



Industry Reform under the Building and Construction Industry Improvement Act 2005

The Office of the Australian Building and Construction Commissioner (ABCC) commenced operations on 1 October 2005. It absorbed the Building Industry Taskforce which operated from 1 October 2002. Under the *Building and Construction Industry Improvement Act 2005* (BCII Act), the ABCC has several powers. Its purpose is to reform conduct in the building and construction industry.

INDUSTRIAL ACTION

Unlawful industrial action in the building industry now incurs a maximum penalty of up to \$22,000 for individuals and up to \$110,000 for a body corporate. Types of unlawful industrial action that contravene the BCII Act include:

- joint action taken with one or more persons who are not negotiating parties to a proposed building agreement
- action taken for the purpose of supporting claims for employees covered by a building collective agreement, before the nominal expiry date of the agreement
- action taken for a purpose of furthering industrial objectives or disrupting work, imposing bans or restrictions on work practices that conflict with those set out by an industrial instrument, a law or court/body of the Commonwealth or a state
- action that is not protected action under the *Fair Work Act 2009* (FW Act).

For more information refer to the fact sheet 'Unlawful Industrial Action in the Building and Construction Industry'.

COMPLIANCE POWERS

Under the BCII Act, the ABC Commissioner and the Deputy ABC Commissioner/s can exercise compliance powers to compel people to provide information, produce documents, and/or attend and answer questions at an examination.

Information obtained or derived from what is provided cannot be used in court against the individual who provides it unless they are prosecuted for:

- failing to comply with a notice to produce
- knowingly providing false/misleading information or documents
- obstructing a Commonwealth public official.

Individuals who provide information, answers, or documents to the ABC Commissioner in good faith receive a broad exemption from civil liability.

A failure to attend an examination, provide information or produce documents as required by a compliance notice can incur a penalty of 6 months imprisonment.

For more information refer to the fact sheet 'Compliance powers of the Australian Building and Construction Commissioner'.

CIVIL PENALTY PROVISIONS

Civil penalty provisions under the BCII Act include:

- coercion of employers in relation to the engagement and allocation of responsibilities to contractors or employees
- coercion or undue pressure on a person to make, vary, or terminate a building enterprise agreement
- coercion in relation to superannuation
- discrimination against an employer in relation to the type of industrial agreement they have
- unlawful industrial action.

For more information refer to the fact sheet 'Freedom of Association in the Building and Construction Industry'.

GREATER PENALTIES

The BCII Act provides the following increased penalties:

- A person who contravenes the BCII Act may incur a maximum penalty of up to \$22,000.
- A corporation that contravenes the BCII Act may incur a maximum penalty of up to \$110,000.
- Strike pay breaches now incur a maximum penalty of up to \$6,600 for an individual or up to \$110,000 for a body corporate. These penalties apply to:
 - any person who makes a demand for strike pay
 - an employee who receives strike pay
 - an employer who pays strike pay.

In addition, employers, employees and unions who breach the BCII Act are liable to:

- pay compensation for damage caused by the breach
- give up assets for sequestration
- be held in contempt of court for failing to comply with an injunction, including an interim injunction.

NEED TO INFORM THE ABC COMMISSIONER

All building industry participants must:

- notify the ABC Commissioner of any court application they make or are involved in that arises under the BCII Act or the FW Act or the *Independent Contractors Act 2006* where the proceedings relate to building work, and
- also notify the ABC Commissioner of the outcome of their application.

Failure to notify the ABC Commissioner incurs a penalty of up to \$550 for an individual or up to \$2,750 for a body corporate.

For more information refer to the fact sheet 'Power to Intervene in Cases'.

NATIONAL CODE

All building industry participants who work on projects funded by the Australian Government must comply with the National Code of Practice for the Construction Industry.

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



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