matters to relevant authorities;

(f) to represent building industry participants who are, or may become, a party to proceedings in a court, or a party to a matter before FWA, under a designated building law, if the Director considers that representing the building industry participants will promote compliance with designated building laws;

(g) to disseminate information about designated building laws and the Building Code, and about other matters affecting building industry participants, including disseminating information by facilitating ongoing discussions with building industry participants;

(h) to make submissions and provide information to the Independent Assessor in accordance with this Act;

(i) any other functions conferred on the Director by any Act.

Note: The Director also has the functions of an inspector (see section 59A).

11 Minister's directions

(1) The Minister may, by legislative instrument, give directions to the Director about:

(a) the policies, programs and priorities of the Director; and

(b) the manner in which the Director is to perform the functions or exercise the powers of the Director.

(2) The Minister must not give a direction under subsection (1) about a particular case.

Section 12

(3) The Director must comply with a direction under subsection (1).

(4) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a direction under subsection (1) of this section.

12 Minister may require reports

(1) The Minister may, in writing, direct the Director to give the Minister specified reports relating to the Director's functions and powers.

Note: See also section 66, which restricts the disclosure of personal information in a report.

(2) The Director must comply with the direction.

(3) A direction under subsection (1) is not a legislative instrument.

13 Delegation by the Director

General power to delegate

(1) Subject to subsections (2) and (3), the Director may, in writing, delegate all or any of the Director's functions or powers under any Act to:

- (a) a member of staff referred to in subsection 26K(1); or
- (b) an inspector.

Functions and powers that must not be delegated

(2) The Director must not delegate his or her functions or powers:

- (a) as an inspector; or
- (b) under section 45 (which deals with applying for an examination notice); or
- (c) under subsection 50(3) or (4) (which deal with varying the time for compliance with an examination notice).

Functions and powers that may only be delegated to SES employees

- (3) The Director must not delegate his or her functions or powers under the following provisions to anyone other than a member of staff referred to in subsection 26K(1) who is an SES employee:
- (a) subsection 51(2) (which deals with conducting an examination);
 - (b) subsection 51(4) (which deals with administering an oath or affirmation at an examination).

Delegate subject to direction

- (4) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Director.

Details of delegation must be published

- (5) As soon as practicable after delegating any function or power under this section, the Director must publish details of the delegation.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

14 Annual report

- (1) The Director must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the performance of the Director's functions and the exercise of the Director's powers during that year.

Note 1: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

Note 2: See also section 66 of this Act, which restricts the disclosure of personal information in a report.

- (2) The report must include:
- (a) details of directions given by the Minister during the financial year under section 11 or 12; and
 - (b) details of delegations by the Director under section 13 during the financial year; and
 - (c) details of recommendations made to the Director by the Advisory Board during the financial year.

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15 Appointment

- ~~(1) The Director is to be appointed by the Minister by written instrument.~~
- ~~(2) The appointment is to be on a full-time basis.~~
- ~~(3) The Minister must not appoint a person as the Director unless the Minister is satisfied that the person:~~
- ~~(a) has suitable qualifications or experience; and~~
 - ~~(b) is of good character.~~
- ~~(4) The Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.~~
- ~~(5) The Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.~~

16 Acting appointments

- ~~(1) The Minister may, by written instrument, appoint a person to act as the Director:~~
- ~~(a) during a vacancy in the office of Director (whether or not an appointment has previously been made to the office); or~~
 - ~~(b) during any period, or during all periods, when the Director:~~
 - ~~(i) is absent from duty or from Australia; or~~
 - ~~(ii) is, for any reason, unable to perform the duties of the office.~~
- ~~(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:~~
- ~~(a) the occasion for the appointment had not arisen; or~~
 - ~~(b) there was a defect or irregularity in connection with the appointment; or~~
 - ~~(c) the appointment had ceased to have effect; or~~
 - ~~(d) the occasion to act had not arisen or had ceased.~~

~~Note: See sections 20 and For rules that apply to acting appointments, see section 33A of the Acts Interpretation Act 1901.~~

17 Remuneration

- (1) The Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director is to be paid the remuneration that is prescribed by the regulations.
- (2) The Director is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

18 Leave of absence

- (1) The Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

19 Engaging in other paid employment

The Director must not engage in paid employment outside the duties of his or her office without the Minister's approval.

20 Disclosure of interests

The Director must give written notice to the Minister of all material personal interests that the Director has or acquires and that conflict or could conflict with the proper performance of the Director's functions.

21 Resignation

- (1) The Director may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

Section 22

22 Termination

(1) The Minister may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of the Director if:

(a) the Director:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Director is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the Director engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 19); or

(d) the Director fails, without reasonable excuse, to comply with section 20.

**Part 2—Fair Work Building Industry Inspectorate
Advisory Board**

23 Establishment

The Fair Work Building Industry Inspectorate Advisory Board is established by this section.

24 Role

The Advisory Board is to make recommendations to the Director about:

(a) policies to guide the performance of the Director's functions and the exercise of the Director's powers; and

(b) the priorities of, and the programs to be implemented by, the Director; and

(c) any matter that the Minister requests the Advisory Board to consider.

25 Membership

The Advisory Board consists of the following members:

- (a) the Director;
- (b) the Fair Work Ombudsman;
- (c) one member who has experience or background in employee representation in the building industry;
- (d) one member who has experience or background in employer representation in the building industry;
- (e) no more than 3 other members.

26 Appointment of members

- (1) A member of the Advisory Board (other than the Director or the Fair Work Ombudsman) is to be appointed by the Minister by written instrument.

Note: A member of the Advisory Board is eligible for re-appointment (see subsection 33(4AA) of the *Acts Interpretation Act 1901*).

- (2) The Minister must not appoint a person as a member unless the Minister is satisfied that the person has knowledge of, or experience in, one or more of the following fields:

- (a) workplace relations;
- (b) law;
- (c) business, industry or commerce.

- (3) A member appointed by the Minister holds office on a part-time basis.

- (4) A member appointed by the Minister holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

26A Chair

- (1) The Minister must appoint a member (other than the Director or the Fair Work Ombudsman) to be the Chair of the Advisory Board.

- (2) The Minister may, by written instrument, appoint a member (other than the Director or the Fair Work Ombudsman) to act as the Chair:

Section 26B

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

26B Remuneration of members

- (1) A member appointed by the Minister is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) A member appointed by the Minister is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

26C Leave of members

- (1) The Minister may grant the Chair leave of absence on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants to a member leave of absence for a period that exceeds 6 months.

26D Resignation of members

- (1) A member appointed by the Minister may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

26E Termination of appointment

- (1) The Minister may terminate the appointment of a member (other than the Director or the Fair Work Ombudsman) for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a member (other than the Director or the Fair Work Ombudsman) if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Advisory Board.

26F Other terms and conditions

A member (other than the Director or the Fair Work Ombudsman) holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

26G Meetings

- (1) The Chair must convene:
 - (a) such meetings of the Advisory Board as are, in his or her opinion, necessary for the performance of its role; and
 - (b) at least 2 meetings of the Advisory Board in each financial year; and
 - (c) such meetings of the Advisory Board as are requested by the Director.
- (2) The quorum for a meeting is the Chair, the Director and the Fair Work Ombudsman.
- (3) A question arising at a meeting of the Advisory Board is to be decided by a majority of the votes of the members present and voting.

Section 26H

(4) The Chair must preside at all meetings.

(5) At a meeting, the Chair has a deliberative vote and, in the event of an equality of votes, has a casting vote.

26H Decisions without meetings

(1) The Advisory Board is taken to have made a decision at a meeting if:

- (a) without meeting, a majority of the members indicate agreement with the decision; and
- (b) that agreement is indicated in accordance with the method determined by the Advisory Board under subsection (2); and
- (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.

(2) Subsection (1) applies only if the Advisory Board:

- (a) has determined that it may make decisions of that kind without meeting; and
- (b) has determined the method by which members are to indicate agreement with proposed decisions.

(3) The Advisory Board must keep a record of decisions made in accordance with this section.

Part 3—Office of the Fair Work Building Industry Inspectorate

26J Office of the Fair Work Building Industry Inspectorate

The Office of the Fair Work Building Industry Inspectorate is established by this section.

26K Staff

(1) The staff of the Office are to be persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:

(a) the Director and the staff of the Office together constitute a Statutory Agency; and

(b) the Director is the Head of that Statutory Agency.

26L Persons assisting the Director

The Director may also be assisted:

(a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or

(b) by officers and employees of a State or Territory; or

(c) by officers and employees of authorities of the Commonwealth, a State or a Territory;

whose services are made available to the Director in connection with the performance of any of his or her functions.

Note: For example, State or Territory employees could be made available to assist the Director in providing education in a particular region.

26M Consultants

The Director may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Director. The terms and conditions of the engagement of a person are such as are determined by the Director in writing.

Note: See also section 71 of the *Public Service Act 1999*, which makes provision for State employees to perform services in an Agency (as defined in that Act).

Chapter 3—The Building Code

27 Minister to issue Building Code

- (1) The Minister may issue one or more documents that together constitute a code of practice (the *Building Code*) that is to be complied with by persons in respect of building work.
- (2) Without limiting subsection (1), the Minister may issue one or more documents under that subsection in relation to occupational health and safety matters relating to building work.
- (3) The Building Code cannot require a person to comply with the Code in respect of particular building work (the *current work*) unless:
 - (a) the person is a building contractor that is a constitutional corporation; or
 - (b) the person is a building industry participant and the current work is to be carried out in a Territory or Commonwealth place.
- (4) Before exercising powers under this section, the Minister must take into account any relevant recommendations of the Federal Safety Commissioner in relation to occupational health and safety matters.
- (5) A document issued under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

~~28 Building industry participants to report on compliance with Code~~

- ~~(1) This section applies to a person who is required to comply with the Building Code in respect of particular building work.~~
- ~~(2) The ABC Commissioner may, by notice in writing, direct the person to give a written report to the ABC Commissioner, within the period specified in the direction, containing specified information about the extent to which the person complied with the Building Code in respect of that building work. The specified period must be at least 14 days.~~

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~~(3) The person must comply with the requirement.~~

Note: ~~Grade B civil penalty.~~

~~(4) The ABC Commissioner must give a copy of the report to the Federal Safety Commissioner.~~

Internal Working Document

Chapter 4—Occupational health and safety

Part 1—Federal Safety Commissioner

29 Federal Safety Commissioner

- (1) The Secretary must, by writing, designate a position in the Department as the position of Federal Safety Commissioner.
Note: For creation of positions, see section 77 of the *Public Service Act 1999*.
- (2) That position can only be occupied by an SES employee.
- (3) The Federal Safety Commissioner is the SES employee who occupies that position.
- (4) An instrument under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

30 Functions of Federal Safety Commissioner

The Federal Safety Commissioner has the following functions:

- (a) promoting occupational health and safety in relation to building work;
- (b) monitoring and promoting compliance with the Building Code, so far as the Code deals with occupational health and safety;
- (c) disseminating information about the Building Code, so far as the Code deals with occupational health and safety;
- (d) performing functions as the accreditation authority for the purposes of the accreditation scheme;
- (e) promoting the benefits of the accreditation scheme and disseminating information about the accreditation scheme;
- (f) referring matters to other relevant agencies and bodies;
- (g) any other functions conferred on the Federal Safety Commissioner by this Act or by another Act;
- (h) any other functions conferred on the Federal Safety Commissioner by the regulations.

31 Minister's directions to Federal Safety Commissioner

- (1) The Minister may give written directions to the Federal Safety Commissioner specifying the manner in which the Federal Safety Commissioner must exercise or perform the powers or functions of the Federal Safety Commissioner under this Act.
- (2) The Minister must not give a direction under subsection (1) about a particular case.
- (3) The Federal Safety Commissioner must comply with a direction under subsection (1).
- (4) A direction under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (5) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a direction under subsection (1) of this section.

32 Delegation by Federal Safety Commissioner

- (1) The Federal Safety Commissioner may, in writing, delegate all or any of his or her powers and functions under this Act to:
 - (a) a Federal Safety Officer; or
 - (b) an SES employee or acting SES employee; or
 - (c) a person prescribed by the regulations for the purposes of this paragraph.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Federal Safety Commissioner.
- (3) As soon as practicable after delegating any power or function under this section, the Federal Safety Commissioner must publish details of the delegation.

33 Acting Federal Safety Commissioner

If an SES employee is acting in the position of Federal Safety Commissioner:

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- (a) the SES employee has and may exercise all the powers, and is to perform all the functions and duties, of the occupier of the position of Federal Safety Commissioner; and
- (b) this Act, and any other law of the Commonwealth, applies in relation to the SES employee as if the SES employee were the occupier of the position of Federal Safety Commissioner.

34 Consultants

- (1) The Federal Safety Commissioner may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Federal Safety Commissioner.
- (2) The terms and conditions of the engagement of a person are such as are determined by the Federal Safety Commissioner in writing.

Part 2—Accreditation scheme for Commonwealth building work

35 Accreditation scheme

Accreditation scheme

- (1) The regulations may prescribe an accreditation scheme for persons who wish to carry out building work funded by the Commonwealth or a Commonwealth authority.
- (2) The regulations must provide for the Federal Safety Commissioner to be the accrediting authority under the scheme.
- (3) The regulations may prescribe fees for applications made under the regulations.

Commonwealth building work to be carried out by accredited persons

- (4) The Commonwealth or a Commonwealth authority must not fund building work unless:
 - (a) contracts for the building work entered into with builders will be entered into with builders who are accredited persons; and
 - (b) at the time of the funding, the Commonwealth or Commonwealth authority, as the case may be, takes appropriate steps to ensure that builders will be accredited persons when they carry out the building work.

This subsection does not apply to building work prescribed by the regulations.

- (5) For the purposes of this section, the Commonwealth or a Commonwealth authority funds building work if it:
 - (a) pays for, or otherwise funds or finances, the building work (whether directly or indirectly); or
 - (b) facilitates the carrying out of the building work by entering into, or otherwise funding or financing (whether directly or indirectly), a pre-construction agreement that relates to the building work.

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- (6) If another Commonwealth provision is inconsistent with subsection (4), subsection (4) prevails to the extent of the inconsistency unless the other provision expressly refers to this section.
- (7) Failure to comply with subsection (4) does not affect the validity of anything done by the Commonwealth or a Commonwealth authority in relation to building work.
- (8) In this section:

accredited person means a person who is accredited under the accreditation scheme.

builder, in relation to building work, means a person who carries out any of the building work.

Commonwealth authority means a Commonwealth authority within the meaning of the *Commonwealth Authorities and Companies Act 1997*.

Commonwealth provision means a provision of a law of the Commonwealth.

pre-construction agreement means an agreement to lease or transfer land, a building or a part of a building on the condition, or on conditions that include the condition, that building work will be carried out on the land, the building or the part of the building.

Chapter 5—Industrial action etc.

Part 1—Preliminary

36—Definitions

(1) In this Chapter, unless the contrary intention appears:

building industrial action means:

(a) the performance of building work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to building work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:

(i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial instrument or an order of an industrial body; or

(ii) the work is performed, or the practice is adopted, in connection with an industrial dispute (within the meaning of subsection (4)); or

(b) a ban, limitation or restriction on the performance of building work, or on acceptance of or offering for building work, in accordance with the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or

(c) a ban, limitation or restriction on the performance of building work, or on acceptance of or offering for building work, that is adopted in connection with an industrial dispute (within the meaning of subsection (4)); or

(d) a failure or refusal by persons to attend for building work or a failure or refusal to perform any work at all by persons who attend for building work;

but does not include:

(e) action by employees that is authorised or agreed to, in advance and in writing, by the employer of the employees; or

(f) action by an employer that is authorised or agreed to, in advance and in writing, by or on behalf of employees of the employer; or

(g) action by an employee if:

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~~(i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and~~

~~(ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe for the employee to perform.~~

~~Note: See also subsection (2), which deals with the burden of proof of the exception in paragraph (e) of this definition.~~

~~**constitutionally-connected action** means building industrial action that satisfies at least one of the following conditions:~~

~~(a) the action is taken by an organisation;~~

~~(b) the action is taken by a constitutional corporation, or adversely affects a constitutional corporation in its capacity as a building industry participant;~~

~~(d) the action relates to work that is regulated by a Commonwealth industrial instrument;~~

~~(e) the action relates to the bargaining or proposed bargaining for, or the making or proposed making of, an enterprise agreement;~~

~~(f) the action occurs in a Territory or Commonwealth place.~~

~~**excluded action** means building industrial action that is protected industrial action (as affected by Part 3 of this Chapter).~~

~~**industrially-motivated** means motivated by one or more of the following purposes, or by purposes that include one or more of the following purposes:~~

~~(a) supporting or advancing claims against an employer in respect of the employment of employees of that employer;~~

~~(b) supporting or advancing claims by an employer in respect of the employment of employees of that employer;~~

~~(c) advancing industrial objectives of an industrial association;~~

~~(d) disrupting the performance of work.~~

~~The employer referred to in paragraphs (a) and (b) need not be the employer whose employees do the work to which the action relates.~~

-
- ~~(2) Whenever a person seeks to rely on paragraph (g) of the definition of **building industrial action** in subsection (1), that person has the burden of proving that paragraph (g) applies.~~
- ~~(3) For the purposes of this Chapter:~~
- ~~(a) conduct is capable of constituting building industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and~~
 - ~~(b) a reference to building industrial action includes a reference to a course of conduct consisting of a series of building industrial actions.~~
- ~~(4) In the definition of **building industrial action** in subsection (1):~~
- ~~**industrial dispute** means:~~
- ~~(a) an industrial dispute (including a threatened, impending or probable industrial dispute) that is about matters pertaining to the relationship between employers and employees; or~~
 - ~~(b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a); or~~
 - ~~(c) a dispute arising between 2 or more industrial associations, or within an industrial association, as to the rights, status or functions of members of the associations or association in relation to the employment of those members; or~~
 - ~~(d) a dispute arising between employers and employees, or between members of different industrial associations, as to the demarcation of functions of employees or classes of employees; or~~
 - ~~(e) a dispute about the representation of the industrial interests of employees by an industrial association of employees.~~
-

Part 2 — Unlawful industrial action

37 — Definition of *unlawful industrial action*

- ~~Building industrial action is *unlawful industrial action* if:~~
- ~~(a) the action is industrially motivated; and~~
 - ~~(b) the action is constitutionally connected action; and~~
 - ~~(c) the action is not excluded action.~~

38 — Unlawful industrial action prohibited

~~A person must not engage in unlawful industrial action.~~

~~Note: — Grade A civil penalty.~~

39 — Injunction against unlawful industrial action

- ~~(1) If, on application by the ABC Commissioner or any other person, an appropriate court is satisfied that unlawful industrial action is:~~
- ~~(a) occurring; or~~
 - ~~(b) threatened, impending or probable;~~
- ~~then the court may grant an injunction in such terms as the court considers appropriate.~~
- ~~(2) If, in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).~~
- ~~(3) The power of the court to grant an injunction restraining a person (the *defendant*) from engaging in conduct may be exercised:~~
- ~~(a) whether or not it appears to the court that the defendant intends to engage again, or to continue to engage, in conduct of that kind; and~~
 - ~~(b) whether or not the defendant has previously engaged in conduct of that kind; and~~
 - ~~(c) whether or not there is an imminent danger of substantial damage to any person if the defendant engages in conduct of that kind.~~

~~(4) In this section:~~

~~*appropriate court* means the Federal Court, the Federal Magistrates Court, a Supreme Court of a State or Territory or a District Court, or County Court, of a State.~~

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~~Part 3—Protected industrial action~~

~~40—Action involving extraneous participants~~

- ~~(1) Building industrial action in relation to a proposed building enterprise agreement is not protected industrial action if:~~
- ~~(a) the action is engaged in in concert with one or more persons who are not protected persons for the action; or~~
 - ~~(b) the organisers include one or more persons who are not protected persons for the action.~~
- ~~(2) In this section:~~
- ~~*protected person* means:~~
- ~~(a) an employee organisation that is a bargaining representative for the proposed agreement; or~~
 - ~~(b) a member of such an organisation who is employed by the employer and who will be covered by the proposed agreement; or~~
 - ~~(c) an officer or employee of such an organisation acting in that capacity; or~~
 - ~~(d) an employee who is a bargaining representative for the proposed agreement.~~

Part 4—Miscellaneous

42—Payments in relation to periods of building industrial action

- ~~———— (1) Division 9 of Part 3-3 of the FW Act (which deals with payments for periods of industrial action) applies in relation to building work with the following modifications:~~
 - ~~———— (a) references in that Division to industrial action are to be read as references to building industrial action that is industrially motivated and constitutionally connected;~~
 - ~~———— (b) if the person who contravenes a civil remedy provision to which table item 21, 22, 23 or 24 of the table set out in section 539 of the FW Act relates is a body corporate—then, for the purposes of paragraph 546(2)(b) of that Act, the pecuniary penalty must not be more than 1,000 penalty units.~~
- ~~———— (2) Division 9 of Part 3-3 of the FW Act (which deals with payments for periods of industrial action) does not apply to building work except as provided by this section.~~

~~Chapter 6—Discrimination, coercion and unfair contracts~~

~~43—Coercion in relation to engagement etc. of building employees and building contractors~~

~~(1) A person (the *first person*) must not organise or take action, or threaten to organise or take action, with intent to coerce another person (the *second person*):~~

~~(a) to employ, or not employ, a person as a building employee; or~~

~~or~~

~~(b) to engage, or not engage, a person as a building contractor; or~~

~~(c) to allocate, or not allocate, particular responsibilities to a building employee or building contractor; or~~

~~(d) to designate a building employee or building contractor as having, or not having, particular duties or responsibilities.~~

~~Note: Grade A civil penalty.~~

~~(2) Subsection (1) does not apply unless:~~

~~(a) the first person is an organisation or a constitutional corporation; or~~

~~(b) the second person is a constitutional corporation; or~~

~~(c) the conduct occurs in a Territory or Commonwealth place.~~

~~44—Coercion of persons to make, vary, terminate etc. enterprise agreements etc.~~

~~(1) A person must not:~~

~~(a) take or threaten to take any action; or~~

~~(b) refrain or threaten to refrain from taking any action;~~

~~with intent to coerce another person, or with intent to apply undue pressure to another person, to agree, or not to agree:~~

~~(c) to make, vary or terminate, or extend the nominal expiry date of, a building enterprise agreement; or~~

~~(d) to approve any of the things mentioned in paragraph (c).~~

~~Note: Grade A civil penalty.~~

~~(2) Subsection (1) does not apply to action that is protected industrial action (as affected by Part 3 of Chapter 5 of this Act).~~

~~(3) An employer must not coerce, or attempt to coerce, an employee of the employer in relation to who is to be, or is not to be, the employee's bargaining representative.~~

~~Note: Grade A civil penalty.~~

~~(4) An employer must not apply, or attempt to apply, undue pressure to an employee of the employer in relation to who is to be, or is not to be, the employee's bargaining representative.~~

~~Note: Grade A civil penalty.~~

~~(5) To the extent that section 343 of the FW Act relates to:~~

~~(a) the making, varying or terminating of an enterprise agreement; or~~

~~(b) the appointment, or termination of appointment, of a bargaining representative for an enterprise agreement;~~

~~that section does not apply if the agreement is a building enterprise agreement.~~

45 Discrimination against employer in relation to industrial instruments

~~(1) A person (the *first person*) must not discriminate against another person (the *second person*) on the ground that:~~

~~(a) the employment of the second person's building employees is covered, or is not covered, by:~~

~~(i) a particular kind of industrial instrument; or~~

~~(ii) an industrial instrument made with a particular person; or~~

~~(iii) a particular preserved Australian Pay and Classification Scale; or~~

~~(iv) the Australian Fair Pay and Conditions Standard; or~~

~~(v) the National Employment Standards; or~~

~~(b) it is proposed that the employment of the second person's building employees be covered, or not be covered, by:~~

~~(i) a particular kind of industrial instrument; or~~

~~(ii) an industrial instrument made with a particular person; or~~

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~~(iii) a particular preserved Australian Pay and Classification Scale; or~~

~~(iv) the Australian Fair Pay and Conditions Standard; or~~

~~(v) the National Employment Standards.~~

~~Note: Grade A civil penalty.~~

~~(2) Subsection (1) does not apply to conduct that is protected industrial action (as affected by Part 3 of Chapter 5 of this Act).~~

~~(3) Subsection (1) does not apply to conduct by the first person if:~~

~~(a) the conduct occurs in relation to:~~

~~(i) a proposed agreement between the first person and the second person under which the second person would carry out building work or arrange for building work to be carried out; or~~

~~(ii) a proposed variation of an agreement between the first person and the second person under which the second person carries out building work or arranges for building work to be carried out; and~~

~~(b) the conduct is engaged in solely for the purpose of encouraging the second person to have particular eligible conditions in an industrial instrument that covers employees of the second person.~~

~~(4) Subsection (1) does not apply unless:~~

~~(a) the industrial instrument referred to in that section is an award, transitional award, workplace agreement, pre reform certified agreement, pre reform AWA or fair work instrument; or~~

~~(b) the first person is an organisation or a constitutional corporation; or~~

~~(c) the second person is a constitutional corporation; or~~

~~(d) the conduct occurs in a Territory or Commonwealth place.~~

~~46 Coercion in relation to superannuation~~

~~(1) A person (the *first person*) must not:~~

~~(a) take, or threaten to take, any action (the *relevant action*); or~~

~~(b) refrain, or threaten to refrain, from taking action (the *relevant action*);~~

~~with intent:~~

- ~~(c) to coerce a building employee to nominate a particular superannuation fund or scheme to receive the employee's superannuation contributions; or~~
- ~~(d) to coerce a building employer to pay the employer's superannuation contributions in respect of building employees to a particular superannuation fund or scheme.~~

~~Note: Grade A civil penalty.~~

- ~~(2) Subsection (1) does not apply if the relevant action is, or would be, protected industrial action (as affected by Part 3 of Chapter 5).~~
- ~~(3) Subsection (1) does not apply unless:~~
 - ~~(a) the first person is an organisation or a constitutional corporation; or~~
 - ~~(b) paragraph (1)(d) applies and the building employer referred to in that paragraph is a constitutional corporation; or~~
 - ~~(c) paragraph (1)(d) applies and the building employer referred to in that paragraph is the Commonwealth or a Commonwealth authority; or~~
 - ~~(d) the relevant action occurs, or would occur, in a Territory or Commonwealth place.~~

Chapter 7—Enforcement

~~Part 1—Contravention of civil penalty provisions~~

~~48—Definitions~~

~~(1) In this Part, unless the contrary intention appears:~~

~~*appropriate court* means:~~

- ~~(a) for a contravention of section 38—the Federal Court, the Federal Magistrates Court, a Supreme Court of a State or Territory or a District Court, or County Court, of a State; or~~
- ~~(b) for any other contravention—the Federal Court.~~

~~*pecuniary penalty order* means an order under paragraph 49(1)(a).~~

~~*person*, in relation to a contravention of a civil penalty provision, includes an industrial association.~~

~~(2) For the purposes of this Part, a person who is involved in a contravention of a civil penalty provision is treated as having contravened that provision. For this purpose, a person is **involved in** a contravention of a civil penalty provision if, and only if, the person:~~

- ~~(a) has aided, abetted, counselled or procured the contravention; or~~
- ~~(b) has induced the contravention, whether by threats or promises or otherwise; or~~
- ~~(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or~~
- ~~(d) has conspired with others to effect the contravention.~~

~~49—Penalties etc. for contravention of civil penalty provision~~

~~(1) An appropriate court, on application by an eligible person, may make one or more of the following orders in relation to a person (the *defendant*) who has contravened a civil penalty provision:~~

- ~~(a) an order imposing a pecuniary penalty on the defendant;~~

- ~~(b) an order requiring the defendant to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;~~
- ~~(c) any other order that the court considers appropriate.~~
- ~~(2) The maximum pecuniary penalty is:~~
 - ~~(a) for a Grade A civil penalty provision—1,000 penalty units if the defendant is a body corporate and otherwise 200 penalty units; and~~
 - ~~(b) for a Grade B civil penalty provision—100 penalty units if the defendant is a body corporate and otherwise 20 penalty units.~~
- ~~(3) The orders that may be made under paragraph (1)(c) include:~~
 - ~~(a) injunctions (including interim injunctions); and~~
 - ~~(b) any other orders that the court considers necessary to stop the conduct or remedy its effects, including orders for the sequestration of assets.~~
- ~~(4) If the contravention is a contravention of section 38, then the power of the court to grant an injunction restraining a person (the *defendant*) from engaging in conduct may be exercised:~~
 - ~~(a) whether or not it appears to the court that the defendant intends to engage again, or to continue to engage, in conduct of that kind; and~~
 - ~~(b) whether or not the defendant has previously engaged in conduct of that kind; and~~
 - ~~(c) whether or not there is an imminent danger of substantial damage to any person if the defendant engages in conduct of that kind.~~
- ~~(5) A pecuniary penalty is payable to the Commonwealth, or to some other person if the court so directs. It may be recovered as a debt.~~
- ~~(6) Each of the following is an *eligible person* for the purposes of this section:~~
 - ~~(a) the ABC Commissioner;~~
 - ~~(b) an ABC Inspector;~~
 - ~~(c) a person affected by the contravention;~~
 - ~~(d) a person prescribed by the regulations for the purposes of this paragraph.~~

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~~(7) A regulation prescribing persons for the purposes of paragraph (6)(d) may provide that a person is prescribed only in relation to circumstances specified in the regulation.~~

50 Multiple proceedings for same conduct

~~(1) A court must not make a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.~~

~~(2) Proceedings for a pecuniary penalty order against a person are stayed if:~~

~~(a) criminal proceedings are started or have already been started against the person for an offence; and~~

~~(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.~~

~~The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.~~

~~(3) Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether an order under this Part has been made against the person.~~

51 Evidence given in proceedings for penalty not admissible in criminal proceedings

~~Evidence of information given by an individual, or evidence of production of documents by an individual, is not admissible in criminal proceedings against the individual if:~~

~~(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and~~

~~(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.~~

~~However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.~~

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Part 1—Powers to obtain information etc.

Division 1—Preliminary

36 Definitions

Building project

- (1) For the purposes of this Part, a ***building project*** is a project that consists of, or includes, building work.

Interested person

- (2) For the purposes of this Part, each of the following is an ***interested person*** in relation to a building project:

(a) the Minister;

(b) a person prescribed by the regulations for the purposes of this paragraph.

36A Application of this Part

General

- (1) This Part applies to an investigation by the Director into a suspected contravention, by a building industry participant, of a designated building law or a safety net contractual entitlement.

Limitation on Director's powers

- (2) However, the Director may exercise powers under this Part in relation to a suspected contravention by a building industry participant of a safety net contractual entitlement only if the Director reasonably believes that the building industry participant has contravened a provision or term referred to in subsection 706(2) of the FW Act.

Division 2—Role of the Independent Assessor

Subdivision A—Establishment and appointment etc. of the Independent Assessor

36B Establishment

There is to be an Independent Assessor—Special Building Industry Powers.

36C Functions and powers

The Independent Assessor has the functions and powers conferred on him or her by or under this Act.

36D Minister may require reports

- (1) The Minister may, in writing, direct the Independent Assessor to give the Minister specified reports relating to the Independent Assessor's functions and powers.
- (2) The Independent Assessor must comply with the direction.
- (3) A direction under subsection (1) is not a legislative instrument.

37 Appointment

- (1) The Independent Assessor is to be appointed by the Governor-General by written instrument.
- (2) The appointment is to be on a part-time basis.
- (3) Before the Governor-General appoints a person as the Independent Assessor, the Minister must be satisfied that the person:
 - (a) has suitable qualifications or experience; and
 - (b) is of good character.
- (4) The Independent Assessor holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (5) The Independent Assessor holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

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37A Acting appointments

~~(1) The Minister may, by written instrument, appoint a person to act as the Independent Assessor:~~

~~(a) during a vacancy in the office of Independent Assessor (whether or not an appointment has previously been made to the office); or~~

~~(b) during any period, or during all periods, when the Independent Assessor:~~

~~(i) is absent from duty or from Australia; or~~

~~(ii) is, for any reason, unable to perform the duties of the office.~~

~~(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:~~

~~(a) the occasion for the appointment had not arisen; or~~

~~(b) there was a defect or irregularity in connection with the appointment; or~~

~~(c) the appointment had ceased to have effect; or~~

~~(d) the occasion to act had not arisen or had ceased.~~

~~Note: For rules that apply to acting appointments, see sections 20 and 33A of the Acts Interpretation Act 1901.~~

37B Remuneration

~~(1) The Independent Assessor is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Independent Assessor is to be paid the remuneration that is prescribed by the regulations.~~

~~(2) The Independent Assessor is to be paid the allowances that are prescribed by the regulations.~~

~~(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.~~

37C Leave of absence

~~(1) The Independent Assessor has the recreation leave entitlements that are determined by the Remuneration Tribunal.~~

~~(2) The Minister may grant the Independent Assessor leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.~~

37D Engaging in other paid employment

~~The Independent Assessor must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the Independent Assessor's functions.~~

37E Disclosure of interests

~~The Independent Assessor must give written notice to the Minister of all material personal interests that the Independent Assessor has or acquires and that conflict or could conflict with the proper performance of the Independent Assessor's functions.~~

37F Resignation

~~(1) The Independent Assessor may resign his or her appointment by giving the Governor-General a written resignation.~~

~~(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.~~

37G Termination

~~(1) The Governor-General may terminate the appointment of the Independent Assessor for misbehaviour or physical or mental incapacity.~~

~~(2) The Governor-General must terminate the appointment of the Independent Assessor if:~~

~~(a) the Independent Assessor:~~

~~(i) becomes bankrupt; or~~

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(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Independent Assessor is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the Independent Assessor engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her functions (see section 37D); or

(d) the Independent Assessor fails, without reasonable excuse, to comply with section 37E.

Subdivision B—Determinations by Independent Assessor

38 Application of this Subdivision

This Subdivision applies in relation to a building project if the building work that the project consists of, or includes, begins on or after the commencement of this Subdivision.

39 Independent Assessor may determine that powers to obtain information do not apply in relation to particular building project

(1) The Independent Assessor may, in accordance with this Subdivision, make a written determination that section 45 does not apply in relation to one or more building projects.

Note 1: Section 45 provides for the Director to make an application to a nominated AAT presidential member for the issue of an examination notice in relation to a person in respect of an investigation.

Note 2: A determination can be varied or revoked on application by an interested person (see subsection 33(3) of the *Acts Interpretation Act 1901*) or on request by the Director (see section 43 of this Act).

(2) The Independent Assessor may make a determination under subsection (1) in relation to a building project only on application under section 40 by an interested person in relation to the building project.

(3) The Independent Assessor must not make a determination under subsection (1) in relation to a particular building project unless the Independent Assessor is satisfied, in relation to that building project, that:

(a) it would be appropriate to make the determination, having regard to:

(i) the object of this Act; and

(ii) any matters prescribed by the regulations; and

(b) it would not be contrary to the public interest to make the determination.

(4) A determination under subsection (1) is not a legislative instrument.

40 Interested person may apply for determination

(1) Subject to subsection (5), an interested person in relation to a building project (or 2 or more such interested persons acting jointly) may apply in writing to the Independent Assessor for a determination that section 45 does not apply in relation to the building project.

Note: Section 45 provides for the Director to make an application to a nominated AAT presidential member for the issue of an examination notice in relation to a person in respect of an investigation.

(2) An application under subsection (1) must:

(a) state the grounds on which the application is made; and

(b) if a form is prescribed by the regulations—be in that form; and

(c) include any other information prescribed by the regulations.

(3) An application under subsection (1) may relate to more than one building project.

(4) An application under subsection (1) may be made at any time:

(a) before or after the relevant building project has commenced; or

(b) after the relevant building project is completed.

(5) If an interested person has made an application (the *original application*) under subsection (1) in relation to a building project, the interested person may not make a further application under that

subsection, in relation to the same building project and on the same grounds as the original application, unless the interested person becomes aware of new information in relation to the building project.

41 Consideration of application for determination

Opportunity for Director to make submissions in relation to application

- (1) If the Independent Assessor receives an application for a determination from an interested person (the **applicant**) under section 40, the Independent Assessor must:
- (a) as soon as practicable after receiving the application, give the Director a copy of the application; and
 - (b) give the Director a reasonable opportunity to make submissions in relation to the application.

Independent Assessor may request further information

- (2) The Independent Assessor may request the applicant or the Director to give the Independent Assessor further information in relation to the application.
- (3) If a request for further information is made under subsection (2), the applicant or the Director (as the case requires) must give the further information to the Independent Assessor:
- (a) as soon as practicable after receiving the request; and
 - (b) if the request specifies that the information must be given in writing—in writing.

Decision by Independent Assessor

- (4) The Independent Assessor must decide whether or not to make the determination. In making the decision, the Independent Assessor must have regard to:
- (a) the application and any further information given to the Independent Assessor under subsection (3); and
 - (b) any submissions made by the Director.

(5) As soon as practicable after the Independent Assessor makes a decision under subsection (4), the Independent Assessor must give written notice of the decision to:

- (a) the applicant; and
- (b) the Director.

42 Publication and period of effect of determination

(1) As soon as practicable after making a determination under subsection 39(1), the Independent Assessor must:

- (a) give a copy of the determination to:
 - (i) the applicant for the determination; and
 - (ii) the Director; and

(b) arrange for a copy of the determination to be published in the *Gazette*.

(2) A determination under subsection 39(1) takes effect on the day on which it is published in the *Gazette*.

43 Director may request Independent Assessor to reconsider determination

(1) The Director may request the Independent Assessor to reconsider a determination (the *original determination*) made under subsection 39(1) in relation to a building project.

(2) A request under subsection (1):

- (a) may be made at any time after the original determination is made; and
- (b) must be in writing and set out the reasons for the request.

(3) If the Independent Assessor receives a request under subsection (1), the Independent Assessor must:

- (a) reconsider the original determination; and
- (b) make a determination affirming or revoking the original determination, or varying the original determination in such manner as the Independent Assessor considers appropriate.

(4) As soon as practicable after making a determination under subsection (3), the Independent Assessor must give written notice of that determination to:

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(a) the Director; and

(b) the applicant for the original determination.

(5) The Independent Assessor must, as soon as practicable after making a determination under subsection (3) revoking or varying the original determination, arrange for a copy of the determination to be published in the *Gazette*.

(6) A determination under subsection (3) revoking or varying the original determination takes effect on the day on which it is published in the *Gazette*.

Division 3—Examination notices

44 Minister may nominate AAT presidential members to issue examination notices

(1) The Minister may, by writing, nominate an AAT presidential member to issue examination notices under this Division.

(2) The Minister may nominate an AAT presidential member who is a Judge to issue examination notices under this Division only if the Judge has consented, by writing, to the nomination.

(3) A nomination ceases to have effect if:

(a) the nominated AAT presidential member ceases to be an AAT presidential member; or

(b) the Minister, by writing, withdraws the nomination.

(4) A nominated AAT presidential member has, in performing a function of or connected with issuing an examination notice under this Division, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

45 Director may apply to nominated AAT presidential member for examination notice

General requirements

(1) If the Director believes on reasonable grounds that a person:

(a) has information or documents relevant to an investigation; or

(b) is capable of giving evidence that is relevant to an investigation;

the Director may apply, in writing, to a nominated AAT presidential member for the issue of an examination notice requiring the person:

(c) to give the information to the Director; or

(d) to produce the documents to the Director; or

(e) to attend before the Director to answer questions relevant to the investigation.

Application not permitted if determination by Independent Assessor is in force

(2) The Director may not make an application under subsection (1) in relation to an investigation (regardless of when the suspected contravention to which the investigation relates occurred) if the investigation is connected with a building project in relation to which a determination under subsection 39(1) is in force.

Note: Subsection 39(1) provides for the Independent Assessor to make a determination that section 45 does not apply in relation to certain building projects.

Form and content of application

(3) An application for an examination notice must:

(a) if a form is prescribed by the regulations—be in that form; and

(b) include any information prescribed by the regulations.

(4) An application for an examination notice must not relate to more than one person, but may relate to more than one investigation.

Application must be accompanied by affidavit

(5) An application for an examination notice must be accompanied by an affidavit by the Director including the following:

(a) the name of the person in relation to whom the application relates;

(b) details of the investigation (or investigations) to which the application relates;

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(c) a statement that the investigation (or investigations) are not connected with a building project in relation to which a determination under subsection 39(1) is in force;

(d) the grounds on which the Director believes the person has information or documents, or is capable of giving evidence, relevant to the investigation (or investigations) referred to in paragraph (b);

(e) details of other methods used to attempt to obtain the information, documents or evidence;

(f) the number (if any) of previous applications for an examination notice that the Director has made in relation to the person in respect of the investigation (or investigations) referred to in paragraph (b);

(g) information about whether the Director has made, or expects to make, any other applications for an examination notice in relation to the investigation (or investigations) referred to in paragraph (b) and, if so, the persons in relation to whom those applications relate.

Further information

(6) A nominated AAT presidential member to whom an application for an examination notice is made may request the Director to give the presidential member further information in relation to the application.

(7) If a request for further information is made under subsection (6), the Director must give the further information in writing as soon as practicable after receiving the request.

46 Sunset provision

The Director may not make an application under section 45 after the end of 53 years after the day on which that section commences.

47 Issue of examination notice

(1) A nominated AAT presidential member to whom an application for an examination notice has been made must issue the examination notice if the presidential member is satisfied of the following:

(a) that the Director has commenced the investigation (or investigations) to which the application relates;

- (b) that the investigation (or investigations) are not connected with a building project in relation to which a determination under subsection 39(1) is in force;
- (c) that there are reasonable grounds to believe that the person to whom the application relates has information or documents, or is capable of giving evidence, relevant to the investigation (or investigations);
- (d) that any other method of obtaining the information, documents or evidence:
- (i) has been attempted and has been unsuccessful; or
 - (ii) is not appropriate;
- (e) that the information, documents or evidence would be likely to be of assistance in the investigation (or investigations);
- (f) that, having regard to all the circumstances, it would be appropriate to issue the examination notice;
- (g) any other matter prescribed by the regulations.
- (2) A nominated AAT presidential member must not issue an examination notice except in the circumstances referred to in subsection (1).
- (3) An examination notice must not be issued in relation to more than one person, but may be issued in relation to more than one investigation.
- (4) If:
- (a) an application for an examination notice is made in relation to more than one investigation; and
 - (b) the nominated AAT presidential member to whom the application is made is not satisfied of the matters referred to in subsection (1) in relation to each of those investigations;
- the nominated AAT presidential member must issue the examination notice in relation to the investigation (or investigations) in relation to which the nominated AAT presidential member is satisfied of the matters referred to in subsection (1).

48 Form and content of examination notice

An examination notice:

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- (a) must be in accordance with the form prescribed by the regulations; and
- (b) if the notice requires a person to give information to the Director—must specify the time by which, and the manner and form in which, the information is to be given; and
- (c) if the notice requires a person to produce documents to the Director—must specify the time by which, and the manner in which, the documents are to be produced; and
- (d) if the notice requires a person to attend before the Director to answer questions relevant to an investigation—must specify the time and place for the attendance; and
- (e) must be signed by the nominated AAT presidential member who issued it; and
- (f) must include any other information prescribed by the regulations.

49 Director must notify Commonwealth Ombudsman of issue of examination notice

As soon as practicable after an examination notice has been issued, the Director must:

- (a) notify the Commonwealth Ombudsman that the examination notice has been issued; and
- (b) give the Commonwealth Ombudsman a copy of:
 - (i) the examination notice; and
 - (ii) the affidavit that accompanied the application for the examination notice; and
 - (iii) any other information in relation to the examination notice that was given to the nominated AAT presidential member who issued the notice.

50 Director may give examination notice to person in relation to whom it is issued and vary time for compliance

Director may give examination notice to person in relation to whom it is issued

- (1) If a nominated AAT presidential member issues an examination notice, the Director may give the notice to the person in relation to whom it is issued.

(2) If an examination notice is not given to the person in relation to whom it is issued within 3 months after the day on which it was issued, the notice ceases to have effect at the end of that period.

Director may vary time for compliance with examination notice

(3) If:

(a) the Director gives an examination notice to a person under subsection (1); and

(b) the time specified in the notice under paragraph 48(b), (c) or (d) is not at least 14 days after the notice is given to the person;

the Director must, at the same time as the examination notice is given to the person, also give notice to the person of a time later than the time specified in the notice.

(4) The Director may, at any time after giving an examination notice to the person in relation to whom it is issued, give notice to the person of a time later than the time:

(a) specified in the notice under paragraph 48(b), (c) or (d); or

(b) notified under subsection (3).

(5) A later time notified under subsection (3) or (4) must be at least 14 days after the examination notice is given to the person.

(6) If the person is notified of a later time under subsection (3) or (4), the examination notice has effect as if the later time (or the latest of those times) were the time specified in the examination notice.

Director must give copy of notice varying time to Commonwealth Ombudsman

(7) If a notice under subsection (3) or (4) is given to a person, the Director must, as soon as practicable after giving the notice, give a copy of the notice to the Commonwealth Ombudsman.

51 Conduct of examination etc.

Application of section

(1) This section applies if a person is required by an examination notice to attend before the Director to answer questions relevant to

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an investigation. An attendance before the Director for this purpose is called an *examination*.

Director to conduct examination

(2) The Director must conduct the examination of the person.

Representation by lawyer

(3) The person may, if he or she so chooses, be represented at the examination by a lawyer of the person's choice.

Oath or affirmation

(4) The Director may require the information or answers given by the person at the examination to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the Director may administer the oath or affirmation.

(5) The oath or affirmation is an oath or affirmation that information or answers are, or will be, true.

Director must not require person to give certain undertakings

(6) The Director must not require the person to undertake:

(a) not to disclose information or answers given at the examination; or

(b) not to discuss matters relating to the examination with any other person.

~~Part 2—Compliance etc. powers~~

~~Division 1—ABC Commissioner's powers to obtain information etc.~~

~~52—ABC Commissioner's powers to obtain information etc.~~

~~*ABC Commissioner may require information, documents etc.*~~

~~(1) If the ABC Commissioner believes on reasonable grounds that a person:~~

~~(a) has information or documents relevant to an investigation; or~~

- ~~(b) is capable of giving evidence that is relevant to an investigation;~~
~~the ABC Commissioner may, by written notice given to the person, require the person:~~
- ~~(c) to give the information to the ABC Commissioner, or to an assistant, by the time, and in the manner and form, specified in the notice; or~~
- ~~(d) to produce the documents to the ABC Commissioner, or to an assistant, by the time, and in the manner, specified in the notice; or~~
- ~~(e) to attend before the ABC Commissioner, or an assistant, at the time and place specified in the notice, and answer questions relevant to the investigation.~~
- ~~(2) The time specified under paragraph (1)(c), (d) or (e) must be at least 14 days after the notice is given.~~

Legal representation

- ~~(3) A person attending before the ABC Commissioner, or before an assistant, as mentioned in paragraph (1)(e) may, if the person so chooses, be represented by a person who, under the *Judiciary Act 1903*, is entitled to practise as a barrister or solicitor, or both, in a federal court.~~

Oath or affirmation

- ~~(4) The ABC Commissioner, or an assistant, may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the ABC Commissioner, or an assistant, may administer the oath or affirmation.~~
- ~~(5) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.~~

Offence

- ~~(6) A person commits an offence if:~~
- ~~(a) the person has been given a notice under subsection (1); and~~
- ~~(b) the person fails:~~

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- ~~(i) to give the required information by the time, and in the manner and form, specified in the notice; or~~
- ~~(ii) to produce the required documents by the time, and in the manner, specified in the notice; or~~
- ~~(iii) to attend to answer questions at the time and place specified in the notice; or~~
- ~~(iv) to take an oath or make an affirmation, when required to do so under subsection (4); or~~
- ~~(v) to answer questions relevant to the investigation while attending as required by the notice.~~

~~Penalty: Imprisonment for 6 months.~~

~~*Effect of other laws*~~

- ~~(7) The operation of this section is not limited by any secrecy provision of any other law (whether enacted before or after the commencement of this section), except to the extent that the secrecy provision expressly excludes the operation of this section. For this purpose, **secrecy provision** means a provision that prohibits the communication or divulging of information.~~

~~*Definitions*~~

- ~~(8) In this section:~~

~~**assistant** means:~~

- ~~(a) a Deputy ABC Commissioner; or~~
- ~~(b) an ABC Inspector; or~~
- ~~(c) a person referred to in subsection 25(1) or (3) who is assisting the ABC Commissioner.~~

~~**investigation** means an investigation by the ABC Commissioner into a contravention, by a building industry participant, of a designated building law.~~

52 Offence—failure to comply with examination notice

- ~~(1) A person commits an offence if:
 - ~~(a) the person has been given an examination notice under section 50; and~~
 - ~~(b) the person fails:~~~~

- (i) to give the required information by the time, and in the manner and form, specified in the notice; or
- (ii) to produce the required documents by the time, and in the manner, specified in the notice; or
- (iii) to attend to answer questions at the time and place specified in the notice; or
- (iv) to take an oath or make an affirmation, if required to do so under subsection 51(4); or
- (v) to answer questions relevant to the investigation while attending as required by the notice.

Penalty: Imprisonment for 6 months.

Note: A court may impose a maximum fine of 30 penalty units instead of, or in addition to, a term of imprisonment. A body corporate that is convicted of an offence may be fined up to 5 times that maximum fine. (See subsections 4B(2) and (3) of the *Crimes Act 1914*.)

- (2) This Part does not require a person to give information, produce a document or answer questions if to do so would disclose information that:
 - (a) is the subject of legal professional privilege; or
 - (b) would be protected by public interest immunity.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

53 Certain excuses not available in relation to ~~section 52~~ requirements examination notices

Excuses that are not available

- (1) A person is not excused from giving information, producing a document, or answering a question, under ~~section 52~~ an examination notice on the ground that to do so:
 - (a) would contravene any other law; or
 - (b) might tend to incriminate the person or otherwise expose the person to a penalty or other ~~liability; or liability.~~
 - ~~(c) would be otherwise contrary to the public interest.~~

Use/derivative use indemnity

- (2) However, neither:

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- (a) the information or answer given or the document produced; nor
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer or producing the document;

is admissible in evidence against the person in proceedings, other than:

- (c) proceedings for an offence against subsection ~~52(6)~~ 52(1); or
- (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act; or
- (e) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act.

54 Protection from liability

A person who, in good faith:

- (a) gives information; or
- (b) produces a document; or
- (c) answers a question;

when requested or required to do so under ~~section 52~~ an examination notice is not liable to:

- (d) any proceedings for contravening any other law because of that conduct; or
- (e) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

54A Review and report by Commonwealth Ombudsman

Director to give report etc. to Commonwealth Ombudsman

(1) As soon as practicable after an examination of a person is completed, the Director must give the Commonwealth Ombudsman:

- (a) a report about the examination; and
- (b) a video recording of the examination; and
- (c) a transcript of the examination.

(2) The report required under paragraph (1)(a) must include:

- (a) a copy of the examination notice under which the examination was conducted; and

(b) the following information:

(i) the time and place at which the examination was conducted;

(ii) the name of each person who was present at the examination;

(iii) any other information prescribed by the regulations.

Review of exercise of powers under this Division

(3) The Commonwealth Ombudsman:

(a) must review the exercise of powers under this Division by the Director and any person assisting the Director; and

(b) may do anything incidental or conducive to the performance of that function.

(4) The Commonwealth Ombudsman's powers under the *Ombudsman Act 1976* extend to a review by the Ombudsman under this section as if the review were an investigation by the Ombudsman under that Act.

(5) The exercise of those powers in relation to a review by the Ombudsman under this section is taken, for all purposes, to be an exercise of powers under the *Ombudsman Act 1976*.

Commonwealth Ombudsman to report to Parliament

(6) As soon as practicable after the end of each financial year, the Commonwealth Ombudsman must prepare and present to the Parliament a report about examinations conducted under this Division during that year. The report must include the results of reviews conducted under this section during that year.

(7) The Commonwealth Ombudsman may prepare and present to the Parliament such other reports about the results of reviews conducted under this section as the Commonwealth Ombudsman considers appropriate.

55 Retention and copying etc. of documents

~~ABC Commissioner-Director~~ may keep documents

- (1) The ~~ABC Commissioner-Director~~ may take possession of a document produced under ~~section 52-an examination notice~~ and keep it for as long as is necessary for the purposes of conducting the investigation to which the document is relevant.

Certified copy to be supplied to person entitled to document

- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy that is certified, by one of the following persons, to be a true copy:

~~(a) the ABC Commissioner;~~

~~(b) a Deputy ABC Commissioner;~~

~~(c) an ABC Inspector;~~

~~(d) a person referred to in subsection 25(1) or (3) who is assisting the ABC Commissioner.~~

~~(a) the Director;~~

~~(b) an inspector;~~

~~(c) a member of staff referred to in subsection 26K(1);~~

~~(d) a person assisting the Director under section 26L;~~

~~(e) a person engaged as a consultant under section 26M.~~

Certified copy to be treated as original

- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

Right to inspect and copy the original

- (4) Until a certified copy is supplied, the ~~ABC Commissioner-Director~~ must, at such times and places as the ~~ABC Commissioner-Director~~ considers appropriate, permit the person otherwise entitled to possession of the document (or a person authorised by that person) to inspect and make copies of all or part of the document.

56 ~~ABC Commissioner-Director~~ may make and keep copies of documents

The ~~ABC Commissioner-Director~~ may make and keep copies of all or part of any documents produced under ~~section 52~~ an examination notice.

57 Secrecy provisions

- (1) The operation of this Division is not limited by any secrecy provision of any other law (whether enacted before or after the commencement of this section), except to the extent that the secrecy provision expressly excludes the operation of this section.
- (2) For the purposes of subsection (1), *secrecy provision* means a provision that prohibits the communication or divulging of information.

58 Payment for expenses incurred in attending an examination

- (1) Subject to subsection (2), a person who attends an examination as required by an examination notice is entitled to be paid fees and allowances, fixed by or calculated in accordance with the regulations, for reasonable expenses (including legal expenses) incurred by the person in attending the examination.
- (2) The person is not entitled to be paid for expenses under this section unless the person:
 - (a) applies, in writing, to the Director for payment of the expenses within 3 months after the examination is completed; and
 - (b) provides to the Director sufficient evidence to establish that the person incurred the expenses.
- (3) An application under paragraph (2)(a) must:
 - (a) if a form is prescribed by the regulations—be in that form; and
 - (b) include any information prescribed by the regulations.

Division 2—Powers of ABC Inspectors

57—Australian Building and Construction Inspectors

- ~~(1) The ABC Commissioner may, by written instrument, appoint any of the following persons as an Australian Building and Construction Inspector (*ABC Inspector*):~~
- ~~(a) a person who is an employee of the Commonwealth or who holds an office or appointment under a law of the Commonwealth;~~
 - ~~(b) a person who is an employee of a State or Territory or who holds an office or appointment under a law of a State or Territory;~~
 - ~~(c) a consultant engaged by the ABC Commissioner under section 25.~~
- ~~(2) The ABC Commissioner must not appoint a person referred to in paragraph (1)(c) as an ABC Inspector unless the ABC Commissioner is satisfied that the person is an appropriate person to be appointed as an ABC Inspector.~~
- ~~(3) The ABC Commissioner is an ABC Inspector by force of this subsection.~~
- ~~(4) In exercising powers or performing functions as an ABC Inspector, an ABC Inspector appointed under subsection (1) must comply with any directions of the ABC Commissioner.~~
- ~~(5) If a direction under subsection (4) is of general application, the direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.~~
- ~~(6) If a direction under subsection (4) relates to a particular case, the direction is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.~~

58—Identity cards for ABC Inspectors

- ~~(1) The ABC Commissioner must issue to an ABC Inspector appointed under subsection 57(1) an identity card in the form~~

~~prescribed by the regulations. The identity card must contain a recent photograph of the ABC Inspector.~~

~~(2) The Minister must issue to the ABC Commissioner an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the ABC Commissioner.~~

~~(3) If a person to whom an identity card has been issued ceases to be an ABC Inspector, the person must, within 14 days, return the identity card to the ABC Commissioner, or the Minister, as the case requires.~~

~~(4) A person must not contravene subsection (3).~~

~~Penalty: 1 penalty unit.~~

~~(5) Subsection (4) does not apply if the person has a reasonable excuse.~~

~~Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).~~

~~(6) An ABC Inspector must carry the identity card at all times when exercising powers or performing functions as an ABC Inspector.~~

~~59 Power to enter premises etc.~~

~~(1) An ABC Inspector may exercise powers under this section for the following purposes (*compliance purposes*):~~

~~(a) ascertaining whether a designated building law has been complied with, or is being complied with, by a building industry participant;~~

~~(b) ascertaining whether a court order relating to a designated building law has been complied with, or is being complied with, by a building industry participant;~~

~~(c) ascertaining whether the Building Code has been complied with, or is being complied with, by a building industry participant.~~

~~Note: Section 27 specifies the persons who can be required to comply with the Building Code.~~

~~(2) The powers may be exercised at any time during ordinary working hours or at any other time at which it is necessary to do so for compliance purposes.~~

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- ~~(3) An ABC Inspector may, without force, enter:~~
- ~~(a) any premises on which the inspector has reasonable cause to believe that building work is being carried out, or has been carried out, being building work:~~
 - ~~(i) to which a Commonwealth industrial instrument applies or applied; or~~
 - ~~(ii) to which the Building Code applies or applied; or~~
 - ~~(b) any premises on which the inspector has reasonable cause to believe that there are documents relevant to compliance purposes; or~~
 - ~~(c) any premises on which the inspector has reasonable cause to believe that a breach by a building industry participant of a designated building law or the Building Code, has occurred, is occurring or is likely to occur.~~
- ~~(4) Subsection (3) does not authorise entry onto a part of premises if that part is used for residential purposes.~~
- ~~(5) An ABC Inspector may do any of the following on premises referred to in subsection (3):~~
- ~~(a) inspect any work, material, machinery, appliance, article or facility;~~
 - ~~(b) as prescribed by the regulations, take samples of any goods or substances;~~
 - ~~(c) interview any person;~~
 - ~~(d) inspect, and make copies of, any document that is on the premises, or is accessible from a computer that is kept on the premises, being a document that the inspector believes, on reasonable grounds, to be relevant to compliance purposes;~~
 - ~~(e) require a person who has the custody of, or access to, a document to produce the document to the inspector within a specified period.~~
- ~~(6) If a person fails to comply with a requirement under subsection (5) to produce a document, an ABC Inspector may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).~~

- ~~(7) Where a document is produced to an ABC Inspector under paragraph (5)(e) or subsection (6), the inspector may:~~
- ~~(a) inspect and copy the document; and~~
 - ~~(b) if the inspector gives a receipt to the person who produced the document—retain the document for as long as necessary for the purpose of exercising powers or performing functions as an ABC Inspector.~~
- ~~(8) While an ABC Inspector retains a document, the inspector must permit the document to be inspected and copied, at any reasonable time, by:~~
- ~~(a) the person otherwise entitled to possession of the document;~~
 - ~~or~~
 - ~~(b) a person authorised by the person otherwise entitled to possession of the document.~~
- ~~(9) An ABC Inspector may, without force, enter business premises in which a person ordinarily performs work or conducts business if the inspector has reasonable cause to believe that the person has information relevant to compliance purposes.~~
- ~~(10) An ABC Inspector must not enter business premises under subsection (9) if the inspector has reasonable cause to believe that the person concerned is not in that place.~~
- ~~(11) An ABC Inspector who enters premises under subsection (9) may interview the person concerned in that place.~~
- ~~(12) For the avoidance of doubt, a refusal or failure by a person to participate in an interview under this section is not to be treated as conduct covered by section 149.1 of the *Criminal Code*.~~
- ~~(13) Before entering premises under this section, an ABC Inspector must announce that the inspector is authorised to enter the place. If the occupier or another person who apparently represents the occupier is present, the inspector must produce the inspector's identity card to that person for inspection.~~
- ~~(14) The occupier of premises must not refuse or unduly delay entry to the premises by an ABC Inspector exercising powers under this section.~~

~~Note: Grade A civil penalty.~~

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~~(15) In this section:~~

~~copy, in relation to a document, includes take extracts from the document.~~

~~Note: The *Criminal Code* contains offences for obstructing or hindering Commonwealth public officials.~~

Part 2—Fair Work Building Industry Inspectors

Division 1—Appointment

59 Appointment

~~(1) The Director may, in writing, appoint as a Fair Work Building Industry Inspector:~~

~~(a) a person who has been appointed, or who is employed, by the Commonwealth; or~~

~~(b) a person who has been appointed, or who is employed, by a State or Territory, or who holds an office or appointment under a law of a State or Territory.~~

~~(2) The Director may appoint a person as an inspector only if the Director is satisfied that the person is of good character.~~

~~(3) An inspector is appointed for the period specified in the instrument of appointment. The period must not exceed 4 years.~~

~~Note: An inspector is eligible for reappointment (see subsection 33(4AA) of the *Acts Interpretation Act 1901*).~~

59A Director is an inspector

~~The Director is an inspector by force of this section.~~

59B Identity cards

~~(1) The Director must issue an identity card to an inspector appointed under section 59.~~

~~(2) The Minister must issue an identity card to the Director.~~

Form of identity card

(3) The identity card must:

- (a) be in the form approved by the Director; and
- (b) contain a recent photograph of the inspector.

Inspector must carry card

(4) An inspector must carry the identity card at all times when performing functions or exercising powers as an inspector.

Offence

(5) A person commits an offence if:

- (a) the person ceases to be an inspector; and
- (b) the person does not, within 14 days of so ceasing, return the person's identity card to the Director or the Minister (as the case may be).

Penalty: 1 penalty unit.

(6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defence—card lost or destroyed

(7) Subsection (5) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Division 2—Powers

59C Inspectors' powers under Fair Work and other Acts

(1) An inspector has the same functions and powers as a Fair Work Inspector.

(2) However, the functions and powers of an inspector:

- (a) may be performed or exercised only in relation to a building matter; and

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- (b) are subject to such conditions and restrictions as are specified in his or her instrument of appointment.
- (3) A matter is a *building matter* if it relates to a building industry participant.
- (4) For the purposes of the performance of the functions and the exercise of the powers of an inspector in relation to a building matter:
- (a) a reference in an Act to a Fair Work Inspector has effect as if it were a reference to an inspector; and
- (b) a reference in an Act to the Fair Work Ombudsman has effect as if it were a reference to the Director.
- (5) To avoid doubt, this section does not provide for the Fair Work Ombudsman to give directions to an inspector under section 704 or 705 of the FW Act.

59D Director's powers under Fair Work Act

- (1) The Director has the same functions and powers, in relation to a building matter, that the Fair Work Ombudsman has under section 715 of the FW Act.
- Note: Section 715 of the FW Act provides for the Fair Work Ombudsman to accept written undertakings in relation to contraventions of that Act.
- (2) The functions and powers conferred under subsection (1) are in addition to the functions and powers the Director has because of the operation of subsection 59C(4).

59E Inspectors' power to monitor compliance with Building Code

- (1) Inspectors are also to monitor compliance with the Building Code.
- (2) For this purpose, an inspector has the functions and powers under Subdivision D of Division 3 of Part 5-2 of the FW Act that he or she would have if the Building Code were a fair work instrument.

59F General directions by the Director

- (1) The Director may, by legislative instrument, give a direction to inspectors relating to the performance of their functions or the exercise of their powers as inspectors.
-

(2) The direction must be of a general nature only, and cannot relate to a particular case.

(3) An inspector must comply with the direction.

59G Particular directions by the Director

(1) The Director may give a direction to an inspector relating to the performance of the inspector's functions or the exercise of the inspector's powers as an inspector.

(2) The inspector must comply with the direction.

(3) If a direction is in writing, the direction is not a legislative instrument.

Division 3—Powers of Federal Safety Officers

Part 3—Federal Safety Officers

Division 1—Appointment

60 Federal Safety Officers

- (1) The Federal Safety Commissioner may, by written instrument, appoint any of the following persons as a Federal Safety Officer:
 - (a) a person who is an employee of the Commonwealth or who holds an office or appointment under a law of the Commonwealth;
 - (b) a person who is an employee of a State or Territory or who holds an office or appointment under a law of a State or Territory;
 - (c) a consultant engaged under section 34.
- (2) The Federal Safety Commissioner must not appoint a person referred to in paragraph (1)(c) as a Federal Safety Officer unless the Federal Safety Commissioner is satisfied that the person is an appropriate person to be appointed as a Federal Safety Officer.
- (3) The Federal Safety Commissioner is a Federal Safety Officer by force of this subsection.
- (4) In exercising powers or performing functions as a Federal Safety Officer, a Federal Safety Officer appointed under subsection (1) must comply with any directions of the Federal Safety Commissioner.
- (5) If a direction under subsection (4) is of general application, the direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- (6) If a direction under subsection (4) relates to a particular case, the direction is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

61 Identity cards for Federal Safety Officers

- (1) The Federal Safety Commissioner must issue to a Federal Safety Officer appointed under subsection 60(1) an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the Federal Safety Officer.
- (2) The Minister must issue to the Federal Safety Commissioner an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the Federal Safety Commissioner.
- (3) If a person to whom an identity card has been issued ceases to be a Federal Safety Officer, the person must, within 14 days, return the identity card to the Federal Safety Commissioner, or the Minister, as the case requires.
- (4) A person must not contravene subsection (3).
Penalty: 1 penalty unit.
- (5) Subsection (4) does not apply if the person has a reasonable excuse.
Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).
- (6) A Federal Safety Officer must carry the identity card at all times when exercising powers or performing functions as a Federal Safety Officer.

Division 2—Powers

62 Powers to enter premises etc. to ascertain compliance with Building Code

- (1) A Federal Safety Officer may exercise powers under this section for the purpose (a *compliance purpose*) of ascertaining whether the Building Code has been complied with, or is being complied with, by a building industry participant.
Note: Section 27 specifies the persons who can be required to comply with the Building Code.

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- (2) The powers may be exercised at any time during ordinary working hours or at any other time at which it is necessary to do so for a compliance purpose.
- (3) A Federal Safety Officer may, without force, enter:
 - (a) any premises on which the officer has reasonable cause to believe that building work is being carried out, or has been carried out, being building work to which the Building Code applies or applied; or
 - (b) any premises on which the officer has reasonable cause to believe that a breach by a building industry participant of the Building Code has occurred, is occurring or is likely to occur.
- (4) Subsection (3) does not authorise entry onto a part of premises if that part is used for residential purposes.
- (5) A Federal Safety Officer may do any of the following on premises referred to in subsection (3):
 - (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) as prescribed by the regulations, take samples of any goods or substances;
 - (c) interview any person;
 - (d) inspect, and make copies of, any document that is on the premises, or is accessible from a computer that is kept on the premises, being a document that the officer believes, on reasonable grounds, to be relevant to compliance purposes;
 - (e) require a person who has the custody of, or access to, a document to produce the document to the officer within a specified period.
- (6) If a person fails to comply with a requirement under subsection (5) to produce a document, a Federal Safety Officer may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).
- (7) Where a document is produced to a Federal Safety Officer under paragraph (5)(e) or subsection (6), the officer may:
 - (a) inspect and copy the document; and
 - (b) if the Federal Safety Officer gives a receipt to the person who produced the document—retain the document for as long as

necessary for the purpose of exercising powers or performing functions as a Federal Safety Officer.

- (8) While a Federal Safety Officer retains a document, the officer must permit the document to be inspected and copied, at any reasonable time, by:
- (a) the person otherwise entitled to possession of the document; or
 - (b) a person authorised by the person otherwise entitled to possession of the document.
- (9) A Federal Safety Officer may, without force, enter business premises in which a person ordinarily performs work or conducts business if the officer has reasonable cause to believe that the person has information relevant to compliance purposes.
- (10) A Federal Safety Officer must not enter business premises under subsection (9) if the officer has reasonable cause to believe that the person concerned is not in that place.
- (11) A Federal Safety Officer who enters premises under subsection (9) may interview the person concerned in that place.
- (12) For the avoidance of doubt, a refusal or failure by a person to participate in an interview under this section is not to be treated as conduct covered by section 149.1 of the *Criminal Code*.
- (13) Before entering premises under this section, a Federal Safety Officer must announce that the officer is authorised to enter the place. If the occupier or another person who apparently represents the occupier is present, the officer must produce the officer's identity card to that person for inspection.
- ~~(14) The occupier of premises must not refuse or unduly delay entry to the premises by a Federal Safety Officer exercising powers under this section.~~

~~Note: — Grade A civil penalty.~~

- (15) In this section:

copy, in relation to a document, includes take extracts from the document.

Note: The *Criminal Code* contains offences for obstructing or hindering Commonwealth public officials.

63 Powers to enter premises etc. to ascertain compliance with accreditation scheme

- (1) A Federal Safety Officer may exercise powers under this section for the following purposes (*compliance purposes*):
 - (a) ascertaining whether a constitutional corporation that is an applicant for accreditation meets the accreditation requirements;
 - (b) ascertaining whether a constitutional corporation that is an accredited person has complied, or is complying, with conditions of the accreditation;
 - (c) ascertaining whether an accredited person has complied, or is complying, with conditions of the accreditation in respect of building work in a Territory or Commonwealth place.
- (2) The powers may be exercised at any time during ordinary working hours or at any other time at which it is necessary to do so for compliance purposes.
- (3) A Federal Safety Officer may, without force, enter:
 - (a) any premises on which the officer has reasonable cause to believe that building work is being carried out, or has been carried out, by the applicant or accredited person referred to in subsection (1); or
 - (b) any premises on which the officer has reasonable cause to believe that there are documents relevant to compliance purposes.
- (4) Subsection (3) does not authorise entry onto a part of premises if that part is used for residential purposes.
- (5) A Federal Safety Officer may do any of the following on premises referred to in subsection (3):
 - (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) as prescribed by the regulations, take samples of any goods or substances;
 - (c) interview any person;
 - (d) inspect, and make copies of, any document that is on the premises, or is accessible from a computer that is kept on the

- premises, being a document that the officer believes, on reasonable grounds, to be relevant to compliance purposes;
- (e) require a person who has the custody of, or access to, a document to produce the document to the officer within a specified period.
- (6) If a person fails to comply with a requirement under subsection (5) to produce a document, a Federal Safety Officer may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).
- (7) Where a document is produced to a Federal Safety Officer under paragraph (5)(e) or subsection (6), the officer may:
- (a) inspect and copy the document; and
 - (b) if the Federal Safety Officer gives a receipt to the person who produced the document—retain the document for as long as necessary for the purpose of exercising powers or performing functions as a Federal Safety Officer.
- (8) While a Federal Safety Officer retains a document, the officer must permit the document to be inspected and copied, at any reasonable time, by:
- (a) the person otherwise entitled to possession of the document; or
 - (b) a person authorised by the person otherwise entitled to possession of the document.
- (9) A Federal Safety Officer may, without force, enter business premises in which a person ordinarily performs work or conducts business if the officer has reasonable cause to believe that the person has information relevant to compliance purposes.
- (10) A Federal Safety Officer must not enter business premises under subsection (9) if the officer has reasonable cause to believe that the person concerned is not in that place.
- (11) A Federal Safety Officer who enters premises under subsection (9) may interview the person concerned in that place.
- (12) For the avoidance of doubt, a refusal or failure by a person to participate in an interview under this section is not to be treated as conduct covered by section 149.1 of the *Criminal Code*.
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(13) Before entering premises under this section, a Federal Safety Officer must announce that the officer is authorised to enter the place. If the occupier or another person who apparently represents the occupier is present, the officer must produce the officer's identity card to that person for inspection.

~~(14) The occupier of premises must not refuse or unduly delay entry to the premises by a Federal Safety Officer exercising powers under this section.~~

~~Note: — Grade A civil penalty.~~

(15) In this section:

accreditation means accreditation under the accreditation scheme.

accredited person means a person who is accredited under the accreditation scheme.

copy, in relation to a document, includes take extracts from the document.

Note: The *Criminal Code* contains offences for obstructing or hindering Commonwealth public officials.

Chapter 8—Miscellaneous

~~64 Project agreements not enforceable~~

~~_____ If:~~

- ~~_____ (a) an agreement is entered into with the intention of securing standard employment conditions for building employees in respect of building work that they carry out at a particular building site or sites; and~~
 - ~~_____ (b) not all the employees are employed by the same employer; and~~
 - ~~_____ (c) either:~~
 - ~~_____ (i) a party to the agreement is an organisation and at least some of the employees are members of that organisation; or~~
 - ~~_____ (ii) a party to the agreement is a constitutional corporation and at least some of the employees are employees of that corporation; and~~
 - ~~_____ (d) the agreement has not been approved by FWA (within the meaning of the FW Act);~~
- ~~then the agreement is unenforceable to the extent to which it relates to building employees.~~

64 Disclosure of information by the Director

Information to which this section applies

- ~~_____ (1) This section applies to information (other than protected information within the meaning of section 65) that is:~~
 - ~~_____ (a) information acquired by the Director in the course of performing functions, or exercising powers, as the Director; or~~
 - ~~_____ (b) information acquired by an inspector in the course of performing functions, or exercising powers, as an inspector; or~~
 - ~~_____ (c) information acquired by a member of staff referred to in subsection 26K(1) in the course of performing functions, or exercising powers, as a member of staff; or~~

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(d) information acquired by a person in the course of assisting the Director under section 26L, or in the course of performing functions, or exercising powers, as a consultant under section 26M; or

(e) information acquired by a person in the course of assisting an inspector in performing functions, or exercising powers, as an inspector.

Disclosure that is necessary or appropriate, or likely to assist administration or enforcement

(2) The Director may disclose, or authorise the disclosure of, the information if the Director reasonably believes:

(a) that it is necessary or appropriate to do so for the purposes of the performance of the Director's functions or the exercise of the Director's powers; or

(b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

Disclosure to the Minister

(3) The Director may disclose, or authorise the disclosure of, the information to the Minister if the Director reasonably believes that the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Disclosure to the Department

(4) The Director may disclose, or authorise the disclosure of, the information to:

(a) the Secretary of the Department; or

(b) an SES employee, or an APS employee, in the Department;

for the purpose of briefing, or considering briefing, the Minister if the Director reasonably believes the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Disclosure to the Fair Work Building Industry Inspectorate Advisory Board

- (5) The Director may disclose, or authorise the disclosure of, the information to the Advisory Board if the Director reasonably believes that the disclosure is likely to assist the Advisory Board in performing its role.

Interaction with section 66

- (6) Subsections (2) to (4) have effect subject to section 66.

64A Disclosure of information by the Federal Safety Commissioner

Information to which this section applies

- (1) This section applies to information that is:
- (a) information acquired by the Federal Safety Commissioner in the course of performing functions, or exercising powers, as the Federal Safety Commissioner; or
 - (b) information acquired by a Federal Safety Officer in the course of performing functions, or exercising powers, as a Federal Safety Officer; or
 - (c) information acquired by an APS employee assisting the Federal Safety Commissioner; or
 - (d) information acquired by a person in the course of performing functions, or exercising powers, as a consultant under section 34.

Disclosure that is necessary or appropriate, or likely to assist administration or enforcement

- (2) The Federal Safety Commissioner may disclose, or authorise the disclosure of, the information if the Federal Safety Commissioner reasonably believes:
- (a) that it is necessary or appropriate to do so for the purposes of the performance of the Federal Safety Commissioner's functions or the exercise of the Federal Safety Commissioner's powers; or
 - (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

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Disclosure to the Minister

- (3) The Federal Safety Commissioner may disclose, or authorise the disclosure of, the information to the Minister if the Federal Safety Commissioner reasonably believes that the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

Disclosure to the Department

- (4) The Federal Safety Commissioner may disclose, or authorise the disclosure of, the information to:
- (a) the Secretary of the Department; or
 - (b) an SES employee, or an APS employee, in the Department;
- for the purpose of briefing, or considering briefing, the Minister if the Federal Safety Commissioner reasonably believes the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

65 Protection of confidentiality of information obtained under an examination notice

- (1) This section restricts what a person (the *entrusted person*) may do with protected information that the person has obtained in the course of official employment.

Note: Although this section applies only to information that a person obtained in the course of official employment, the obligations under this section continue to apply after the person ceases to be in official employment.

Recording or disclosing

- (2) The entrusted person must not:
- (a) make a record of protected information; or
 - (b) disclose protected information.

Penalty: Imprisonment for 12 months.

Permitted recording or disclosure by designated officials

- (3) If the entrusted person is a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):

- (a) the recording or disclosure is for the purposes of ~~this Act~~ the performance of the Director's functions or the exercise of the Director's powers;
- (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment;
- (c) in the case of a disclosure—the disclosure is to a person appointed or employed by:
 - (i) the Commonwealth, a State or Territory; or
 - (ii) an authority of the Commonwealth, a State or Territory; for the purpose of assisting in building industry law enforcement;
- (d) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

Permitted recording or disclosure by other persons

- (4) If the entrusted person is not a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):
 - (a) the recording or disclosure is for the purposes of ~~this Act~~ the performance of the Director's functions or the exercise of the Director's powers;
 - (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment, being duties relating to building industry law enforcement;
 - (c) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

Disclosure to a Minister by a designated ~~ABC~~ official

- (5) If:
 - (a) the entrusted person discloses protected information to any Minister; and
 - (aa) the entrusted person is a designated ~~ABC~~ official; and

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(b) the disclosure is not required or authorised by section 12 or 14;
then the exceptions in subsections (3) and (4) of this section do not apply to the disclosure.

Disclosure in reports under this Act

- (6) If:
- (a) the entrusted person discloses protected information in a report under section 12 or 14; and
 - (b) section 66 is not complied with in respect of the disclosure of the information in the report;
- then the exceptions in subsections (3) and (4) of this section do not apply to the disclosure.

Authorisation for purposes of Privacy Act

- (7) A disclosure of personal information is taken to be authorised by law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988* if the information is protected information and the disclosure is made in accordance with subsection (3) or (4) of this section.

Definitions

- (8) In this section:

building industry law enforcement means enforcement of a law of the Commonwealth, or of a State or Territory, where the enforcement is in respect of:

- (a) conduct by, or in relation to, a building industry participant in that capacity; or
- (b) conduct that is, or relates to, building work.

~~**designated ABC official** means:~~

- ~~(a) a person covered by paragraphs (a) to (e) or (j) of the definition of **designated official** in this subsection; or~~
- ~~(b) a person acting under a delegation under this Act from a person covered by paragraph (a) of this definition.~~

~~**designated official** means any of the following:~~

- ~~(a) the ABC Commissioner;~~

- ~~(b) a Deputy ABC Commissioner;~~
- ~~(c) an ABC Inspector;~~
- ~~(d) a person assisting the ABC Commissioner as mentioned in subsection 25(1);~~
- ~~(e) a person engaged as a consultant under subsection 25(3);~~
- ~~(f) the Federal Safety Commissioner;~~
- ~~(g) a Federal Safety Officer;~~
- ~~(h) an APS employee assisting the Federal Safety Commissioner;~~
- ~~(i) a person engaged as a consultant under section 34;~~
- ~~(j) the General Manager of FWA;~~
- ~~(k) a person acting under a delegation under this Act from a person covered by any of the above paragraphs.~~

designated official means any of the following:

- ~~(a) the Director;~~
- ~~(b) an inspector;~~
- ~~(c) a member of staff referred to in subsection 26K(1);~~
- ~~(d) a person assisting the Director under section 26L;~~
- ~~(e) a person engaged as a consultant under section 26M;~~
- ~~(f) the General Manager of FWA;~~
- ~~(g) a presidential member or a Registrar of the Administrative Appeals Tribunal, or an officer or member of staff referred to in section 24N of the *Administrative Appeals Tribunal Act 1975*;~~
- ~~(h) the Commonwealth Ombudsman, a Deputy Commonwealth Ombudsman or a member of the staff referred to in subsection 31(1) of the *Ombudsman Act 1976*;~~
- ~~(i) a person acting under a delegation under this Act from a person referred to in any of the preceding paragraphs.~~

disclose means divulge or communicate.

official employment means:

- (a) appointment or employment by, or the performance of services for:
 - (i) the Commonwealth, a State or Territory; or
 - (ii) an authority of the Commonwealth, a State or Territory;
- or

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- (b) appointment as an ~~ABC Inspector or Federal Safety Officer~~ inspector.

protected information means information that:

- ~~(a) was disclosed or obtained for the purposes of this Act; and~~
(a) was disclosed or obtained under an examination notice or at an examination; and
(b) was obtained by the entrusted person, or by any other person, in the course of official employment; and
(c) relates to a person other than the entrusted person.

66 Reports not to include information relating to an individual's affairs

- (1) Information relating to the affairs of an individual must not be included in a report under section 12 or 14 if:
- (a) the individual is named, or otherwise specifically identified, in the report as the individual to whom the information relates; or
 - (b) it is reasonably likely that people generally (other than people to whom the individual has disclosed information relating to the individual's affairs) would be able to work out the identity of the individual to whom the information relates.
- (2) For the purposes of applying paragraph (1)(b) to information relating to a particular individual's affairs, the context in which the information appears, and information that is otherwise publicly available, must be taken into account (as well as any other relevant matter).

~~**67 ABC Commissioner to publicise non-compliance**~~

~~If the ABC Commissioner considers that it is in the public interest to do so, the ABC Commissioner may publish details of:~~

- ~~(a) non-compliance with the Building Code, including the names of the persons who have failed to comply; and~~
~~(b) non-compliance by a building industry participant with this Act, including the names of the participants who have failed to comply; and~~
~~(c) non-compliance by a building industry participant with the Independent Contractors Act 2006, the FW Act or the Fair~~

~~Work (Transitional Provisions and Consequential Amendments) Act 2009, including the names of the participants who have failed to comply.~~

~~68 Delegation by Minister~~

- ~~(1) The Minister may, in writing, delegate all or any of the Minister's powers and functions under this Act to:~~
- ~~(a) an SES employee or acting SES employee; or~~
 - ~~(b) a person prescribed by the regulations for the purposes of this paragraph;~~
~~other than powers or functions under Chapter 2 or 4 or section 58 or 61.~~
- ~~(2) The Minister may, in writing, delegate all or any of the Minister's powers and functions under Chapter 3 to:~~
- ~~(a) the ABC Commissioner; or~~
 - ~~(b) a Deputy ABC Commissioner; or~~
 - ~~(c) the Federal Safety Commissioner.~~
- ~~(3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.~~

68 Delegation by Minister

- (1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under Chapter 3 to:
- (a) the Director; or
 - (b) the Federal Safety Commissioner.
- (2) In performing functions or exercising powers delegated under subsection (1), the Director and the Federal Safety Commissioner must comply with any directions of the Minister.

Note: See also sections 34AA and 34AB of the Acts Interpretation Act 1901.

~~69 Building association responsible for conduct of members etc.~~

- ~~(1) For the purposes of this Act, the following conduct in relation to a building association is taken to be conduct of the building association:~~
- ~~(a) conduct of the committee of management of the association;~~

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- ~~(b) conduct of an officer or agent of the association acting in that capacity;~~
- ~~(c) conduct of a member, or group of members, of the association where the conduct is authorised by:
 - ~~(i) the rules of the association; or~~
 - ~~(ii) the committee of management of the association; or~~
 - ~~(iii) an officer or agent of the association acting in that capacity;~~~~
- ~~(d) conduct of a member of the association, who performs the function of dealing with an employer on behalf of the member and other members of the association, acting in that capacity.~~
- ~~(2) Paragraphs (1)(c) and (d) do not apply if:
 - ~~(a) a committee of management of the building association; or~~
 - ~~(b) a person authorised by the committee; or~~
 - ~~(c) an officer of the industrial association; has taken reasonable steps to prevent the action.~~~~
- ~~(3) In this section:
officer, in relation to a building association, includes:
 - ~~(a) a delegate or other representative of the association; and~~
 - ~~(b) an employee of the association.~~~~

70 Capacity, state of mind etc. of person being coerced etc.

- ~~In applying a provision of this Act that refers to:~~
- ~~(a) coercing a person to do a particular thing; or~~
 - ~~(b) applying undue pressure to a person to do a particular thing;~~
- ~~or~~
- ~~(c) encouraging a person to do a particular thing; or~~
 - ~~(d) advising a person to do a particular thing; or~~
 - ~~(e) inciting a person to do a particular thing; or~~
 - ~~(f) engaging in conduct with the intention of doing any of the above;~~
- ~~it is not relevant whether or not that person is able, willing or eligible to do that particular thing.~~

71 ~~ABC Commissioner intervention~~ Director may intervene in court proceedings

- (1) The ~~ABC Commissioner~~ Director may intervene in the public interest in a civil proceeding before a court in a matter that:
 - (a) arises under this Act; or
 - (b) arises under the *Independent Contractors Act 2006*, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and involves:
 - (i) a building industry participant; or
 - (ii) building work.
- (2) If the ~~ABC Commissioner~~ Director intervenes in a proceeding under subsection (1), the ~~ABC Commissioner~~ Director is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

72 ~~ABC Commissioner~~ Director may make submissions in FWA proceedings

The ~~ABC Commissioner~~ Director may, by giving written notice to the General Manager of FWA, make a submission in a matter before FWA that arises under the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and involves:

- (a) a building industry participant; or
- (b) building work.

~~73 ABC Commissioner or ABC Inspector may institute proceedings under the FW Act, etc.~~

~~Powers corresponding to powers of Fair Work Inspectors under the FW Act, etc.~~

- ~~(1) If a provision of the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or of an instrument under either of those Acts, authorises a Fair Work Inspector (within the meaning of the FW Act) to:~~
 - ~~(a) make an application to FWA; or~~
 - ~~(b) make an application to, or otherwise institute proceedings in, a court;~~

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~~the provision is also taken to authorise the ABC Commissioner or an ABC Inspector to make such an application, or institute such proceedings, in any case where the application or proceedings relates to a matter that involves:~~

- ~~———— (d) a building industry participant; or~~
- ~~———— (e) building work.~~
- ~~(2) If the ABC Commissioner or an ABC Inspector makes such an application, or institutes such proceedings, the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and any such instrument have effect, in relation to the application or proceedings, as if the ABC Commissioner or the ABC Inspector were a Fair Work Inspector (within the meaning of the FW Act).~~
- ~~(3) Directions under section 704 or 705 of the FW Act do not apply to the ABC Commissioner or an ABC Inspector in relation to such an application or such proceedings.~~

~~73A ABC Commissioner or ABC Inspector may institute proceedings under the *Independent Contractors Act 2006*~~

- ~~(1) If a provision of the *Independent Contractors Act 2006*, or of an instrument under that Act, authorises a workplace inspector (within the meaning of that Act) to make an application to, or otherwise institute proceedings in, a court, the provision is also taken to authorise the ABC Commissioner or an ABC Inspector to make such an application, or institute such proceedings, in any case where the application or proceedings relate to a matter that involves:~~
 - ~~———— (a) a building industry participant; or~~
 - ~~———— (b) building work.~~
- ~~(2) If the ABC Commissioner or an ABC Inspector makes such an application, or institutes such proceedings, the *Independent Contractors Act 2006* and any such instrument have effect, in relation to the application or proceedings, as if the ABC Commissioner or the ABC Inspector were a workplace inspector (within the meaning of that Act).~~

~~(3) Directions under section 704 or 705 of the FW Act do not apply to the ABC Commissioner or an ABC Inspector in relation to such an application or such proceedings.~~

74 General Manager of FWA must keep ABC Commissioner Director informed

The General Manager of FWA must, as soon as practicable, notify the ABC Commissioner Director of:

- (a) every application lodged with FWA, or the General Manager of FWA under the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, where the application relates to a matter that involves:
 - (i) a building industry participant; or
 - (ii) building work; and
- (b) the outcome of each such application.

75 Jurisdiction of courts

Jurisdiction where Act allows proceedings to be instituted

~~(1) If a provision of this Act, expressly or by implication, authorises a proceeding to be instituted in a particular court in relation to a matter:~~

~~(a) that provision is taken to vest that court with jurisdiction in that matter; and~~

~~(b) in the case of a court of a State—the jurisdiction so vested is subject to any limits to which any other jurisdiction of the court may be subject; and~~

~~(c) in the case of the Federal Court or the Federal Magistrates Court—the jurisdiction so vested is not limited by any limits to which the other jurisdiction of the court may be subject; and~~

~~(d) in the case of a court of a Territory—the jurisdiction is vested so far only as the Constitution permits.~~

Jurisdiction in relation to modified provisions of FW Act

~~(3) If:~~

~~(a) a court has jurisdiction in relation to a matter arising under a provision of the FW Act; and~~

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~~(b) that provision is affected by this Act;
then that jurisdiction extends to a matter arising under that
provision as affected by this Act.~~

~~*Writ of mandamus etc. against officers of the Commonwealth*~~

~~(4) Paragraph 563(b) of the FW Act and paragraph 22(b) of
Schedule 17 to the *Fair Work (Transitional Provisions and
Consequential Amendments) Act 2009* extend to matters in which a
writ of mandamus or prohibition, or an injunction, is sought against
an officer or officers of the Commonwealth holding office under
that Act, in relation to powers or functions under this Act. This
subsection is enacted for the avoidance of doubt.~~

~~(5) For the purposes of section 44 of the *Judiciary Act 1903*, the
Federal Court is taken to have jurisdiction with respect to any
matter in which a writ of mandamus or prohibition, or an
injunction, is sought against an officer or officers of the
Commonwealth holding office under this Act.~~

~~Note: Section 44 of the *Judiciary Act 1903* gives the High Court of Australia
power to remit a matter to a federal court that has jurisdiction with
respect to that matter.~~

~~(6) The Federal Court has jurisdiction with respect to matters remitted
to it under section 44 of the *Judiciary Act 1903*.~~

~~*Exclusive jurisdiction of Federal Court for certain matters
involving organisations etc.*~~

~~(7) Subject to this Act, the jurisdiction of the Federal Court in relation
to an act or omission for which an organisation, or member of an
organisation, is liable to be sued, or to be proceeded against for a
pecuniary penalty, is exclusive of the jurisdiction of any other
court created by the Parliament or any court of a State or Territory.~~

~~*Referral of matters to Full Court of Federal Court*~~

~~(8) At any stage of a proceeding in a matter in which the Federal Court
has jurisdiction under this Act, a single Judge exercising the
jurisdiction of the Federal Court:~~

~~(a) may refer a question of law for the opinion of a Full Court of
the Federal Court; and~~

~~(b) may, of the Judge's own motion or on the application of a party, refer the matter to a Full Court of the Federal Court to be heard and determined.~~

~~If a Judge so refers a matter, the Full Court of the Federal Court may have regard to any evidence given, or arguments adduced, in the proceeding before the Judge.~~

~~(9) The Federal Court has jurisdiction with respect to matters in relation to which questions may be referred to it under subsection (8).~~

75 Jurisdiction of the Federal Court

Jurisdiction is conferred on the Federal Court in relation to any matter arising under this Act.

75A Exercising jurisdiction in the Fair Work Division of the Federal Court

(1) This section applies if:

~~(a) an application is made to the Federal Court under this Act; or~~

(b) a writ of mandamus or prohibition or an injunction is sought in the Federal Court against a person holding office under this Act; or

(c) a declaration is sought under section 21 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or

(d) an injunction is sought under section 23 of the *Federal Court of Australia Act 1976* in relation to a matter arising under this Act; or

(e) a prosecution is instituted in the Federal Court under this Act; or

(f) an appeal is instituted in the Federal Court from a judgment of the Federal Magistrates Court or a court of a State or Territory in a matter arising under this Act; or

(g) proceedings in relation to a matter arising under this Act are transferred to the Federal Court from the Federal Magistrates Court; or

(h) the Federal Magistrates Court or a court of a State or Territory states a case or reserves a question for the

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consideration of the Federal Court in a matter arising under this Act; or

- (i) the High Court remits a matter arising under this Act to the Federal Court.

- (2) The jurisdiction of the Federal Court is to be exercised in the Fair Work Division of the Federal Court.

~~75B Exercising jurisdiction in the Fair Work Division of the Federal Magistrates Court~~

~~(1) This section applies if:~~

~~(a) an application is made to the Federal Magistrates Court under this Act; or~~

~~(b) an injunction is sought under section 15 of the *Federal Magistrates Act 1999* in relation to a matter arising under this Act; or~~

~~(c) a declaration is sought under section 16 of the *Federal Magistrates Act 1999* in relation to a matter arising under this Act; or~~

~~(d) proceedings in relation to a matter arising under this Act are transferred to the Federal Magistrates Court from the Federal Court; or~~

~~(e) the High Court remits a matter arising under this Act to the Federal Magistrates Court.~~

~~(2) The jurisdiction of the Federal Magistrates Court is to be exercised in the Fair Work Division of the Federal Magistrates Court.~~

~~76 Court not to require undertaking as to damages~~

~~If the ABC Commissioner or an ABC Inspector is an applicant in court proceedings under:~~

~~(a) section 39 or 49 of this Act; or~~

~~(b) the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;~~

~~then the court cannot require the ABC Commissioner, the ABC Inspector or any other person, as a condition of granting an interim injunction, to give undertakings as to damages.~~

76 Court not to require undertaking as to damages

If the Director or an inspector is an applicant in court proceedings under the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, the court cannot require the Director, the inspector or another person, as a condition of granting an interim injunction, to give undertakings as to damages.

77 ABC Commissioner-Director etc. not liable for conduct in good faith

- (1) No one is liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done, or omitted to be done, in good faith and without negligence:
- (a) by a protected person in the exercise, or purported exercise, of functions, powers or duties under, or in relation to, this Act; or
 - (b) by a protected person in the exercise, or purported exercise, of functions, powers or duties under, or in relation to, the *Independent Contractors Act 2006*, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, where the exercise, or purported exercise, of the function, power or duty relates to a matter that involves:
 - (i) a building industry participant; or
 - (ii) building work.

- (2) In this section:

protected person means any of the following:

- ~~(a) the ABC Commissioner;~~
- ~~(b) a Deputy ABC Commissioner;~~
- ~~(c) an ABC Inspector;~~
- ~~(d) a person assisting the ABC Commissioner as mentioned in subsection 25(1);~~
- ~~(e) a person engaged as a consultant under subsection 25(3);~~
- ~~(a) the Director;~~
- ~~(b) an inspector;~~
- ~~(c) a member of staff referred to in subsection 26K(1);~~
- ~~(d) a person assisting the Director under section 26L;~~

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~~(e) a person engaged as a consultant under section 26M;~~

(f) the Federal Safety Commissioner;

(g) a Federal Safety Officer;

(h) an APS employee assisting the Federal Safety Commissioner;

(i) a person engaged as a consultant under section 34;

(j) the General Manager of FWA;

~~(k) a person acting under a delegation under this Act from a person covered by any of the above paragraphs.~~

~~(k) the Independent Assessor;~~

~~(l) a presidential member or a Registrar of the Administrative Appeals Tribunal, or an officer or member of staff referred to in section 24N of the *Administrative Appeals Tribunal Act 1975*;~~

~~(m) the Commonwealth Ombudsman, a Deputy Commonwealth Ombudsman or a member of the staff referred to in subsection 31(1) of the *Ombudsman Act 1976*;~~

~~(n) a person acting under a delegation under this Act from a person referred to in any of the preceding paragraphs.~~

78 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- required or permitted by this Act to be prescribed; or
 - necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may make provision for, and in relation to, the following:

~~(a) the signing or lodging of documents that are required or permitted by this Act to be lodged with, or given to, a court;~~

(b) the manner in which, and the time within which, applications under this Act may be made and dealt with;

(c) the form of notices that are required or permitted to be given under this Act;

~~(d) requiring a building industry participant to notify the ABC Commissioner of:~~

-
- ~~(i) an application made to a court under this Act, the *Independent Contractors Act 2006*, the *FW Act* or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, where the application is made by, or otherwise involves, the participant; and~~
 - ~~(ii) the outcome of the application;~~
 - ~~(e) fees to be charged in relation to proceedings under this Act;~~
 - (f) penalties for offences against the regulations, not exceeding a fine of 10 penalty units;
 - (g) civil penalties for contraventions of the regulations, not exceeding:
 - (i) for a body corporate—25 penalty units; or
 - (ii) in any other case—5 penalty units.
- (3) Despite subsection 12(2) of the *Legislative Instruments Act 2003*:
- (a) the first regulations made for the purposes of subsection 5(3) may be expressed to take effect from the commencement of that subsection; and
 - (b) the first regulations made for the purposes of subsection 5(4) may be expressed to take effect from the commencement of that subsection; and
 - (c) the first regulations made for the purposes of subsection 7(2) may be expressed to take effect from the commencement of that subsection;
- so long as those regulations are made within 120 days after the commencement of this subsection.

Table of Acts

Notes to the *Building and Construction Industry Improvement Act 2005* Fair Work (*Building Industry*) Act 2011

Note 1

The *Building and Construction Industry Improvement Act 2005* as shown in this compilation comprises Act No. 113, 2005 amended as indicated in the Tables below.

The *Building and Construction Industry Improvement Act 2005* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50 as amended by SLI 2006 No. 119) and the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 2)* (SLI 2006 No. 99). The amendments are incorporated in this compilation.

The *Building and Construction Industry Improvement Act 2005* was amended by the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* (No. 54, 2009) as amended by the *Fair Work (State Referral and Consequential and Other Amendments) Regulations 2009* (SLI 2009 No. 165 as amended by SLI 2009 No. 364). The amendment is incorporated in this compilation.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Building and Construction Industry Improvement Act 2005</i>	113, 2005	12 Sept 2005	Ss. 4–8, 36–38, 41 and 42: 9 Mar 2005 Remainder: Royal Assent	
<i>Workplace Relations Legislation Amendment (Independent Contractors) Act 2006</i>	163, 2006	11 Dec 2006	Schedule 2 (items 6, 6A, 8–19): 1 Mar 2007 (see s. 2(1) and F2007L00412)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Building and Construction Industry Improvement Amendment (OHS) Act 2007</i>	153, 2007	24 Sept 2007	Schedule 1 (item 2): 1 Oct 2007 (see F2007L03846) Remainder: Royal Assent	Sch. 1 (item 5)
<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i>	8, 2008	20 Mar 2008	Schedules 1–7: 28 Mar 2008 (see F2008L00959) Remainder: Royal Assent	—
<i>Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008</i>	26, 2008	23 June 2008	Schedule 1 (items 43–46): Royal Assent	—
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	S. 4: Royal Assent Schedule 8 (items 2–84, 155–158): (a)	S. 4 and Sch. 8 (items 155–158)

Act Notes

- (a) Subsection 2(1) (items 24 and 30) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
24. Schedule 8, items 1 to 130	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009 (see F2009L02563)
30. Schedule 8, items 140 to 161	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009 (see F2009L02563)

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 1	
S. 4	am. SLI 2006 Nos. 50 and 99; No. 163, 2006; No. 8, 2008; No. 54, 2009
Chapter 2	
Part 1	
S. 10	am. SLI 2006 No. 50; No. 163, 2006; No. 54, 2009
Part 2	
S. 24	am. No. 26, 2008
Chapter 4	
Part 1	
S. 34	am. No. 153, 2007
Part 2	
Part 2 of Chapt. 4	rs. No. 153, 2007
S. 35	rs. No. 153, 2007
Chapter 5	
Part 1	
S. 36	am. SLI 2006 No. 50; No. 54, 2009
Part 3	
Heading to Part 3	rs. No. 54, 2009 of Chapt. 5
S. 40	am. No. 54, 2009
S. 41	am. SLI 2006 No. 50 rep. No. 54, 2009
Part 4	
S. 42	am. SLI 2006 Nos. 50 and 119; No. 54, 2009
Chapter 6	
Heading to s. 44	am. SLI 2006 No. 50; No. 54, 2009
Ss. 44, 45	am. SLI 2006 No. 50; No. 54, 2009
Example to s. 45(1)	ad. SLI 2006 No. 50 rep. No. 54, 2009
S. 46	am. No. 54, 2009
S. 47	rs. SLI 2006 No. 50 rep. No. 163, 2006
Chapter 7	
Part 1	
S. 50	am. SLI 2006 No. 50; No. 54, 2009
Chapter 8	
S. 64	am. SLI 2006 No. 50; No. 54, 2009 (as am. by SLI 2009 No. 165)

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subhead. to s. 65(5).....	am. No. 153, 2007
S. 65.....	am. No. 153, 2007; No. 54, 2009
S. 67.....	am. No. 163, 2006; No. 54, 2009
S. 71.....	am. No. 163, 2006; No. 54, 2009
Heading to s. 72.....	am. No. 54, 2009
S. 72.....	am. No. 54, 2009
Heading to s. 73.....	am. No. 54, 2009
Subhead. to s. 73(1).....	am. SLI 2006 No. 50; No. 54, 2009
S. 73.....	am. SLI 2006 No. 50; No. 163, 2006; No. 54, 2009
S. 73A.....	ad. No. 163, 2006 am. No. 54, 2009
Heading to s. 74.....	am. No. 54, 2009
S. 74.....	am. No. 54, 2009
Subhead. to s. 75(3).....	am. No. 54, 2009
S. 75.....	am. No. 163, 2006; No. 54, 2009
Ss. 75A, 75B.....	ad. No. 54, 2009
S. 76.....	am. No. 54, 2009
Ss. 77, 78.....	am. No. 163, 2006; No. 54, 2009

Table A

Table A

Application, saving or transitional provisions

Building and Construction Industry Improvement Amendment (OHS) Act
2007 (No. 153, 2007)

Schedule 1

5 Transitional—consultants

- (1) This item applies if, immediately before the commencement of item 1 of this Schedule, a person is engaged as a consultant under section 34 of the *Building and Construction Industry Improvement Act 2005*.
- (2) The person's engagement has effect from the commencement of item 1 as if the person were engaged under section 34 of the *Building and Construction Industry Improvement Act 2005* as amended by that item.

Fair Work (State Referral and Consequential and Other Amendments) Act 2009
(No. 54, 2009)

4 Definition

In this Act:

WR Act repeal day has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Schedule 2—Transitional and consequential provisions

1 Regulations may deal with transitional etc. matters

- (1) The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments made by this Act.
- (2) In this item:

Table A

amendments made by this Act includes amendments made by regulations under item 2 of this Schedule.

2 Regulations may make consequential amendments of Acts

- (1) The Governor-General may make regulations amending Acts being amendments that are consequential on, or that otherwise relate to, the amendments made by this Act.
- (2) For the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of this item are to be treated as if they had been made by an Act.

Note: This subitem ensures that the amendments can be incorporated into a reprint of the Act.

3 Regulations may take effect from date before registration

- (1) Despite subsection 12(2) of the *Legislative Instruments Act 2003* and subject to subitem (2), regulations made under item 1 or 2 of this Schedule may be expressed to take effect from a date before the regulations are registered under that Act.
- (2) If:
- (a) regulations made under item 1 or 2 of this Schedule are expressed to take effect from a date (the *registration date*) before the regulations are registered under the *Legislative Instruments Act 2003*; and
 - (b) a person engaged in conduct before the registration date; and
 - (c) but for the retrospective effect of the regulations, the conduct would not have contravened a provision of an Act;
- then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of that Act.

Schedule 8

155 General transitional provision relating to functions and powers of the ABC Commissioner and ABC inspectors

Table A

If the *Building and Construction Industry Improvement Act 2005* confers a function or power on the ABC Commissioner or an ABC inspector in relation to the *Fair Work Act 2009*, the *Building and Construction Industry Improvement Act 2005* has effect, on and after the WR Act repeal day, as if the function or power were also conferred in relation to:

- (a) the *Workplace Relations Act 1996* as in force before the WR Act repeal day; and
- (b) the *Workplace Relations Act 1996* as continued in force after the WR Act repeal day by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

156 Transitional provision relating to paragraph 44(1)(c)

Despite the amendment of paragraph 44(1)(c) of the *Building and Construction Industry Improvement Act 2005* made by item 50 of this Schedule, that paragraph applies, in relation to a building agreement made before the WR Act repeal day as if it referred to that agreement.

157 Transitional provision relating to paragraph 64(1)(d)

Despite the repeal of paragraph 64(1)(d) of the *Building and Construction Industry Improvement Act 2005* by item 63 of this Schedule, that paragraph continues to apply, in relation to an agreement entered into before the WR Act repeal day, as if it had not been repealed.

158 Transitional provisions relating to the Industrial Registrar

- (1) Section 65 of the *Building and Construction Industry Improvement Act 2005* applies, on and after the WR Act repeal day, in relation to the Industrial Registrar as if the Industrial Registrar were a designated person.
- (2) Section 74 of the *Building and Construction Industry Improvement Act 2005*, as in force immediately before the WR Act repeal day, continues to apply in relation to an application lodged before that day.
- (3) Subsection 77(2) of the *Building and Construction Industry Improvement Act 2005* applies, on and after the WR Act repeal day, in relation to the Industrial Registrar as if the Industrial Registrar were a protected person.

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