



Building and Construction Industry Improvement Amendment (Transition to Fair Work) Regulation 2012¹

Select Legislative Instrument 2012 No. 80

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Act 2012*, the *Fair Work (Building Industry) Act 2012* and the *Financial Management and Accountability Act 1997*.

Dated 24 May 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BILL SHORTEN
Minister for Employment and Workplace Relations for the
Minister for Finance and Deregulation

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Part 1 Preliminary

1.1 Name of regulation

This regulation is the *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Regulation 2012*.

1.2 Commencement

This regulation commences on the commencement of Schedule 1 to the *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Act 2012*.

1.3 Definitions

In this regulation:

2005 Act means the *Building and Construction Industry Improvement Act 2005* as in force immediately before the commencement of this regulation.

ABCC Office means the Office of the Australian Building and Construction Commissioner established under the 2005 Act.

Act means the *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Act 2012*.

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

Section 2.1

Part 2 Transitional matters**2.1 Inspectors and staff***ABC inspectors to become inspectors*

- (1) For subitem 1 (1) of Schedule 2 to the Act, an appointment of a person as an ABC inspector that is in force under subsection 57 (1) of the 2005 Act immediately before the commencement of this regulation has effect, for the remainder of the term of the appointment, as if it were an appointment of the person as an inspector under subsection 59 (1) of the FWBI Act.
- (2) An identity card issued under section 58 of the 2005 Act to a person covered by subsection (1) has effect, for the remainder of the person's term of appointment, as if it were an identity card issued under section 59B of the FWBI Act.
- (3) Subsection (2) does not apply if the person is issued with an identity card under section 59B of the FWBI Act.

Transferred staff

- (4) For subitem 1 (1) of Schedule 2 to the Act, subsection (5) applies if:
 - (a) a person assisting the ABC Commissioner, as mentioned in subsection 25 (1) of the 2005 Act, is moved, under paragraph 72 (1) (a) of the *Public Service Act 1999*, from the ABCC Office to the Office of the Fair Work Building Industry Inspectorate; and
 - (b) the employee's employment in the ABCC Office was subject to an enterprise agreement.
- (5) The enterprise agreement has effect after the move in relation to the employee's employment as if it had been made with the Director of the Fair Work Building Industry Inspectorate.

Section 2.3

2.2 Notices under subsection 52 (1) of 2005 Act to obtain information

- (1) For subitem 1 (1) of Schedule 2 to the Act, this section applies if:
 - (a) a notice under subsection 52 (1) of the 2005 Act was in effect immediately before the commencement of this regulation; and
 - (b) the time for complying with the requirements of the notice had not expired.
- (2) The notice is taken to have effect as if it were an examination notice issued in accordance with the FWBI Act.
- (3) The time for complying with the requirements of the notice is the time specified in the notice.

2.3 Proceedings

- (1) For subitem 1 (1) of Schedule 2 to the Act:
 - (a) if an application, proceeding, appeal or other action (a *proceeding*) was started under the 2005 Act, but not completed before the commencement of this regulation, the 2005 Act (other than Divisions 1 and 2 of Part 2 of Chapter 7) continues in force to the extent necessary to allow the proceeding to be dealt with; and
 - (b) if a proceeding could have been started under the 2005 Act in relation to conduct that happened before the commencement of this regulation, but was not started before the commencement of this regulation, the 2005 Act (other than Divisions 1 and 2 of Part 2 of Chapter 7) continues in force to the extent necessary to allow the proceeding to be started and dealt with.

Example of proceeding

A proceeding that would be started because of a person's failure to comply with a requirement to produce a document.

Section 2.4

(2) However:

- (a) if a proceeding is a building proceeding that is started after this regulation commences, and the circumstances mentioned in subsection 73 (1) of the FWBI Act happen after this regulation commences, section 73 of the FWBI Act applies to the proceeding; and
- (b) if a proceeding is a building proceeding that is started after this regulation commences, and the circumstances mentioned in subsection 73A (1) of the FWBI Act happen after this regulation commences, section 73A of the FWBI Act applies to the proceeding.

Note For the definition of **building proceeding**, see subsection 73 (4) of the FWBI Act.

(3) For subsection (1):

- (a) a reference in the 2005 Act to the ABC Commissioner, or a Deputy ABC Commissioner, is taken to be a reference to the Director under the FWBI Act; and
- (b) a reference in the 2005 Act to an ABC Inspector is taken to be a reference to an inspector under the FWBI Act; and
- (c) Parts 1 and 2 of Chapter 7 of the FWBI Act apply to the proceeding.

Note Parts 1 and 2 of Chapter 7 of the FWBI Act relate to the Director and inspectors under the FWBI Act.

2.4 Decisions

- (1) For subitem 1 (1) of Schedule 2 to the Act, this section applies if a decision:
 - (a) was made under the 2005 Act; and
 - (b) is in force immediately before the commencement of this regulation.

Examples of decisions

A declaration, delegation, direction, instruction, or court or tribunal order.

- (2) The decision is taken to continue in force as if it had been made under the FWBI Act.

Section 2.7

2.5 Previously acquired information

- (1) For subitem 1 (1) of Schedule 2 to the Act, this section applies if information was acquired under the 2005 Act in the course of the performance of functions or the exercise of powers by:
 - (a) the ABC Commissioner; or
 - (b) a Deputy ABC Commissioner; or
 - (c) an ABC Inspector; or
 - (d) a member of staff for subsection 25 (1) of the 2005 Act; or
 - (e) a person engaged as a consultant under subsection 25 (3) of the 2005 Act.
- (2) The information is taken to be information acquired by the Director under the FWBI Act in the course of the performance of the Director's functions or the exercise of the Director's powers.
- (3) If the information was obtained under section 52 of the 2005 Act, the information is taken to be protected information for section 65 of the FWBI Act.

2.6 Annual report

- (1) For subitem 1 (1) of Schedule 2 to the Act, the Director must include, in the first annual report prepared under section 14 of the FWBI Act, a report that complies with section 14 of the 2005 Act and covers the period:
 - (a) commencing on the last 1 July before the commencement of this regulation; and
 - (b) ending immediately before the commencement of this regulation.
- (2) However, subsection (1) does not apply if this regulation commences on 1 July in a year.

2.7 References to 2005 Act

- (1) For subitem 1 (1) of Schedule 2 to the Act, this section applies to a document (other than an Act) that was in force immediately before the commencement of this regulation.

Section 2.7

Examples of documents

A contract, enterprise agreement, identity card or memorandum of understanding.

- (2) A reference in the document to the 2005 Act may, if the context permits, be taken to be a reference to the FWBI Act.
- (3) A reference in the document to a particular provision of the 2005 Act may, if the context permits, be taken to be a reference to a provision of the FWBI Act, all or part of which corresponds, or substantially corresponds, to the provision.
- (4) A reference in the document to the ABCC Office may, if the context permits, be taken to be a reference to the Office of the Fair Work Building Industry Inspectorate under the FWBI Act.
- (5) A reference in the document to the ABC Commissioner or a Deputy ABC Commissioner may, if the context permits, be taken to be a reference to the Director under the FWBI Act.
- (6) A reference in the document to an ABC Inspector may, if the context permits, be taken to be a reference to an inspector under the FWBI Act.

2.8 Assets and liabilities

- (1) For subitem 1 (1) of Schedule 2 to the Act, the assets and liabilities of the ABCC Office are transferred to the Office of the Fair Work Building Industry Inspectorate.
- (2) The Director must make the arrangements that are necessary to give effect to the transfer.

Example

The Director must arrange for money in an account in the name of the ABCC Office to be transferred into an account opened in the name of the Office of the Fair Work Building Industry Inspectorate.

Part 3 Amendment of Acts and regulations

3.1 Amendment of Acts

For subitem 2 (1) of Schedule 2 to the Act:

- (a) Schedule 1 amends the *Administrative Decisions (Judicial Review) Act 1977*; and
- (b) Schedule 2 amends the *Fair Work (Registered Organisations) Act 2009*; and
- (c) Schedule 3 amends the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

3.2 Amendment of regulations

- (1) Schedule 4 amends the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*.
- (2) Schedule 5 amends the *Financial Management and Accountability Regulations 1997*.

Schedule 1 Amendment of *Administrative Decisions (Judicial Review) Act 1977*

(paragraph 3.1 (a))

[1] Schedule 1, paragraph (a)

omit

or the *Building and Construction Industry Improvement Act 2005*;

insert

, the *Building and Construction Industry Improvement Act 2005* or the *Fair Work (Building Industry) Act 2012*;

**Schedule 2 Amendments of *Fair Work
(Registered Organisations)
Act 2009***

(paragraph 3.1 (b))

**[1] Section 6, definition of *Australian Building and
Construction Commissioner***

omit

**[2] Section 6, definition of *Australian Building and
Construction Inspector***

omit

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

substitute

- (iii) the Director, within the meaning of subsection 4 (1) of the *Fair Work (Building Industry) Act 2012*;
- (iv) a Fair Work Building Industry Inspector, within the meaning of subsection 4 (1) of the *Fair Work (Building Industry) Act 2012*;

**Schedule 3 Amendment of *Jurisdiction of
Courts (Cross-vesting) Act
1987***

(paragraph 3.1 (c))

[1] Paragraph 4 (4) (aa)

omit

[2] After paragraph 4 (4) (ab)

insert

(aba) the *Fair Work (Building Industry) Act 2012*; or

Schedule 4 **Amendments of *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005***

(subsection 3.2 (1))

[1] Regulation 1

omit

Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005

insert

Fair Work (Building Industry—Accreditation Scheme) Regulations 2005

[2] Regulation 3, definition of Act

omit

Building and Construction Industry Improvement Act 2005

insert

Fair Work (Building Industry) Act 2012

Schedule 5 **Amendments of *Financial Management and Accountability Regulations 1997***

(subsection 3.2 (2))

[1] Schedule 1, item 167

omit

[2] Schedule 1, after item 170

insert

- 170AA Office of the Fair Work Building Industry Director
Inspectorate, comprising:
- (a) the Director; and
 - (b) the staff mentioned in subsection 26K (1) of the *Fair Work (Building Industry) Act 2012*; and
 - (c) the consultants engaged under section 26M of that Act.

See Note B

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.