



Building and Construction Industry Improvement Amendment (Transition to Fair Work) Act 2012

No. 42, 2012

**An Act to amend the *Building and Construction
Industry Improvement Act 2005*, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 42, 2012

**An Act to amend the *Building and Construction
Industry Improvement Act 2005*, and for related
purposes**

[Assented to 15 April 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Building and Construction Industry
Improvement Amendment (Transition to Fair Work) Act 2012*.

Building and Construction Industry Improvement Amendment (Transition to Fair Work) Act 2012

No. 42, 2012 1

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 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 April 2012
2. Schedule 1	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 June 2012 (see F2012L01107)
3. Schedule 2	The day this Act receives the Royal Assent.	15 April 2012

Note: This table relates only to the provisions of this Act as originally enacted.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

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Building and Construction Industry Improvement Act 2005

1 Section 1

Omit “*Building and Construction Industry Improvement Act 2005*”, substitute “*Fair Work (Building Industry) Act 2012*”.

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 Section 3

Repeal the section, substitute:

3 Object of this Act

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

- (a) ensuring compliance with workplace relations laws by all building industry participants; and
- (b) providing information, advice and assistance to all building industry participants about their rights and obligations; and
- (c) providing an effective means of enforcing those rights and obligations; and
- (d) providing appropriate safeguards on the use of enforcement and investigative powers; and
- (e) improving the level of occupational health and safety in the building industry.

3 Subsection 4(1)

Insert:

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

4 Subsection 4(1) (definition of *ABC Commissioner*)

Repeal the definition.

5 Subsection 4(1) (definition of *ABC Inspector*)

Repeal the definition.

6 Subsection 4(1)

Insert:

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

7 Subsection 4(1) (definition of *AIRC*)

Repeal the definition.

8 Subsection 4(1) (definition of *bargaining representative*)

Repeal the definition.

9 Subsection 4(1) (definition of *building enterprise agreement*)

Repeal the definition.

10 Subsection 4(1)

Insert:

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

11 Subsection 4(1) (definition of *civil penalty provision*)

Repeal the definition.

12 Subsection 4(1) (definition of *collective agreement*)

Repeal the definition.

13 Subsection 4(1) (definition of *Commissioner*)

Repeal the definition.

14 Subsection 4(1) (definition of *Commonwealth authority*)

Repeal the definition.

15 Subsection 4(1) (paragraph (d) of the definition of *Commonwealth industrial instrument*)

Omit “AIRC”, substitute “Australian Industrial Relations Commission”.

16 Subsection 4(1)

Insert:

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

17 Subsection 4(1) (definition of *Deputy ABC Commissioner*)

Repeal the definition.

18 Subsection 4(1) (paragraph (a) of the definition of *designated building law*)

Omit “this Act”.

19 Subsection 4(1)

Insert:

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

20 Subsection 4(1) (definition of *eligible condition*)

Repeal the definition.

21 Subsection 4(1) (definition of *employee organisation*)

Repeal the definition.

22 Subsection 4(1) (definition of *enterprise agreement*)

Repeal the definition.

23 Subsection 4(1)

Insert:

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

24 Subsection 4(1)

Insert:

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

25 Subsection 4(1)

Insert:

Fair Work Building Industry Inspector means:

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

26 Subsection 4(1)

Insert:

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

27 Subsection 4(1)

Insert:

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

28 Subsection 4(1) (definition of *full-time Commissioner*)

Repeal the definition.

29 Subsection 4(1) (definition of *Grade A civil penalty provision*)

Repeal the definition.

30 Subsection 4(1) (definition of *Grade B civil penalty provision*)

Repeal the definition.

31 Subsection 4(1)

Insert:

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

32 Subsection 4(1) (definition of *industrial body*)

Repeal the definition.

33 Subsection 4(1) (definition of *industrial instrument*)

Repeal the definition.

34 Subsection 4(1) (definition of *industrial law*)

Repeal the definition.

35 Subsection 4(1)

Insert:

inspector means a Fair Work Building Industry Inspector.

36 Subsection 4(1)

Insert:

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

37 Subsection 4(1)

Insert:

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

38 Subsection 4(1)

Insert:

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.

39 Subsection 4(1)

Insert:

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

40 Subsection 4(1) (definition of *part-time Commissioner*)

Repeal the definition.

41 Subsection 4(1) (definition of *penalty unit*)

Repeal the definition.

42 Subsection 4(1) (definition of *protected industrial action*)

Repeal the definition.

43 Subsection 4(1)

Insert:

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

44 Subsection 4(1)

Insert:

this Act includes the regulations.

45 Subsection 4(1) (definition of *transitional award*)

Omit “meaning given by the Workplace Relations Act”, substitute “same meaning as in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*”.

46 Subsection 4(1) (definition of *unlawful industrial action*)

Repeal the definition.

47 Subsection 4(1) (definition of *Workplace Relations Act*)

Repeal the definition.

48 Subparagraph 5(1)(d)(iv)

Repeal the subparagraph, substitute:

- (iv) the on-site prefabrication of made-to-order components to form part of any building, structure or works;

49 Chapter 2

Repeal the Chapter, substitute:

Chapter 2—Fair Work Building Industry Inspectorate

Part 1—Director

9 Establishment

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

10 Functions

The Director has the following functions:

- (a) to promote:
 - (i) harmonious, productive and cooperative workplace relations in the building industry; and
 - (ii) compliance with designated building laws and the Building Code by building industry participants; including by providing education, assistance and advice to building industry participants;
- (b) to monitor compliance with designated building laws and the Building Code by building industry participants;
- (c) to inquire into, and investigate, any act or practice by a building industry participant that may be contrary to a designated building law, a safety net contractual entitlement or the Building Code;
- (d) to commence proceedings in a court, or to make applications to FWA, to enforce designated building laws and safety net contractual entitlements as they relate to building industry participants;
- (e) to refer matters to relevant authorities;
- (f) to represent building industry participants who are, or may become, a party to proceedings in a court, or a party to a matter before FWA, under a designated building law, if the Director considers that representing the building industry participants will promote compliance with designated building laws;

- (g) to disseminate information about designated building laws and the Building Code, and about other matters affecting building industry participants, including disseminating information by facilitating ongoing discussions with building industry participants;
- (h) to make submissions and provide information to the Independent Assessor in accordance with this Act;
- (i) any other functions conferred on the Director by any Act.

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

11 Minister's directions

- (1) The Minister may, by legislative instrument, give directions to the Director about:
 - (a) the policies, programs and priorities of the Director; and
 - (b) the manner in which the Director is to perform the functions or exercise the powers of the Director.
- (2) The Minister must not give a direction under subsection (1) about a particular case.
- (3) The Director must comply with a direction under subsection (1).
- (4) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a direction under subsection (1) of this section.

12 Minister may require reports

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

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

- (2) The Director must comply with the direction.
- (3) A direction under subsection (1) is not a legislative instrument.

13 Delegation by the Director

General power to delegate

- (1) Subject to subsections (2) and (3), the Director may, in writing, delegate all or any of the Director's functions or powers under any Act to:
 - (a) a member of staff referred to in subsection 26K(1); or
 - (b) an inspector.

Functions and powers that must not be delegated

- (2) The Director must not delegate his or her functions or powers:
 - (a) as an inspector; or
 - (b) under section 45 (which deals with applying for an examination notice); or
 - (c) under subsection 50(3) or (4) (which deal with varying the time for compliance with an examination notice).

Functions and powers that may only be delegated to SES employees

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

Delegate subject to direction

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

Details of delegation must be published

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

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

14 Annual report

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

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

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

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

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

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.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

17 Remuneration

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

18 Leave of absence

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

19 Engaging in other paid employment

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

20 Disclosure of interests

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

21 Resignation

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

22 Termination

- (1) The Minister may terminate the appointment of the Director for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of the Director if:
 - (a) the Director:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Director is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Director engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 19); or
 - (d) the Director fails, without reasonable excuse, to comply with section 20.

Part 2—Fair Work Building Industry Inspectorate Advisory Board

23 Establishment

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

24 Role

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

- (a) policies to guide the performance of the Director's functions and the exercise of the Director's powers; and
- (b) the priorities of, and the programs to be implemented by, the Director; and
- (c) any matter that the Minister requests the Advisory Board to consider.

25 Membership

The Advisory Board consists of the following members:

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

26 Appointment of members

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

Note: A member of the Advisory Board is eligible for reappointment (see section 33AA of the *Acts Interpretation Act 1901*).

- (2) The Minister must not appoint a person as a member unless the Minister is satisfied that the person has knowledge of, or experience in, one or more of the following fields:
 - (a) workplace relations;
 - (b) law;
 - (c) business, industry or commerce.
- (3) A member appointed by the Minister holds office on a part-time basis.
- (4) A member appointed by the Minister holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

26A Chair

- (1) The Minister must appoint a member (other than the Director or the Fair Work Ombudsman) to be the Chair of the Advisory Board.
- (2) The Minister may, by written instrument, appoint a member (other than the Director or the Fair Work Ombudsman) to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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

26B Remuneration of members

- (1) A member appointed by the Minister is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) A member appointed by the Minister is to be paid the allowances that are prescribed by the regulations.

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

26C Leave of members

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

26D Resignation of members

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

26E Termination of appointment

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

26F Other terms and conditions

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

26G Meetings

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

26H Decisions without meetings

- (1) The Advisory Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Advisory Board under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Advisory Board:

- (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) The Advisory Board must keep a record of decisions made in accordance with this section.

Part 3—Office of the Fair Work Building Industry Inspectorate

26J Office of the Fair Work Building Industry Inspectorate

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

26K Staff

- (1) The staff of the Office are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Director and the staff of the Office together constitute a Statutory Agency; and
 - (b) the Director is the Head of that Statutory Agency.

26L Persons assisting the Director

The Director may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, a State or a Territory;

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

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

26M Consultants

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

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

50 Section 28

Repeal the section.

51 Chapters 5 and 6

Repeal the Chapters.

52 Part 1 of Chapter 7

Repeal the Part, substitute:

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.

37A Acting appointments

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

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

Note: For rules that apply to acting appointments, see section 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.

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- (2) The Independent Assessor is to be paid the allowances that are prescribed by the regulations.
 - (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

37C Leave of absence

The Minister may grant the Independent Assessor leave of absence on the terms and conditions that the Minister determines.

37D Engaging in other paid employment

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

37E Disclosure of interests

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

37F Resignation

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

37G Termination

- (1) The Governor-General may terminate the appointment of the Independent Assessor for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Independent Assessor if:
 - (a) the Independent Assessor:

- (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the Independent Assessor is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the Independent Assessor engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her functions (see section 37D); or
- (d) the Independent Assessor fails, without reasonable excuse, to comply with section 37E.

Subdivision B—Determinations by Independent Assessor

38 Application of this Subdivision

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

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

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

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

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

- (2) The Independent Assessor may make a determination under subsection (1) in relation to a building project only on application

under section 40 by an interested person in relation to the building project.

- (3) The Independent Assessor must not make a determination under subsection (1) in relation to a particular building project unless the Independent Assessor is satisfied, in relation to that building project, that:
 - (a) it would be appropriate to make the determination, having regard to:
 - (i) the object of this Act; and
 - (ii) any matters prescribed by the regulations; and
 - (b) it would not be contrary to the public interest to make the determination.
- (4) A determination under subsection (1) is not a legislative instrument.

40 Interested person may apply for determination

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

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

- (2) An application under subsection (1) must:
 - (a) state the grounds on which the application is made; and
 - (b) if a form is prescribed by the regulations—be in that form; and
 - (c) include any other information prescribed by the regulations.
- (3) An application under subsection (1) may relate to more than one building project.
- (4) An application under subsection (1) may be made at any time:
 - (a) before or after the relevant building project has commenced; or
 - (b) after the relevant building project is completed.

- (5) If an interested person has made an application (the *original application*) under subsection (1) in relation to a building project, the interested person may not make a further application under that subsection, in relation to the same building project and on the same grounds as the original application, unless the interested person becomes aware of new information in relation to the building project.

41 Consideration of application for determination

Opportunity for Director to make submissions in relation to application

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

Independent Assessor may request further information

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

Decision by Independent Assessor

- (4) The Independent Assessor must decide whether or not to make the determination. In making the decision, the Independent Assessor must have regard to:
 - (a) the application and any further information given to the Independent Assessor under subsection (3); and
 - (b) any submissions made by the Director.
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- (5) As soon as practicable after the Independent Assessor makes a decision under subsection (4), the Independent Assessor must give written notice of the decision to:
- (a) the applicant; and
 - (b) the Director.

42 Publication and period of effect of determination

- (1) As soon as practicable after making a determination under subsection 39(1), the Independent Assessor must:
- (a) give a copy of the determination to:
 - (i) the applicant for the determination; and
 - (ii) the Director; and
 - (b) arrange for a copy of the determination to be published in the *Gazette*.
- (2) A determination under subsection 39(1) takes effect on the day on which it is published in the *Gazette*.

43 Director may request Independent Assessor to reconsider determination

- (1) The Director may request the Independent Assessor to reconsider a determination (the *original determination*) made under subsection 39(1) in relation to a building project.
- (2) A request under subsection (1):
- (a) may be made at any time after the original determination is made; and
 - (b) must be in writing and set out the reasons for the request.
- (3) If the Independent Assessor receives a request under subsection (1), the Independent Assessor must:
- (a) reconsider the original determination; and
 - (b) make a determination affirming or revoking the original determination, or varying the original determination in such manner as the Independent Assessor considers appropriate.
- (4) As soon as practicable after making a determination under subsection (3), the Independent Assessor must give written notice of that determination to:

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

Division 3—Examination notices

44 Minister may nominate AAT presidential members to issue examination notices

- (1) The Minister may, by writing, nominate an AAT presidential member to issue examination notices under this Division.
- (2) The Minister may nominate an AAT presidential member who is a Judge to issue examination notices under this Division only if the Judge has consented, by writing, to the nomination.
- (3) A nomination ceases to have effect if:
 - (a) the nominated AAT presidential member ceases to be an AAT presidential member; or
 - (b) the Minister, by writing, withdraws the nomination.
- (4) A nominated AAT presidential member has, in performing a function of or connected with issuing an examination notice under this Division, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

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

General requirements

- (1) If the Director believes on reasonable grounds that a person:
 - (a) has information or documents relevant to an investigation; or

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

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

- (c) to give the information to the Director; or
- (d) to produce the documents to the Director; or
- (e) to attend before the Director to answer questions relevant to the investigation.

Application not permitted if determination by Independent Assessor is in force

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

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

Form and content of application

- (3) An application for an examination notice must:
- (a) if a form is prescribed by the regulations—be in that form; and
 - (b) include any information prescribed by the regulations.
- (4) An application for an examination notice must not relate to more than one person, but may relate to more than one investigation.

Application must be accompanied by affidavit

- (5) An application for an examination notice must be accompanied by an affidavit by the Director including the following:
- (a) the name of the person in relation to whom the application relates;
 - (b) details of the investigation (or investigations) to which the application relates;

- (c) a statement that the investigation (or investigations) are not connected with a building project in relation to which a determination under subsection 39(1) is in force;
- (d) the grounds on which the Director believes the person has information or documents, or is capable of giving evidence, relevant to the investigation (or investigations) referred to in paragraph (b);
- (e) details of other methods used to attempt to obtain the information, documents or evidence;
- (f) the number (if any) of previous applications for an examination notice that the Director has made in relation to the person in respect of the investigation (or investigations) referred to in paragraph (b);
- (g) information about whether the Director has made, or expects to make, any other applications for an examination notice in relation to the investigation (or investigations) referred to in paragraph (b) and, if so, the persons in relation to whom those applications relate.

Further information

- (6) A nominated AAT presidential member to whom an application for an examination notice is made may request the Director to give the presidential member further information in relation to the application.
- (7) If a request for further information is made under subsection (6), the Director must give the further information in writing as soon as practicable after receiving the request.

46 Sunset provision

The Director may not make an application under section 45 after the end of 3 years after the day on which that section commences.

47 Issue of examination notice

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

48 Form and content of examination notice

An examination notice:

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

49 Director must notify Commonwealth Ombudsman of issue of examination notice

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

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

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

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

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

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

Director may vary time for compliance with examination notice

- (3) If:
- (a) the Director gives an examination notice to a person under subsection (1); and
 - (b) the time specified in the notice under paragraph 48(b), (c) or (d) is not at least 14 days after the notice is given to the person;
- the Director must, at the same time as the examination notice is given to the person, also give notice to the person of a time later than the time specified in the notice.
- (4) The Director may, at any time after giving an examination notice to the person in relation to whom it is issued, give notice to the person of a time later than the time:
- (a) specified in the notice under paragraph 48(b), (c) or (d); or
 - (b) notified under subsection (3).
- (5) A later time notified under subsection (3) or (4) must be at least 14 days after the examination notice is given to the person.
- (6) If the person is notified of a later time under subsection (3) or (4), the examination notice has effect as if the later time (or the latest of those times) were the time specified in the examination notice.

Director must give copy of notice varying time to Commonwealth Ombudsman

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

51 Conduct of examination etc.

Application of section

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

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

Director to conduct examination

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

Representation by lawyer

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

Oath or affirmation

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

Director must not require person to give certain undertakings

- (6) The Director must not require the person to undertake:
- (a) not to disclose information or answers given at the examination; or
 - (b) not to discuss matters relating to the examination with any other person.

53 Part 2 of Chapter 7 (heading)

Repeal the heading.

54 Division 1 of Part 2 of Chapter 7 (heading)

Repeal the heading.

55 Section 52

Repeal the section, substitute:

52 Offence—failure to comply with examination notice

- (1) A person commits an offence if:
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- (a) the person has been given an examination notice under section 50; and
 - (b) the person fails:
 - (i) to give the required information by the time, and in the manner and form, specified in the notice; or
 - (ii) to produce the required documents by the time, and in the manner, specified in the notice; or
 - (iii) to attend to answer questions at the time and place specified in the notice; or
 - (iv) to take an oath or make an affirmation, if required to do so under subsection 51(4); or
 - (v) to answer questions relevant to the investigation while attending as required by the notice.

Penalty: Imprisonment for 6 months.

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

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

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

56 Section 53 (heading)

Repeal the heading, substitute:

53 Certain excuses not available in relation to examination notices

57 Subsection 53(1)

Omit “section 52”, substitute “an examination notice”.

58 Paragraph 53(1)(b)

Omit “liability; or”, substitute “liability.”.

59 Paragraph 53(1)(c)

Repeal the paragraph.

60 Paragraph 53(2)(c)

Omit “52(6)”, substitute “52(1)”.

61 Section 54

Omit “section 52”, substitute “an examination notice”.

62 After section 54

Insert:

54A Review and report by Commonwealth Ombudsman

Director to give report etc. to Commonwealth Ombudsman

- (1) As soon as practicable after an examination of a person is completed, the Director must give the Commonwealth Ombudsman:
 - (a) a report about the examination; and
 - (b) a video recording of the examination; and
 - (c) a transcript of the examination.
- (2) The report required under paragraph (1)(a) must include:
 - (a) a copy of the examination notice under which the examination was conducted; and
 - (b) the following information:
 - (i) the time and place at which the examination was conducted;
 - (ii) the name of each person who was present at the examination;
 - (iii) any other information prescribed by the regulations.

Review of exercise of powers under this Division

- (3) The Commonwealth Ombudsman:
 - (a) must review the exercise of powers under this Division by the Director and any person assisting the Director; and
 - (b) may do anything incidental or conducive to the performance of that function.

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- (4) The Commonwealth Ombudsman's powers under the *Ombudsman Act 1976* extend to a review by the Ombudsman under this section as if the review were an investigation by the Ombudsman under that Act.
- (5) The exercise of those powers in relation to a review by the Ombudsman under this section is taken, for all purposes, to be an exercise of powers under the *Ombudsman Act 1976*.

Commonwealth Ombudsman to report to Parliament

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

63 Subsection 55(1) (heading)

Repeal the heading, substitute:

Director may keep documents

64 Subsection 55(1)

Omit "ABC Commissioner", substitute "Director".

65 Subsection 55(1)

Omit "section 52", substitute "an examination notice".

66 Paragraphs 55(2)(a) to (d)

Repeal the paragraphs, substitute:

- (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.

67 Subsection 55(4)

Omit “ABC Commissioner” (wherever occurring), substitute “Director”.

68 Section 56 (heading)

Repeal the heading, substitute:

56 Director may make and keep copies of documents

69 Section 56

Omit “ABC Commissioner”, substitute “Director”.

70 Section 56

Omit “section 52”, substitute “an examination notice”.

71 At the end of Division 1 of Part 2 of Chapter 7

Add:

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:

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- (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.

72 Division 2 of Part 2 of Chapter 7

Repeal the Division, substitute:

Part 2—Fair Work Building Industry Inspectors

Division 1—Appointment

59 Appointment

- (1) The Director may, in writing, appoint as a Fair Work Building Industry Inspector:
 - (a) a person who has been appointed, or who is employed, by the Commonwealth; or
 - (b) a person who has been appointed, or who is employed, by a State or Territory, or who holds an office or appointment under a law of a State or Territory.
- (2) The Director may appoint a person as an inspector only if the Director is satisfied that the person is of good character.
- (3) An inspector is appointed for the period specified in the instrument of appointment. The period must not exceed 4 years.

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

59A Director is an inspector

The Director is an inspector by force of this section.

59B Identity cards

- (1) The Director must issue an identity card to an inspector appointed under section 59.
- (2) The Minister must issue an identity card to the Director.

Form of identity card

- (3) The identity card must:
 - (a) be in the form approved by the Director; and
 - (b) contain a recent photograph of the inspector.

Inspector must carry card

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

Offence

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

Penalty: 1 penalty unit.

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

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

Defence—card lost or destroyed

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

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

Division 2—Powers

59C Inspectors' powers under Fair Work and other Acts

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

59D Director's powers under Fair Work Act

- (1) The Director has the same functions and powers, in relation to a building matter, that the Fair Work Ombudsman has under section 715 of the FW Act.

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

59E Inspectors' power to monitor compliance with Building Code

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

59F General directions by the Director

- (1) The Director may, by legislative instrument, give a direction to inspectors relating to the performance of their functions or the exercise of their powers as inspectors.
- (2) The direction must be of a general nature only, and cannot relate to a particular case.
- (3) An inspector must comply with the direction.

59G Particular directions by the Director

- (1) The Director may give a direction to an inspector relating to the performance of the inspector's functions or the exercise of the inspector's powers as an inspector.
- (2) The inspector must comply with the direction.
- (3) If a direction is in writing, the direction is not a legislative instrument.

73 Division 3 of Part 2 of Chapter 7 (heading)

Repeal the heading, substitute:

Part 3—Federal Safety Officers

Division 1—Appointment

74 Before section 62

Insert:

Division 2—Powers**75 Subsection 62(14)**

Repeal the subsection.

76 Subsection 63(14)

Repeal the subsection.

77 Section 64

Repeal the section, substitute:

64 Disclosure of information by the Director

Information to which this section applies

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

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

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

- (a) that it is necessary or appropriate to do so for the purposes of the performance of the Director's functions or the exercise of the Director's powers; or
- (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

Disclosure to the Minister

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

Disclosure to the Department

- (4) The Director may disclose, or authorise the disclosure of, the information to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or an APS employee, in the Department;for the purpose of briefing, or considering briefing, the Minister if the Director reasonably believes the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act, the FW Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Disclosure to the Fair Work Building Industry Inspectorate Advisory Board

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

Interaction with section 66

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

64A Disclosure of information by the Federal Safety Commissioner*Information to which this section applies*

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

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

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

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.

78 Section 65 (heading)

Repeal the heading, substitute:

65 Protection of confidentiality of information obtained under an examination notice

79 Paragraph 65(3)(a)

Omit “this Act”, substitute “the performance of the Director’s functions or the exercise of the Director’s powers”.

80 Paragraph 65(4)(a)

Omit “this Act”, substitute “the performance of the Director’s functions or the exercise of the Director’s powers”.

81 Subsection 65(5) (heading)

Repeal the heading, substitute:

Disclosure to a Minister by a designated official

82 Paragraph 65(5)(aa)

Omit “ABC”.

83 Subsection 65(8) (definition of *designated ABC official*)

Repeal the definition.

84 Subsection 65(8) (definition of *designated official*)

Repeal the definition, substitute:

designated official means any of the following:

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

85 Subsection 65(8) (paragraph (b) of the definition of *official employment*)

Omit “ABC Inspector or Federal Safety Officer”, substitute “inspector”.

86 Subsection 65(8) (paragraph (a) of the definition of *protected information*)

Repeal the paragraph, substitute:

- (a) was disclosed or obtained under an examination notice or at an examination; and

87 Section 67

Repeal the section.

88 Section 68

Repeal the section, substitute:

68 Delegation by Minister

- (1) The Minister may, in writing, delegate all or any of the Minister’s functions or powers under Chapter 3 to:
 - (a) the Director; or

(b) the Federal Safety Commissioner.

- (2) In performing functions or exercising powers delegated under subsection (1), the Director and the Federal Safety Commissioner must comply with any directions of the Minister.

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

89 Sections 69 and 70

Repeal the sections.

90 Section 71 (heading)

Repeal the heading, substitute:

71 Director may intervene in court proceedings

91 Section 71

Omit “ABC Commissioner” (wherever occurring), substitute “Director”.

92 Section 72 (heading)

Repeal the heading, substitute:

72 Director may make submissions in FWA proceedings

93 Section 72

Omit “ABC Commissioner”, substitute “Director”.

94 Section 73

Repeal the section, substitute:

73 Director etc. must not participate in court proceedings in relation to settled matters

- (1) This section applies if:
- (a) either:
 - (i) the Director (or an inspector) and another party or parties are joint applicants in a building proceeding before a court; or

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- (ii) the Director (or an inspector) has intervened in a building proceeding before a court under subsection 71(1); and
 - (b) before the court has given judgement in the proceeding:
 - (i) the matter that is the subject of the proceeding is settled between the parties to the proceeding (or if more than one matter is the subject of the proceeding—one or more of those matters is settled between the parties to the proceeding); and
 - (ii) a notice is filed in the court discontinuing the proceeding to the extent that it relates to the settled matter or matters.
 - (2) The Director (or inspector) must not continue to participate in the building proceeding to the extent that it relates to the settled matter or matters.
 - (3) A reference in subparagraph (1)(b)(i) to parties to the proceeding does not include a reference to the Director (or inspector).
 - (4) In this section:

building proceeding means a civil proceeding in relation to a matter that arises under a designated building law and involves a building industry participant.

94A Section 73A

Repeal the section, substitute:

73A Director etc. must not institute court proceedings in relation to settled matters

- (1) This section applies if:
 - (a) a building proceeding was instituted in a court; and
 - (b) neither the Director nor an inspector:
 - (i) was a party to the proceeding; or
 - (ii) had intervened in the proceeding; and
 - (c) the matter that was the subject of the proceeding was settled between the parties to the proceeding (or if more than one matter was the subject of the proceeding—one or more of

those matters was settled between the parties to the proceeding); and

(d) a notice was filed in the court discontinuing the proceeding to the extent that it related to the settled matter or matters.

(2) The Director (or an inspector) must not institute a building proceeding in a court if the conduct giving rise to the proceeding was the subject of the settled matter or matters referred to in paragraph (1)(c).

(3) In this section:

building proceeding has the same meaning as in subsection 73(4).

95 Section 74 (heading)

Repeal the heading, substitute:

74 General Manager of FWA must keep Director informed

96 Section 74

Omit “ABC Commissioner”, substitute “Director”.

97 Section 75

Repeal the section, substitute:

75 Jurisdiction of the Federal Court

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

98 Paragraph 75A(1)(a)

Repeal the paragraph.

99 Section 75B

Repeal the section.

100 Section 76

Repeal the section, substitute:

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.

101 Section 77 (heading)

Repeal the heading, substitute:

77 Director etc. not liable for conduct in good faith**102 Subsection 77(2) (paragraphs (a) to (e) of the definition of *protected person*)**

Repeal the paragraphs, substitute:

- (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;

103 Subsection 77(2) (paragraph (k) of the definition of *protected person*)

Repeal the paragraph, substitute:

- (k) the Independent Assessor;
- (l) a presidential member or a Registrar of the Administrative Appeals Tribunal, or an officer or member of staff referred to in section 24N of the *Administrative Appeals Tribunal Act 1975*;
- (m) the Commonwealth Ombudsman, a Deputy Commonwealth Ombudsman or a member of the staff referred to in subsection 31(1) of the *Ombudsman Act 1976*;
- (n) a person acting under a delegation under this Act from a person referred to in any of the preceding paragraphs.

104 Paragraphs 78(2)(a), (d) and (e)

Repeal the paragraphs.

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:
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) Amendments of an Act made by regulations for the purposes of this item can be incorporated into a reprint or compilation of the Act as provided by the *Acts Publication Act 1905*.

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.

*[Minister's second reading speech made in—
House of Representatives on 3 November 2011
Senate on 28 February 2012]*

(213/11)

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