

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

Contents

Chapter 1—I	Prelimi	narv	1 61
21.0p.01 1	1	Short title [see Note 1]	
	2	Commencement	
	3	Main object of Act	
	4	Definitions	
	5	Definition of building work	
	6	Definition of office	
	7	Extension to Christmas Island	
	8	Act to bind Crown	_
			. <u>140211</u>
		lian Building and Construction	
Com	missio	ner	<u>156212</u>
Part 1—Aust	ralian	Building and Construction Commissioner	15 6212
	9	ABC Commissioner and Deputy ABC Commissioners	15 6212
	10	Functions of ABC Commissioner	
	11	Minister's directions to ABC Commissioner	16 6213
	12	Minister may require reports	17 6214
	13	Delegation by ABC Commissioner	
	14	Annual report	
Part 2 Adm	inictro	ative provisions	
1 al t 2—Auiii		_ /	19 62 16
	15	Appointment	
	16	Acting ABC Commissioner	
	17	Remuneration	
	18	Application of the Judges' Pensions Act to a former Judge of the Federal Court who becomes the ABC Commissioner	
	19	Application of the Judges' Pensions Act to a former member	
	19	of the AIRC who becomes the ABC Commissioner	
	20	Leave	
	21	Engaging in other paid employment etc.	
X O	22	Disclosure of interests	
	23	Resignation	
	24	Termination of appointment	
	25	Staff and consultants	
	26	Office of the Australian Building and Construction	. <u>2502</u> 20
	20	Commissioner	<u>246221</u>
Chapter 3—7	The Bu	ilding Code	36 6222
	27	Minister to issue Building Code	
	28	Building industry participants to report on compliance with	. <u>500E</u>
	20	Code	36 6222

Chapter 4—Occup	ational health and safety	<u>386224</u>
Part 1—Federal Sa	nfety Commissioner	38 6224
29	Federal Safety Commissioner	
30	Functions of Federal Safety Commissioner	
31	Minister's directions to Federal Safety Commissioner	
32	Delegation by Federal Safety Commissioner	
33	Acting Federal Safety Commissioner	
34	Consultants	5.4
Part 2—Accreditat	tion scheme for Commonwealth building	
work	aon geneme for common wearing	41 6227
35	Accreditation scheme	<u>416227</u>
Chapter 5—Indust	rial action etc.	<u>436229</u>
Part 1—Prelimina	rv	43 6229
36	Definitions	43 <u>62</u> 29
Part 2—Unlawful i	industrial action	46 6232
37	Definition of unlawful industrial action	
38	Unlawful industrial action prohibited	
39	Injunction against unlawful industrial action	
Part 3—Protected		
		48 <u>62</u> 34
40	Action involving extraneous participants	48 62 34
Part 4—Miscellane		<u>496235</u>
42	Payments in relation to periods of building industrial actio	n <u>496235</u>
Chapter 6—Discri	mination, coercion and unfair contracts	<u>506236</u>
43	Coercion in relation to engagement etc. of building	
	employees and building contractors	<u>506236</u>
44	Coercion of persons to make, vary, terminate etc. enterpris	
	agreements etc.	<u>506236</u>
45	Discrimination against employer in relation to industrial	516027
46	instruments	
	Coercion in relation to superannuation	
Chapter 7—Enforce	cement	<u>546240</u>
Part 1—Contraven	tion of civil penalty provisions	<u>546240</u>
48	Definitions	<u>546240</u>
49	Penalties etc. for contravention of civil penalty provision	<u>546240</u>
50	Multiple proceedings for same conduct	
51	Evidence given in proceedings for penalty not admissible criminal proceedings	

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

Part 2—Com	pliance	e etc. powers 586243	
Division 1	—ABC	Commissioner's powers to obtain information	
21/101011	etc.	72 6243	I
	52	ABC Commissioner's powers to obtain information etc	
	53	Certain excuses not available in relation to section 52 requirements	1
	54	Protection from liability	
	55	Retention and copying etc. of documents	
	56	ABC Commissioner may make and keep copies of documents	1
Division 2	2—Powe	ers of ABC Inspectors 806248	
	57	Australian Building and Construction Inspectors806248	
	58	Identity cards for ABC Inspectors806248	
	59	Power to enter premises etc. 816249	
Division 3	R—Pow	ers of Federal Safety Officers 886253	
Division	60	Federal Safety Officers	
	61	Identity cards for Federal Safety Officers	
	62	Powers to enter premises etc. to ascertain compliance with	ı
	٥ -	Building Code	I
	63	Powers to enter premises etc. to ascertain compliance with	
		accreditation scheme	
Chapter 8—I	Miscell	aneous 95 <u>6260</u>	
•	64	Project agreements not enforceable	
	65	Protection of confidentiality of information	
	66	Reports not to include information relating to an individual's	
		affairs	
	67	ABC Commissioner to publicise non-compliance <u>1026264</u>	
	68	Delegation by Minister	
	69	Building association responsible for conduct of members etc. $\underline{1036265}$	
	70	Capacity, state of mind etc. of person being coerced etc <u>1046265</u>	
	71	ABC Commissioner intervention in court proceedings <u>10562</u> 66	
	72	ABC Commissioner may make submissions in FWA proceedings	
	73	ABC Commissioner or ABC Inspector may institute proceedings under the FW Act, etc	
	73A	ABC Commissioner or ABC Inspector may institute proceedings under the <i>Independent Contractors Act</i> 2006 1066267	
	74	General Manager of FWA must keep ABC Commissioner informed	ļ
	75	Jurisdiction of courts	
	75A	Exercising jurisdiction in the Fair Work Division of the Federal Court	ļ

	75B	Exercising jurisdiction in the Fair Work Division of the Federal Magistrates Court
	76	Court not to require undertaking as to damages
	77	ABC Commissioner etc. not liable for conduct in good faith 1116271
	78	Regulations
Notes		115 6275

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.

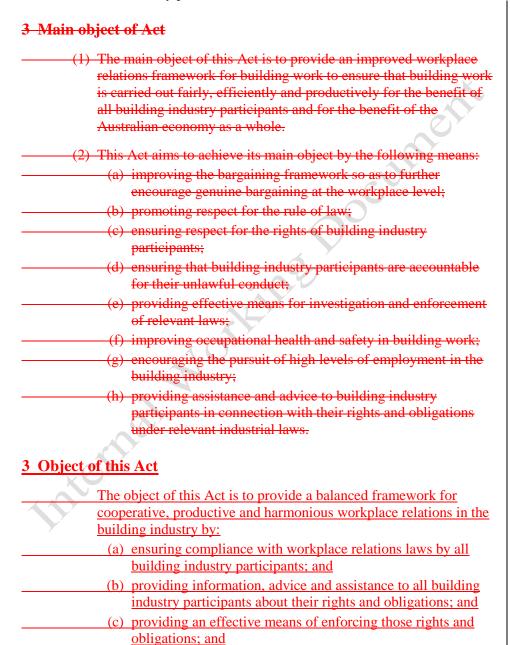
Commencement information			
Column 1	Column 2	Column 3	
Provision(s)	Commencement	Date/Details	
1. Sections 1, 2 and 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 September 2005	
2. Sections 4 to 8	9 March 2005.	9 March 2005	
3.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

Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011 1

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eptember	12 Sept 2005	hich this Act receives the	The day on w Royal Assent	. Sections 39 and 0
rch 2005	9 Marc		9 March 200:	. Sections 41 and 2
eptember	12 Sept 2005	hich this Act receives the	The day on w Royal Assent	. Chapter 6
eptember	12 Sept 2005	hich this Act receives the	The day on w Royal Assent	. Chapters 7 and
Apanueu (0		Parliament and assented to. It visions inserted in this Act after	deal with pro	
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	Date/D	hich this Act receives the	Column 2 Commencen The day on w Royal Assent A day or day However, if a commence w beginning on receives the I	column 1 crovision(s) . Sections 1 to 3 nd anything in nis Act not lsewhere covered y this table
	Date/D	to be fixed by Proclamation	Commencen The day on w Royal Assent A day or day	column 1 crovision(s) . Sections 1 to 3 nd anything in nis Act not lsewhere covered y this table

² Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

(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.



- (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:

⁴ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

- (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.

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 <u>AIRC Australian Industrial Relations</u> Commission;
- (e) the Australian Fair Pay and Conditions Standard;
- (f) a fair work instrument;
- (g) the National Employment Standards.

<u>Commonwealth Ombudsman</u> 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.

⁶ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

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).

<u>examination notice</u> means an examination notice issued under <u>Division 3 of Part 1 of Chapter 7.</u>

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.

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

⁸ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

 (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 <u>Supreme Court of a State or Territory.</u>

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.

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.

¹⁰ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

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:

- (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.

¹² Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

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.

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:

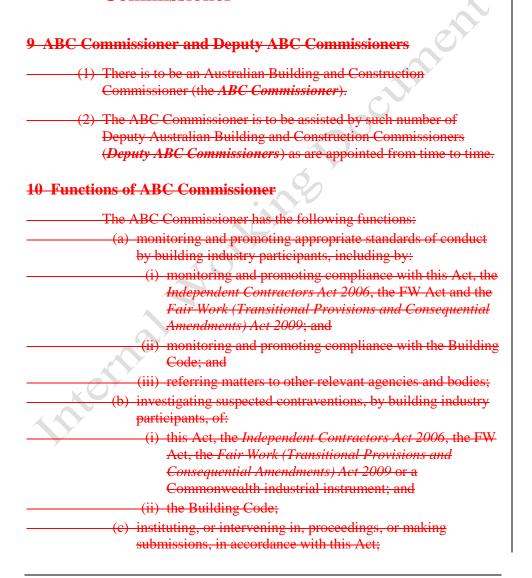
modifications includes additions, omissions and substitutions.

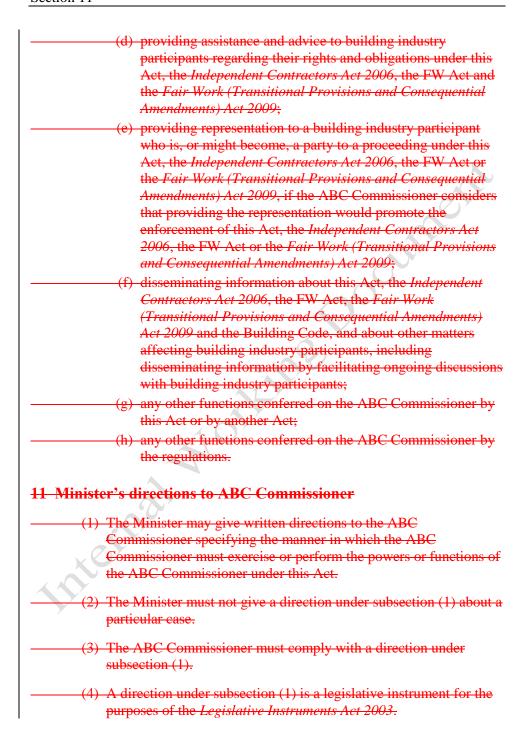
8 Act to bind Crown

- (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

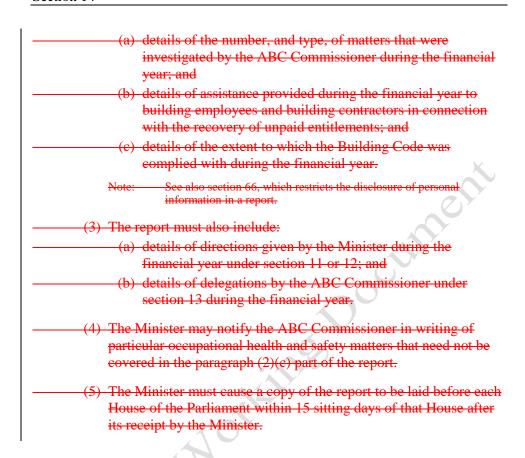
Part 1 Australian Building and Construction Commissioner



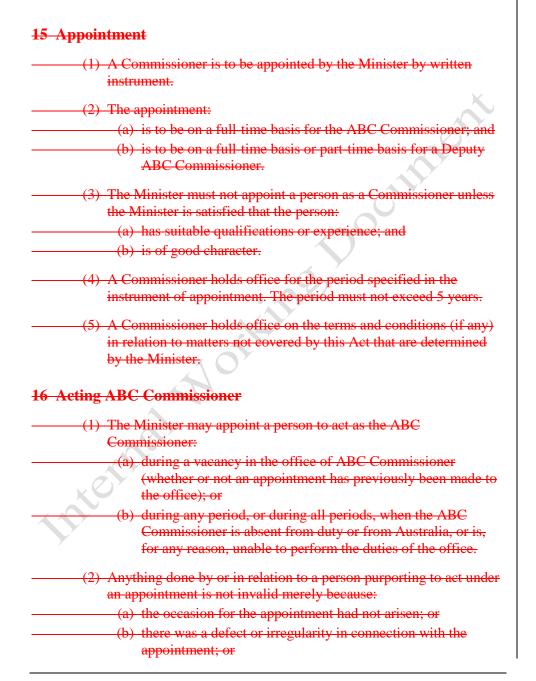


¹⁶ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

(5) Despite anything in section 44 of the <i>Legislative Instruments Act</i>
2003, section 42 of that Act applies to a direction under
subsection (1) of this section.
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.
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 and of each financial year the
(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:

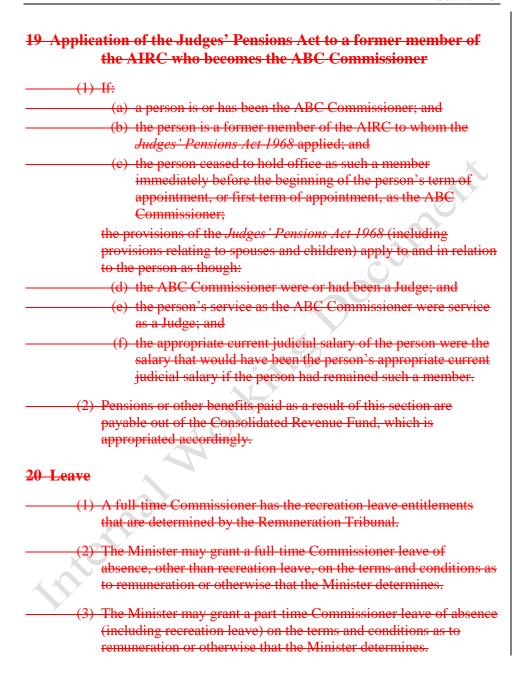


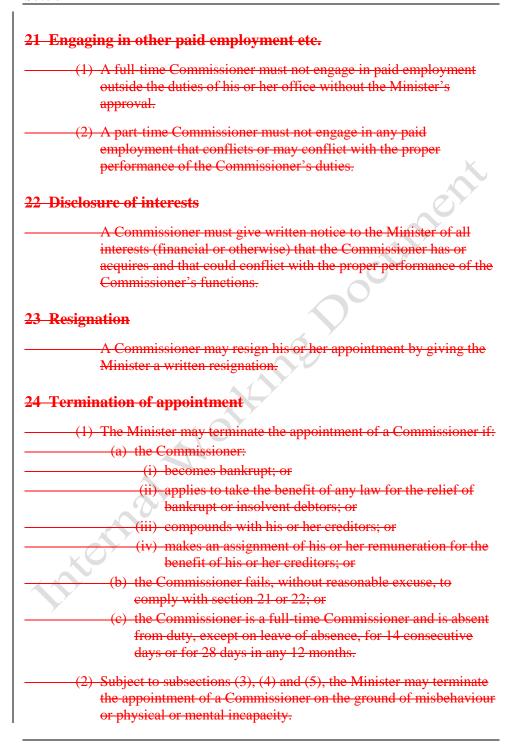
Part 2 Administrative provisions



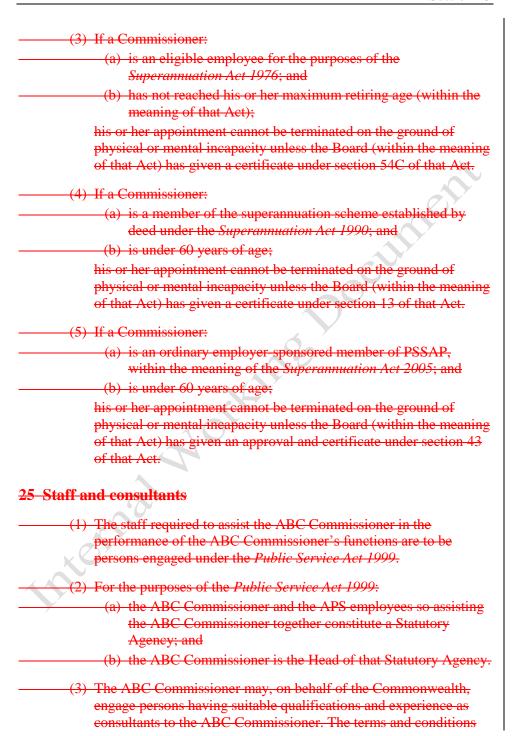
(c) the appointment had ceased to have effect; or (d) the occasion to act had not arisen or had ceased. 17 Remuneration (1) A Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a Commissioner 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. Pensions or other benefits paid as a result of this section are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

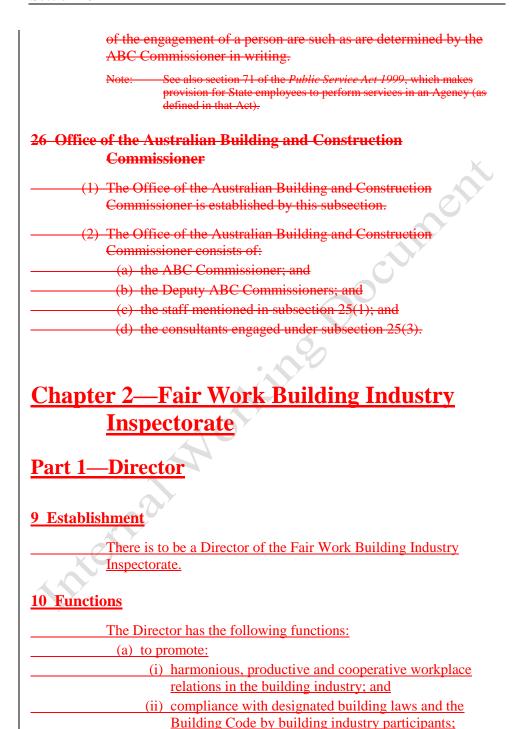
²⁰ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



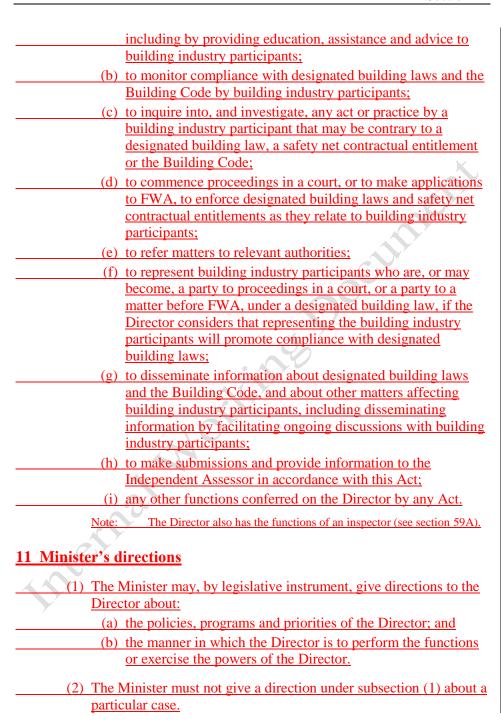


²² Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



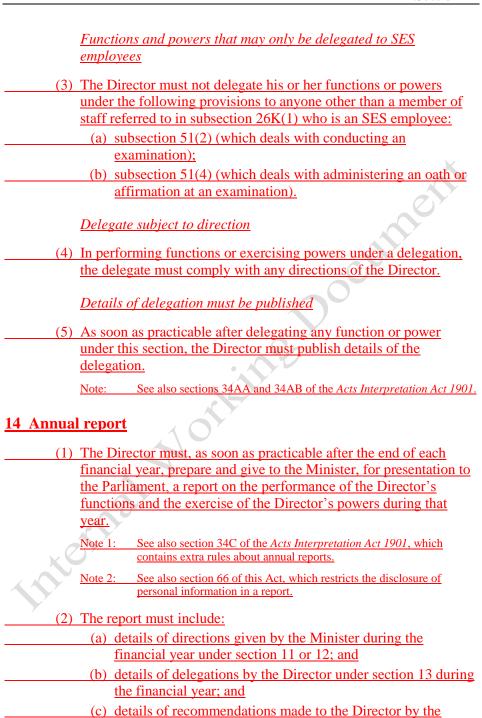


24 Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



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. See also section 66, which restricts the disclosure of personal Note: 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).

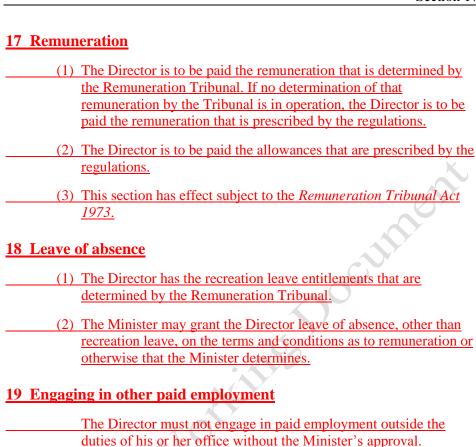
²⁶ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



Advisory Board during the financial year.

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

²⁸ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



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.

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.

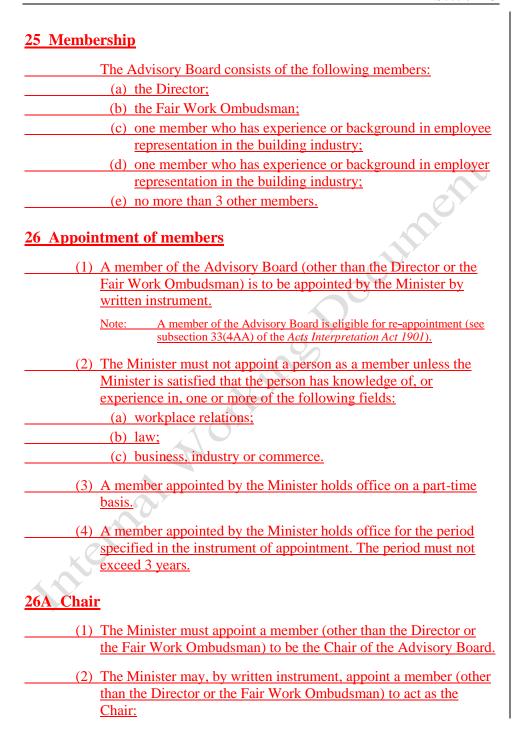
Part 2—Fair Work Building Industry Inspectorate Advisory Board

23 Establishment

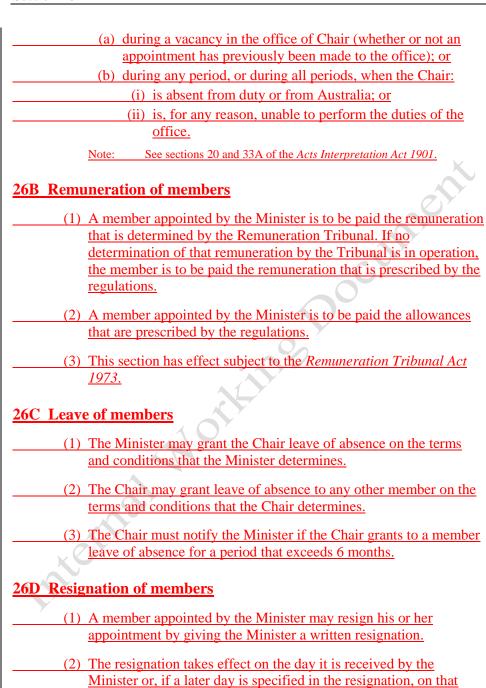
The Fair Work Building Industry Inspectorate Advisory Board is established by this section.

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.

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

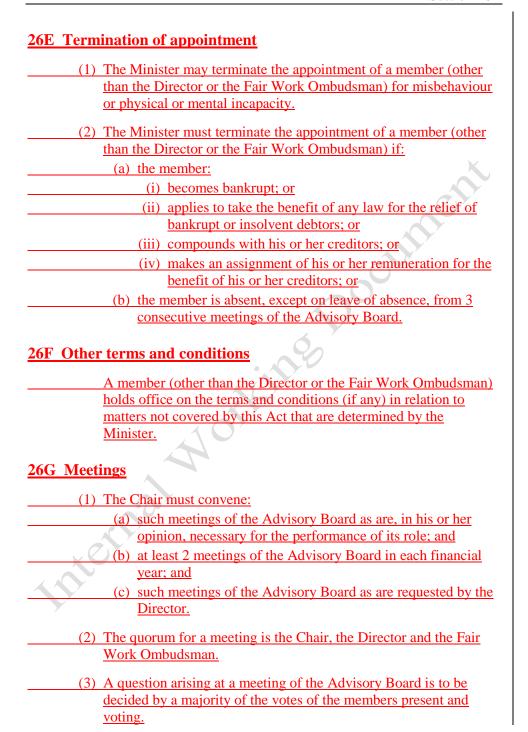


Section 26B



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³² Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



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. Office of the Fair Work Building Industry Part 3-**Inspectorate** 26J Office of the Fair Work Building Industry Inspectorate The Office of the Fair Work Building Industry Inspectorate is established by this section.

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

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

26K Staff

Service Act 1999.

³⁴ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

Section 26L (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.

³⁶ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

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

 Note: Grade B civil penalty.
 - Trote. Grade B ervir penalty.
- (4) The ABC Commissioner must give a copy of the report to the Federal Safety Commissioner.

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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.

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

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:

- (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.

- (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.

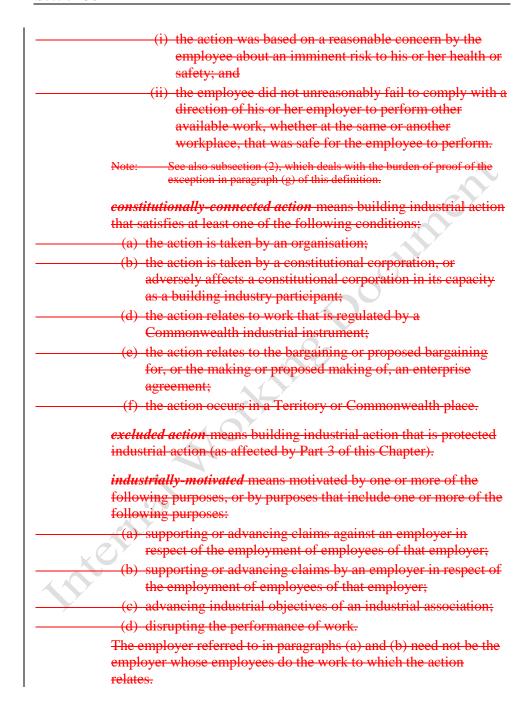
⁴² Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

Chapter 5 Industrial action etc.

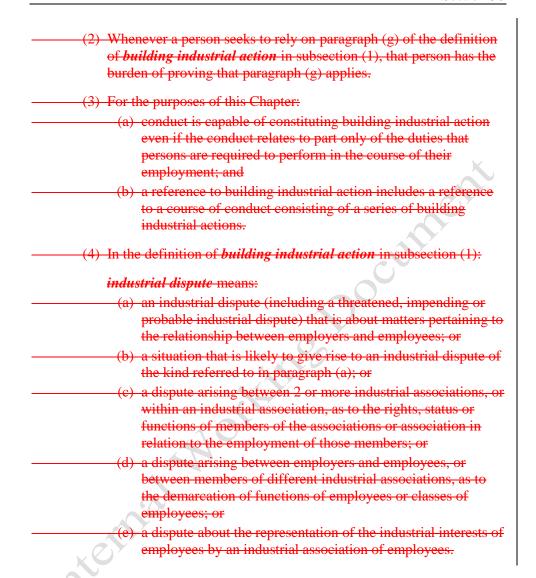
Part 1 Preliminary

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 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 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:



⁴⁴ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



Part 2 Unlawful industrial action

37 Definition of unlawful industrial action

	(a) the action is industrially motivated, and
	(b) the action is constitutionally connected action; and
	(c) the action is not excluded action.
38 Unlawf	ul industrial action prohibited
-	A person must not engage in unlawful industrial action.
;	Note: Grade A civil penalty.
39 Injuncti	ion against unlawful industrial action
	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.
;	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 <i>defendant</i>) from engaging in conduct may be exercised:
THE STATE OF THE S	(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
<i></i>	(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.

Building industrial action is unlawful industrial action if:

⁴⁶ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

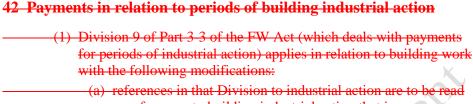
(4) In this section:

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.

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 per 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 an employee who is a bargaining representative for the

proposed agreement.

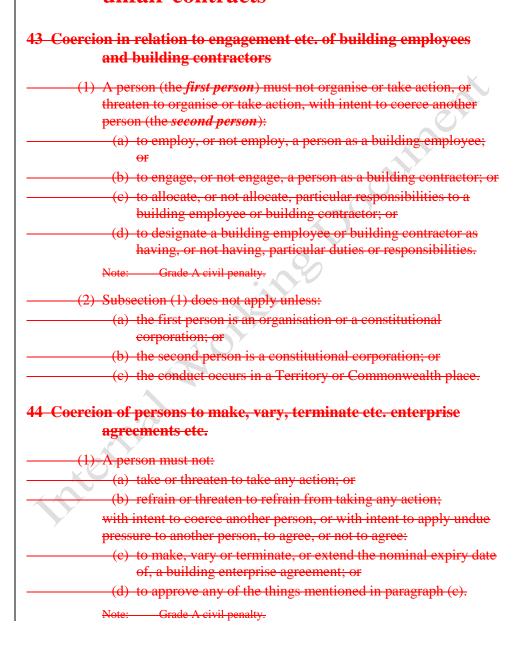
Part 4 Miscellaneous



- as references to building industrial action that is industrially motivated and constitutionally connected;

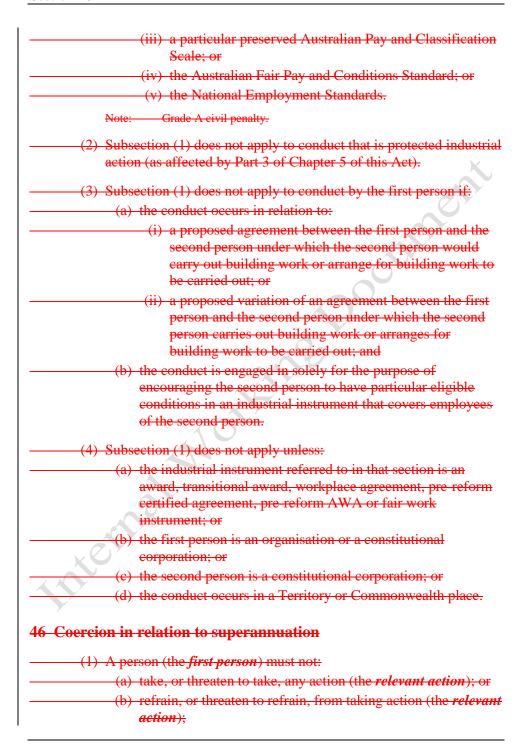
 (b) if the person who contravenes a civil remady provision to
- (b) if the person who contravenes a civil remedy provision to which table item 21, 22, 23 or 24 of the table set out in section 539 of the FW Act relates is a body corporate—then, for the purposes of paragraph 546(2)(b) of that Act, the 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



⁵⁰ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

(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
45 Discrimination against employer in relation to industrial instruments
instruments
- A - W
 instruments (1) A person (the <i>first person</i>) must not discriminate against another person (the <i>second person</i>) on the ground that: (a) the employment of the second person's building employees is
 instruments (1) A person (the <i>first person</i>) must not discriminate against another person (the <i>second person</i>) on the ground that: (a) the employment of the second person's building employees is covered, or is not covered, by:
instruments (1) A person (the <i>first person</i>) must not discriminate against another person (the <i>second person</i>) 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
 instruments (1) A person (the <i>first person</i>) must not discriminate against another person (the <i>second person</i>) on the ground that: (a) the employment of the second person's building employees is covered, or is not covered, by:
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;
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
instruments (1) A person (the <i>first person</i>) must not discriminate against another person (the <i>second person</i>) 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 Seale; or (iv) the Australian Fair Pay and Conditions Standard; or
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
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
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
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
instruments (1) A person (the <i>first person</i>) must not discriminate against another person (the <i>second person</i>) 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:



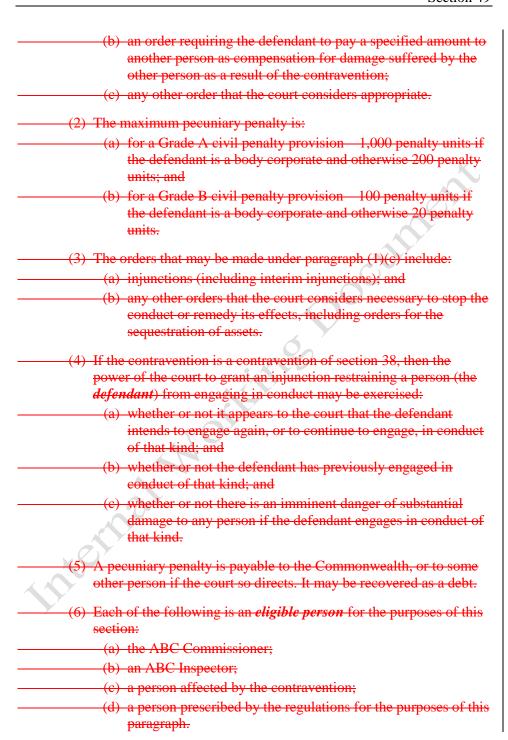
52 Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

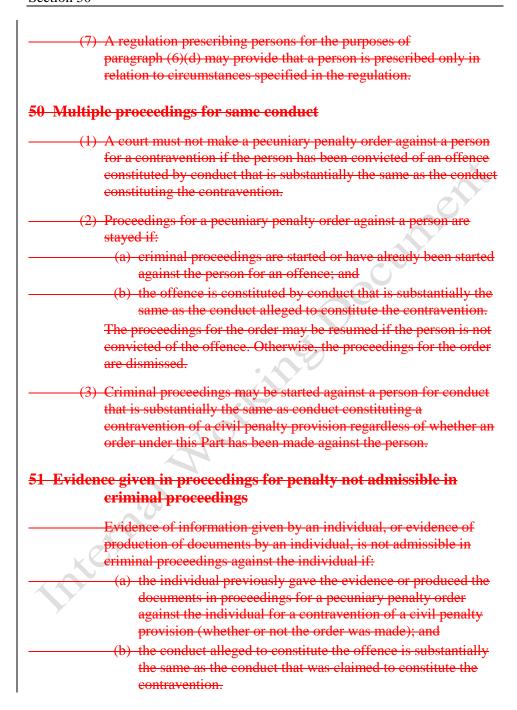
Chapter 7—Enforcement

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;
Of
(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;

⁵⁴ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011





⁵⁶ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

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.

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

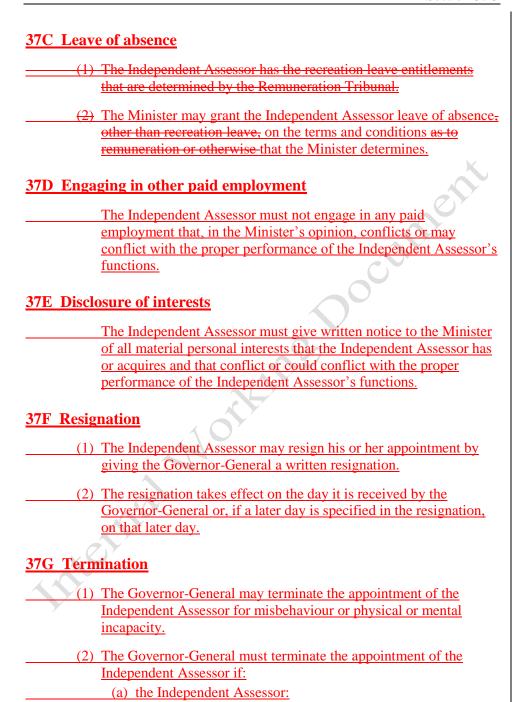
Subdivision A—Establishment and appointment etc. of the Independent Assessor

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.

Section 37A

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 <u>Independent Assessor:</u> (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 there was a defect or irregularity in connection with the appointment; or the appointment had ceased to have (d) the occasion to act had not arisen or had ceased. 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.

⁶⁰ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



(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 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):
<u>or</u>
(d) the Independent Assessor fails, without reasonable excuse, to
comply with section 37E.

Subdivision B—Determinations by Independent Assessor

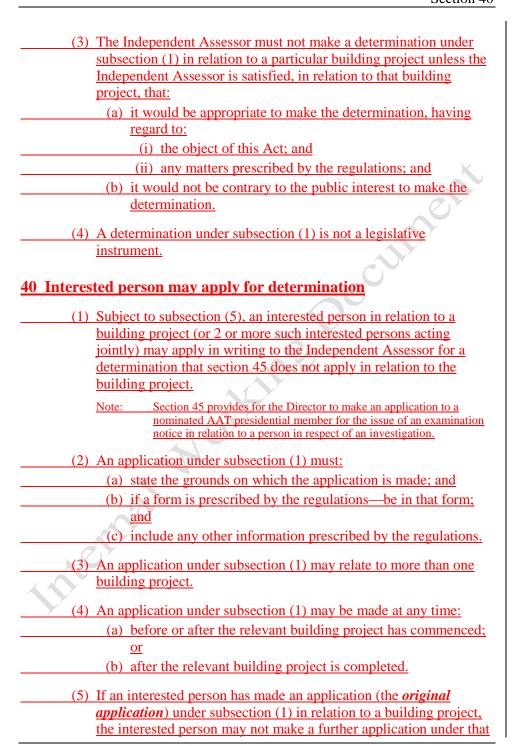
38 Application of this Subdivision

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.

⁶² Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



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.

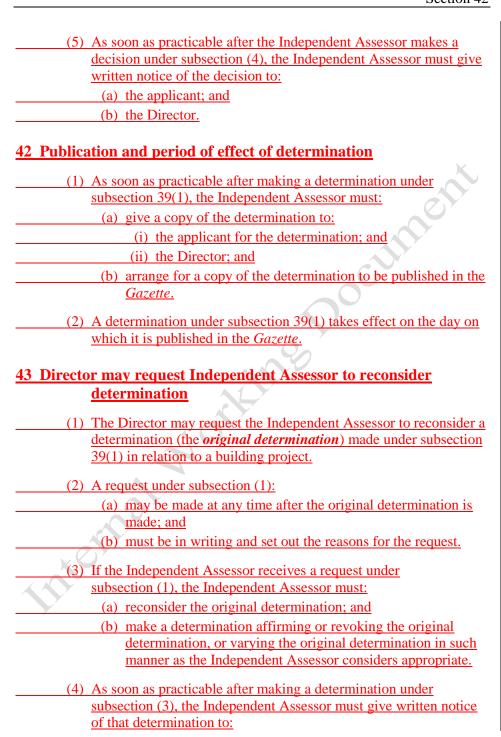
Independent Assessor may request further information

- (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

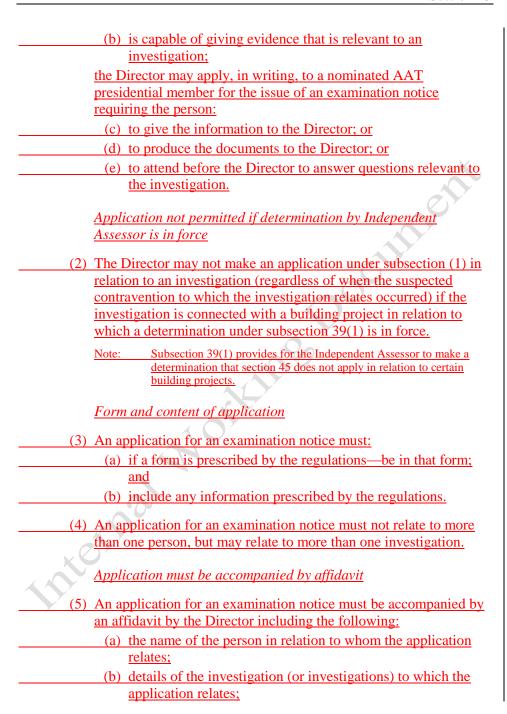
- (4) The Independent Assessor must decide whether or not to make the determination. In making the decision, the Independent Assessor must have regard to:
 - (a) the application and any further information given to the Independent Assessor under subsection (3); and
 - (b) any submissions made by the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

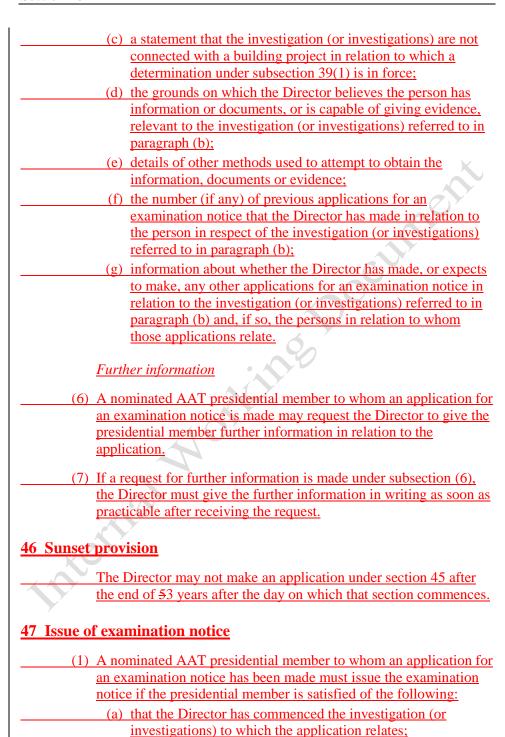
⁶⁴ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

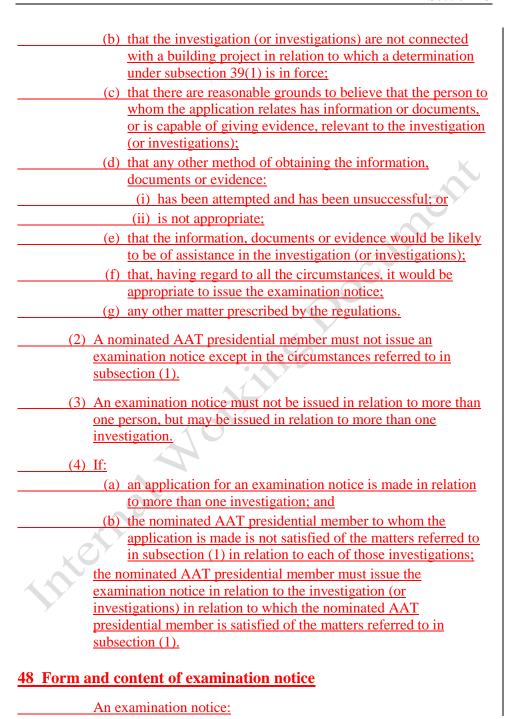


(a) the Director; and (b) the applicant for the original determination.
(5) The Independent Assessor must, as soon as practicable after making a determination under subsection (3) revoking or varying the original determination, arrange for a copy of the determination to be published in the <i>Gazette</i> .
(6) A determination under subsection (3) revoking or varying the original determination takes effect on the day on which it is published in the <i>Gazette</i> .
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

⁶⁶ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

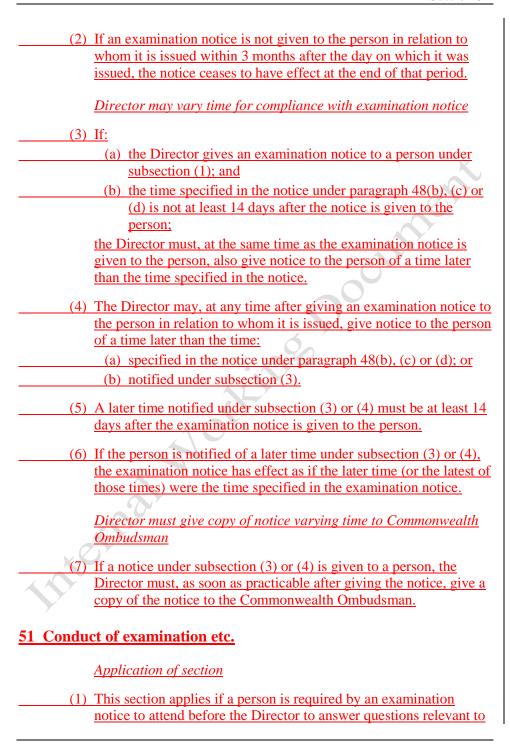






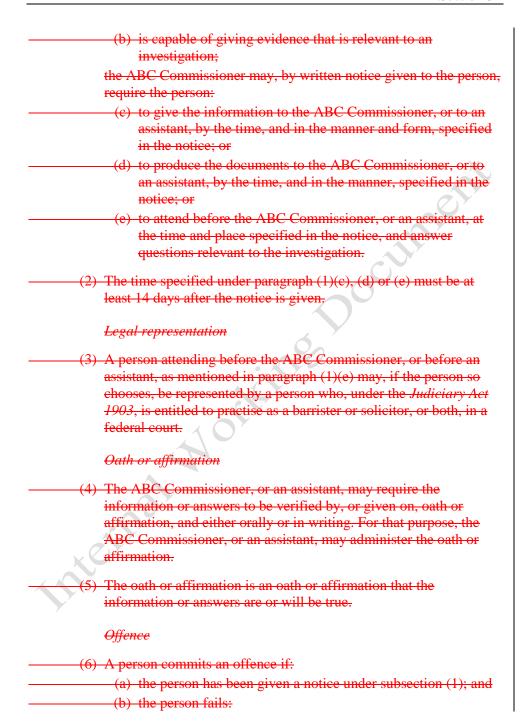
(a) must be in accordance with the form prescribed by the		
regulations; and		
(b) if the notice requires a person to give information to the		
<u>Director—must specify the time by which, and the manner</u>		
and form in which, the information is to be given; and		
(c) if the notice requires a person to produce documents to the		
<u>Director—must specify the time by which, and the manner in</u>		
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.		
inchiber who issued the notice.		
50 Director may give examination notice to person in relation to		
whom it is issued and vary time for compliance		
whom it is issued and vary time for comphance		
Director may give examination notice to person in relation to		
whom it is issued		
(4) 16		
(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.		

⁷⁰ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



an investigation. An attendance before the Director for this purpose is called an <i>examination</i> .
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

⁷² Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



(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
Dejinitions
(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.
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 <i>Crimes Act 1914</i> .)
(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

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.

this subsection (see subsection 13.3(3) of the *Criminal Code*).

(c) would be otherwise contrary to the public interest.

Use/derivative use indemnity

(2) However, neither:

- (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	
(A) THE G)
(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	<u> </u>
of that function.	
(4) The Commonwealth Ombudsman's powers under the <i>Ombudsma</i>	n
Act 1976 extend to a review by the Ombudsman under this section	
as if the review were an investigation by the Ombudsman under	1
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 <u>ABC Commissioner Director</u> must, at such times and places as the <u>ABC Commissioner Director</u> 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.

⁷⁸ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

56 ABC Commissioner <u>Director</u> 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.

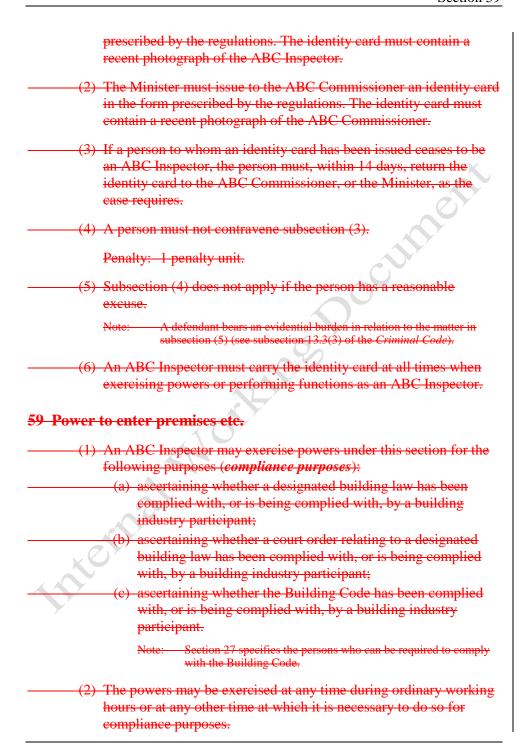
58 Payment for expenses incurred in attending an examination

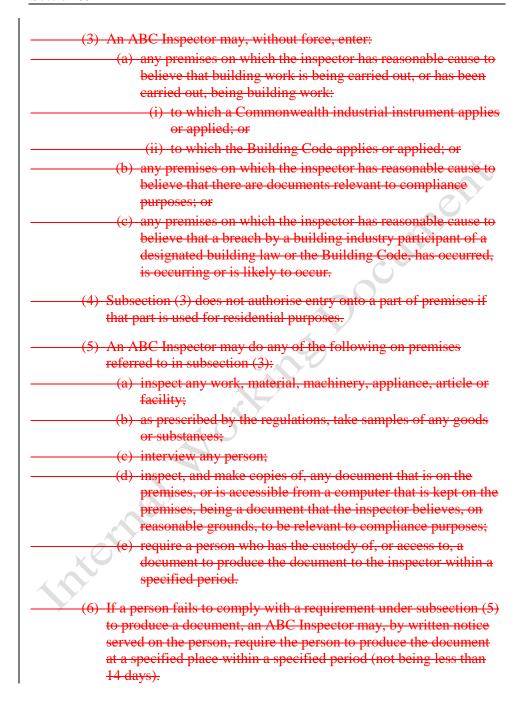
- (1) Subject to subsection (2), a person who attends an examination as required by an examination notice is entitled to be paid fees and allowances, fixed by or calculated in accordance with the regulations, for reasonable expenses (including legal expenses) incurred by the person in attending the examination.
 - (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. The ABC Commissioner is an ABC Inspector by force of this subsection. 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. 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

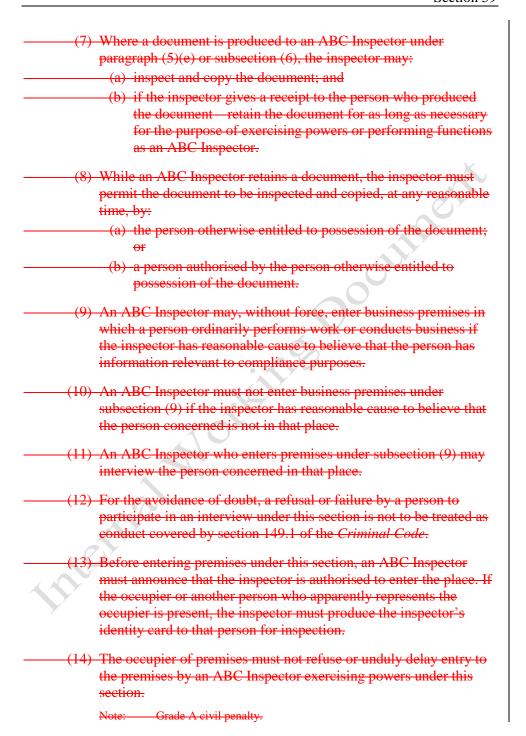
appointed under subsection 57(1) an identity card in the form

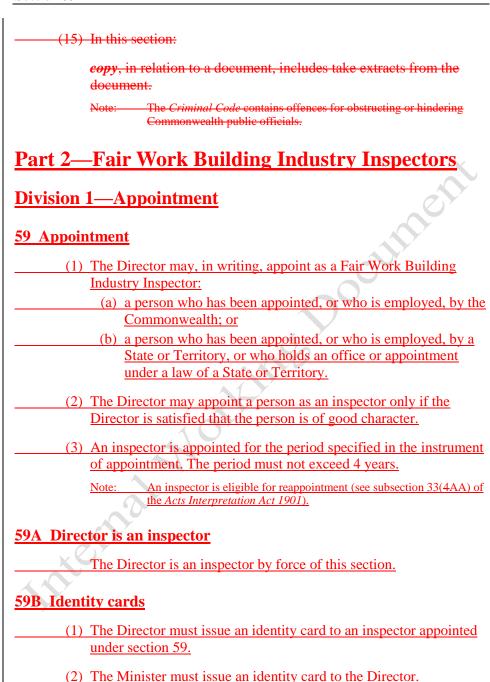
⁸⁰ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



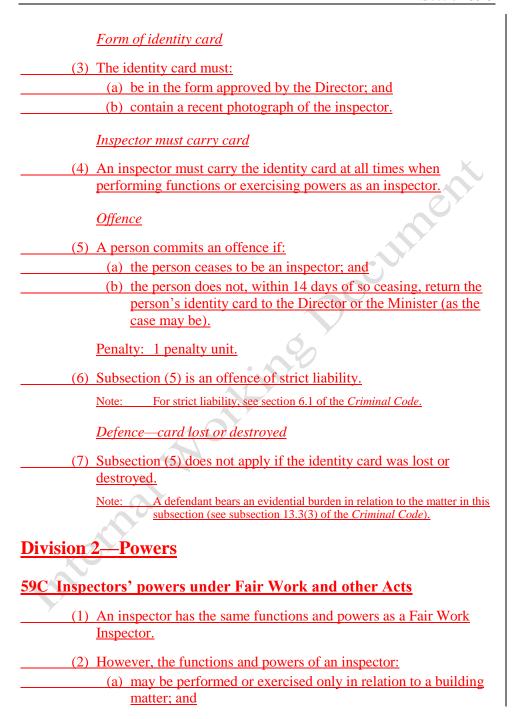


⁸² Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

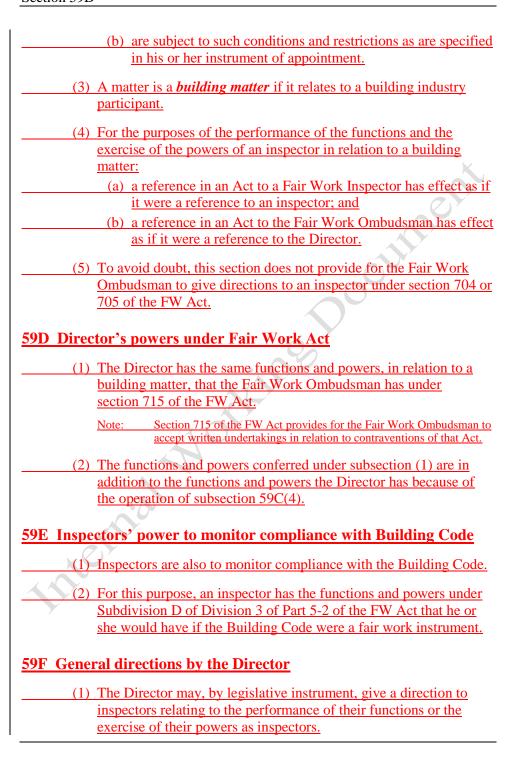




⁸⁴ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



Section 59D



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- (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.

- (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

⁹⁰ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011

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;
 - (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:

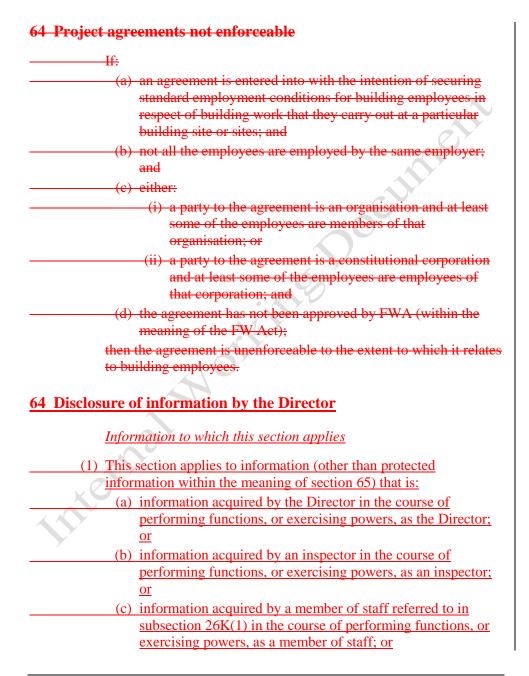
accreditation means accreditation under the accreditation scheme.

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

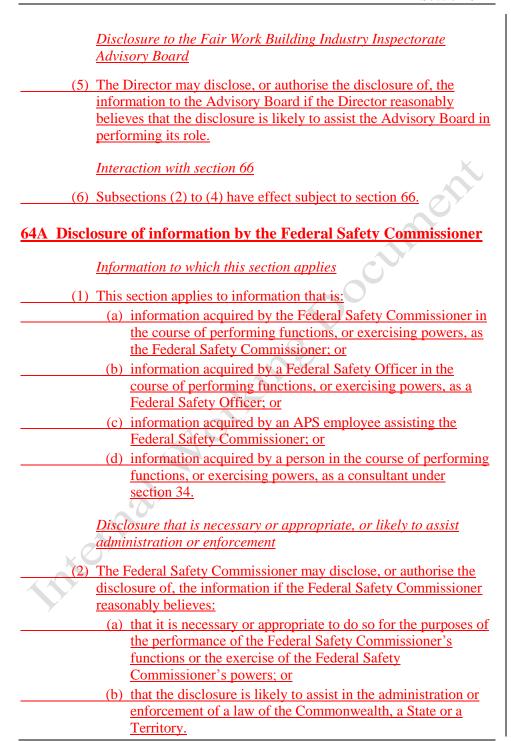


(d) information acquired by a person in the course of assisting the Director under section 26L, or in the course of performing functions, or exercising powers, as a consultant under section 26M; or (e) information acquired by a person in the course of assisting an inspector in performing functions, or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

<u>Provisions and Consequential Amendments) Act 2009.</u>

Minister to consider a complaint or issue in relation to a matter arising under this Act, the FW Act or the Fair Work (Transitional

⁹⁶ Building and Construction Industry Improvement Act 2005Fair Work (Building Industry) Act 2011



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

(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:

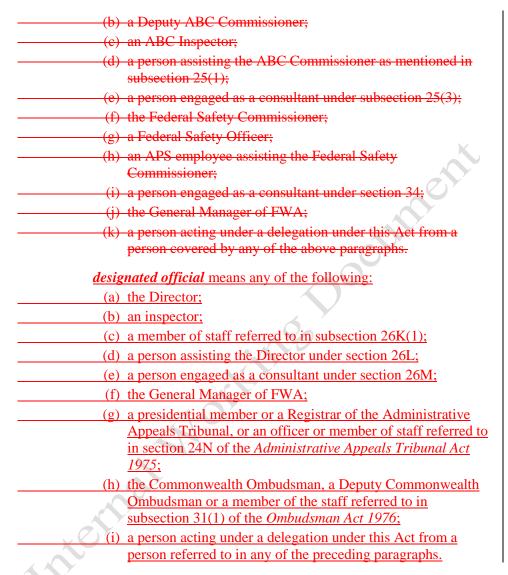
- (a) conduct by, or in relation to, a building industry participant in that capacity; or
- (b) conduct that is, or relates to, building work.

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;



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

(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

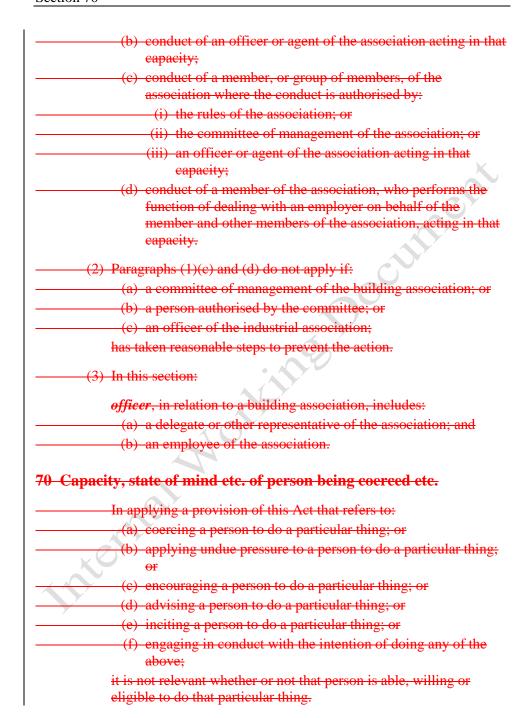
If the ABC Commissioner considers that it is in the public interest to do so, the ABC Commissioner may publish details of:

- (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 Delegat	ion 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
	o r 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 Delegat	ion 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
(2)	subsection (1), the Director and the Federal Safety Commissioner
40	must comply with any directions of the Minister.
	Note: See also sections 34AA and 34AB of the Acts Interpretation Act 1901.
69 Buildin	g 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:

Section 70



71 ABC Commissioner intervention <u>Director may intervene</u> in court proceedings

- (1) The ABC Commissioner <u>Director</u> 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 <u>Director</u> intervenes in a proceeding under subsection (1), the <u>ABC Commissioner Director</u> is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

72 ABC Commissioner <u>Director</u> may make submissions in FWA proceedings

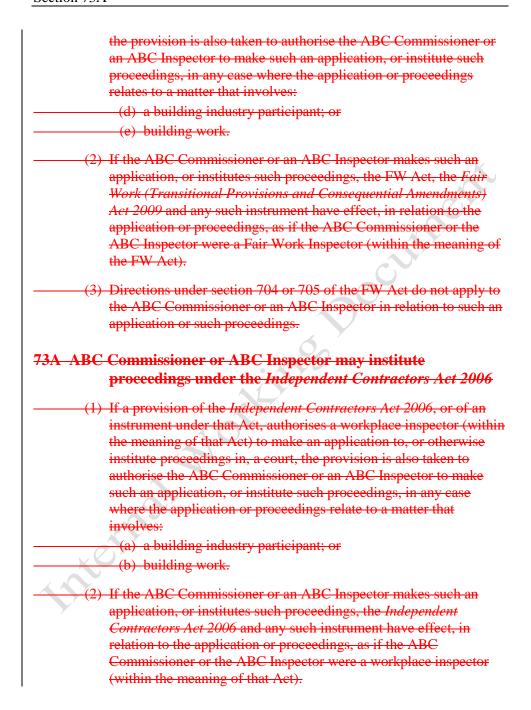
The ABC Commissioner Director may, by giving written notice to the General Manager of FWA, make a submission in a matter before FWA that arises under the FW Act or the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 and involves:

- (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,



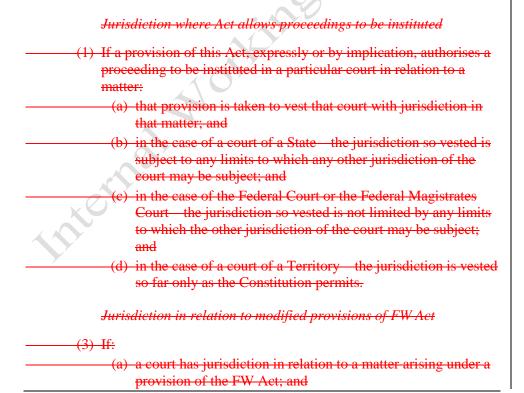
(3) Directions under section 704 or 705 of the FW Act do not apply to the ABC Commissioner or an ABC Inspector in relation to such an application or such proceedings.

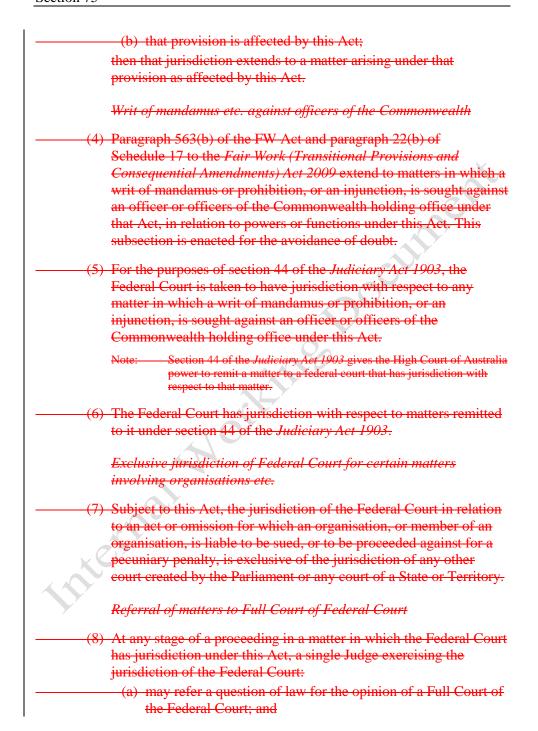
74 General Manager of FWA must keep ABC Commissioner Director informed

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





(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).

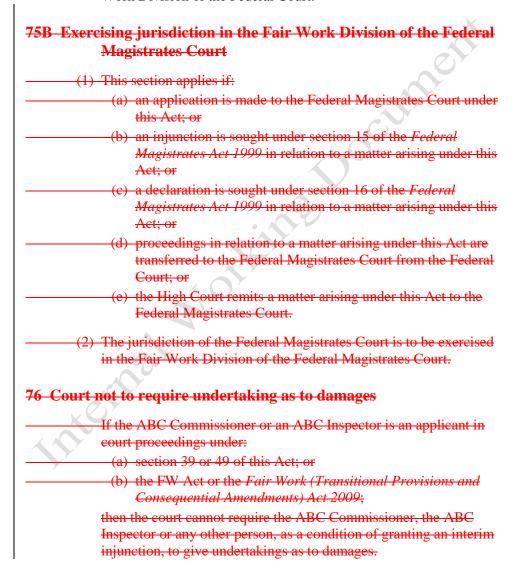
75 Jurisdiction of the Federal Court

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

- 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.



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 <u>Director</u> 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;

- (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;
- (1) 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:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) 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.

Notes to the Building and Construction Industry Improvement Act 2005Fair 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
Building and Construction Industry Improvement Act 2005	113, 2005	12 Sept 2005	Ss. 4–8, 36–38, 41 and 42: 9 Mar 2005 Remainder: Royal Assent	
Workplace Relations Legislation Amendment (Independent Contractors) Act 2006	163, 2006	11 Dec 2006	Schedule 2 (items 6, 6A, 8–19): 1 Mar 2007 (see s. 2(1) and F2007L00412)	_

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

Table of Acts

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

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.

	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 Fair Work Act 2009.	1 July 2009 (see F2009L02563)
30. Schedule 8, items 140 to 161	Immediately after the commencement of Part 2-4 of the Fair Work Act 2009.	1 July 2009 (see F2009L02563)
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Table of Amendments

Table of Amendments

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

Provision affected	How affected
Chapter 1	TIOW UNDOLOG
•	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	90
Part 1	
S. 36	am. SLI 2006 No. 50; No. 54, 2009
Part 3	
Heading to Part 3 of Chapt. 5	rs. No. 54, 2009
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	ren = renealed	rs. = repealed and substituted

ad. = added of inscribe and. =	amenaea Tep Tepealea T3 Tepealea and Substitutea
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	
	am. No. 54, 2009
Heading to s. 74	
S. 74	
Subhead. to s. 75(3)	
	am. No. 163, 2006; No. 54, 2009
Ss. 75A, 75B	
S. 76	am. No. 163, 2006; No. 54, 2009
	Nothing
Metho	

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:

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

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.

Internal Working Document