



# **Building and Construction Industry Improvement (Consequential and Transitional) Act 2005**

**No. 112, 2005**

**An Act to deal with matters consequential on the  
enactment of the *Building and Construction  
Industry Improvement Act 2005*, and for related  
purposes**

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



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**An Act to deal with matters consequential on the  
enactment of the *Building and Construction  
Industry Improvement Act 2005*, and for related  
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[Assented to 12 September 2005]

The Parliament of Australia enacts:

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*Building and Construction Industry Improvement (Consequential and Transitional) Act 2005*  
No. 112, 2005 1

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## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Building and Construction Industry Improvement (Consequential and Transitional) Act 2005*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 September 2005
2. Section 4	9 March 2005.	9 March 2005
3. Subsection 5(1)	9 March 2005.	9 March 2005
4. Subsection 5(2)	The day on which this Act receives the Royal Assent.	12 September 2005
5. Subsections 5(3) and (4)	9 March 2005.	9 March 2005
6. Sections 6, 7, 8 and 9	The day on which this Act receives the Royal Assent.	12 September 2005
7. Schedule 1, items 1 to 7	The day on which this Act receives the Royal Assent.	12 September 2005
8. Schedule 1, items 8 and 9	9 March 2005.	9 March 2005
9. Schedule 1, item 10	The day on which this Act receives the Royal Assent.	12 September 2005
10. Schedule 1, item 11	9 March 2005.	9 March 2005

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
11. Schedule 1, items 12 to 18	The day on which this Act receives the Royal Assent.	12 September 2005
12. Schedule 2	The day on which this Act receives the Royal Assent.	12 September 2005
13. Schedule 3	The day on which this Act receives the Royal Assent.	12 September 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

- (1) Each Act, and each regulation, 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.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

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## Part 2—Application and transitional provisions

### 4 Definitions

In this Part, unless the contrary intention appears:

*BCII Act* means the *Building and Construction Industry Improvement Act 2005*.

### 5 Chapter 5 of the BCII Act

- (1) Section 38 of the BCII Act applies to building industrial action that occurs after the commencement of that section (whether or not the action began before the commencement of that section).
- (2) Section 40 of the BCII Act applies to building industrial action that occurs after the commencement of that section (whether or not the action began before the commencement of that section).
- (3) Section 41 of the BCII Act applies to building industrial action that occurs after the commencement of that section (whether or not the action began before the commencement of that section).
- (4) Section 42 of the BCII Act applies to building industrial action that occurs after the commencement of that section (whether or not the action began before the commencement of that section).

### 6 Chapter 6 of the BCII Act

Section 47 of the BCII Act applies to contracts entered into at any time, whether before or after the commencement of that section.

### 7 Chapter 8 of the BCII Act

During the period of 3 years after the commencement of section 64 of the BCII Act, that section does not apply to an agreement that was made under a State industrial law before the commencement of that section.



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## 8 Records of the Building Industry Royal Commission

### *ABC Commissioner entitled to custody of certain original records of the Building Industry Royal Commission*

- (1) The ABC Commissioner is, by force of this section, entitled to the custody of records that:
- (a) are deemed, by subsection 22(2) of the *Archives Act 1983*, to be Commonwealth records for the purposes of that Act; and
  - (b) are documents or things that were produced to the Building Industry Royal Commission;

as if a direction to that effect were in force under subsection 22(3) of the *Archives Act 1983* at all times after the commencement of this section.

Note: This subsection applies to documents or things that were actually produced to the Building Industry Royal Commission. For the obligation to provide the ABC Commissioner with electronic copies of such documents or things, see subsection (4).

- (2) The Commonwealth must ensure that the records to which subsection (1) applies are provided or made available to the ABC Commissioner as soon as practicable after the commencement of this section.
- (3) If the ABC Commissioner obtains custody of a record under this section:
- (a) while the ABC Commissioner retains custody of the record, the ABC Commissioner must ensure that the record is looked after in a manner agreed between the ABC Commissioner and the Director-General; and
  - (b) if the record is owned by a person other than the Commonwealth, the ABC Commissioner may return the record to that person; and
  - (c) if the ABC Commissioner returns the record to its owner as mentioned in paragraph (b), the ABC Commissioner must give the Director-General a copy of the record; and
  - (d) subject to paragraph (b), the ABC Commissioner must transfer custody of the record to the Director-General as soon as practicable after the ABC Commissioner no longer needs the record, and in any case not later than 5 years after the commencement of this section.

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*ABC Commissioner to be provided with electronic copies of certain records of the Building Industry Royal Commission*

- (4) If:
- (a) the Commonwealth has an electronic version of a document or thing that was produced to the Building Industry Royal Commission (whether or not subsection (1) applies to the document or thing itself); and
  - (b) the electronic version is deemed, by subsection 22(2) of the *Archives Act 1983*, to be a Commonwealth record for the purposes of that Act;

the Commonwealth must ensure that an electronic copy of that electronic version, and of any associated objective coding data, is provided or made available to the ABC Commissioner as soon as practicable after the commencement of this section.

*Regulations may provide for ABC Commissioner's access to other records of the Building Industry Royal Commission*

- (5) The regulations may provide for the ABC Commissioner to have access to other records of, or relating to, the Building Industry Royal Commission (being records in the possession of the Commonwealth), including by:
- (a) providing that the ABC Commissioner is entitled to the custody of such records; or
  - (b) requiring such records, or electronic copies of such records (with or without objective coding data), to be provided or made available to the ABC Commissioner.

*Status of the transferred records*

- (6) The transferred records are taken:
- (a) to have been disclosed or given to the ABC Commissioner for the purposes of any of the ABC Commissioner's functions and powers; and
  - (b) to have the status of ***protected information*** for the purposes of section 65 of the BCII Act.
- (7) The ABC Commissioner may retain possession of a record of which the ABC Commissioner is entitled to custody under subsection (1) for so long as the ABC Commissioner considers it desirable to do so for the purposes of any of the ABC

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Commissioner's functions and powers, despite any request from the owner of the record for the return of the record.

*Section 6DD of the Royal Commissions Act 1902 continues to apply to the transferred records*

- (8) Nothing in this section affects the operation of section 6DD of the *Royal Commissions Act 1902* in relation to the transferred records.

Note: Section 6DD of the *Royal Commissions Act 1902* limits the admissibility in proceedings against a person of statements or disclosures made by the person to a Royal Commission, or of the fact that the person produced a document or thing to a Royal Commission.

*No loss of legal professional privilege*

- (9) A transferred record, or material in or referred to in a transferred record, does not cease to be the subject of legal professional privilege merely because:
- (a) the ABC Commissioner is entitled to the custody of the record under subsection (1), or under regulations made for the purposes of subsection (5); or
  - (b) the record, or an electronic copy of the record, is provided or made available to the ABC Commissioner under subsection (2) or (4), or under regulations made for the purposes of subsection (5).

- (10) In this section:

**ABC Commissioner** has the same meaning as in the BCII Act.

**Building Industry Royal Commission** means the Royal Commission that was commissioned, by Letters Patent dated 29 August 2001 as extended by Letters Patent dated 5 December 2002 and 23 January 2003, to inquire into certain matters relating to the building and construction industry.

**Director-General** has the same meaning as in the *Archives Act 1983*.

**record** has the same meaning as in the *Archives Act 1983*.

**transferred record** means:

- (a) a record that the ABC Commissioner has custody of:
  - (i) under subsection (1); or

- 
- (ii) under regulations made for the purposes of subsection (5); or
  - (b) an electronic copy of a document or thing provided or made available to the ABC Commissioner:
    - (i) under subsection (4); or
    - (ii) under regulations made for the purposes of subsection (5).

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## **Part 3—Miscellaneous**

### **9 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Schedule 1—Amendment of the Workplace Relations Act 1996

### 1 Subsection 4(1)

Insert:

*BCII Act* means the *Building and Construction Industry Improvement Act 2005*.

### 2 Paragraph 63(1)(d)

After “this Act”, insert “, the BCII Act”.

### 3 Subsection 66(1)

After “this Act”, insert “, the BCII Act”.

### 4 Paragraph 67(2)(a)

After “this Act”, insert “, the BCII Act”.

### 5 Paragraph 67(2)(b)

After “this Act”, insert “, the BCII Act”.

### 6 Paragraph 75(2)(a)

After “this Act”, insert “, the BCII Act”.

### 7 Subsection 124(1)

Repeal the subsection, substitute:

- (1) The Commission does not have power to deal with a claim for the making of any payment to employees in relation to a period during which those employees engaged, or engage, in:

- (a) industrial action; or
- (b) building industrial action that is constitutionally-connected action.

For this purpose, *building industrial action* and *constitutionally-connected action* have the same meanings as in Chapter 5 of the BCII Act.

### 8 Subsection 349(1)

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After “this Act”, insert “or the BCII Act”.

**9 Subsection 349(2)**

After “this Act”, insert “or the BCII Act (as the case requires)”.

**10 At the end of section 350**

Add “or the BCII Act”.

**11 Section 352**

After “this Act” (wherever occurring), insert “, the BCII Act”.

**12 Paragraph 357(1)(a)**

After “this Act”, insert “or the BCII Act”.

**13 At the end of subsection 422(1)**

Add “or the BCII Act”.

**14 Subsection 469(1)**

After “this Act”, insert “, the BCII Act”.

**15 After subsection 469(2A)**

Insert:

(2B) Subject to this Act, the BCII Act and any other Act, a party to a proceeding before the Court in a matter arising under the BCII Act may be represented only as provided by this section.

**16 Paragraph 469(8)(b)**

After “this Act”, insert “, the BCII Act”.

**17 Section 470**

After “this Act”, insert “, the BCII Act”.

**18 Subsection 471(1)**

After “this Act”, insert “, the BCII Act”.

## **Schedule 2—Amendment of other Acts**

### ***Administrative Decisions (Judicial Review) Act 1977***

#### **1 Paragraph (a) of Schedule 1**

Omit “or the *Workplace Relations Act 1996*”, substitute “, the *Workplace Relations Act 1996* or the *Building and Construction Industry Improvement Act 2005*”.

### ***Jurisdiction of Courts (Cross-vesting) Act 1987***

#### **2 After paragraph 4(4)(a)**

Insert:

(aa) the *Building and Construction Industry Improvement Act 2005*; or



## Schedule 3—Amendment of the Financial Management and Accountability Regulations 1997

### 1 Part 1 of Schedule 1 (after table item 137)

Insert:

- |       |  |   |
|-------|--|---|
| 137AA | Office of the Australian Building and<br>Construction Commissioner, comprising:  | Australian Building<br>and Construction<br>Commissioner |
|       | (a) the Australian Building and Construction<br>Commissioner; and  |   |
|       | (b) the Deputy Australian Building and<br>Construction Commissioners; and  |   |
|       | (c) the staff mentioned in subsection 25(1) of the<br><i>Building and Construction Industry<br/>Improvement Act 2005</i> ; and |   |
|       | (d) the consultants engaged under subsection<br>25(3) of that Act.   |   |

*See Note B*

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[*Minister's second reading speech made in—  
House of Representatives on 9 March 2005  
Senate on 16 August 2005*]

(26/05)

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