# Building and Construction Industry (Improving Productivity) Act 2016

**No. 87, 2016**

## Compilation No. 4

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# About this compilation

### This compilation

This is a compilation of the *Building and Construction Industry (Improving Productivity) Act 2016* that shows the text of the law as amended and in force on 30 August 2019 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to re-establish the Australian Building and Construction Commissioner, and for related purposes

# Chapter 1—Preliminary

## 1 Short title

This Act may be cited as the *Building and Construction Industry (Improving Productivity) Act 2016*.

## 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 and 2 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 1 December 2016 |
| 2. Sections 3 to 120 | The later of:<br>(a) 1 January 2014; and<br>(b) the day after this Act receives the Royal Assent. | 2 December 2016<br>(paragraph (b) applies) |

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.



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(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 Main object of this Act

(1) The main object of this Act is to provide an improved workplace relations framework for building work to ensure that building work is carried out fairly, efficiently and productively, without distinction between interests of building industry participants, and for the benefit of all building industry participants and for the benefit of the Australian economy as a whole.

(2) This Act aims to achieve its main object by the following means:

(a) improving the bargaining framework so as to further encourage genuine bargaining at the workplace level;

(b) promoting respect for the rule of law;

(c) ensuring respect for the rights of building industry participants;

(d) ensuring that building industry participants are accountable for their unlawful conduct;

(e) providing effective means for investigating and enforcing this Act, designated building laws (to the extent that those laws relate to building work) and the Building Code;

(f) improving work health and safety in building work;

(g) encouraging the pursuit of high levels of employment in the building industry, including by encouraging youth employment with an emphasis on engaging apprentices;

(h) providing assistance and advice to building industry participants in connection with their rights and obligations under this Act, designated building laws and the Building Code.



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## 4 Simplified outline of this Act

This Act regulates certain conduct of building industry participants who perform building work.

The Australian Building and Construction Commissioner, and those who are part of the Australian Building and Construction Commission, exercise powers and perform functions in relation to building work. For example, the ABC Commissioner and other inspectors investigate, monitor and promote compliance with this Act, the Building Code and designated building laws. Designated building laws are specified workplace relations laws and industrial instruments under those laws. The Building Code is a code of practice issued under this Act in respect of building work that certain persons must comply with.

The Federal Safety Commissioner, and Federal Safety Officers, are responsible for promoting work health and safety in relation to building work. They also have a role in relation to the Work Health and Safety Accreditation Scheme, which is a scheme prescribed by the rules for accrediting persons who carry out building work funded by the Commonwealth or a corporate Commonwealth entity.

Unlawful industrial action and unlawful picketing are prohibited by this Act, and anyone can obtain an injunction to prevent this happening. Other action relating to coercion and discrimination is also prohibited by this Act.

The ABC Commissioner, inspectors and Federal Safety Officers may obtain information. An examination notice, issued by a nominated AAT presidential member on application by the ABC Commissioner, may require a person to give information. Inspectors and Federal Safety Officers can also enter premises for certain purposes. There are protections for, and limitations on the use of, information that is provided under this Act.



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Inspectors and affected persons are able to apply to certain courts when a person contravenes a civil remedy provision. The court may order a pecuniary penalty, grant an injunction or make another order. The ABC Commissioner and inspectors have other powers to enforce compliance with this Act (such as being able to accept enforceable undertakings).

The ABC Commissioner can intervene in, or institute, court or FWC proceedings. The ABC Commissioner can also publicise non-compliance with this Act, designated building laws and the Building Code.

## 5 Definitions

In this Act:

***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 subsection 15(1).

***accredited person*** means a person who is accredited under the WHS Accreditation Scheme.

***ancillary site*** has the meaning given by section 9.

***authorised applicant*** for an order relating to a contravention of a civil remedy provision means:

(a) the ABC Commissioner or any other inspector; or

(b) a person affected by the contravention; or

(c) a person prescribed by the rules for the purposes of this paragraph.

Rules prescribing persons for the purposes of paragraph (c) may provide that a person is prescribed only in relation to circumstances specified in the rules.



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***authorised officer*** means an inspector or a Federal Safety Officer.

***bargaining representative*** has the meaning given by the FW Act.

***builder*** has the meaning given by subsection 43(8).

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

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

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

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

***Building Code*** means the code of practice referred to in section 34.

***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 law enforcement*** has the meaning given by section 106.



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***building industry participant*** means any of the following:

(a) a building employer;

(b) a building employee;

(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.

***building matter*** means a matter that relates to a building industry participant.

***building site*** means a site at which building work is being or may be performed.

***building work*** has the meaning given by section 6.

***civil penalty order*** means an order under paragraph 81(1)(a).

***civil remedy provision*** means:

(a) a Grade A civil remedy provision; or

(b) a Grade B civil remedy provision.

***Commission*** means the Australian Building and Construction Commission referred to in subsection 29(2).

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

***Commonwealth industrial instrument*** means any of the following:

(a) an award or transitional award (within the meaning of the FW Transitional Act);

(b) a workplace agreement (within the meaning of the FW Transitional Act);

(c) a pre-reform certified agreement or a pre-reform AWA (within the meaning of the FW Transitional Act);



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(d) an order of the Australian Industrial Relations Commission or the FWC;
(e) the Australian Fair Pay and Conditions Standard (within the meaning of the FW Transitional Act);
(f) a fair work instrument (within the meaning of the FW Act);
(g) the National Employment Standards (within the meaning of the FW Act).

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

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

***compliance powers*** means functions and powers conferred on an authorised officer.

***compliance purposes*** means:
(a) for an inspector—the purposes referred to in subsection 70(1); or
(b) for a Federal Safety Officer—the purposes referred to in subsection 70(2).

***conduct*** includes an omission.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***constitutionally-covered entity*** means:
(a) a constitutional corporation; or
(b) the Commonwealth; or
(c) a corporate Commonwealth entity; or
(d) a body corporate incorporated in a Territory; or
(e) an organisation.

***copy*** a document includes take extracts from the document.

***corporate Commonwealth entity*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.



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***Deputy ABC Commissioner*** means a Deputy Australian Building and Construction Commissioner referred to in subsection 15(2).

***designated building law*** means:

(a) the *Independent Contractors Act 2006*, the FW Act or the FW Transitional Act; or

(b) a Commonwealth industrial instrument.

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

(a) the ABC Commissioner;

(b) a Deputy ABC Commissioner;

(c) an inspector;

(d) a member of staff referred to in subsection 30(1);

(e) a person assisting the ABC Commissioner under section 31;

(f) a person engaged as a consultant under section 32;

(g) the General Manager of the FWC;

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

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

***disclose*** means divulge or communicate.

***employee*** has its ordinary meaning, and:

(a) includes an individual who is usually an employee within that meaning; but

(b) does not include an individual on a vocational placement.

***employer*** has its ordinary meaning, and includes a person that is usually an employer within that meaning.

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

***entrusted person*** has the meaning given by subsection 106(1).



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***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***examination*** means an attendance by a person, before the ABC Commissioner, where the person is required as a result of an examination notice to answer questions relevant to an investigation.

***examination notice*** means an examination notice issued under Part 2 of Chapter 7.

***Federal Circuit Court*** means the Federal Circuit Court of Australia.

***Federal Court*** means the Federal Court of Australia.

***Federal Safety Commissioner*** means the Federal Safety Commissioner referred to in section 37.

***Federal Safety Officer*** means:

(a) the Federal Safety Commissioner; or

(b) a person appointed as a Federal Safety Officer under subsection 68(1).

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

(a) the ABC Commissioner; or

(b) a Deputy ABC Commissioner appointed on a full-time basis.

***funding entity*** has the meaning given by subsection 34(2C).

***FW Act*** means the *Fair Work Act 2009*.

***FWC*** means the Fair Work Commission.

***FW Transitional Act*** means the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

***Grade A civil remedy provision*** means:



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(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".

Note: The maximum penalty for a Grade A civil remedy provision is 1,000 penalty units for bodies corporate, and otherwise 200 penalty units (see subsection 81(2)).

***Grade B civil remedy 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".

Note: The maximum penalty for a Grade B civil remedy provision is 100 penalty units for bodies corporate, and otherwise 20 penalty units (see subsection 81(2)).

***Greater Sunrise special regime area*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

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

***industrial action*** has the meaning given by section 7.

***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; or

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



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and includes:

(d) a branch of such an association; and

(e) an organisation; and

(f) a branch of an organisation.

***inspector*** means:

(a) the ABC Commissioner; or

(b) a person appointed as an Australian Building and Construction Inspector under subsection 66(1).

***land*** has a meaning affected by subsection 6(6).

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

***lockout*** has the meaning given by subsection 7(3).

***nominated AAT presidential member*** means an AAT presidential member in respect of whom a nomination is in force under section 61A to issue examination notices under Part 2 of Chapter 7.

***occupier*** has the same meaning as in the FW Act.

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

***official employment*** has the meaning given by subsection 106(8).

***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.

***person*** has a meaning affected by section 96.

***pre-construction agreement*** has the meaning given by subsection 43(8).

***premises*** has the same meaning as in the FW Act.



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***protected industrial action*** has the meaning given by section 8.

***protected information*** means information that:

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

(b) was obtained by an entrusted person in the course of official employment; and

(c) relates to a person other than the entrusted person.

***protected person*** has the meaning given by subsection 8(3).

***quarter*** means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

***relevant court*** means each of the following courts:

(a) the Federal Court;

(b) the Federal Circuit Court;

(c) a Supreme Court of a State or Territory;

(d) a District Court, or County Court, of a State.

***relevant State or Territory court*** means each of the following courts:

(a) a District, County or Local Court of a State;

(b) a magistrates court;

(c) the Industrial Relations Court of South Australia;

(d) the Industrial Court of New South Wales;

(e) any other State or Territory court that is prescribed by the rules.

***resources platform*** means an artificial island, installation or structure attached to the seabed for the purpose of exploration for, or exploitation of, resources or for other economic purposes.

***Secretary*** means the Secretary of the Department.

***single enterprise*** has the meaning given by subsection 59(2).

***this Act*** includes the rules and the regulations.



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***unlawful industrial action***: action is ***unlawful industrial action*** if:

(a) the action is industrial action (see section 7); and

(b) the action is not protected industrial action (see section 8).

***unlawful picket*** has the meaning given by subsection 47(2).

***WHS Accreditation Scheme*** means the Work Health and Safety Accreditation Scheme referred to in section 43.

***Working Group*** means the Security of Payments Working Group established by section 32A.

## 6 Meaning of *building work*

(1) Subject to subsections (3), (4) and (5), ***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; or

(ii) the laying of foundations; or

(iii) the erection, maintenance or dismantling of scaffolding; or



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(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; or

(v) site restoration, landscaping and the provision of roadways and other access works;

(e) transporting or supplying goods, to be used in work covered by paragraph (a), (b), (c) or (d), directly to building sites (including any resources platform) where that work is being or may be performed;

but does not include any of the following:

(f) the drilling for, or extraction of, oil or natural gas;

(g) the extraction (whether by underground or surface working) of minerals, including tunnelling or boring, or constructing underground works, for that purpose;

(h) 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) To avoid doubt, paragraphs (1)(f) and (g) do not prevent this Act from applying to building work (within the meaning of paragraphs (1)(a) to (e)) that is performed on land in which there is an interest relating to the mining of oil, gas or minerals.

Note: This Act extends to any resources platform, and to certain ships, in the exclusive economic zone or in the waters above the continental shelf (see section 11).

(3) Paragraph (1)(h) 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.

(4) Subject to subsection (5), ***building work*** includes any activity that is prescribed by the rules for the purposes of this subsection.



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(5) ***Building work*** does not include any activity that is prescribed by the rules for the purposes of this subsection.

(6) In this Act:

***land*** includes land beneath water.

## 7 Meaning of *industrial action*

(1) ***Industrial action*** is action of any of the following kinds:

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

(b) a ban, limitation or restriction on the performance of building work by an employee or on the acceptance of or offering for building work by an employee;

(c) a failure or refusal:

(i) by employees to attend work, where that work is building work; or

(ii) to perform any building work at all by employees who attend work, where that work is building work;

(d) the lockout of employees from their work by their employer, where that work is building work.

Note: In *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v The Age Company Limited*, PR946290, the Full Bench of the Australian Industrial Relations Commission considered the nature of industrial action and noted that action will not be industrial in character if it stands completely outside the area of disputation and bargaining.

(2) However, ***industrial action*** does not include the following:

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



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

(c) action by an employee if:

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

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

*When there is a lockout*

(3) There is a ***lockout*** of employees from their work by an employer if the employer prevents the employees from performing work under their contracts of employment without terminating those contracts.

## 8 Meaning of *protected industrial action*

(1) Action is ***protected industrial action*** if the action is protected industrial action within the meaning of the FW Act.

(2) However, action is not ***protected industrial action*** if the action is protected industrial action (within the meaning of the FW Act) for a proposed enterprise agreement but:

(a) the action is engaged in in concert with one or more persons who are not protected persons; or

(b) the organisers include one or more persons who are not protected persons.

(3) The following persons are ***protected persons***:

(a) an employee organisation (within the meaning of the FW Act) that is a bargaining representative for the proposed enterprise agreement;



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(b) a member of such an organisation who is employed by the employer and who will be covered by the proposed enterprise agreement;
(c) an officer of such an organisation acting in that capacity;
(d) an employee who is a bargaining representative for the proposed enterprise agreement.

## 9 Meaning of *ancillary site*

A site is an ***ancillary site*** if the site is:

(a) a site from which goods are transported or supplied, or building industry participants are transported, directly to a building site; or
(b) a site where a building industry participant, who is performing building work, or managing building work that is being performed, on a building site, does work relating to the building work.

## 10 Extension of Act to Christmas Island and Cocos (Keeling) Islands

(1) This Act extends to the Territory of Christmas Island and to the Territory of Cocos (Keeling) Islands.

(2) This Act applies in relation to the Territory of Christmas Island and to the Territory of Cocos (Keeling) Islands with any modifications that are prescribed by the rules.

## 11 Extension of Act to EEZ and waters above continental shelf

(1) This Act extends to or in relation to:
(a) any resources platform in the exclusive economic zone or in the waters above the continental shelf; and
(b) any ship, in the exclusive economic zone or in the waters above the continental shelf, that is travelling to or from (or both to and from) an Australian port.



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*Extensions prescribed by rules*

(2) Without limiting subsection (1), if the rules prescribe further extensions of this Act, or specified provisions of this Act, to or in relation to the exclusive economic zone or to the waters above the continental shelf, then this Act extends accordingly.

*Modifications relating to Greater Sunrise special regime area*

(3) Despite subsections (1) and (2), if the rules prescribe modifications of this Act, or specified provisions of this Act, for its operation under subsection (1) or (2) in relation to all or part of the Greater Sunrise special regime area then, so far as this Act would, apart from this subsection, extend to the area or part, it has effect as so modified.

(4) For the purposes of subsection (3), the rules may prescribe different modifications relating to different parts of the Greater Sunrise special regime area.

*Extension relating to Greater Sunrise special regime area*

(5) Despite subsection 13AB(1) of the *Seas and Submerged Lands Act 1973*:

(a) an extension of this Act under subsection (1) of this section has effect; and

(b) an extension of this Act, or a provision of this Act, because of rules made for the purposes of subsection (2) of this section may (subject to those rules) have effect;

in relation to acts, omissions, matters and things directly or indirectly connected with the exploration of, or exploitation of the natural resources of, the continental shelf in the Greater Sunrise special regime area. This subsection has effect whether or not the extension is affected by subsection (3) of this section.

## 12 Geographical application of offences

Division 14 (standard geographical jurisdiction) of the *Criminal Code* does not apply in relation to an offence against this Act.



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Note: The extended geographical application that section 11 gives to this Act will apply to the offences in this Act.

## 13 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.



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Section 14

# Chapter 2—The Australian Building and Construction Commissioner

## Part 1—Simplified outline of this Chapter

### 14 Simplified outline of this Chapter

Many of the functions and powers under this Act are conferred on the Australian Building and Construction Commissioner (or the ABC Commissioner) and those who are part of the Australian Building and Construction Commission.

The Commissioner is appointed under and the Commission is established by this Chapter. This Chapter also includes the terms and conditions of the Commissioner, the staff of the Commission, and the people who assist the Commissioner.



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# Part 2—The Australian Building and Construction Commissioner

## 15 ABC Commissioner and Deputy ABC Commissioners

(1) There is to be an Australian Building and Construction Commissioner.

(2) The ABC Commissioner is to be assisted by the number of Deputy Australian Building and Construction Commissioners appointed from time to time.

## 16 Functions of ABC Commissioner

(1) The ABC Commissioner has the following functions:

(aa) promoting the main object of this Act (see section 3);

(a) monitoring and promoting appropriate standards of conduct by building industry participants, including by:

(i) monitoring and promoting compliance with this Act, designated building laws and the Building Code by building industry participants; and

(ii) referring matters to other relevant agencies and bodies;

(b) investigating suspected contraventions, by building industry participants, of this Act, designated building laws or the Building Code;

(ba) ensuring building employers and building contractors comply with their obligations under this Act, designated building laws and the Building Code;

(c) instituting, or intervening in, proceedings in accordance with this Act;

(d) providing assistance and advice to building industry participants regarding their rights and obligations under this Act, designated building laws and the Building Code;



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(e) providing representation to a building industry participant who is, or might become, a party to a proceeding under this Act, a designated building law or the Building Code, if the ABC Commissioner considers that providing the representation would promote the enforcement of this Act, the law or the Code;

(f) disseminating information about this Act, 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;

(g) any other functions conferred on the ABC Commissioner by this Act or by another Act.

(2) In performing the functions referred to in subsection (1), the ABC Commissioner must ensure that the policies and procedures adopted and resources allocated for protecting and enforcing rights and obligations arising under this Act, designated building laws and the Building Code are, to the greatest extent practicable having regard to industry conditions based on complaints received by the ABC Commissioner, applied in a reasonable and proportionate manner to each of the categories of building industry participants.

(3) Without limiting subsection (1), the ABC Commissioner must perform his or her functions in relation to the following provisions of the FW Act:

(a) Chapter 2, including (but not limited to) in relation to wages and entitlements;

(b) Part 3-1 (general protections, including protection of freedom of association and prohibitions on coercion), including (but not limited to):

(i) section 351 (discrimination); and

(ii) sections 357 to 359 (sham arrangements);

(c) Part 3-3 (industrial action), including (but not limited to):

(i) section 474 (payments not to be made relating to certain periods of industrial action); and



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(ii) section 475 (accepting or seeking payments relating to periods of industrial action);

(d) Part 3-4 (right of entry).

## 17 Minister's directions to ABC Commissioner

(1) The Minister may, by legislative instrument, give written directions to the ABC Commissioner specifying the manner in which the ABC Commissioner must exercise the powers or perform the functions of the ABC Commissioner under this Act.

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

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

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

## 18 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 and powers.

Note: See also section 107, which restricts the disclosure of personal information in a report.

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

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

## 19 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 (other than his or her functions or powers as an inspector) to:



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(a) a Deputy ABC Commissioner; or
(b) an inspector who is an employee of the Commission; or
(c) an SES employee or acting SES employee who is an employee of the Commission; or
(d) a person (whether or not an SES employee) who is an employee of the Commission and prescribed by the rules for the purposes of this paragraph.

(2) Powers or functions under section 61B or 61F or subsection 61E(3) or (4) (examination notices) may only be delegated to:
(a) a Deputy ABC Commissioner; or
(b) if no Deputy ABC Commissioner is currently appointed—an SES employee or acting SES employee.

(3) In exercising powers or performing 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.

(5) The ABC Commissioner may give a direction for the purposes of subsection (3).

(6) A written direction under subsection (5) that is of general application is a legislative instrument.

(7) A written direction under subsection (5) that relates to a particular case is not a legislative instrument.

## 20 Quarterly and annual reports

(1A) As soon as practicable after the end of each quarter of each financial year, the ABC Commissioner must prepare and give to the Minister a report (a ***quarterly report***) on the performance of the ABC Commissioner's functions and the exercise of the ABC Commissioner's powers during that quarter.



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(2) Each quarterly report, and each annual report prepared by the ABC Commissioner and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a reporting period (an ***annual report***), must include:

(a) details of:

(i) the number, and type, of matters that were investigated by the ABC Commissioner during the quarter or period (as the case requires); and

(ii) the cost, during that quarter or period, of each such investigation; and

(b) details of assistance and advice provided during that quarter or period to building industry participants; and

(c) details of the extent to which the Building Code was complied with during that quarter or period; and

(d) details of:

(i) the number, and type, of matters that were investigated by the ABC Commissioner during that quarter or period in relation to building employers; and

(ii) the cost, during that quarter or period, of each such investigation; and

(e) details of the following, both in total and in relation to each category of building industry participant:

(i) the number of proceedings commenced in accordance with this Act in that quarter or period;

(ii) the cost, during that quarter or period, of those proceedings (including legal expenses); and

(f) details of the number, and total cost, of such proceedings finalised in that quarter or period; and

(g) details of the legal expenses incurred during that quarter or period as a result of enforcement action undertaken by the ABC Commissioner; and

(h) details of industry conditions, during that quarter or period, based on complaints received by the ABC Commissioner during that quarter or period; and

(i) details of activities that the ABC Commissioner has undertaken during that quarter or period to monitor the



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compliance of products used in building work with relevant Australian standards published by, or on behalf of, Standards Australia; and

(j) details of the number, and type, of matters for which examination notices were issued under this Act.

Note: See also section 107, which restricts the disclosure of personal information in a report.

(3) Each quarterly report, and each annual report for a period, must also include:

(a) details of directions given by the Minister during that quarter or period under section 17 or 18; and

(b) details of delegations by the ABC Commissioner under section 19 during that quarter or period.

(4) The Minister may notify the ABC Commissioner in writing of particular work health and safety matters that need not be covered in the paragraph (2)(c) part of a quarterly report or an annual report.

(5) The Minister must cause a copy of each quarterly report and each annual report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

## 21 Appointment

(1) A Commissioner is to be appointed by the Minister by written instrument.

(2) The appointment:

(a) is to be on a full-time basis for the ABC Commissioner; and

(b) is to be on a full-time basis or part-time basis for a Deputy ABC Commissioner.

(3) The Minister must not appoint a person as a Commissioner unless the Minister is satisfied that the person:

(a) has suitable qualifications or experience; and

(b) is of good character; and



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(c) will uphold the APS Values set out in section 10 of the *Public Service Act 1999*, including by performing his or her functions in an apolitical manner and acting impartially and professionally.

(4) A Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(5) A Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## 22 Acting appointments

The Minister may, by written instrument, appoint a person to act as the ABC Commissioner:

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

(b) during any period, or during all periods, when the ABC Commissioner:

(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*.

## 23 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 by the rules.

(2) A Commissioner is to be paid the allowances that are prescribed by the rules.

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



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## 24 Leave of absence

(1) A full-time Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The Minister may grant a part-time Commissioner leave of absence (including recreation leave) on the terms and conditions as to remuneration or otherwise that the Minister determines.

## 25 Engaging in other paid employment

(1) A full-time Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's approval.

(2) A part-time Commissioner must not engage in any paid employment that conflicts or may conflict with the proper performance of the Commissioner's duties.

## 26 Disclosure of interests

(1) A disclosure by a Commissioner under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.

(2) Subsection (1) applies in addition to any rules made for the purposes of that section.

(3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, a Commissioner is taken not to have complied with section 29 of that Act if the Commissioner does not comply with subsection (1) of this section.



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## 27 Resignation

(1) A Commissioner 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.

## 28 Termination

(1) The Minister may terminate the appointment of a Commissioner:
  (a) for misbehaviour; or
  (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity; or
  (c) if the Commissioner fails to perform his or her functions with impartiality as between all categories of building industry participants.

(2) The Minister must terminate the appointment of a Commissioner if:
  (a) the Commissioner:
    (i) becomes bankrupt; or
    (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with one or more of his or her creditors; or
    (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  (b) for a full-time Commissioner:
    (i) the Commissioner is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
    (ii) the Commissioner engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see subsection 25(1)); or
  (c) for a part-time Commissioner—the Commissioner engages in paid employment that conflicts or could conflict with the



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proper performance of his or her duties (see subsection 25(2)); or

(d) in any case—the Commissioner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or with rules made for the purposes of that section.



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# Part 3—The Australian Building and Construction Commission

## 29 The Australian Building and Construction Commission

(1) This section applies to the body, known as the Office of the Fair Work Building Industry Inspectorate, that was established by section 26J of the *Fair Work (Building Industry) Act 2012* (as in force before the commencement of this section).

(2) That body continues in existence by force of this section, under and subject to the provisions of this Act, under the name of the Australian Building and Construction Commission.

(3) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
- (a) the Commission is a listed entity; and
- (b) the ABC Commissioner is the accountable authority of the Commission; and
- (c) the following persons are officials of the Commission:
  - (i) the ABC Commissioner;
  - (ii) the staff of the Commission referred to in subsection 30(1);
  - (iii) persons whose services are made available to the ABC Commissioner under section 31;
  - (iv) consultants engaged under section 32; and
- (d) the purposes of the Commission include the functions of the ABC Commissioner referred to in section 16.

## 30 Staff

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

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



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(a) the ABC Commissioner and the staff of the Commission together constitute a Statutory Agency; and
(b) the ABC Commissioner is the Head of that Statutory Agency.

## 31 Persons assisting the ABC Commissioner

The ABC Commissioner may also be assisted:

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

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

Note 1: For example, State or Territory employees could be made available to assist the ABC Commissioner in providing education in a particular region.

Note 2: 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).

## 32 Consultants

(1) The ABC Commissioner may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the ABC Commissioner.

(2) The terms and conditions of the engagement of a person are those determined by the ABC Commissioner in writing.



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# Part 4—Security of Payments Working Group

## 32A Security of Payments Working Group

(1) The Security of Payments Working Group is established by this section.

(2) The functions of the Working Group are the following:

(a) monitoring the impact of the activities of the Commission on the conduct and practices of building industry participants in relation to their compliance with laws (***security of payment laws***) of the Commonwealth, the States and the Territories that relate to the security of payments that are due to persons in relation to building work;

(b) making recommendations to the ABC Commissioner about policies, procedures or programs that could be implemented to improve compliance by building industry participants with security of payment laws;

(c) making recommendations to the Minister about any matter that the Minister requests the Working Group to consider;

(d) any other functions conferred on the Working Group by the rules.

## 32B Membership of Working Group

(1) The Working Group consists of the following members:

(a) the ABC Commissioner;

(b) at least one member who has experience or background in employee representation in the building industry;

(c) at least one member who has experience or background in employer representation in the building industry;

(d) at least one member who has experience or background in contractor representation in the building industry;

(e) any other members (if any) appointed under section 32C.



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(2) The rules may specify entities that must be represented on the Working Group.

## 32C Appointment of members

(1) A member of the Working Group (other than the ABC Commissioner) is to be appointed by the Minister by written instrument.

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

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

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

## 32D Chair

(1) The Minister must appoint a member (other than the ABC Commissioner) to be the Chair of the Working Group.

(2) The Minister may, by written instrument, appoint a member (other than the ABC Commissioner) 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*.

## 32E Remuneration

(1) A member of the Working Group appointed by the Minister is not entitled to be paid remuneration or allowances.



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(2) A member of the Working Group appointed by the Minister is entitled to be reimbursed reasonable expenses that he or she incurs in performing functions as a member.

## 32F Resignation of members

(1) A member of the Working Group 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.

## 32G Termination of appointment

The Minister may terminate the appointment of a member of the Working Group appointed by the Minister:

(a) for misbehaviour; or

(b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity; or

(c) if the member:

(i) becomes bankrupt; or

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

(iii) compounds with one or more of his or her creditors; or

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

(d) if the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

## 32H Other terms and conditions

A member of the Working Group appointed by the Minister holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.



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## 32J Meetings

(1) The Chair must convene:

(a) such meetings of the Working Group as are, in his or her opinion, necessary for the performance of its functions; and

(b) at least 4 meetings of the Working Group in each financial year.

(2) The procedures to be followed at a meeting of the Working Group are to be determined by the Chair.

## 32K Annual report

The Chair 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:

(a) the membership of the Working Group during the financial year; and

(b) the operations of the Working Group during the financial year.



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# Chapter 3—The Building Code

## 33 Simplified outline of this Chapter

The Minister may issue a Building Code under this Chapter. The Building Code is a code of practice that certain persons (such as constitutional corporations and the Commonwealth) must comply with in respect of building work.

The ABC Commissioner can require a person to report on his or her compliance with the Building Code.

## 34 Minister may issue Building Code

(1) The Minister may, by legislative instrument, issue one or more documents that together constitute a code of practice that is to be complied with by persons in respect of building work.

Note: The code is called the Building Code (see the definition of ***Building Code*** in section 5).

(2) Without limiting subsection (1), the Minister:

(a) must issue one or more documents under that subsection in relation to procurement matters relating to building work; and

(b) may issue one or more documents under that subsection in relation to work health and safety matters relating to building work.

Note: A single document may contain the entire Building Code (including the matters referred to in paragraph (2)(a) and, if applicable, paragraph (2)(b)).

(2A) Without limiting subsection (1) or paragraph (2)(a), a document issued under subsection (1) relating to procurement matters must require a funding entity to ensure that the preferred tenderer for building work provides the following information:



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(a) the extent to which domestically sourced and manufactured building materials will be used to undertake the building work;
(b) whether the building materials to be used to undertake the building work comply with relevant Australian standards published by, or on behalf of, Standards Australia;
(c) the preferred tenderer's assessment of the whole-of-life costs of the project to which the building work relates;
(d) the impact on jobs of the project to which the building work relates;
(e) whether the project to which the building work relates will contribute to skills growth.

(2B) Without limiting subsection (1) or paragraph (2)(a), a document issued under subsection (1) relating to procurement matters must require a funding entity to require building industry participants to only use products in building work that comply with relevant Australian standards published by, or on behalf of, Standards Australia.

(2C) Each of the following is a ***funding entity***:
(a) a non-corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
(b) a corporate Commonwealth entity (within the meaning of that Act) that is directed by the Minister administering that Act to comply with the Building Code.

(2D) Without limiting subsection (1), the Building Code must include provisions ensuring that no person is employed to undertake building work unless:
(a) the position is first advertised in Australia; and
(b) the advertising was targeted in such a way that a significant proportion of suitably qualified and experienced Australian citizens and Australian permanent residents (within the meaning of the *Migration Act 1958*) would be likely to be informed about the position; and



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(c) any skills or experience requirements set out in the advertising were appropriate to the position; and

(d) the employer demonstrates that no Australian citizen or Australian permanent resident is suitable for the job.

(2E) If a document issued under subsection (1) includes requirements in relation to the content of building enterprise agreements, a building industry participant may, before 1 September 2017, submit expressions of interest or tender for building work funded (whether directly or indirectly) by the Commonwealth or a corporate Commonwealth entity even if a building enterprise agreement, made before the document is issued, that covers the building industry participant does not comply with any one or more of the requirements.

Note 1: However, a building enterprise agreement, made before the document is issued, that covers a building industry participant must comply with the requirements if the building industry participant is to be awarded or perform building work.

Note 2: A building enterprise agreement, made after the document is issued, that covers a building industry participant must comply with the requirements if the building industry participant is to submit expressions of interest or tender for 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; or

(c) the person is the Commonwealth or a corporate Commonwealth entity.

## 35 Building industry participants to report on compliance with Building Code

(1) The ABC Commissioner may give a written notice to a person who



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is required to comply with the Building Code in respect of particular building work.

Note: See subsection 34(3) for the persons who are required to comply with the Building Code.

(2) The notice may direct the person to give a written report to the ABC Commissioner containing specified information about the extent to which the person complied with the Building Code in respect of that building work.

(3) The person must comply with the notice within the period specified by the notice. The period must be at least 14 days.

Note: Grade B civil penalty.

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



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# Chapter 4—The Federal Safety Commissioner

## Part 1—Simplified outline of this Chapter

### 36 Simplified outline of this Chapter

The Federal Safety Commissioner is an SES position in the Department. The Commissioner has 2 main functions: in relation to work health and safety in building work and the Work Health and Safety Accreditation Scheme.

The Work Health and Safety Accreditation Scheme is a scheme prescribed by the rules. Any person who wishes to carry out building work funded by the Commonwealth or a corporate Commonwealth entity must be accredited by the Federal Safety Commissioner in accordance with the scheme.



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# Part 2—The Federal Safety Commissioner

## 37 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, or the acting SES employee who is acting in, that position.

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

## 38 Functions of Federal Safety Commissioner

The Federal Safety Commissioner has the following functions:

(a) promoting work health and safety in relation to building work undertaken by a constitutional corporation, the Commonwealth or a corporate Commonwealth entity;

(b) performing functions as the accreditation authority for the purposes of the WHS Accreditation Scheme;

(c) promoting the benefits of the WHS Accreditation Scheme and disseminating information about the WHS Accreditation Scheme;

(ca) auditing compliance with National Construction Code performance requirements in relation to building materials;

(d) referring matters to other relevant agencies and bodies;

(e) any other functions conferred on the Federal Safety Commissioner by this Act or by another Act.



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## 39 Minister's directions to Federal Safety Commissioner

(1) The Minister may, by legislative instrument, give written directions to the Federal Safety Commissioner specifying the manner in which the Federal Safety Commissioner must exercise the powers or perform the 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) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act (disallowance of legislative instruments) applies to a direction under subsection (1) of this section.

## 40 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 (whether or not an SES employee) prescribed by the rules for the purposes of this paragraph.

(2) In exercising powers or performing 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.

(4) The Federal Safety Commissioner may give a direction for the purposes of subsection (2).



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(5) A written direction under subsection (4) that is of general application is a legislative instrument.

(6) A written direction under subsection (4) that relates to a particular case is not a legislative instrument.

## 41 Acting Federal Safety Commissioner

(1) If an SES employee, or acting SES employee, is acting in the position of Federal Safety Commissioner:

(a) the 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 employee as if the employee were the occupier of the position of Federal Safety Commissioner.

(2) Anything done by or in relation to a person purporting to act in the position of Federal Safety Commissioner is not invalid merely because the occasion to act had not arisen or had ceased.

## 42 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 those determined by the Federal Safety Commissioner in writing.



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# Part 3—WHS Accreditation Scheme for Commonwealth building work

## 43 WHS Accreditation Scheme for Commonwealth building work

*Accreditation scheme*

(1) The rules may prescribe an accreditation scheme, to be known as the Work Health and Safety Accreditation Scheme, for persons who wish to carry out building work funded by the Commonwealth or a corporate Commonwealth entity.

(2) The rules must provide for the Federal Safety Commissioner to be the accrediting authority under the scheme.

(3) The rules may prescribe fees for applications made under the rules.

*Commonwealth building work to be carried out by accredited persons*

(4) The Commonwealth or a corporate Commonwealth entity must not fund building work unless:

(a) contracts for the building work will be entered into with builders who are accredited persons; and

(b) at the time of the funding, the Commonwealth or corporate Commonwealth entity 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 rules.

(5) For the purposes of this section, the Commonwealth or a corporate Commonwealth entity funds building work if it:

(a) pays for, or otherwise funds or finances, the building work (whether directly or indirectly); or



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(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 provision of a law of the Commonwealth 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 corporate Commonwealth entity in relation to building work.

*Definitions*

(8) In this Act:

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

***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.



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# Chapter 5—Unlawful action

## 44 Simplified outline of this Chapter

Anyone can apply for an injunction under this Chapter to restrain a person from organising or engaging in unlawful industrial action or an unlawful picket that relates to building work. The unlawful industrial action or picket must also relate to a constitutionally-covered entity (such as if the action is taken by or against a constitutionally-covered entity).

Unlawful industrial action includes bans on working, employees failing to attend work and employers locking out employees.

The provisions of the FW Act relating to strike pay also apply in relation to unlawful industrial action.

## 45 Action to which this Chapter applies

This Chapter applies to the following action:

(a) action taken by a constitutionally-covered entity;

(b) action that affects, is capable of affecting or is taken with intent to affect the activities, functions, relationships or business of a constitutionally-covered entity;

(c) action that consists of advising, encouraging or inciting, or action taken with intent to coerce, a constitutionally-covered entity:

(i) to take, or not take, particular action in relation to another person; or

(ii) to threaten to take, or not take, particular action in relation to another person.

## 46 Unlawful industrial action prohibited

A person must not organise or engage in unlawful industrial action.



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Note: Grade A civil penalty.

## 47 Unlawful picketing prohibited

(1) A person must not organise or engage in an unlawful picket.

Note: Grade A civil penalty.

(2) An ***unlawful picket*** is action:

(a) that:

(i) has the purpose of preventing or restricting a person from accessing or leaving a building site or an ancillary site; or

(ii) directly prevents or restricts a person accessing or leaving a building site or an ancillary site; or

(iii) would reasonably be expected to intimidate a person accessing or leaving a building site or an ancillary site; and

(b) that:

(i) is motivated for the purpose of supporting or advancing claims against a building industry participant in respect of the employment of employees or the engagement of contractors by the building industry participant; or

(ii) is motivated for the purpose of advancing industrial objectives of a building association; or

(iii) is unlawful (apart from this section).

Note: See also Division 2 of Part 2 of Chapter 6 (reason for action and coercion).

## 48 Injunction against unlawful industrial action or picket

(1) Any person may apply to a relevant court for an injunction under this section.

Note: An authorised applicant may also apply under section 81 for an injunction.



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(2) The court may grant an injunction in the terms the court considers appropriate if the court is satisfied that unlawful industrial action, or an unlawful picket, is:

(a) occurring; or

(b) threatened, impending or probable; or

(c) being organised.

(3) The court may grant an interim injunction pending determination of an application under subsection (1) if the court is satisfied that it is desirable to do so.

(4) The power of the court to grant an injunction restraining a person (the ***defendant***) from engaging in conduct may be exercised:

(a) whether or not it appears to the court that the defendant intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the defendant has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the defendant engages in conduct of that kind.

## 49 Payments relating to periods of industrial action

Division 9 of Part 3-3 of the FW Act (payment relating to periods of industrial action) applies in relation to industrial action relating to building work with the following modifications:

(a) references in that Division to industrial action are to be read as references to industrial action within the meaning of this Act to which this Chapter applies under section 45;

(b) references in that Division to protected industrial action are to be read as references to protected industrial action within the meaning of this Act;

(c) if the person who contravenes a civil remedy provision to which any of items 21 to 24 of the table set out in section 539 of the FW Act relates is a body corporate—then, for the purposes of subsection 539(2) and paragraph 546(2)(b) of



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that Act, the pecuniary penalty must not be more than 1,000 penalty units.



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# Chapter 6—Coercion, discrimination and unenforceable agreements

## Part 1—Simplified outline of this Chapter

### 50 Simplified outline of this Chapter

It is unlawful for a person to do something (or threaten to do something) intending to coerce another person:

(a) to employ a person, engage a contractor or allocate duties or responsibilities relating to building work; or

(b) in relation to the choice of superannuation fund for the superannuation contributions of a building employee; or

(c) to agree to make, vary or terminate a Commonwealth industrial instrument relating to building work.

It is also unlawful for a person to take action against a building employer because building employees are or are not covered by a Commonwealth industrial instrument.

However, action is only unlawful if the action is connected to a constitutionally-covered entity.

A court can make an order under Chapter 8 if a person is alleged to have taken unlawful action. Division 3 of Part 2 of Chapter 8 has rules relating to coercion. There are also rules relating to a person's reasons for action and to coercion in Division 2 of Part 2 of this Chapter.

An agreement (other than a Commonwealth industrial instrument) may be unenforceable if building employees who are not all employed in a single enterprise enter into the agreement to secure standard employment conditions in respect of building work that the employees carry out at a particular building site or sites.



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# Part 2—Coercion and discrimination

## Division 1—Civil penalties

### 51 Action to which this Part applies

This Part applies to the following action:

(a) action taken by a constitutionally-covered entity;

(b) action that affects, is capable of affecting or is taken with intent to affect the activities, functions, relationships or business of a constitutionally-covered entity;

(c) action that consists of advising, encouraging or inciting, or action taken with intent to coerce, a constitutionally-covered entity:

(i) to take, or not take, particular action in relation to another person; or

(ii) to threaten to take, or not take, particular action in relation to another person.

### 52 Coercion relating to allocation of duties etc. to particular person

A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce the other person, or a third person, to:

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

(b) engage, or not engage, a particular independent contractor as a building contractor; or

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

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

Note 1: See also Division 2 (reason for action and coercion).

Note 2: Grade A civil penalty.



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## 53 Coercion relating to superannuation

(1) A person must not:

(a) organise or take, or threaten to organise or take, any action; or

(b) refrain, or threaten to refrain, from taking action;

with intent:

(c) to coerce a building employee to nominate a particular superannuation fund or scheme to receive the employee's superannuation contributions; or

(d) to coerce a building employer to pay to a particular superannuation fund or scheme the employer's superannuation contributions for building employees.

Note 1: See also Division 2 (reason for action and coercion).

Note 2: Grade A civil penalty.

(2) Subsection (1) does not apply to protected industrial action.

## 54 Coercion of persons to make, vary, terminate etc. enterprise agreements etc.

(1) A person must not:

(a) organise or take, or threaten to organise or take, any action; or

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

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

(c) to make, vary or terminate a building enterprise agreement; or

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

Note 1: See also Division 2 (reason for action and coercion).

Note 2: Grade A civil penalty.

(2) Subsection (1) does not apply to protected industrial action.



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(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 for a proposed enterprise agreement.

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 for a proposed enterprise agreement.

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 a proposed enterprise agreement;

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

## 55 Coverage by particular instruments

(1) A person must not take action against a building employer because:

(a) building employees of the building employer are covered, or not covered, by a Commonwealth industrial instrument; or

(b) it is proposed that building employees of the building employer be covered, or not be covered, by a Commonwealth industrial instrument.

Note 1: See also Division 2 (reason for action).

Note 2: Grade A civil penalty.

(2) Subsection (1) does not apply to protected industrial action.



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## Division 2—General provisions

### 56 Multiple reasons for action

For the purposes of section 47 (unlawful picketing prohibited) and this Part, a person takes action for a particular reason if the reasons for the action include that reason.

### 57 Reason for action to be presumed unless proved otherwise

(1) If:

(a) in an application in relation to a contravention of section 47 (unlawful picketing prohibited) or a civil remedy provision in this Part, it is alleged that a person took, or is taking, action for a particular reason or with a particular intent; and

(b) taking that action for that reason or with that intent would constitute a contravention of the section or provision;

it is presumed, in proceedings arising from the application, that the action was, or is being, taken for that reason or with that intent, unless the person proves otherwise.

(2) Subsection (1) does not apply in relation to an interim injunction.

### 58 Advising, encouraging, inciting or coercing action

(1) If:

(a) for a particular reason (the ***first person's reason***), a person advises, encourages or incites, or takes any action with intent to coerce, a second person to take action; and

(b) the action, if taken by the second person for the first person's reason, would contravene section 47 (unlawful picketing prohibited) or a civil remedy provision in this Part;

the first person is taken to have contravened the section or provision.

Note: See also section 97 (capacity, state of mind etc. of person being coerced etc.).



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(2) Subsection (1) does not limit section 92 (ancillary contravention of civil remedy provisions).



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# Part 3—Unenforceable agreements

## 59 Project agreements not enforceable

(1) An agreement is unenforceable to the extent that it relates to building employees if:

(a) the agreement is entered into with the intention of securing standard employment conditions for building employees in respect of building work that they carry out at a particular building site or sites; and

(b) not all the employees are employed in a single enterprise; and

(c) a party to the agreement is a constitutional corporation and at least some of the employees are employees of that corporation; and

(d) the agreement is not a Commonwealth industrial instrument.

(2) A ***single enterprise*** is:

(a) a business, project or undertaking that is carried on by an employer; or

(b) the activities carried on by:

(i) the Commonwealth, a State or a Territory; or

(ii) a body, association, office or other entity established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or

(iii) any other body in which the Commonwealth, a State or a Territory has a controlling interest.



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Section 60

# Chapter 7—Powers to obtain information

## Part 1—Simplified outline of this Chapter

### 60 Simplified outline of this Chapter

A person may be required under an examination notice issued under Part 2 to give information, produce documents or answer questions relating to an investigation of a suspected contravention of this Act or a designated building law by a building industry participant. The notice is issued, on application by the ABC Commissioner, by a nominated AAT presidential member. The Commonwealth Ombudsman oversees the exercise of this power. A person who attends an examination may be entitled to have paid any expenses incurred in attending the examination.

Australian Building and Construction Inspectors and Federal Safety Officers (who together are called authorised officers) are appointed under this Chapter. Authorised officers have powers, including the power to enter premises, the power to ask a person's name and address and the power to require persons to produce records or documents.

Intentionally hindering or obstructing an authorised officer who is exercising any of these powers is prohibited.



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# Part 2—Examination notices

## 61A 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 Part.

(2) The Minister may nominate an AAT presidential member who is a Judge to issue examination notices under this Part 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 Part, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

## 61B ABC Commissioner may apply to nominated AAT presidential member for examination notice

*General requirements*

(1) The ABC Commissioner may apply, in writing, to a nominated AAT presidential member for the issue of an examination notice referred to in subsection (2) if the ABC Commissioner believes on reasonable grounds that a person:
  (a) has information or documents relevant to an investigation by an inspector into a suspected contravention, by a building industry participant, of this Act or a designated building law; or



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

(2) The examination notice may require the person:
(a) to give information to the ABC Commissioner; or
(b) to produce documents to the ABC Commissioner; or
(c) to attend before the ABC Commissioner and answer questions relevant to the investigation.

*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 ABC Commissioner including the following:
(a) the name of the person to whom the application relates;
(b) details of the investigation (or investigations) to which the application relates;
(c) the grounds on which the ABC Commissioner believes the person has information or documents, or is capable of giving evidence, relevant to the investigation (or investigations) referred to in paragraph (b);
(d) details of other methods used to attempt to obtain the information, documents or evidence;
(e) the number (if any) of previous applications for an examination notice that the ABC Commissioner has made in relation to the person in respect of the investigation (or investigations) referred to in paragraph (b);
(f) information about whether the ABC Commissioner has made, or expects to make, any other applications for an



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examination notice in relation to the investigation (or investigations) referred to in paragraph (b) and, if so, the persons 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 ABC Commissioner 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 ABC Commissioner must give the further information in writing as soon as practicable after receiving the request.

## 61C 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 an inspector has commenced the investigation (or investigations) to which the application relates;

(b) 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);

(c) that any other method of obtaining the information, documents or evidence:

(i) has been attempted and has been unsuccessful; or

(ii) is not appropriate;

(d) that the information, documents or evidence would be likely to be of assistance in the investigation (or investigations);

(e) that, having regard to all the circumstances, it would be appropriate to issue the examination notice;

(f) any other matter prescribed by the regulations.



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(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).

## 61D Form and content of examination notice

An examination notice must:

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

(b) if the notice requires a person to give information under paragraph 61B(2)(a) to the ABC Commissioner—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 under paragraph 61B(2)(b) to the ABC Commissioner—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 ABC Commissioner to answer questions relevant to an investigation—specify the time and place for the attendance; and



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(e) be signed by the nominated AAT presidential member who issued it; and

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

Note: See also sections 62 (offence for failing to comply with examination notice), 79 (power to keep records or documents), 102 (self-incrimination) and 103 (protection from liability).

## 61E ABC Commissioner may give examination notice to person in relation to whom it is issued and vary time for compliance

*ABC Commissioner 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 ABC Commissioner may give the notice to the person in relation to whom it is issued.

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

*ABC Commissioner may vary time for compliance with examination notice*

(3) If:

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

(b) the time specified in the notice under paragraph 61D(b), (c) or (d) is not at least 14 days after the notice is given to the person;

the ABC Commissioner 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 ABC Commissioner 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 61D(b), (c) or (d); or



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(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.

## 61F Conduct of examination etc.

*Application of section*

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

*ABC Commissioner to conduct examination*

(2) The ABC Commissioner 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 ABC Commissioner 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 ABC Commissioner 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.



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*ABC Commissioner must not require person to give certain undertakings*

(6) The ABC Commissioner 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.

## 62 Offence for failing to comply with examination notice

(1) A person commits an offence if:
  (a) the person has been given an examination notice; and
  (b) the person fails:
    (i) to give information or produce a document in accordance with the notice; or
    (ii) to attend to answer questions in accordance with the notice; or
    (iii) to take an oath or make an affirmation, when required to do so under subsection 61F(4); or
    (iv) to answer questions relevant to the investigation while attending as required by the examination notice.

Note: A court may impose a maximum penalty 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 penalty (see subsections 4B(2) and (3) of the *Crimes Act 1914*).

Penalty: Imprisonment for 6 months.

(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*).



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## 63 Payment for expenses incurred in attending an examination

(1) A person who attends an examination as required by an examination notice is (subject to subsection (2)) entitled to be paid fees and allowances, fixed by or calculated in accordance with the rules, for reasonable expenses (other than 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 ABC Commissioner for payment of the expenses within 3 months after the examination is completed; and

(b) provides to the ABC Commissioner 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 rules—be in that form; and

(b) include any information prescribed by the rules.

## 64 ABC Commissioner must notify Commonwealth Ombudsman of issue of examination notice

(1) As soon as practicable after an examination notice has been issued, the ABC Commissioner 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.

(2) If notice under subsection 61E(3) or (4) is given to a person, the ABC Commissioner must notify the Commonwealth Ombudsman as soon as practicable after giving notice.



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## 65 Review and report by Commonwealth Ombudsman

*ABC Commissioner to give report etc. to Commonwealth Ombudsman*

(1) As soon as practicable after an examination of a person is completed, the ABC Commissioner 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 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 rules.

*Review of exercise of powers under this Part*

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

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



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(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 quarter of each financial year, the Commonwealth Ombudsman must prepare and present to the Parliament a report about examinations conducted during that quarter. The report must include the results of reviews conducted under this section during that quarter.

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



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# Part 3—Powers of Australian Building and Construction Inspectors and Federal Safety Officers

## Division 1—Appointment of Australian Building and Construction Inspectors

### 66 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:

(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 32.

(2) The ABC Commissioner must not appoint a person referred to in paragraph (1)(c) as an inspector unless the ABC Commissioner is satisfied that the person is an appropriate person to be appointed as an inspector.

(3) The ABC Commissioner is an inspector by force of this subsection.

(4) In exercising powers or performing functions as an inspector, an inspector appointed under subsection (1) must comply with any directions of the ABC Commissioner.

(5) The ABC Commissioner may give directions for the purposes of subsection (4).



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(6) A written direction under subsection (5) that is of general application is a legislative instrument.

(7) A written direction under subsection (5) that relates to a particular case is not a legislative instrument.

## 67 Identity cards for inspectors

(1) The ABC Commissioner must issue an identity card to an inspector appointed under subsection 66(1).

(2) The Minister must issue an identity card to the ABC Commissioner.

*Form of identity card*

(3) The identity card must:
(a) be in the form approved by the ABC Commissioner; and
(b) contain a recent photograph of the person to whom it is issued.

*Inspector must carry card*

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

Note: The ABC Commissioner is an inspector (see the definition of ***inspector*** in section 5).

*Offence*

(5) A person commits an offence of strict liability 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 ABC Commissioner or the Minister (as the case requires).

Penalty: 1 penalty unit.



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*Exception—card lost or destroyed*

(6) 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 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).



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# Division 2—Appointment of Federal Safety Officers

## 68 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 42.

(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) The Federal Safety Commissioner may give directions for the purposes of subsection (4).

(6) A written direction under subsection (5) that is of general application is a legislative instrument.

(7) A written direction under subsection (5) that relates to a particular case is not a legislative instrument.



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## 69 Identity cards for Federal Safety Officers

(1) The Federal Safety Commissioner must issue an identity card to a Federal Safety Officer appointed under subsection 68(1).

(2) The Minister must issue an identity card to the Federal Safety Commissioner.

*Form of identity card*

(3) The identity card must:
  (a) be in the form approved by the Federal Safety Commissioner; and
  (b) contain a recent photograph of the person to whom it is issued.

*Federal Safety Officer must carry card*

(4) A Federal Safety Officer must carry the identity card at all times when performing functions or exercising powers as a Federal Safety Officer.

Note: The Federal Safety Commissioner is a Federal Safety Officer (see the definition of ***Federal Safety Officer*** in section 5).

*Offence*

(5) A person commits an offence of strict liability if:
  (a) the person ceases to be a Federal Safety Officer; and
  (b) the person does not, within 14 days of so ceasing, return the person's identity card to the Federal Safety Commissioner or the Minister (as the case requires).

Penalty: 1 penalty unit.

*Exception—card lost or destroyed*

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



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Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).



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## Division 3—Powers of authorised officers

### 70 Purposes for which powers of authorised officers may be exercised

*Compliance purposes for inspectors*

(1) An inspector may exercise compliance powers (other than a power under section 98 or 99) in relation to a building matter for one or more of the following purposes:

(a) ascertaining whether this Act, a designated building law or the Building Code is being, or has been, complied with;

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

(c) the purposes of a provision of the rules that confers functions or powers on inspectors;

(d) the purposes of a provision of another Act that confers functions or powers on inspectors.

Note: The powers in sections 98 (enforceable undertakings) and 99 (compliance notices) may be exercised for the purpose of remedying the effects of certain contraventions.

*Compliance purposes for Federal Safety Officers*

(2) A Federal Safety Officer may exercise compliance powers for one or more of the following purposes:

(a) ascertaining whether a constitutional corporation, the Commonwealth or a corporate Commonwealth entity that is an applicant for accreditation meets the accreditation requirements;

(b) ascertaining whether a constitutional corporation, the Commonwealth or a corporate Commonwealth entity that is an accredited person has complied, or is complying, with conditions of the accreditation;



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(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.

*Functions and powers subject to terms and conditions*

(3) The functions and powers of an authorised officer are subject to any conditions and restrictions specified in his or her instrument of appointment.

Note: Inspectors and Federal Safety Officers are authorised officers (see the definition of ***authorised officer*** in section 5).

## 71 When powers of authorised officers may be exercised

An authorised officer may exercise compliance powers:

(a) at any time during working hours; or

(b) at any other time, if the authorised officer reasonably believes that it is necessary to do so for compliance purposes.

## 72 Power of authorised officers to enter premises

*Powers of inspectors to enter premises*

(1) An inspector may, without force:

(a) enter premises, if the inspector reasonably believes that:

(i) this Act, a designated building law or the Building Code applies to building work that is being, or applied to building work that has been, performed on the premises; or

(ii) a breach by a building industry participant of this Act, a designated building law or the Building Code has occurred, is occurring or is likely to occur; or

(b) enter business premises, if the inspector reasonably believes that:

(i) there are records or documents relevant to compliance purposes on the premises, or accessible from a computer on the premises; or



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(ii) a person who ordinarily performs work or conducts business at the premises has information relevant to compliance purposes.

Note: Intentionally hindering or obstructing an inspector is prohibited (see section 78).

*Powers of Federal Safety Officers to enter premises*

(2) A Federal Safety Officer may, without force:

(a) enter premises, if the officer reasonably believes that building work is being carried out, or has been carried out by an applicant or accredited person referred to in subsection 70(2); or

(b) enter business premises, if the officer reasonably believes that:

(i) there are records or documents relevant to compliance purposes on the premises, or accessible from a computer on the premises; or

(ii) a person who ordinarily performs work or conducts business at the premises has information relevant to compliance purposes.

Note: Intentionally hindering or obstructing a Federal Safety Officer is prohibited (see section 78).

*Limitation on authorised officers entering premises*

(3) Despite subparagraph (1)(a)(i) and paragraph (2)(a), an authorised officer must not enter a part of premises that is used for residential purposes unless the officer reasonably believes that the work referred to in that subparagraph or paragraph is being performed on that part of the premises.

(4) Despite subparagraphs (1)(b)(ii) and (2)(b)(ii), an authorised officer must not enter business premises under either of those subparagraphs if the authorised officer reasonably believes that the person concerned is not at those premises.



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Section 73

## 73 Showing identity card before entry

An authorised officer must, before or as soon as practicable after entering premises, show his or her identity card to the occupier, or another person who apparently represents the occupier, if the occupier or other person is present at the premises.

## 74 Powers of authorised officers while on premises

*Entry other than under subparagraph 72(1)(b)(ii) or (2)(b)(ii)*

(1) An authorised officer who enters premises under paragraph 72(1)(a) or (2)(a), or subparagraph 72(1)(b)(i) or (2)(b)(i), may exercise one or more of the following powers while on the premises:

(a) inspect any work, process or object;

(b) interview any person;

(c) require a person to tell the authorised officer who has custody of, or access to, a record or document;

(d) require a person who has custody of, or access to, a record or document to produce the record or document to the authorised officer either while the authorised officer is on the premises, or within a specified period;

(e) inspect, and make copies of, any record or document that:

(i) is on the premises; or

(ii) is accessible from a computer that is on the premises;

(f) take samples of any goods or substances in accordance with any procedures prescribed by the rules.

Note: See also sections 79 (power to keep records or documents), 102 (self-incrimination) and 104 (certain records and documents are inadmissible).

*Entry under subparagraph 72(1)(b)(ii) or (2)(b)(ii)*

(2) An authorised officer who enters premises under subparagraph 72(1)(b)(ii) or (2)(b)(ii) may interview the person concerned while on those premises.



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*Refusing or failing to participate in an interview*

(3) 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*.

## 75 Persons assisting authorised officers

(1) A person may accompany an authorised officer onto premises to assist the authorised officer if the ABC Commissioner or Federal Safety Commissioner (as the case requires) is satisfied that:

(a) the assistance is necessary and reasonable; and

(b) the person assisting has suitable qualifications and experience to properly assist the authorised officer.

(2) The person assisting:

(a) may do such things on the premises as the authorised officer requires to assist the authorised officer to exercise compliance powers; but

(b) must not do anything that the authorised officer does not have power to do.

(3) Anything done by the person assisting is taken for all purposes to have been done by the authorised officer.

## 76 Power to ask for person's name and address

(1) An authorised officer may require a person to tell the authorised officer the person's name and address if the authorised officer reasonably believes that the person has contravened a civil remedy provision.

(2) If the authorised officer reasonably believes that the name or address is false, the authorised officer may require the person to give evidence of its correctness.

(3) The person must comply with a requirement under subsection (1) or (2) if:



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(a) the authorised officer advises the person that he or she may contravene a civil remedy provision if he or she fails to comply with the requirement; and

(b) the authorised officer shows his or her identity card to the person.

Note: Grade B civil penalty.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

## 77 Power to require persons to produce records or documents

(1) An authorised officer may require a person, by notice, to produce a record or document to the authorised officer.

Note: See also sections 79 (power to keep records or documents) and 102 (self-incrimination).

(2) The notice must:

(a) be in writing; and

(b) be served on the person; and

(c) require the person to produce the record or document at a specified place within a specified period of at least 14 days.

(3) The person must comply with the notice.

Note: Grade B civil penalty.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

## 78 Hindering or obstructing authorised officers

A person must not intentionally hinder or obstruct an authorised officer in exercising his or her compliance powers, or induce or attempt to induce any other person to do so.

Note: Grade A civil penalty.



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## 79 Power to keep records or documents

(1) If a record or document is produced to an authorised officer in accordance with this Division or Part 2 (examination notices), the authorised officer may:

(a) inspect, and make copies of, the record or document; and

(b) keep the record or document for any period that is necessary.

(2) While the authorised officer keeps a record or document, he or she must allow the following persons to inspect, or make copies of, the record or document at all reasonable times:

(a) the person who produced the record or document;

(b) any person otherwise entitled to possession of the record or document;

(c) a person authorised by a person referred to in paragraph (a) or (b).

*Certified copy to be supplied to person entitled to document*

(3) A 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 inspector;

(d) a member of staff referred to in subsection 30(1);

(e) a person assisting the ABC Commissioner under section 31;

(f) a person engaged as a consultant under section 32;

(g) the Federal Safety Commissioner;

(h) a Federal Safety Officer;

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

(j) a person engaged as a consultant under section 42.



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*Treatment of certified copy*

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



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# Chapter 8—Enforcement

## Part 1—Simplified outline of this Chapter

### 80 Simplified outline of this Chapter

An authorised applicant (who may be an inspector or a person affected by a contravention of a civil remedy provision) may apply to certain courts for an order relating to the contravention. A court may make any order, such as imposing a pecuniary penalty on a person or granting an injunction. This Chapter also includes general rules relating to contraventions of civil remedy provisions (such as who bears burdens of proof, double jeopardy, and the treatment of persons and bodies that are not individuals).

The ABC Commissioner can accept an enforceable undertaking if the Commissioner reasonably believes that a person has contravened a civil remedy provision. The enforceable undertaking can be enforced by certain courts. An inspector can also give a compliance notice requiring a person who the inspector reasonably believes has contravened a civil remedy provision to rectify the contravention. Certain courts can review the compliance notice.



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# Part 2—Orders for contraventions of civil remedy provisions

## Division 1—Obtaining an order for contravention of civil remedy provision

### 81 Penalty etc. for contravention of civil remedy provision

(1) A relevant court, on application by an authorised applicant, may make one or more of the following orders relating to a person (the ***defendant***) who has contravened a civil remedy provision:

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

(b) an order requiring the defendant to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;

(c) any other order that the court considers appropriate.

Note: An authorised applicant may not be able to make an application for an order if there is an enforceable undertaking in force or a compliance notice has been given (see subsections 98(4) and 99(5)).

*Maximum penalty for civil remedy provisions*

(2) The maximum pecuniary penalty is:

(a) for a Grade A civil remedy provision—1,000 penalty units if the defendant is a body corporate and otherwise 200 penalty units; and

(b) for a Grade B civil remedy provision—100 penalty units if the defendant is a body corporate and otherwise 20 penalty units.

*Injunctions*

(3) The orders that may be made under paragraph (1)(c) include:

(a) injunctions (including interim injunctions); and



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(b) any other orders that the court considers necessary to stop the conduct or remedy its effects, including orders for the sequestration of assets.

(4) If the contravention is a contravention of section 46 or 47 (unlawful industrial action and picketing prohibited), then the power of the court to grant an injunction restraining a person (the ***defendant***) from engaging in conduct may be exercised:

(a) whether or not it appears to the court that the defendant intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the defendant has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the defendant engages in conduct of that kind.

*Pecuniary penalties*

(5) A pecuniary penalty under paragraph (1)(a) is payable to the Commonwealth, or to some other person if the court so directs. It may be recovered as a debt.

(6) In determining a pecuniary penalty under paragraph (1)(a), the court must take into account all relevant matters, including:

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered because of the contravention; and

(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in any similar conduct.

(7) The Consolidated Revenue Fund is appropriated for the purposes of a debt due to a person other than the Commonwealth in relation to a penalty under paragraph (1)(a).



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## 82 Interest up to judgement

(1) This section applies to an order (other than a civil penalty order) under this Division in relation to an amount that a person was required to pay to, or on behalf of, another person under this Act.

(2) In making the order the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.

(3) Without limiting subsection (2), in determining the amount of interest, the court must take into account the period between the day the relevant cause of action arose and the day the order is made.

## 83 Conduct contravening more than one civil remedy provision

(1) If conduct constitutes a contravention of 2 or more civil remedy provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.

(2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

## 84 Multiple contraventions

(1) A relevant court may make a single civil penalty order against a person for multiple contraventions of a civil remedy provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

(2) However, any pecuniary penalty imposed must not exceed the sum of the maximum penalties that could be ordered if a separate pecuniary penalty were ordered for each of the contraventions.



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## 85 Proceedings may be heard together

A relevant court may direct that 2 or more proceedings relating to contraventions of civil remedy provisions are to be heard together.

## 86 Civil evidence and procedure rules for proceedings relating to contraventions of civil remedy provisions

A relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a contravention of a civil remedy provision.



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## Division 2—Civil proceedings and criminal proceedings

### 87 Civil proceedings after criminal proceedings

A relevant court may not make a civil penalty order against a person for a contravention of a civil remedy provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### 88 Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order against a person for a contravention of a civil remedy provision are stayed if:

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

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

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

### 89 Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil remedy provision regardless of whether an order has been made under this Part against the person in relation to the contravention.

### 90 Evidence given in civil proceedings not admissible in criminal proceedings

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



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(a) the individual previously gave the information or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil remedy provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## 91 Civil double jeopardy

If a person is ordered to pay a pecuniary penalty under a civil remedy provision in relation to particular conduct, the person is not liable to be ordered to pay a pecuniary penalty under some other provision of a law of the Commonwealth in relation to that conduct.

Note: A court may make other orders, such as an order for compensation, in relation to particular conduct even if the court has made a civil penalty order in relation to that conduct.



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## Division 3—Miscellaneous

### 92 Ancillary contravention of civil remedy provisions

(1) A person must not:

(a) attempt to contravene a civil remedy provision; or

(b) aid, abet, counsel or procure a contravention of a civil remedy provision; or

(c) induce (by threats, promises or otherwise) a contravention of a civil remedy provision; or

(d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil remedy provision; or

(e) conspire with others to effect a contravention of a civil remedy provision.

*Civil penalty*

(2) A person who contravenes subsection (1) in relation to a civil remedy provision is taken to have contravened the provision.

### 93 Exceptions etc. to civil remedy provisions—burden of proof

If, in proceedings for a civil penalty order against a person for a contravention of a civil remedy provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil remedy provision, then the person bears an evidential burden in relation to that matter.

### 94 Liability of bodies corporate

*Conduct of a body corporate*

(1) Any conduct engaged in on behalf of a body corporate:

(a) by an officer, employee or agent (an ***official***) of the body within the scope of his or her actual or apparent authority; or



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(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an official of the body, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the official;

is taken, for the purposes of this Act, to have been engaged in also by the body.

*State of mind of a body corporate*

(2) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is enough to show:

(a) that the conduct was engaged in by a person referred to in paragraph (1)(a) or (b); and

(b) that the person had that state of mind.

*Meaning of state of mind*

(3) The state of mind of a person includes:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

## 95 Actions of building associations

(1) For the purposes of this Act, each of the following is taken to be action of a building association:

(a) action taken by the committee of management of the building association;

(b) action taken by an officer or agent of the building association acting in that capacity;

(c) action taken by a member, or group of members, of the building association if the action is authorised by:

(i) the rules of the association; or

(ii) the committee of management of the association; or



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(iii) an officer or agent of the association acting in that capacity;

(d) action taken by a member of the building association who performs the function of dealing with an employer on behalf of the member and other members of the association, acting in that capacity;

(e) if the building association is an unincorporated building association that does not have a committee of management—action taken by a member, or group of members, of the association.

(2) Paragraphs (1)(c) and (d) do not apply if:

(a) the committee of management of the building association; or

(b) a person authorised by the committee; or

(c) an officer of the building association;

has taken all reasonable steps to prevent the action.

(3) If, for the purposes of this Act, it is necessary to establish the state of mind of a building association in relation to particular action, it is enough to show:

(a) that the action was taken by a person, or a group, referred to in any of paragraphs (1)(a) to (e); and

(b) that the person, or a person in the group, had that state of mind.

(4) Subsections (1) to (3) have effect despite subsections 94(1) and (2) (liabilities of bodies corporate).

## 96 Unincorporated building associations

For the purposes of this Act, a reference to a person includes a reference to an unincorporated building association.

## 97 Capacity, state of mind etc. of person being coerced etc.

In applying a provision of this Act that refers to:

(a) coercing a person to do a particular thing; or



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(b) applying undue pressure to a person to do a particular thing; or

(c) encouraging a person to do a particular thing; or

(d) advising a person to do a particular thing; or

(e) inciting a person to do a particular thing; or

(f) engaging in conduct with the intention of doing any of the above;

it is not relevant whether or not that person is able, willing or eligible to do that particular thing.



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# Part 3—Other powers of enforcement for inspectors

## 98 Enforceable undertakings relating to contraventions of civil remedy provisions

*Application of this section*

(1) This section applies if the ABC Commissioner reasonably believes that a person has contravened a civil remedy provision.

*Accepting an undertaking*

(2) The ABC Commissioner may accept a written undertaking given by the person in relation to the contravention, except as provided by subsection (5).

*Withdrawing or varying an undertaking*

(3) The person may withdraw or vary the undertaking at any time, but only with the ABC Commissioner's consent.

*Relationship with orders in relation to contraventions of civil remedy provisions*

(4) An inspector must not apply for an order under Division 1 of Part 2 relating to a contravention of a civil remedy provision by a person if an undertaking given by the person under this section in relation to the contravention has not been withdrawn.

Note: A person other than an inspector who is otherwise entitled to apply for an order relating to the contravention may do so.

*Relationship with compliance notices*

(5) The ABC Commissioner must not accept an undertaking relating to a contravention if the person has been given a notice relating to the contravention under section 99 (compliance notices).



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*Enforcement of undertakings*

(6) If the ABC Commissioner considers that the person who gave the undertaking has contravened any of its terms, the ABC Commissioner may apply to a relevant court or a relevant State or Territory court for an order under subsection (7).

(7) If the court is satisfied that the person has contravened a term of the undertaking, the court may make one or more of the following orders:
   (a) an order directing the person to comply with the term of the undertaking;
   (b) an order awarding compensation for loss that a person has suffered because of the contravention;
   (c) any other order that the court considers appropriate.

## 99 Compliance notices

*Application of this section*

(1) This section applies if an inspector reasonably believes that a person has contravened one or more of the following to the extent that the contravention relates (whether directly or indirectly) to building work:
   (a) this Act;
   (b) a designated building law;
   (c) the Building Code.

*Giving a notice*

(2) The inspector may (subject to subsection (4)) give the person a notice requiring the person to do either or both of the following within a reasonable time specified in the notice:
   (a) take specified action to remedy the direct effects of the contravention referred to in subsection (1);
   (b) produce reasonable evidence of the person's compliance with the notice.



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(3) The notice must also:

(a) set out the name of the person to whom the notice is given; and

(b) set out the name of the inspector who gave the notice; and

(c) set out brief details of the contravention; and

(d) explain that a failure to comply with the notice may contravene a civil remedy provision; and

(e) explain that the person may apply to a relevant court or a relevant State or Territory court for a review of the notice on either or both of the following grounds:

(i) the person has not committed the contravention set out in the notice;

(ii) the notice does not comply with subsection (2) or this subsection; and

(f) set out any other matters prescribed by the rules.

*Relationship with enforceable undertakings*

(4) An inspector must not give a person a notice relating to a contravention if:

(a) the person has given an undertaking under section 98 relating to the contravention; and

(b) the undertaking has not been withdrawn.

*Relationship with civil remedy provisions*

(5) An inspector must not apply for an order under Division 1 of Part 2 relating to a contravention of a civil remedy provision by a person if:

(a) the inspector has given the person a notice relating to the contravention; and

(b) either of the following subparagraphs applies:

(i) the notice has not been withdrawn, and the person has complied with the notice;



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(ii) the person has made an application under section 100 (review of compliance notices) relating to the notice that has not been completely dealt with.

Note: A person other than an inspector who is otherwise entitled to apply for an order relating to the contravention may do so.

(6) A person who complies with a notice relating to a contravention of a civil remedy provision is not taken:

(a) to have admitted to contravening the provision; or

(b) to have been found to have contravened the provision.

*Person must comply with notice*

(7) A person must comply with a notice given under this section.

Note: Grade B civil penalty.

(8) Subsection (7) does not apply if the person has a reasonable excuse.

## 100 Review of compliance notices

(1) A person who has been given a notice under section 99 (compliance notices) may apply to a relevant court or a relevant State or Territory court for a review of the notice on either or both of the following grounds:

(a) the person has not committed a contravention set out in the notice;

(b) the notice does not comply with subsection 99(2) or (3).

(2) At any time after the application has been made, the court may stay the operation of the notice on the terms and conditions that the court considers appropriate.

(3) The court may confirm, cancel or vary the notice after reviewing it.



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# Chapter 9—Miscellaneous

## Part 1—Simplified outline of this Chapter

### 101 Simplified outline of this Chapter

For persons who are required by this Act to provide information, Part 2 contains provisions relating to self-incrimination, protection from liability for providing the information and the admissibility of the information provided. The Part also contains rules to protect the privacy of that information, while allowing its disclosure in certain circumstances.

Part 3 gives some additional powers to the ABC Commissioner, such as the ability to publicise non-compliance and to intervene in or commence court and FWC proceedings.

Provisions relating to courts, such as the conferral of power on the Federal Court and appeals from certain State or Territory courts, are dealt with by Part 4.

Certain officials under this Act are protected from civil proceedings under Part 5. That Part also allows the Minister to delegate certain powers, and contains a rule-making and regulation-making power.



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# Part 2—Provisions relating to information

## Division 1—Provisions relating to requirements to provide information

### 102 Self-incrimination etc.

*Excuses that are not available*

(1) A person is not excused from giving information, producing a record or document, or answering a question, under an examination notice, or under paragraph 74(1)(d) or subsection 77(1), 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.

Note: However, if a person is given an examination notice, the person is protected, by section 103, from liability for contravening the other law.

*Use/derivative use indemnity in relation to examination notices*

(2) In the case of an individual who gives information, produces a record or document, or answers a question, under an examination notice, neither:

(a) the information or answer given or the record or 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 record or document;

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

(c) proceedings for an offence against section 62 (failure to comply with examination notice); or



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(d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act (false or misleading information or documents); or

(e) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act (obstruction of Commonwealth officials).

*Use/derivative use indemnity in relation to other requirements*

(3) In the case of an individual who gives information, produces a record or document, or answers a question, under paragraph 74(1)(d) or subsection 77(1), neither:

(a) the information or answer given or the record or 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 record or document;

is admissible in evidence against the individual in criminal proceedings, other than proceedings referred to in paragraphs (2)(d) and (e) of this section.

## 103 Protection from liability relating to examination notices

A person who, in good faith:

(a) gives information; or

(b) produces a record or document; or

(c) answers a question;

when required to do so under 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.

## 104 Certain records and documents are inadmissible

The following:



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(a) any record or document inspected or copied under paragraph 74(1)(e) of which an individual had custody, or to which an individual had access, when it was inspected or copied;

(b) any information, document or thing obtained as a direct or indirect consequence of inspecting or copying a record or document described in paragraph (a) of this section;

are not admissible in evidence in criminal proceedings against the individual, other than:

(c) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act (false or misleading information or documents); or

(d) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act (obstruction of Commonwealth officials).



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# Division 2—Protecting information acquired for the purposes of this Act

## 105 Disclosure of information by the ABC Commissioner or Federal Safety Commissioner

*Information to which this section applies*

(1) This section applies to information that is acquired by any of the following persons in the course of performing functions, or exercising powers, as such a person:

(a) the ABC Commissioner;
(b) a Deputy ABC Commissioner;
(c) an inspector;
(d) a member of staff referred to in subsection 30(1);
(e) a person assisting the ABC Commissioner under section 31;
(f) a consultant under section 32;
(g) a person assisting an inspector;
(h) the Federal Safety Commissioner;
(i) a Federal Safety Officer;
(j) an APS employee assisting the Federal Safety Commissioner;
(k) a consultant under section 42.

However, the ABC Commissioner must not under this section disclose, or authorise the disclosure of, protected information.

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

(2) The ABC Commissioner or Federal Safety Commissioner may disclose, or authorise the disclosure of, the information if the Commissioner reasonably believes:

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



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(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 ABC Commissioner or Federal Safety Commissioner may disclose, or authorise the disclosure of, the information to the Minister if the 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:

(a) this Act; or

(b) for the ABC Commissioner—the FW Act or the FW Transitional Act.

*Disclosure to the Department*

(4) The ABC Commissioner or Federal Safety Commissioner may disclose, or authorise the disclosure of, the information to:

(a) the Secretary; or

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

for the purpose of briefing, or considering briefing, the Minister if the Commissioner reasonably believes the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under:

(c) this Act; or

(d) for the ABC Commissioner—the FW Act or the FW Transitional Act.

*Interaction with section 107*

(5) For disclosures of information, or authorisations of disclosures of information, by the ABC Commissioner, subsections (2) to (4) have effect subject to section 107 (reports not to include information relating to individual's affairs).



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## 106 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 the performance of the ABC Commissioner's functions or the exercise of the ABC Commissioner'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 rules made for the purposes of this paragraph.



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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 the performance of the ABC Commissioner's functions or the exercise of the ABC Commissioner's powers;

(b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment that relate to building industry law enforcement;

(c) the recording or disclosure is in accordance with rules 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 official*

(5) The exception in subsection (3) does not apply to a disclosure if:

(a) the entrusted person discloses protected information to any Minister; and

(b) the entrusted person is a designated official; and

(c) the disclosure is not required or authorised by section 18 (Minister may require reports) or 20 (quarterly and annual reports) of this Act or section 46 of the *Public Governance, Performance and Accountability Act 2013* (which deals with annual reports).

*Disclosure in certain reports*

(6) The exception in subsection (3) does not apply to a disclosure if:

(a) the entrusted person discloses protected information in a report referred to in section 18 or 20; and



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(b) section 107 (reports not to include information relating to an individual's affairs) is not complied with in respect of the disclosure of the information in the report.

*Authorisation for purposes of Privacy Act*

(7) A disclosure of personal information is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6 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 Act:

***building industry law enforcement*** means enforcement of a law of the Commonwealth, a State or a 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.

***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 inspector.

## 107 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 referred to in section 18 (Minister may require reports) or 20 (quarterly and annual reports) if:



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(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).



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# Part 3—Powers of ABC Commissioner etc.

## 108 ABC Commissioner may 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 name of the person who has failed to comply; and

(b) non-compliance by a building industry participant with this Act or designated building laws, including the name of the participant who has failed to comply.

## 109 ABC Commissioner may intervene in court proceedings

(1) The ABC Commissioner 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 FW Transitional Act and involves:

(i) a building industry participant; or

(ii) building work.

(2) If the ABC Commissioner intervenes in a proceeding under subsection (1), the ABC Commissioner is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

## 110 ABC Commissioner may make submissions in FWC proceedings

(1) The ABC Commissioner may intervene or make a submission in a matter before the FWC that arises under the FW Act or the FW Transitional Act if the matter involves:

(a) a building industry participant; or

(b) building work.



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(2) If the ABC Commissioner intervenes in a proceeding under subsection (1), the ABC Commissioner is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

(3) The ABC Commissioner makes a submission under subsection (1) by giving written notice to the General Manager of the FWC.

## 111 ABC Commissioner and other inspectors may institute proceedings under the FW Act, etc.

(1) If a provision of the FW Act, the FW Transitional Act, 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 the FWC; or

(b) make an application to, or otherwise institute proceedings in, a court;

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

(c) a building industry participant; or

(d) building work.

(2) If the inspector makes an application, or institutes proceedings, the FW Act, the FW Transitional Act and any such instrument have effect, in relation to the application or proceedings, as if the inspector were a Fair Work Inspector (within the meaning of the FW Act).

(3) Directions under section 704 or 705 of the FW Act do not apply to the inspector in relation to the application or proceedings.

## 112 General Manager of the FWC must keep ABC Commissioner informed

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



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(a) every application lodged with the FWC, or the General Manager of the FWC, under the FW Act or the FW Transitional Act, where the application relates to a matter that involves:
  (i) a building industry participant; or
  (ii) building work; and
(b) the outcome of each application.



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# Part 4—Provisions relating to courts

## 113 Jurisdiction of the Federal Court

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

## 114 Exercising jurisdiction in the Fair Work Division of the Federal Court

(1) This section applies if:

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

(b) 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

(c) 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

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

(e) an appeal is instituted in the Federal Court from a judgement of the Federal Circuit Court or a court of a State or Territory in a matter arising under this Act; or

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

(g) the Federal Circuit 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

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



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

## 115 No limitation on Federal Court's powers

To avoid doubt, nothing in this Act limits the Federal Court's powers under section 21, 22 or 23 of the *Federal Court of Australia Act 1976*.

## 116 Appeals from relevant State or Territory courts

*Appeals from original decisions of relevant State or Territory courts*

(1) An appeal lies to the Federal Court from a decision of a relevant State or Territory court exercising jurisdiction under this Act.

(2) No appeal lies from a decision of a relevant State or Territory court exercising jurisdiction under this Act, except:
  (a) if the court was exercising summary jurisdiction—an appeal, to that court or another relevant State or Territory court of the same State or Territory, as provided for by a law of that State or Territory; or
  (b) in any case—an appeal as provided for by subsection (1).

*Appeals from appellate decisions of relevant State or Territory courts*

(3) An appeal lies to the Federal Court from a decision of a relevant State or Territory court made on appeal from a decision that:
  (a) was a decision of that court or another relevant State or Territory court of the same State or Territory; and
  (b) was made in the exercise of jurisdiction under this Act.

(4) No appeal lies from a decision to which subsection (3) applies, except an appeal as provided for by that subsection.



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*Leave to appeal not required*

(5) It is not necessary to obtain the leave of the Federal Court, or the court appealed from, in relation to an appeal under subsection (1) or (3).

## 117 Court not to require undertaking as to damages

If the ABC Commissioner or any other inspector is an applicant in court proceedings under this Act, the FW Act or the FW Transitional Act, the court cannot require the ABC Commissioner, the inspector or another person, as a condition of granting an interim injunction, to give undertakings as to damages.



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# Part 5—Miscellaneous

## 118 ABC Commissioner etc. not liable for conduct in good faith

(1) Civil proceedings do not lie for loss, damage or injury of any kind suffered by a person as a result of anything done, or omitted to be done, in good faith and without negligence by a person referred to in subsection (2):

(a) in the exercise, or purported exercise, of functions, powers or duties under, or in relation to, this Act; or

(b) 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 FW Transitional Act, 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) The persons are:

(a) a designated official; and

(b) the Federal Safety Commissioner; and

(c) a Federal Safety Officer; and

(d) an APS employee assisting the Federal Safety Commissioner; and

(e) a person engaged as a consultant under section 42.

## 119 Delegation by Minister

(1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under Chapter 3 (the Building Code) to the ABC Commissioner.

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



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

(3) The Minister may give a direction for the purposes of subsection (2).

(4) A written direction under subsection (3) that is of general application is a legislative instrument.

(5) A written direction under subsection (4) that relates to a particular case is not a legislative instrument.

## 119A Review of operation of this Act

(1) Before the end of the period of 12 months after the commencement of this section, the Minister must cause to be conducted a review into the operation of this Act.

(2) The Minister must cause to be prepared a report of a review under subsection (1).

(3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

## 120 Rules and regulations

*Rules*

(1) The Minister may, by legislative instrument, make rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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

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



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

(3) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, the first rules made for the purposes of subsection 6(4) or (5) (meaning of ***building work***) or 10(2) (extension of Act to Christmas Island and Cocos (Keeling) Islands) may be expressed to take effect from the commencement of the subsection for which the rules are made, if those rules are made within 120 days after this subsection commences.

*Regulations*

(4) The Governor-General may make regulations prescribing:

(aa) matters required or permitted by this Act to be prescribed by the regulations; or

(ab) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act; or

(a) penalties for offences against the rules, not exceeding a fine of 10 penalty units; or

(b) civil penalties for contraventions of the rules, not exceeding:

(i) for a body corporate—25 penalty units; or

(ii) in any other case—5 penalty units.



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# Endnotes

## Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

**Abbreviation key—Endnote 2**
The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can



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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.



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## Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced



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# Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|---|---|---|---|
| Building and Construction Industry (Improving Productivity) Act 2016 | 87, 2016 | 1 Dec 2016 | s 3–120: 2 Dec 2016 (s 2(1) item 2)<br>Remainder: 1 Dec 2016 (s 2(1) item 1) | |
| Building and Construction Industry (Consequential and Transitional Provisions) Act 2016 | 88, 2016 | 1 Dec 2016 | Sch 1 (item 6) and Sch 2: 2 Dec 2016 (s 2(1) items 3, 4) | Sch 2 |
| **as amended by** | | | | |
| Public Governance and Resources Legislation Amendment Act (No. 1) 2017 | 92, 2017 | 23 Aug 2017 | Sch 2 (items 20–23) and Sch 4: 23 Aug 2017 (s 2(1) item 1) | Sch 4 |
| Building and Construction Industry (Improving Productivity) Amendment Act 2017 | 1, 2017 | 16 Feb 2017 | 17 Feb 2017 (s 2(1) item 1) | Sch 1 (item 3) |
| Public Governance and Resources Legislation Amendment Act (No. 1) 2017 | 92, 2017 | 23 Aug 2017 | Sch 2 (items 24–49) and Sch 4: 23 Aug 2017 (s 2(1) item 1) | Sch 4 |
| Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019 | 57, 2019 | 7 Aug 2019 | Sch 1 (items 4, 5): 30 Aug 2019 (s 2(1) item 2) | — |



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# Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| **Chapter 1** | |
| s 4 | am No 92, 2017 |
| s 5 | am No 92, 2017; No 57, 2019 |
| s 11 | am No 57, 2019 |
| **Chapter 2** | |
| **Part 2** | |
| s 20 | am No 92, 2017 |
| s 26 | rs No 92, 2017 |
| s 28 | am No 92, 2017 |
| **Part 3** | |
| s 29 | am No 92, 2017 |
| **Chapter 3** | |
| s 34 | am No 1, 2017; No 92, 2017 |
| **Chapter 4** | |
| **Part 1** | |
| s 36 | am No 92, 2017 |
| **Part 2** | |
| s 38 | am No 92, 2017 |
| **Part 3** | |
| s 43 | am No 92, 2017 |
| **Chapter 7** | |
| **Part 3** | |
| **Division 3** | |
| s 70 | am No 92, 2017 |
| **Chapter 8** | |
| **Part 2** | |
| **Division 1** | |
| s 81 | am No 92, 2017 |



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## Endnote 4—Amendment history

| Provision affected | How affected |
|---|---|
| **Chapter 9** | |
| **Part 2** | |
| **Division 2** | |
| s 106 | am No 88, 2016; No 92, 2017 |
| s 107 | am No 92, 2017 |



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