



Building and Construction Industry (Consequential and Transitional Provisions) Act 2016

No. 88, 2016

An Act to deal with consequential and transitional matters arising from the enactment of the *Building and Construction Industry (Improving Productivity) Act 2016*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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[Assented to 1 December 2016]

The Parliament of Australia enacts:

No. 88, 2016 Building and Construction Industry (Consequential and Transitional Provisions) Act 2016 1

1 Short title

This Act may be cited as the *Building and Construction Industry (Consequential and Transitional Provisions) 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
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	1 December 2016
2. Schedule 1, Parts 1 and 2	At the same time as section 3 of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> commences.	2 December 2016
3. Schedule 1, Part 3	The later of: (a) immediately after the commencement of subsection 106(7) of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> ; and (b) the beginning of 12 March 2014.	2 December 2016 (paragraph (a) applies)
4. Schedule 2	At the same time as section 3 of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> commences.	2 December 2016
Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.		

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

3 Schedules

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Repeal and amendments

Part 1—Repeal of the Fair Work (Building Industry) Act 2012

Fair Work (Building Industry) Act 2012

1 The whole of the Act

Repeal the Act.

Part 2—Consequential amendments

Fair Work (Registered Organisations) Act 2009

3 Subparagraphs 337A(b)(iii) and (iv)

Repeal the subparagraphs, substitute:

- (iii) the Australian Building and Construction Commissioner referred to in subsection 15(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*;
- (iiia) a Deputy Australian Building and Construction Commissioner referred to in subsection 15(2) of the *Building and Construction Industry (Improving Productivity) Act 2016*;
- (iv) an Australian Building and Construction Inspector referred to in subsection 66(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*;

4 Saving provision

Despite the repeal of subparagraphs 337A(b)(iii) and (iv) of the *Fair Work (Registered Organisations) Act 2009* by this Act, those subparagraphs continue to apply after this item commences in relation to disclosures to the Director or a Fair Work Building Industry Inspector before this item commences.

Jurisdiction of Courts (Cross-Vesting) Act 1987

5 Paragraph 4(4)(aba)

Repeal the paragraph, substitute:

- (aba) the *Building and Construction Industry (Improving Productivity) Act 2016*; or

Part 3—Amendments relating to privacy

Building and Construction Industry (Improving Productivity) Act 2016

6 Subsection 106(7)

Omit “law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*”, substitute “this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6”.

Schedule 2—Transitional provisions

1 Definitions

In this Schedule:

Commission means the Australian Building and Construction Commission (previously named the Office of the Fair Work Building Industry Inspectorate) as continued in existence after the transition time.

Note: Section 29 of the new Act provides for the Office of the Fair Work Building Industry Inspectorate to continue in existence under the name of the Australian Building and Construction Commission.

Commission transition means the transition from the old Office to the Commission.

new Act means the *Building and Construction Industry (Improving Productivity) Act 2016*.

old Act means the *Fair Work (Building Industry) Act 2012*.

old Office means the Office of the Fair Work Building Industry Inspectorate as established and in existence immediately before the transition time.

transition time means the commencement of section 3 of the new Act.

2 Application of Act

- (1) The new Act applies (subject to this item and this Schedule) in relation to any building work that is performed, any action taken, or any omission that occurs, after the transition time.

Unenforceable project agreements

- (2) Section 59 of the new Act (project agreements not enforceable) applies in relation to agreements entered into after the transition time.

Powers to obtain information

- (3) Chapter 7 of the new Act (powers to obtain information), and any other provision of that Act to the extent that the provision relates to that Chapter, apply in relation to any contravention or alleged contravention of the *Building and Construction Industry Improvement Act 2005* (the **BCII Act**) or the old Act that occurs before the transition time.

- (4) The table translates terms in Chapter 7 of the new Act (and in any other provision of the new Act to the extent that the provision relates to that Chapter) for the purposes of this item.

Translations of terms		
Item	A reference to this term...	is taken to be a reference to this term...
1	a designated building law (within the meaning of the new Act)	a designated building law (within the meaning of the BCII Act or the old Act, as the case requires).
2	this Act	the BCII Act or the old Act, as the case requires.
3	building work (within the meaning of the new Act)	building work (within the meaning of the BCII Act or the old Act, as the case requires).

- (5) To avoid doubt, a person who is an inspector (within the meaning of the new Act) may exercise powers under Chapter 7 of the new Act in relation to an investigation of a contravention or alleged contravention of the BCII Act or the old Act even if the person began the investigation, under those Acts, before the transition time.

Intervening and making submissions in proceedings

- (6) Sections 109 and 110 of the new Act apply in relation to any proceeding before a court or the FWC, even if the proceeding began before the transition time.

3 Annual reports

- (1) If, in relation to a financial year ending at or before the transition time, the Director has not, by the transition time, prepared and given to the Minister a report under section 14 of the old Act on the performance of the Director's functions and the exercise of the Director's powers during the financial year, then the ABC Commissioner must, as soon as practicable after the transition time, prepare and give to the Minister a report in accordance with that section on those functions and powers during that financial year.
- (2) If the first financial year to end after the transition time includes a period before the transition time, the report under section 20 of the new

Act in relation to that financial year must also cover the performance of the Director's functions and the exercise of the Director's powers during that period.

4 Continuation of appointment of Director

- (1) Subitem (2) applies to the person who, immediately before the transition time, holds office as the Director.
- (2) The instrument appointing the person to that office has effect, after the transition time, as if it were an instrument made by the Minister under subsection 21(1) of the new Act appointing the person, for the remainder of the period of the person's appointment to that office, to the office of the ABC Commissioner.
- (3) A determination, in relation to the Director, that is in force immediately before the transition time under the *Remuneration Tribunal Act 1973* has effect after the transition time as if it were a determination in relation to the ABC Commissioner.

5 Termination of appointments of certain persons

- (1) This item applies to a person who, immediately before the transition time, holds office as either of the following:
 - (a) a member of the Fair Work Building Industry Inspectorate Advisory Board (including the Chair of the Board);
 - (b) the Independent Assessor.
- (2) The person ceases to hold that office at the transition time.
- (3) Nothing in this item prevents the person being appointed to an office under the new Act.

6 Staff of old Office

- (1) The Commission transition does not affect the continuity of the employment, or the terms and conditions of employment (including under any enterprise agreement), of the persons who, immediately before the transition time, are engaged as staff under section 26K of the old Act.
 - (2) Those persons are taken, after the transition time, to be staff under section 30 of the new Act.
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7 Consultants to Director

- (1) The Commission transition does not affect the continuity of the engagement, or the terms and conditions of engagement, of the persons who, immediately before the transition time, are engaged as consultants to the Director under section 26M of the old Act.
- (2) Those persons are taken, after the transition time, to be engaged as consultants to the ABC Commissioner under section 32 of the new Act.

8 Continuation of designation of Federal Safety Commissioner

An instrument:

- (a) that is in force under section 29 of the old Act immediately before the transition time; and
- (b) that designates a position in the Department as the position of Federal Safety Commissioner;

is taken, after the transition time, to have been made under section 37 of the new Act.

9 Preserving regulations relating to the Federal Safety Commissioner

- (1) Regulations made by the Governor-General for the purposes of paragraphs 30(h) and 32(1)(c) of the old Act that are in force immediately before the transition time continue in force after that time as if the regulations were rules made by the Minister for the purposes of paragraphs 38(e) and 40(1)(c) of the new Act.
- (2) The table translates terms in the regulations for the purposes of this item.

Translations of terms in regulations		
Item	A reference to this term...	is taken to be a reference to this term...
1	paragraph 30(h) of the old Act	paragraph 38(e) of the new Act.
2	the Federal Safety Commissioner (within the meaning of the old Act)	the Federal Safety Commissioner (within the meaning of the new Act).
3	occupational health and safety	work health and safety (within the

Translations of terms in regulations

Item	A reference to this term...	is taken to be a reference to this term...
	(within the meaning of the old Act)	meaning of the new Act).
4	an accredited person (within the meaning of the old Act)	an accredited person (within the meaning of the new Act).
5	paragraph 32(1)(c) of the old Act	paragraph 40(1)(c) of the new Act.

- (3) Subitem (1) does not prevent the repeal of those regulations.

10 Consultants to old Federal Safety Commissioner

- (1) The Commission transition does not affect the continuity of the engagement, or the terms and conditions of engagement, of the persons who, immediately before the transition time, are engaged as consultants to the Federal Safety Commissioner under section 34 of the old Act.
- (2) Those persons are taken, after the transition time, to be engaged as consultants to the Federal Safety Commissioner under section 42 of the new Act.

11 Preserving the accreditation scheme

- (1) Regulations made by the Governor-General for the purposes of section 35 of the old Act that are in force immediately before the transition time continue in force after that time as if the regulations were rules made by the Minister for the purposes of section 43 of the new Act.
- (2) The table translates terms in the regulations for the purposes of this item.

Translations of terms in regulations

Item	A reference to this term...	is taken to be a reference to this term...
1	the Federal Safety Commissioner (within the meaning of the old Act)	the Federal Safety Commissioner (within the meaning of the new Act).
2	a Federal Safety Officer (within the meaning of the old Act)	a Federal Safety Officer (within the meaning of the new Act).
3	building work (within the meaning	building work (within the meaning

Translations of terms in regulations

Item	A reference to this term...	is taken to be a reference to this term...
	of the old Act)	of the new Act).
4	a constitutional corporation	a constitutional corporation, the Commonwealth or a Commonwealth authority.
5	section 63 of the old Act	Division 3 of Part 3 of Chapter 7 of the new Act.
6	subsection 35(1), (2) or (4) of the old Act	subsection 43(1), (2) or (4) of the new Act.

- (3) Subitem (1) does not prevent the repeal of those regulations.

12 Examination notices issued before commencement

- (1) The repeal by this Act of section 47 of the old Act does not affect the continuity of any examination notice issued under that section before the transition time.
- (2) For things that occur after the transition time in relation to an examination notice that is issued before that time, the following provisions (as in force immediately before that time) continue to apply as if references in those provisions or in that examination notice to the Director were references to the ABC Commissioner:
- (a) sections 49 to 58 of the old Act;
 - (b) a provision of any instrument made under those sections.

13 Reports by Commonwealth Ombudsman

- (1) If, in relation to a financial year ending at or before the transition time, the Commonwealth Ombudsman has not, by the transition time, prepared and given to the Parliament a report under section 54A of the old Act about examinations conducted under Division 3 of Part 1 of Chapter 7 of that Act during the financial year, then the Commonwealth Ombudsman must, as soon as practicable after the transition time, prepare and present to the Parliament a report in accordance with that section on those examinations during that financial year.
- (2) If the first financial year to end after the transition time includes a period before the transition time, the report under section 65 of the new
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Act in relation to that financial year must also cover examinations conducted under Division 3 of Part 1 of Chapter 7 of the old Act during that period.

14 Payment for expenses incurred in attending an examination

- (1) Regulations made by the Governor-General for the purposes of section 58 of the old Act that are in force immediately before the transition time continue in force after that time as if the regulations were rules made by the Minister for the purposes of section 63 of the new Act.
- (2) The table translates terms in the regulations for the purposes of this item.

Translations of terms in regulations		
Item	A reference to this term...	is taken to be a reference to this term...
1	an examination (within the meaning of the old Act)	an examination (within the meaning of the new Act).
2	an examination notice (within the meaning of the old Act)	an examination notice (within the meaning of the new Act).
3	subsection 58(1) of the old Act	subsection 63(1) of the new Act.

- (3) Subitem (1) does not prevent the repeal of those regulations.

14A Continuation of nomination of AAT presidential members

- (1) This item applies to a person if, immediately before the transition time, an instrument is in force under section 44 of the old Act nominating the person to issue examination notices under Division 3 of Part 1 of Chapter 7 of the old Act.
- (2) The instrument has effect, after the transition time, as if it were an instrument made by the Minister under section 61A of the new Act nominating the person to issue examination notices under Part 2 of Chapter 7 of the new Act.

14B Preserving regulations relating to examination notices

Regulations made by the Governor-General for the purposes of a provision of the old Act referred to in column 1 of the table that are in force immediately before the transition time continue in force after that time as if the regulations were rules made by the Minister for the purposes of the provision of the new Act referred to in column 2 of the table.

Preserving regulations relating to examination notices		
Item	Column 1 Old Act	Column 2 New Act
1	Subsection 45(3)	Subsection 61B(3)
2	Paragraph 47(1)(g)	Paragraph 61C(1)(f)
3	Paragraphs 48(a) and (f)	Paragraphs 61D(a) and (f)

15 Continuation of appointment of Federal Safety Officers

- (1) This item applies to a person if, immediately before the transition time, an instrument is in force under section 60 of the old Act appointing the person as a Federal Safety Officer.
- (2) The instrument has effect, after the transition time, as if it were an instrument made by the Federal Safety Commissioner under section 68 of the new Act appointing the person as a Federal Safety Officer.

16 Identity cards for Federal Safety Officers

The identity card of a person who is a Federal Safety Officer immediately before the transition time that was issued under section 61 of the old Act is taken after that time to have been issued under section 69 of the new Act.

17 Disclosure of information by the ABC Commissioner or the Federal Safety Commissioner

- (1) This item applies if information was acquired under the old Act by any of the following persons in the course of performing functions or exercising powers:

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- (a) the Director;
 - (b) an inspector;
 - (c) a member of staff referred to in subsection 26K(1) of that Act;
 - (d) a person assisting the Director under section 26L of that Act;
 - (e) a consultant under section 26M of that Act;
 - (f) a person assisting an inspector;
 - (g) the Federal Safety Commissioner;
 - (h) a Federal Safety Officer;
 - (i) an APS employee assisting the Federal Safety Commissioner;
 - (j) a consultant under section 34 of that Act.
- (2) For the purposes of section 105 of the new Act, that information is taken to have been acquired by the following person in the course of performing functions or exercising powers:
- (a) for paragraphs (1)(a) to (f)—the ABC Commissioner;
 - (b) for paragraphs (1)(g) to (j)—the Federal Safety Commissioner (within the meaning of the new Act).

18 Protected information

For the purposes of sections 105 and 106 of the new Act, information that is protected information under section 65 of the old Act is taken to be protected information under the new Act.

19 Legal proceedings

If any proceedings to which the Director is a party (including as a result of section 71 of the old Act) are pending in a court or tribunal immediately before the transition time, the ABC Commissioner is, after the transition time, the party to those proceedings.

20 Settled matters

- (1) The ABC Commissioner (or an inspector) may begin or continue to participate in a building proceeding (within the meaning of section 73 of the old Act) even if the proceeding relates to a matter that was settled (as referred to in that section) before the transition time.

- (2) The ABC Commissioner (or an inspector) may institute a building proceeding (within the meaning of section 73A of the old Act) even if the conduct giving rise to the proceeding was the subject of a matter that was settled (as referred to in that section) before the transition time.

21 Director etc. not liable for conduct in good faith

Despite the repeal by this Act of section 77 of the old Act, that section continues to apply, after the transition time, in relation to anything done, or omitted to be done, before that time by a protected person (within the meaning of that section).

22 Assets and liabilities of old Office

Assets and liabilities of the old Office immediately before the transition time continue, after the transition time, to be assets and liabilities of the Commission (without any conveyance, transfer or assignment).

23 References in instruments to old Office and Director

- (1) A reference to the old Office in an instrument that is in force immediately before the transition time has effect, after the transition time, as a reference to the Commission.
- (2) A reference to the Director in an instrument that is in force immediately before the transition time has effect, after the transition time, as a reference to the ABC Commissioner.

24 Effect of things done by, or in relation to, the old Office

A thing done by, or in relation to, the old Office before the transition time has effect, after the transition time, as if it had been done by, or in relation to, the Commission.

25 Effect of this Schedule on the operation of section 7 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 7 of the *Acts Interpretation Act 1901*.

26 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
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- (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) The rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the repeals or amendments made by this Act; or
 - (b) the enactment of this Act or the *Building and Construction Industry (Improving Productivity) Act 2016*.
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*[Minister's second reading speech made in—
House of Representatives on 31 August 2016
Senate on 7 November 2016]*

(93/16)

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