

The ABCC and Construction Industry Taskforce

14 February 2023, **BN2**

The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth) (SJBPA Act):

- abolishes the Australian Building and Construction Commission (**ABCC**), with the Fair Work Ombudsman (**FWO**) now regulating the industry under the *Fair Work Act 2009 (Cth)* (**FWA**), as it would any other industry, and
- establishes a National Industry Construction Forum to advise Government on matters in the industry.

Abolition of the ABCC

After a short transitional period that commenced 7 December 2022, the ABCC will be fully abolished on 6 February 2023.

The effect of its abolition will be for the FWO to oversee the commercial building and construction industry under the FWA, in the same way it handles any other industries or sectors.

The FWO will take over from the ABCC and any legal or FWC proceedings it had on foot prior to the transition time of 7 December 2022. This includes interventions, submissions and other applications the ABCC may have made. The FWO has the option of discontinuing any proceedings. Similarly, compliance notices issued by the ABCC prior to the transition time will continue to have effect as if they were issued by a Fair Work Inspector (but only to the extent they concern matters that a Fair Work Inspector could issue a compliance note about), as will rights to review such notices. Records will also be transferred over from the ABCC to the FWO.

Any information or evidence obtained by the ABCC in the performance of functions or exercises of its statutory power may be used by the FWO or a Fair Work Inspector in connection with the performance of their functions or powers. However, the rules regarding “protected information” that was disclosed or obtained under examination prior to the transition time continue to apply, including restrictions on disclosure.

The handling of investigations by the ABCC prior to the transition period is slightly different. If the investigation was into a suspected contravention of the *FWA, the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* or a Commonwealth industrial instrument then the investigation *may* be continued by the FWO.

However, if the investigation was based on a suspected contravention of the *Building and Construction Industry (Improving Productivity) Act 2016*, the *Independent Contractors Act* or the former ABCC Building Code, then those investigations are discontinued at the time of transition.

Taken together, the provisions provide for a reasonably short shadow to be cast by the ABCC over contemporary industrial relations. Existing legal proceedings remain on foot in their entirety unless or until some active steps are taken by the FWO to amend or abandon them and the FWO's investigation of the ABCC's legacy matters will be coloured by the ABCC's case selection bias, however new proceedings cannot be brought in respect of contraventions of the *Building and Construction Industry (Improving Productivity) Act 2016*.

The National Construction Industry Taskforce

The SJBPA Act also establishes the National Construction Industry Forum which will be operative from 1 July 2023.

The Forum aims to provide advice to the Government in relation to work in the building and construction industry, including matters such as workplace relations, skills and training, safety, productivity, diversity and gender equity and industry culture. Advice about particular matters may be sought by the government or agreed to be given between members of the Forum.

The Forum will be chaired by the Minister for Employment and Workplace Relations and also include the Ministers for Infrastructure, Transport, Regional Development and Local Government and Industry and Science. An equal number of union and employer representatives must be appointed and other persons may also be appointed. Appointments are for a maximum term of 3 years. The Chair may invite persons or organisations to participate in a meeting.ⁱ

ⁱ *The information in this document does not constitute legal advice and should not be taken to include all requirements or obligations relevant to the entitlement.*