2004-2005

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Building and Construction Industry Improvement Bill 2005

(Government)

(1) Clause 2, page 2 (table item 1), omit “1 and 2”, substitute “1, 2 and 3”.

[commencement]

(2) Clause 2, page 2 (after table item 2), insert:

2A. Chapters 2, 3 and 4

The day on which this Act receives the Royal Assent.

[commencement]

(3) Clause 2, page 2 (table item 3), omit the table item, substitute:

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<td>3.</td>
<td>Sections 72, 73 and 74</td>
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<td>3A.</td>
<td>Sections 75 and 79</td>
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<td>3B.</td>
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<td>3C.</td>
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[commencement]

(4) Page 2 (after line 12), after clause 2, insert:

3 Main object of 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 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 investigation and enforcement of relevant laws;
   (f) improving occupational health and safety in building work;
   (g) encouraging the pursuit of high levels of employment in the building industry;
   (h) providing assistance and advice to building industry participants in connection with
       their rights and obligations under relevant industrial laws.

(5) Clause 4, page 2 (line 13) to page 5 (line 27), insert:

   ABC Commissioner means the Australian Building and Construction Commissioner
   referred to in section 11.

   ABC Inspector means an Australian Building and Construction Inspector referred to in
   section 235.

   accreditation scheme means the accreditation scheme referred to in section 50.

   AWA has the meaning given by section 4 of the Workplace Relations Act.

   Note: Part XV of the Workplace Relations Act extends the circumstances in which AWAs can be made.

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

   Building Code means the code of practice referred to in section 26.

   Commissioner means the ABC Commissioner or a Deputy ABC Commissioner.

   Commonwealth authority (except in section 50) means:
   (a) a body corporate established for a public purpose by or under a law of the
       Commonwealth; or
   (b) a body corporate:
       (i) incorporated under a law of the Commonwealth or a State or Territory; and
       (ii) in which the Commonwealth has a controlling interest.

   Commonwealth industrial instrument means:
   (a) an award or certified agreement; or
   (b) an order of the AIRC.

   Deputy ABC Commissioner means a Deputy Australian Building and Construction
   Commissioner referred to in section 11.

   designated building law means:
   (a) this Act or the Workplace Relations Act; or
   (b) a Commonwealth industrial instrument.

   eligible condition means a condition relating to:
   (a) the times or days when work is to be performed; or
(b) inclement weather procedures; or
(c) any other matter prescribed by the regulations for the purposes of this paragraph.

employee organisation means an organisation of employees within the meaning of the Workplace Relations Act.


Federal Safety Officer means a Federal Safety Officer referred to in section 238.

full-time Commissioner means:
(a) the ABC Commissioner; or
(b) a Deputy ABC Commissioner appointed on a full-time basis.

Grade A civil penalty provision means:
(a) a section of this Act (other than a section that is divided into subsections) that has a note at its foot stating “Grade A civil penalty”; or
(b) a subsection of this Act that has a note at its foot stating “Grade A civil penalty”.

Grade B civil penalty provision means:
(a) a section of this Act (other than a section that is divided into subsections) that has a note at its foot stating “Grade B civil penalty”; or
(b) a subsection of this Act that has a note at its foot stating “Grade B civil penalty”.

Industrial Registrar means the Industrial Registrar appointed under section 67 of the Workplace Relations Act.

negotiating party has the same meaning as in Division 8 of Part VIB of the Workplace Relations Act.

occupier has the meaning given by section 4 of the Workplace Relations Act.

part-time Commissioner means a Deputy ABC Commissioner appointed on a part-time basis.

premises has the meaning given by section 4 of the Workplace Relations Act.

Secretary means the Secretary of the Department.

(6) Clause 4, page 4 (line 6), omit the definition of civil penalty provision, substitute:
civil penalty provision means:
(a) a Grade A civil penalty provision; or
(b) a Grade B civil penalty provision.

(7) Page 8 (after line 20), after Chapter 1, insert:
Chapter 2—Australian Building and Construction Commissioner

Part 1—Australian Building and Construction Commissioner

11 ABC Commissioner and Deputy ABC Commissioners

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

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

12 Functions of ABC Commissioner

The ABC Commissioner has the following functions:

(a) monitoring and promoting appropriate standards of conduct by building industry participants, including by:
   (i) monitoring and promoting compliance with this Act and the Workplace Relations Act; and
   (ii) monitoring and promoting compliance with the Building Code; and
   (iii) referring matters to other relevant agencies and bodies;
(b) investigating suspected contraventions, by building industry participants, of:
   (i) this Act, the Workplace Relations Act or an award, certified agreement, AWA or order of the AIRC; and
   (ii) 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 and the Workplace Relations Act;
(e) providing representation to a building industry participant who is, or might become, a party to a proceeding under this Act or the Workplace Relations Act, if the ABC Commissioner considers that providing the representation would promote the enforcement of this Act or the Workplace Relations Act;
(f) disseminating information about this Act, the Workplace Relations Act 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;
(h) any other functions conferred on the ABC Commissioner by the regulations.

13 Minister’s directions to ABC Commissioner

(1) The Minister may give written directions to the ABC Commissioner specifying the manner in which the ABC Commissioner must exercise or perform the powers or 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) A direction under subsection (1) is a legislative instrument for the purposes of the
Legislative Instruments Act 2003.

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

14 Minister may require reports

(1) The Minister may, in writing, direct the ABC Commissioner to give the Minister specified reports relating to the ABC Commissioner’s functions.

Note: See also section 243, which restricts the disclosure of personal information in a report.

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

15 Delegation by ABC Commissioner

(1) The ABC Commissioner may, in writing, delegate all or any of his or her powers and functions under this Act to:
   (a) a Deputy ABC Commissioner; or
   (b) an ABC Inspector; or
   (c) an SES employee or acting SES employee; or
   (d) a person prescribed by the regulations for the purposes of this paragraph.

(2) Powers or functions under section 230 may only be delegated to a Deputy ABC Commissioner.

(3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the ABC Commissioner.

(4) As soon as practicable after delegating any power or function under this section, the ABC Commissioner must publish details of the delegation.

16 Annual report

(1) As soon as practicable after the end of each financial year, the ABC Commissioner must prepare and give to the Minister a report on the operations of the ABC Commissioner during that year.

(2) The report must include:
   (a) details of the number, and type, of matters that were investigated by the ABC Commissioner during the financial year; and
   (b) details of assistance provided during the financial year to building employees and building contractors in connection with the recovery of unpaid entitlements; and
   (c) details of the extent to which the Building Code was complied with during the financial year.

Note: See also section 243, which restricts the disclosure of personal information in a report.

(3) The report must also include:
   (a) details of directions given by the Minister during the financial year under section 13 or 14; and
   (b) details of delegations by the ABC Commissioner under section 15 during the financial year.
(4) The Minister may notify the ABC Commissioner in writing of particular occupational health and safety matters that need not be covered in the paragraph (2)(c) part of the report.

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

**Part 2—Administrative provisions**

**17 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.

(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.

**18 Acting ABC Commissioner**

(1) The Minister may 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 is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

**19 Remuneration**

(1) A Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a Commissioner is to be paid the remuneration that is prescribed.

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

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*. 
19A Application of the Judges’ Pensions Act to a former Judge of the Federal Court who becomes the ABC Commissioner

(1) If:
   (a) a person is or has been the ABC Commissioner; and
   (b) the person is a former Judge of the Federal Court; and
   (c) the person ceased to hold office as such a Judge immediately before the beginning of the person’s term of appointment, or first term of appointment, as the ABC Commissioner;

the provisions of the Judges’ Pensions Act 1968 (including provisions relating to spouses and children) apply to and in relation to the person as though:
   (d) the ABC Commissioner were or had been a Judge; and
   (e) the person’s service as the ABC Commissioner were service as a Judge; and
   (f) the appropriate current judicial salary of the person were the salary for the time being payable to a Judge, other than the Chief Judge, of the Federal Court.

(2) Pensions or other benefits paid as a result of this section are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

19B Application of the Judges’ Pensions Act to a former member of the AIRC who becomes the ABC Commissioner

(1) If:
   (a) a person is or has been the ABC Commissioner; and
   (b) the person is a former member of the AIRC to whom the Judges’ Pensions Act 1968 applied; and
   (c) the person ceased to hold office as such a member immediately before the beginning of the person’s term of appointment, or first term of appointment, as the ABC Commissioner;

the provisions of the Judges’ Pensions Act 1968 (including provisions relating to spouses and children) apply to and in relation to the person as though:
   (d) the ABC Commissioner were or had been a Judge; and
   (e) the person’s service as the ABC Commissioner were service as a Judge; and
   (f) the appropriate current judicial salary of the person were the salary that would have been the person’s appropriate current judicial salary if the person had remained such a member.

(2) Pensions or other benefits paid as a result of this section are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

20 Leave

(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.
21 Engaging in other paid employment etc.

(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.

22 Disclosure of interests

A Commissioner must give written notice to the Minister of all interests (financial or otherwise) that the Commissioner has or acquires and that could conflict with the proper performance of the Commissioner’s functions.

23 Resignation

A Commissioner may resign his or her appointment by giving the Minister a written resignation.

24 Termination of appointment

(1) The Minister may terminate the appointment of a Commissioner if:
   (a) the Commissioner:
      (i) becomes bankrupt; or
      (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
      (iii) compounds with his or her creditors; or
      (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
   (b) the Commissioner fails, without reasonable excuse, to comply with section 21 or 22; or
   (c) the Commissioner is a full-time Commissioner and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

(2) Subject to subsections (3) and (4), the Minister may terminate the appointment of a Commissioner on the ground of misbehaviour or physical or mental incapacity.

(3) If a Commissioner:
   (a) is an eligible employee for the purposes of the Superannuation Act 1976; and
   (b) has not reached his or her maximum retiring age within the meaning of that Act; his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.

(4) If a Commissioner:
   (a) is a member of the superannuation scheme established by deed under the Superannuation Act 1990; and
   (b) is under 60 years of age;
   his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.
25 Staff and consultants

(1) The staff required to assist the ABC Commissioner in the performance of the ABC Commissioner’s functions are to be persons engaged under the Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:
   (a) the ABC Commissioner and the APS employees so assisting the ABC Commissioner together constitute a Statutory Agency; and
   (b) the ABC Commissioner is the Head of that Statutory Agency.

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

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

25A Office of the Australian Building and Construction Commissioner

(1) The Office of the Australian Building and Construction Commissioner is established by this subsection.

(2) The Office of the Australian Building and Construction Commissioner consists of:
   (a) the ABC Commissioner; and
   (b) the Deputy ABC Commissioners; and
   (c) the staff mentioned in subsection 25(1); and
   (d) the consultants engaged under subsection 25(3).

26 Minister to issue Building Code

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

(2) Without limiting subsection (1), the Minister may issue one or more documents under that subsection in relation to occupational health and safety matters relating to building work.

(3) The Building Code cannot require a person to comply with the Code in respect of particular building work (the current work) unless:
   (a) the person is a building contractor that is a constitutional corporation; or
   (b) the person is a building industry participant and the current work is to be carried out in a Territory or Commonwealth place.

(4) Before exercising powers under this section, the Minister must take into account any relevant recommendations of the Federal Safety Commissioner in relation to occupational health and safety matters.
(5) A document issued under subsection (1) is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

30 BUILDING INDUSTRY PARTICIPANTS TO REPORT ON COMPLIANCE WITH CODE

(1) This section applies to a person who is required to comply with the Building Code in respect of particular building work.

(2) The ABC Commissioner may, by notice in writing, direct the person to give a written report to the ABC Commissioner, within the period specified in the direction, containing specified information about the extent to which the person complied with the Building Code in respect of that building work. The specified period must be at least 14 days.

(3) The person must comply with the requirement.

Note: Grade B civil penalty.

(4) The ABC Commissioner must give a copy of the report to the Federal Safety Commissioner.

[Building Code]

(9) Page 8, after proposed Chapter 3, insert:

Chapter 4—Occupational health and safety

Part 1—Federal Safety Commissioner

31 Federal Safety Commissioner

(1) The Secretary must, by writing, designate a position in the Department as the position of Federal Safety Commissioner.

Note: For creation of positions, see section 77 of the Public Service Act 1999.

(2) That position can only be occupied by an SES employee.

(3) The Federal Safety Commissioner is the SES employee who occupies that position.

(4) An instrument under subsection (1) is not a legislative instrument for the purposes of the Legislative Instruments Act 2003.

32 Functions of Federal Safety Commissioner

The Federal Safety Commissioner has the following functions:

(a) promoting occupational health and safety in relation to building work;
(b) monitoring and promoting compliance with the Building Code, so far as the Code deals with occupational health and safety;
(c) disseminating information about the Building Code, so far as the Code deals with occupational health and safety;
(d) performing functions as the accreditation authority for the purposes of the accreditation scheme;
(e) promoting the benefits of the accreditation scheme and disseminating information about the accreditation scheme;
(f) referring matters to other relevant agencies and bodies;
(g) any other functions conferred on the Federal Safety Commissioner by this Act or by another Act;
(h) any other functions conferred on the Federal Safety Commissioner by the regulations.

33 Minister’s directions to Federal Safety Commissioner

(1) The Minister may give written directions to the Federal Safety Commissioner specifying the manner in which the Federal Safety Commissioner must exercise or perform the powers or functions of the Federal Safety Commissioner under this Act.

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

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

(4) A direction under subsection (1) is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

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

35 Delegation by Federal Safety Commissioner

(1) The Federal Safety Commissioner may, in writing, delegate all or any of his or her powers and functions under this Act to:
   (a) a Federal Safety Officer; or
   (b) an SES employee or acting SES employee; or
   (c) a person prescribed by the regulations for the purposes of this paragraph.

(2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Federal Safety Commissioner.

(3) As soon as practicable after delegating any power or function under this section, the Federal Safety Commissioner must publish details of the delegation.

38 Acting Federal Safety Commissioner

If an SES employee is acting in the position of Federal Safety Commissioner:
   (a) the SES employee has and may exercise all the powers, and is to perform all the functions and duties, of the occupier of the position of Federal Safety Commissioner; and
   (b) this Act, and any other law of the Commonwealth, applies in relation to the SES employee as if the SES employee were the occupier of the position of Federal Safety Commissioner.

45 Consultants

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

(2) The terms and conditions of the engagement of a person are such as are determined by the Secretary in writing.
Part 3—Accreditation scheme for Commonwealth building contracts

50 Accreditation scheme

Accreditation scheme

(1) The regulations may prescribe an accreditation scheme for persons who wish to enter into Commonwealth building contracts with the Commonwealth or Commonwealth authorities.

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

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

Commonwealth building contracts not to be entered into with persons who are not accredited

(4) The Commonwealth or a Commonwealth authority must not enter into a Commonwealth building contract with a person or persons unless the person, or each of the persons, is an accredited person at the time the contract is entered into. This subsection does not apply to contracts prescribed by the regulations.

(5) Subsection (4) overrides:
   (a) any Commonwealth provision enacted before the commencement of this section; and
   (b) any Commonwealth provision enacted after the commencement of this section, unless the provision expressly refers to this section.

(6) A contravention of subsection (4) in respect of a contract does not affect the validity of the contract.

(7) In this section:

accredited person means a person who is accredited under the accreditation scheme.


Commonwealth building contract means a contract under which a person agrees with the Commonwealth or a Commonwealth authority to carry out building work or arrange for building work to be carried out.

Commonwealth provision means a provision of a law of the Commonwealth.

[occupational health and safety]

(10) Clause 72, page 10 (line 27), omit “Division 1 of”.

[protected action]

(11) Clause 74, page 13 (after line 10), at the end of the clause, add:

Note: Grade A civil penalty.

[unlawful industrial action]
(12) Page 13, at the end of Part 2, add:

75 Injunction against unlawful industrial action

(1) If, on application by the ABC Commissioner or any other person, an appropriate court is satisfied that unlawful industrial action is:
   (a) occurring; or
   (b) threatened, impending or probable;
then the court may grant an injunction in such terms as the court considers appropriate.

(2) If, in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

(3) The power of the court to grant an injunction restraining a person (the 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.

(4) In this section:

appropriate court means the Federal Court, the Federal Magistrates Court, a Supreme Court of a State or Territory or a District Court, or County Court, of a State.

(13) Heading to Division 1, page 14 (line 3), omit the heading.

79 Action involving extraneous participants

(1) Building industrial action in relation to a proposed building agreement is not protected action for the purposes of the Workplace Relations Act if:
   (a) the action is engaged in in concert with one or more persons who are not protected persons for the action; or
   (b) the organisers include one or more persons who are not protected persons for the action.

(2) In this section:

protected person means:
   (a) an employee organisation that is a negotiating party to the proposed agreement; or
   (b) a member of such an organisation who is employed by the employer and whose employment will be subject to the proposed agreement; or
   (c) an officer or employee of such an organisation acting in that capacity; or
   (d) an employee who is a negotiating party to the proposed agreement.

(15) Page 15 (after line 14), after Chapter 6, insert:
Chapter 8—Discrimination, coercion and unfair contracts

172 Coercion in relation to engagement etc. of building employees and building contractors

(1) A person (the first person) must not organise or take action, or threaten to organise or take action, with intent to coerce another person (the second person):
   (a) to employ, or not employ, a person as a building employee; or
   (b) to engage, or not engage, a person as a building contractor; or
   (c) to allocate, or not allocate, particular responsibilities to a building employee or building contractor; or
   (d) to designate a building employee or building contractor as having, or not having, particular duties or responsibilities.

Note: Grade A civil penalty.

(2) Subsection (1) does not apply unless:
   (a) the first person is an organisation or a constitutional corporation; or
   (b) the second person is a constitutional corporation; or
   (c) the conduct occurs in a Territory or Commonwealth place.

173 Coercion of persons to make, vary, terminate etc. certified agreements etc.

(1) A person must not:
   (a) take or threaten to 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, or extend the nominal expiry date of, a building agreement under Division 2 or 3 of Part VIB of the Workplace Relations Act; or
   (d) to approve any of the things mentioned in paragraph (c).

Note: Grade A civil penalty.

(2) Subsection (1) does not apply to action that is protected action for the purposes of the Workplace Relations Act (as affected by Part 3 of Chapter 6 of this Act).

(3) An employer must not coerce, or attempt to coerce, an employee of the employer:
   (a) not to make a request as mentioned in subsection 170LK(4) of the Workplace Relations Act in relation to a building agreement that the employer proposes to make; or
   (b) to withdraw such a request.

Note: Grade A civil penalty.

(4) An employer must not apply, or attempt to apply, undue pressure to an employee of the employer:
   (a) not to make a request as mentioned in subsection 170LK(4) of the Workplace Relations Act in relation to a building agreement that the employer proposes to make; or
   (b) to withdraw such a request.

Note: Grade A civil penalty.
(5) Section 170NC of the Workplace Relations Act does not apply if the agreement referred to in that section is a building agreement.

174 Discrimination against employer in relation to industrial instruments

(1) A person (the first person) must not discriminate against another person (the second person) on the ground that:
   a) the employment of the second person’s building employees is covered, or is not covered, by:
      i) a particular kind of industrial instrument; or
      ii) an industrial instrument made with a particular person; or
   b) it is proposed that the employment of the second person’s building employees be covered, or not be covered, by:
      i) a particular kind of industrial instrument; or
      ii) an industrial instrument made with a particular person.

Note: Grade A civil penalty.

(2) Subsection (1) does not apply to conduct that is protected action for the purposes of the Workplace Relations Act (as affected by Part 3 of Chapter 6 of this Act).

(3) Subsection (1) does not apply to conduct by the first person if:
   a) the conduct occurs in relation to:
      i) a proposed agreement between the first person and the second person under which the second person would carry out building work or arrange for building work to be carried out; or
      ii) a proposed variation of an agreement between the first person and the second person under which the second person carries out building work or arranges for building work to be carried out; and
   b) the conduct is engaged in solely for the purpose of encouraging the second person to have particular eligible conditions in an industrial instrument that covers employees of the second person.

(4) Subsection (1) does not apply unless:
   a) the industrial instrument referred to in that section is an award, certified agreement or AWA; or
   b) the first person is an organisation or a constitutional corporation; or
   c) the second person is a constitutional corporation; or
   d) the conduct occurs in a Territory or Commonwealth place.

175 Coercion in relation to superannuation

(1) A person (the first person) must not:
   a) take, or threaten to take, any action (the relevant action); or
   b) refrain, or threaten to refrain, from taking action (the relevant 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 the employer’s superannuation contributions in respect of building employees to a particular superannuation fund or scheme.

Note: Grade A civil penalty.
(2) Subsection (1) does not apply if the relevant action is, or would be, protected action for the purposes of the Workplace Relations Act (as affected by Part 3 of Chapter 6).

(3) Subsection (1) does not apply unless:
   (a) the first person is an organisation or a constitutional corporation; or
   (b) paragraph (1)(d) applies and the building employer referred to in that paragraph is a constitutional corporation; or
   (c) paragraph (1)(d) applies and the building employer referred to in that paragraph is the Commonwealth or a Commonwealth authority; or
   (d) the relevant action occurs, or would occur, in a Territory or Commonwealth place.

176 Unfair contracts with building contractors

Sections 127A, 127B and 127C of the Workplace Relations Act apply in relation to a contract for the performance of building work as if references in sections 127A and 127B of that Act to the Federal Court included references to the Federal Magistrates Court.[discrimination, coercion and unfair contracts]

(16) Clause 226, page 16 (lines 7 to 9), omit the definition of appropriate court, substitute:

appropriate court means:
   (a) for a contravention of section 74—the Federal Court, the Federal Magistrates Court, a Supreme Court of a State or Territory or a District Court, or County Court, of a State; or
   (b) for any other contravention—the Federal Court.[appropriate court]

(17) Clause 227, page 17 (lines 5 to 7), omit subclause (2), substitute:

(2) The maximum pecuniary penalty is:
   (a) for a Grade A civil penalty provision—1,000 penalty units if the defendant is a body corporate and otherwise 200 penalty units; and
   (b) for a Grade B civil penalty provision—100 penalty units if the defendant is a body corporate and otherwise 20 penalty units.[penalties for contravention of civil penalty provision]

(18) Clause 227, page 17 (lines 28 and 29), omit paragraph (6)(a), substitute:

(a) the ABC Commissioner;
   (aa) an ABC Inspector;[eligible person]

(19) Page 19 (after line 15), at the end of Chapter 12, add:

Part 2—Compliance etc. powers

Division 1—ABC Commissioner’s powers to obtain information etc.

230 ABC Commissioner’s powers to obtain information etc.

ABC Commissioner may require information, documents etc.

(1) If the ABC Commissioner believes on reasonable grounds that a person:
(a) has information or documents relevant to an investigation; or
(b) is capable of giving evidence that is relevant to an investigation;
the ABC Commissioner may, by written notice given to the person, require the person:
(c) to give the information to the ABC Commissioner, or to an assistant, by the time, and in the manner and form, specified in the notice; or
(d) to produce the documents to the ABC Commissioner, or to an assistant, by the time, and in the manner, specified in the notice; or
(e) to attend before the ABC Commissioner, or an assistant, at the time and place specified in the notice, and answer questions relevant to the investigation.

(2) The time specified under paragraph (1)(c), (d) or (e) must be at least 14 days after the notice is given.

Legal representation

(3) A person attending before the ABC Commissioner, or before an assistant, as mentioned in paragraph (1)(e) may, if the person so chooses, be represented by a person who, under the Judiciary Act 1903, is entitled to practise as a barrister or solicitor, or both, in a federal court.

Oath or affirmation

(4) The ABC Commissioner, or an assistant, may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the ABC Commissioner, or an assistant, may administer the oath or affirmation.

(5) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

Offence

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

Penalty: Imprisonment for 6 months.

Effect of other laws

(7) The operation of this section is not limited by any secrecy provision of any other law (whether enacted before or after the commencement of this section), except to the extent that the secrecy provision expressly excludes the operation of this section. For this purpose, secrecy provision means a provision that prohibits the communication or divulging of information.
Definitions

(8) In this section:

**assistant** means:
(a) a Deputy ABC Commissioner; or
(b) an ABC Inspector; or
(c) a person referred to in subsection 25(1) or (3) who is assisting the ABC Commissioner.

**investigation** means an investigation by the ABC Commissioner into a contravention, by a building industry participant, of a designated building law.

231 Certain excuses not available in relation to section 230 requirements

*Excuses that are not available*

(1) A person is not excused from giving information, producing a document, or answering a question, under section 230 on the ground that to do so:
(a) would contravene any other law; or
(b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or
(c) would be otherwise contrary to the public interest.

*Use/derivative use indemnity*

(2) However, neither:
(a) the information or answer given or the document produced; nor
(b) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer or producing the document;

is admissible in evidence against the person in proceedings, other than:
(c) proceedings for an offence against subsection 230(6); or
(d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act; or
(e) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act.

232 Protection from liability

A person who, in good faith:
(a) gives information; or
(b) produces a document; or
(c) answers a question;
when requested or required to do so under section 230 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.
233 Retention and copying etc. of documents

ABC Commissioner may keep documents

(1) The ABC Commissioner may take possession of a document produced under section 230 and keep it for as long as is necessary for the purposes of conducting the investigation to which the document is relevant.

Certified copy to be supplied to person entitled to document

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy that is certified, by one of the following persons, to be a true copy:
(a) the ABC Commissioner;
(b) a Deputy ABC Commissioner;
(c) an ABC Inspector;
(d) a person referred to in subsection 25(1) or (3) who is assisting the ABC Commissioner.

Certified copy to be treated as original

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

Right to inspect and copy the original

(4) Until a certified copy is supplied, the ABC Commissioner must, at such times and places as the ABC Commissioner considers appropriate, permit the person otherwise entitled to possession of the document (or a person authorised by that person) to inspect and make copies of all or part of the document.

234 ABC Commissioner may make and keep copies of documents

The ABC Commissioner may make and keep copies of all or part of any documents produced under section 230.

Division 2—Powers of ABC Inspectors

235 Australian Building and Construction Inspectors

(1) The ABC Commissioner may, by written instrument, appoint any of the following persons as an Australian Building and Construction Inspector (ABC Inspector):
(a) a person who is an employee of the Commonwealth or who holds an office or appointment under a law of the Commonwealth;
(b) a person who is an employee of a State or Territory or who holds an office or appointment under a law of a State or Territory;
(c) a consultant engaged by the ABC Commissioner under section 25.

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

(3) The ABC Commissioner is an ABC Inspector by force of this subsection.
(4) In exercising powers or performing functions as an ABC Inspector, an ABC Inspector appointed under subsection (1) must comply with any directions of the ABC Commissioner.

(5) If a direction under subsection (4) is of general application, the direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(6) If a direction under subsection (4) relates to a particular case, the direction is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

236 Identity cards for ABC Inspectors

(1) The ABC Commissioner must issue to an ABC Inspector appointed under subsection 235(1) an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the ABC Inspector.

(2) The Minister must issue to the ABC Commissioner an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the ABC Commissioner.

(3) If a person to whom an identity card has been issued ceases to be an ABC Inspector, the person must, within 14 days, return the identity card to the ABC Commissioner, or the Minister, as the case requires.

(4) A person must not contravene subsection (3).

Penalty: 1 penalty unit.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

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

237 Power to enter premises etc.

(1) An ABC Inspector may exercise powers under this section for the following purposes (*compliance purposes*):

(a) ascertaining whether a designated building law has been complied with, or is being complied with, by a building industry participant;

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

(c) ascertaining whether the Building Code has been complied with, or is being complied with, by a building industry participant.

Note: Section 26 specifies the persons who can be required to comply with the Building Code.

(2) The powers may be exercised at any time during ordinary working hours or at any other time at which it is necessary to do so for compliance purposes.

(3) An ABC Inspector may, without force, enter:

(a) any premises on which the inspector has reasonable cause to believe that building work is being carried out, or has been carried out, being building work:

(i) to which a Commonwealth industrial instrument applies or applied; or

(ii) to which the Building Code applies or applied; or
(b) any premises on which the inspector has reasonable cause to believe that there are documents relevant to compliance purposes; or
(c) any premises on which the inspector has reasonable cause to believe that a breach by a building industry participant of a designated building law or the Building Code, has occurred, is occurring or is likely to occur.

(4) Subsection (3) does not authorise entry onto a part of premises if that part is used for residential purposes.

(5) An ABC Inspector may do any of the following on premises referred to in subsection (3):
   (a) inspect any work, material, machinery, appliance, article or facility;
   (b) as prescribed by the regulations, take samples of any goods or substances;
   (c) interview any person;
   (d) inspect, and make copies of, any document that is on the premises, or is accessible from a computer that is kept on the premises, being a document that the inspector believes, on reasonable grounds, to be relevant to compliance purposes;
   (e) require a person who has the custody of, or access to, a document to produce the document to the inspector within a specified period.

(6) If a person fails to comply with a requirement under subsection (5) to produce a document, an ABC Inspector may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).

(7) Where a document is produced to an ABC Inspector under paragraph (5)(e) or subsection (6), the inspector may:
   (a) inspect and copy the document; and
   (b) if the inspector gives a receipt to the person who produced the document—retain the document for as long as necessary for the purpose of exercising powers or performing functions as an ABC Inspector.

(8) While an ABC Inspector retains a document, the inspector must permit the document to be inspected and copied, at any reasonable time, by:
   (a) the person otherwise entitled to possession of the document; or
   (b) a person authorised by the person otherwise entitled to possession of the document.

(9) An ABC Inspector may, without force, enter business premises in which a person ordinarily performs work or conducts business if the inspector has reasonable cause to believe that the person has information relevant to compliance purposes.

(10) An ABC Inspector must not enter business premises under subsection (9) if the inspector has reasonable cause to believe that the person concerned is not in that place.

(11) An ABC Inspector who enters premises under subsection (9) may interview the person concerned in that place.

(12) For the avoidance of doubt, a refusal or failure by a person to participate in an interview under this section is not to be treated as conduct covered by section 149.1 of the Criminal Code.

(13) Before entering premises under this section, an ABC Inspector must announce that the inspector is authorised to enter the place. If the occupier or another person who apparently represents the occupier is present, the inspector must produce the inspector’s identity card to that person for inspection.
(14) The occupier of premises must not refuse or unduly delay entry to the premises by an ABC Inspector exercising powers under this section.

Note: Grade A civil penalty.

(15) In this section:

copy, in relation to a document, includes take extracts from the document.

Note: The Criminal Code contains offences for obstructing or hindering Commonwealth public officials.

Division 3—Powers of Federal Safety Officers

238 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 45.

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

(3) The Federal Safety Commissioner is a Federal Safety Officer by force of this subsection.

(4) In exercising powers or performing functions as a Federal Safety Officer, a Federal Safety Officer appointed under subsection (1) must comply with any directions of the Federal Safety Commissioner.

(5) If a direction under subsection (4) is of general application, the direction is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

(6) If a direction under subsection (4) relates to a particular case, the direction is not a legislative instrument for the purposes of the Legislative Instruments Act 2003.

239 Identity cards for Federal Safety Officers

(1) The Federal Safety Commissioner must issue to a Federal Safety Officer appointed under subsection 238(1) an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the Federal Safety Officer.

(2) The Minister must issue to the Federal Safety Commissioner an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the Federal Safety Commissioner.

(3) If a person to whom an identity card has been issued ceases to be a Federal Safety Officer, the person must, within 14 days, return the identity card to the Federal Safety Commissioner, or the Minister, as the case requires.

(4) A person must not contravene subsection (3).

Penalty: 1 penalty unit.
(5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the Criminal Code).

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

240 Powers to enter premises etc. to ascertain compliance with Building Code

(1) A Federal Safety Officer may exercise powers under this section for the purpose (a compliance purpose) of ascertaining whether the Building Code has been complied with, or is being complied with, by a building industry participant.

Note: Section 26 specifies the persons who can be required to comply with the Building Code.

(2) The powers may be exercised at any time during ordinary working hours or at any other time at which it is necessary to do so for a compliance purpose.

(3) A Federal Safety Officer may, without force, enter:
   (a) any premises on which the officer has reasonable cause to believe that building work is being carried out, or has been carried out, being building work to which the Building Code applies or applied; or
   (b) any premises on which the officer has reasonable cause to believe that a breach by a building industry participant of the Building Code has occurred, is occurring or is likely to occur.

(4) Subsection (3) does not authorise entry onto a part of premises if that part is used for residential purposes.

(5) A Federal Safety Officer may do any of the following on premises referred to in subsection (3):
   (a) inspect any work, material, machinery, appliance, article or facility;
   (b) as prescribed by the regulations, take samples of any goods or substances;
   (c) interview any person;
   (d) inspect, and make copies of, any document that is on the premises, or is accessible from a computer that is kept on the premises, being a document that the officer believes, on reasonable grounds, to be relevant to compliance purposes;
   (e) require a person who has the custody of, or access to, a document to produce the document to the officer within a specified period.

(6) If a person fails to comply with a requirement under subsection (5) to produce a document, a Federal Safety Officer may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).

(7) Where a document is produced to a Federal Safety Officer under paragraph (5)(e) or subsection (6), the officer may:
   (a) inspect and copy the document; and
   (b) if the Federal Safety Officer gives a receipt to the person who produced the document—retain the document for as long as necessary for the purpose of exercising powers or performing functions as a Federal Safety Officer.

(8) While a Federal Safety Officer retains a document, the officer must permit the document to be inspected and copied, at any reasonable time, by:
   (a) the person otherwise entitled to possession of the document; or
(b) a person authorised by the person otherwise entitled to possession of the document.

(9) A Federal Safety Officer may, without force, enter business premises in which a person ordinarily performs work or conducts business if the officer has reasonable cause to believe that the person has information relevant to compliance purposes.

(10) A Federal Safety Officer must not enter business premises under subsection (9) if the officer has reasonable cause to believe that the person concerned is not in that place.

(11) A Federal Safety Officer who enters premises under subsection (9) may interview the person concerned in that place.

(12) For the avoidance of doubt, a refusal or failure by a person to participate in an interview under this section is not to be treated as conduct covered by section 149.1 of the Criminal Code.

(13) Before entering premises under this section, a Federal Safety Officer must announce that the officer is authorised to enter the place. If the occupier or another person who apparently represents the occupier is present, the officer must produce the officer’s identity card to that person for inspection.

(14) The occupier of premises must not refuse or unduly delay entry to the premises by a Federal Safety Officer exercising powers under this section.

Note: Grade A civil penalty.

(15) In this section:

*copy*, in relation to a document, includes take extracts from the document.

Note: The Criminal Code contains offences for obstructing or hindering Commonwealth public officials.

### 241 Powers to enter premises etc. to ascertain compliance with accreditation scheme

(1) A Federal Safety Officer may exercise powers under this section for the following purposes (compliance purposes):

(a) ascertaining whether a constitutional corporation that is an applicant for accreditation meets the accreditation requirements;

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

(c) ascertaining whether an accredited person has complied, or is complying, with conditions of the accreditation in respect of building work in a Territory or Commonwealth place.

(2) The powers may be exercised at any time during ordinary working hours or at any other time at which it is necessary to do so for compliance purposes.

(3) A Federal Safety Officer may, without force, enter:

(a) any premises on which the officer has reasonable cause to believe that building work is being carried out, or has been carried out, by the applicant or accredited person referred to in subsection (1); or

(b) any premises on which the officer has reasonable cause to believe that there are documents relevant to compliance purposes.

(4) Subsection (3) does not authorise entry onto a part of premises if that part is used for residential purposes.
(5) A Federal Safety Officer may do any of the following on premises referred to in subsection (3):
   (a) inspect any work, material, machinery, appliance, article or facility;
   (b) as prescribed by the regulations, take samples of any goods or substances;
   (c) interview any person;
   (d) inspect, and make copies of, any document that is on the premises, or is accessible from a computer that is kept on the premises, being a document that the officer believes, on reasonable grounds, to be relevant to compliance purposes;
   (e) require a person who has the custody of, or access to, a document to produce the document to the officer within a specified period.

(6) If a person fails to comply with a requirement under subsection (5) to produce a document, a Federal Safety Officer may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).

(7) Where a document is produced to a Federal Safety Officer under paragraph (5)(e) or subsection (6), the officer may:
   (a) inspect and copy the document; and
   (b) if the Federal Safety Officer gives a receipt to the person who produced the document—retain the document for as long as necessary for the purpose of exercising powers or performing functions as a Federal Safety Officer.

(8) While a Federal Safety Officer retains a document, the officer must permit the document to be inspected and copied, at any reasonable time, by:
   (a) the person otherwise entitled to possession of the document; or
   (b) a person authorised by the person otherwise entitled to possession of the document.

(9) A Federal Safety Officer may, without force, enter business premises in which a person ordinarily performs work or conducts business if the officer has reasonable cause to believe that the person has information relevant to compliance purposes.

(10) A Federal Safety Officer must not enter business premises under subsection (9) if the officer has reasonable cause to believe that the person concerned is not in that place.

(11) A Federal Safety Officer who enters premises under subsection (9) may interview the person concerned in that place.

(12) For the avoidance of doubt, a refusal or failure by a person to participate in an interview under this section is not to be treated as conduct covered by section 149.1 of the Criminal Code.

(13) Before entering premises under this section, a Federal Safety Officer must announce that the officer is authorised to enter the place. If the occupier or another person who apparently represents the occupier is present, the officer must produce the officer’s identity card to that person for inspection.

(14) The occupier of premises must not refuse or unduly delay entry to the premises by a Federal Safety Officer exercising powers under this section.

Note: Grade A civil penalty.

(15) In this section:

   accreditation means accreditation under the accreditation scheme.
accredited person means a person who is accredited under the accreditation scheme.

copy, in relation to a document, includes take extracts from the document.

Note: The Criminal Code contains offences for obstructing or hindering Commonwealth public officials.

[compliance etc. powers]

(20) Page 20 (before line 5), before clause 252, insert:

**241A Project agreements not enforceable**

(1) If:
   (a) an 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 by the same employer; and
   (c) either:
      (i) a party to the agreement is an organisation and at least some of the employees are members of that organisation; or
      (ii) 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 certified;

then the agreement is unenforceable to the extent to which it relates to building employees.

(2) In determining for the purposes of this section whether employees are employed by the same employer, section 170LB of the Workplace Relations Act is to be disregarded.

[project agreements not enforceable]

(21) Page 20, after proposed clause 241A, insert:

**242 Protection of confidentiality of information**

(1) This section restricts what a person (the entrusted person) may do with protected information that the person has obtained in the course of official employment.

Note: Although this section applies only to information that a person obtained in the course of official employment, the obligations under this section continue to apply after the person ceases to be in official employment.

**Recording or disclosing**

(2) The entrusted person must not:
   (a) make a record of protected information; or
   (b) disclose protected information.

Penalty: Imprisonment for 12 months.

**Permitted recording or disclosure by designated officials**

(3) If the entrusted person is a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):
   (a) the recording or disclosure is for the purposes of this Act;
   (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person’s official employment;
(c) in the case of a disclosure—the disclosure is to a person appointed or employed by:
   (i) the Commonwealth, a State or Territory; or
   (ii) an authority of the Commonwealth, a State or Territory;
for the purpose of assisting in building industry law enforcement;
(d) the recording or disclosure is in accordance with regulations made for the purposes
of this paragraph.

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

Permitted recording or disclosure by other persons

(4) If the entrusted person is not a designated official at the time of the recording or
disclosure, then each of the following is an exception to the offence in subsection (2):
   (a) the recording or disclosure is for the purposes of this Act;
   (b) the recording or disclosure happens in the course of the performance of the duties of
the entrusted person’s official employment, being duties relating to building
industry law enforcement;
   (c) the recording or disclosure is in accordance with regulations made for the purposes
of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection
13.3(3) of the Criminal Code.

Disclosure to a Minister

(5) If:
   (a) the entrusted person discloses protected information to any Minister; and
   (b) the disclosure is not required or authorised by section 14 or 16;
then the exceptions in subsections (3) and (4) of this section do not apply to the
disclosure.

Disclosure in reports under this Act

(6) If:
   (a) the entrusted person discloses protected information in a report under section 14 or
16; and
   (b) section 243 is not complied with in respect of the disclosure of the information in
the report;
then the exceptions in subsections (3) and (4) of this section do not apply to the
disclosure.

Authorisation for purposes of Privacy Act

(7) A disclosure of personal information is taken to be authorised by law for the purposes
of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the Privacy Act
1988 if the information is protected information and the disclosure is made in accordance
with subsection (3) or (4) of this section.

Definitions

(8) In this section:

building industry law enforcement means enforcement of a law of the Commonwealth,
or of a State or Territory, where the enforcement is in respect of:
(a) conduct by, or in relation to, a building industry participant in that capacity; or
(b) conduct that is, or relates to, building work.

designated official means any of the following:
(a) the ABC Commissioner;
(b) a Deputy ABC Commissioner;
(c) an ABC Inspector;
(d) a person assisting the ABC Commissioner as mentioned in subsection 25(1);
(e) a person engaged as a consultant under subsection 25(3);
(f) the Federal Safety Commissioner;
(g) a Federal Safety Officer;
(h) an APS employee assisting the Federal Safety Commissioner;
(i) a person engaged as a consultant under section 45;
(j) the Industrial Registrar;
(k) a person acting under a delegation under this Act from a person covered by any of
the above paragraphs.

disclose means divulge or communicate.

official employment means:
(a) appointment or employment by, or the performance of services for:
(i) the Commonwealth, a State or Territory; or
(ii) an authority of the Commonwealth, a State or Territory; or
(b) appointment as an ABC Inspector or Federal Safety Officer.

protected information means information that:
(a) was disclosed or obtained for the purposes of this Act; and
(b) was obtained by the entrusted person, or by any other person, in the course of
official employment; and
(c) relates to a person other than the entrusted person.

(22) Page 20, after proposed clause 242, insert:

243 Reports not to include information relating to an individual’s affairs

(1) Information relating to the affairs of an individual must not be included in a report under
section 14 or 16 if:
(a) the individual is named, or otherwise specifically identified, in the report as the
individual to whom the information relates; or
(b) it is reasonably likely that people generally (other than people to whom the
individual has disclosed information relating to the individual’s affairs) would be
able to work out the identity of the individual to whom the information relates.

(2) For the purposes of applying paragraph (1)(b) to information relating to a particular
individual’s affairs, the context in which the information appears, and information that is
otherwise publicly available, must be taken into account (as well as any other relevant
matter).

(23) Page 20, after proposed clause 243, insert:
243A  ABC Commissioner to publicise non-compliance

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

(a) non-compliance with the Building Code, including the names of the persons who have failed to comply; and
(b) non-compliance by a building industry participant with this Act, including the names of the participants who have failed to comply; and
(c) non-compliance by a building industry participant with the Workplace Relations Act, including the names of the participants who have failed to comply.

(24) Page 20, after proposed clause 243A, insert:

246  Delegation by Minister

(1) The Minister may, in writing, delegate all or any of the Minister’s powers and functions under this Act to:
   (a) an SES employee or acting SES employee; or
   (b) a person prescribed by the regulations for the purposes of this paragraph; other than powers or functions under Chapter 2 or 4 or section 236 or 239.

(2) The Minister may, in writing, delegate all or any of the Minister’s powers and functions under Chapter 3 to:
   (a) the ABC Commissioner; or
   (b) a Deputy ABC Commissioner; or
   (c) the Federal Safety Commissioner.

(3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

(25) Page 20, after proposed clause 246, insert:

247  Building association responsible for conduct of members etc.

(1) For the purposes of this Act, the following conduct in relation to a building association is taken to be conduct of the building association:
   (a) conduct of the committee of management of the association;
   (b) conduct of an officer or agent of the association acting in that capacity;
   (c) conduct of a member, or group of members, of the association where the conduct is authorised by:
      (i) the rules of the association; or
      (ii) the committee of management of the association; or
      (iii) an officer or agent of the association acting in that capacity;
   (d) conduct of a member of the 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.

(2) Paragraphs (1)(c) and (d) do not apply if:
   (a) a committee of management of the building association; or
   (b) a person authorised by the committee; or
(c) an officer of the industrial association;
has taken reasonable steps to prevent the action.

(3) In this section:

**officer**, in relation to a building association, includes:
(a) a delegate or other representative of the association; and
(b) an employee of the association.

[building association responsible for conduct of members etc.]

(26) Page 20, after proposed clause 247, insert:

248 **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
(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.

[capacity, state of mind etc. of person being coerced etc.]

(27) Page 20, after proposed clause 248, insert:

249 **ABC Commissioner intervention 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 Workplace Relations 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.

[intervention in court proceedings]

(28) Page 20, after proposed clause 249, insert:

250 **ABC Commissioner intervention in AIRC proceedings**

The ABC Commissioner may, by giving written notice to the Industrial Registrar,
intervene in a matter before the AIRC that arises under the Workplace Relations Act and
involves:
(a) a building industry participant; or
(b) building work.

[intervention in court proceedings]
(29) Page 20, after proposed clause 250, insert:

250A  ABC Commissioner or ABC Inspector may institute proceedings under the Workplace Relations Act

Powers corresponding to powers of inspectors under the Workplace Relations Act

(1) If a provision of the Workplace Relations Act, or of an instrument under that Act, authorises an inspector (within the meaning of that Act) to:
   (a) make an application to the AIRC; or
   (b) make an application to, or otherwise institute proceedings in, a court;
the provision is also taken to authorise the ABC Commissioner or an ABC Inspector to make such an application, or institute such proceedings, in any case where the application or proceedings relates to a matter that involves:
   (d) a building industry participant; or
   (e) building work.

(2) If the ABC Commissioner or an ABC Inspector makes such an application, or institutes such proceedings, the Workplace Relations Act and any such instrument have effect, in relation to the application or proceedings, as if the ABC Commissioner or the ABC Inspector were an inspector (within the meaning of that Act).

(3) Directions under subsection 84(5) of the Workplace Relations Act do not apply to the ABC Commissioner or an ABC Inspector in relation to such an application or such proceedings.

Power to apply under subsection 285A(3) or section 285F or 298T of the Workplace Relations Act

(4) The ABC Commissioner or an ABC Inspector may make an application under subsection 285A(3) or section 285F or 298T of the Workplace Relations Act in any case where the application relates to a matter that involves:
   (a) a building industry participant; or
   (b) building work.

(5) Subsection (4) does not, by implication, limit the persons who may make an application under subsection 285A(3) or section 285F or 298T of the Workplace Relations Act.

(30) Page 20, after proposed clause 250A, insert:

251  Industrial Registrar must keep ABC Commissioner informed

The Industrial Registrar must, as soon as practicable, notify the ABC Commissioner of:

(a) every application lodged with the AIRC, or the Industrial Registrar, under the Workplace Relations 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 such application.

(31) Clause 252, page 20 (after line 20), after subclause (1), insert:

[ABC Commissioner to be kept informed]
Additional jurisdiction of Federal Magistrates Court

(2) The Federal Magistrates Court has jurisdiction in matters arising under the Workplace Relations Act as affected by section 176 of this Act.

[additional jurisdiction of Federal Magistrates Court]

(32) Clause 252, page 20 (after line 28), after subclause (3), insert:

Writ of mandamus etc. against officers of the Commonwealth

(4) Subsections 412(2) and (3), and subsection 415(1), of the Workplace Relations Act extend to matters in which a writ of mandamus or prohibition, or an injunction, is sought against an officer or officers of the Commonwealth holding office under that Act, in relation to powers or functions under this Act. This subsection is enacted for the avoidance of doubt.

(5) For the purposes of section 44 of the Judiciary Act 1903, the Federal Court is taken to have jurisdiction with respect to any matter in which a writ of mandamus or prohibition, or an injunction, is sought against an officer or officers of the Commonwealth holding office under this Act.

Note: Section 44 of the Judiciary Act 1903 gives the High Court of Australia power to remit a matter to a federal court that has jurisdiction with respect to that matter.

(6) The Federal Court has jurisdiction with respect to matters remitted to it under section 44 of the Judiciary Act 1903.

[writ of mandamus]

(33) Page 21 (after line 17), after clause 252, insert:

253 Court not to require undertaking as to damages

If the ABC Commissioner or an ABC Inspector is an applicant in court proceedings under:

(a) section 75 or 227 of this Act; or
(b) the Workplace Relations Act;

then the court cannot require the ABC Commissioner, the ABC Inspector or any other person, as a condition of granting an interim injunction, to give undertakings as to damages.

[undertaking as to damages]

(34) Page 21, after proposed clause 253, insert:

254 ABC Commissioner etc. not liable for conduct in good faith

(1) No one is liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done, or omitted to be done, in good faith and without negligence:

(a) by a protected person in the exercise, or purported exercise, of functions, powers or duties under, or in relation to, this Act; or
(b) by a protected person in the exercise, or purported exercise, of functions, powers or duties under, or in relation to, the Workplace Relations 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) In this section:

**protected person** means any of the following:

(a) the ABC Commissioner;
(b) a Deputy ABC Commissioner;
(c) an ABC Inspector;
(d) a person assisting the ABC Commissioner as mentioned in subsection 25(1);
(e) a person engaged as a consultant under subsection 25(3);
(f) the Federal Safety Commissioner;
(g) a Federal Safety Officer;
(h) an APS employee assisting the Federal Safety Commissioner;
(i) a person engaged as a consultant under section 45;
(j) the Industrial Registrar;
(k) a person acting under a delegation under this Act from a person covered by any of the above paragraphs.

**[liability for conduct in good faith]**

(35) Clause 255, page 21 (after line 28), after paragraph (2)(b), insert:

(c) the form of notices that are required or permitted to be given under this Act;

(ca) requiring a building industry participant to notify the ABC Commissioner of:
   (i) an application made to a court under this Act or the Workplace Relations Act, where the application is made by, or otherwise involves, the participant; and
   (ii) the outcome of the application;

**[regulations]**

(36) Clause 255, page 21 (line 29), at the end of subclause (2), add:

; (e) penalties for offences against the regulations, not exceeding a fine of 10 penalty units;

(f) civil penalties for contraventions of the regulations, not exceeding:
   (i) for a body corporate—25 penalty units; or
   (ii) in any other case—5 penalty units.

**[regulations]**