BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT (CONSEQUENTIAL AND TRANSITIONAL) BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and Workplace Relations, the Honourable Kevin Andrews MP)
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OUTLINE

The Building and Construction Industry Improvement Bill 2005 is a modified re-introduction of the industrial action provisions of the Building and Construction Industry Improvement Bill 2003. The legislation will make unlawful all industrial action within constitutional limits, other than protected industrial action, with industry participants able to recover any losses they suffer due to unlawful action.

The Building and Construction Industry Improvement (Consequential and Transitional) Bill 2003 (the Bill) has two main purposes:

- to make consequential amendments, arising from provisions of the BCII Act, to the WR Act and technical amendments to another Act (generally to supplement references to the WR Act with references to the BCII Act); and

- to provide application, saving and transitional provisions concerning the operation of the BCII Act.

Part 1 of the Bill deals with preliminary matters including the short title of the Bill and the commencement of the clauses and schedules of the Bill.

Part 2 of the Bill contains application provisions for those sections of the BCII Act where the application of those sections upon commencement would otherwise be unclear.

Schedule 1 of the Bill makes consequential amendments to the WR Act in order to accommodate the changes made by the BCII Act and to ensure that references to the BCII Act are inserted into relevant provisions of the WR Act.

Schedule 2 of the Bill amends a Commonwealth Act to take account of changes made by the BCII Act.

FINANCIAL IMPACT STATEMENT

The proposals in this Bill are budget neutral.
NOTES ON CLAUSES

Clause 1 - Short Title

1.1 This is a formal provision specifying the short title of the Act as the Building and Construction Industry Improvement (Consequential and Transitional) Bill 2005.

Clause 2 - Commencement

1.2 Clause 2 sets out a table specifying when the various provisions of the Act are to commence.

1.3 Sections 1 to 3 and anything in this Act not elsewhere covered by the table will commence on the day which this Act receives the Royal Assent.

1.4 Part 2 will commence at the same time as Chapter 6 of the Building and Construction Industry Improvement Act 2003 commences.

1.5 Schedule 1, items 2, 42, 55 and 60 to 66 will commence on the day on which this Act receives the Royal Assent.

1.6 Schedule 1, items 53, 54 and 56 commence at the same time as Chapter 6 of the Building and Construction Industry Improvement Bill 2005 commences.

Clause 3 - Schedule(s)

1.7 Clause 3 provides that 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.
PART 2 – APPLICATION AND TRANSITIONAL PROVISIONS

2.1 This Part contains application provisions for Chapter 6 of the BCII Act.

Clause 4 – Definitions

2.2 Clause 4 provides that unless the contrary intention appears BCII Act means the Building and Construction Industry Improvement Act 2005.

Clause 7 – Chapter 6 of the BCII Act

2.3 This clause sets out the application of Chapter 6 of the BCII Act.

2.4 Sections 74, 80 and 136 of the BCII Act will apply to all building industrial action that occurs after the commencement of those sections, regardless of when the course of action began (subclauses (1), (3), (9)). After the commencement of those provisions, the occurrence of any building industrial action that is unlawful industrial action (as defined in section 73 of the BCII Act) will be prohibited.

2.5 Section 136 modifies the operation of the strike pay provisions of the WR Act and imposes higher penalties for a breach. Payments in relation to any building industrial action occurring after the commencement of these provisions will be prohibited under the BCII Act from that time. Any claims made for strike pay in respect of industrial action occurring after the commencement of these provisions will also be prohibited (subclause 9).
SCHEDULE 1 - AMENDMENT OF THE WORKPLACE RELATIONS ACT 1996

1.1 Schedule 1 proposes amendments to the WR Act consequential upon the commencement of the BCII Act.

1.2 Many of the items will insert references to the BCII Act into the WR Act.

1.3 Item 2 provides that unless the contrary intention appears, BCII Act means the Building and Construction Industry Improvement Act 2005.

1.4 Item 42 inserts section 124(1) into the WR Act. This is a substantive provision which would ensure that the AIRC does not have the power to deal with a claim for the making of payment to employees in relation to a period during which those employees engaged, or engage in industrial action (within the meaning of section 4 of the WR Act) or building industrial action that is constitutionally-connected action (within the meaning of section 72 of the BCII Act).
SCHEDULE 2 - AMENDMENT OF OTHER ACTS

2.1 This clause provides that new paragraph 4(4)(a) be inserted in the *Jurisdiction of Courts (Cross-vesting) Act 1987*, to refer to the *Building and Construction Industry Improvement Act 2005*. 