

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument 2005 No. 204**

Issued by the authority of the Minister for Employment and Workplace Relations.

*Building and Construction Industry Improvement Act 2005*

### ***Building and Construction Industry Improvement Regulations 2005***

The *Building and Construction Industry Improvement Act 2005* (the Act) provides for improved workplace relations practices in the building and construction industry in the federal jurisdiction.

Subsection 78(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides 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.

Regulations give effect to the Act by prescribing certain authorised persons and setting out various forms of identifications, forms and notices required by the Act.

#### Chapter 3

Chapter 3 of the Act provides for a building code to be issued. Section 28(2) provides that the ABC Commissioner may direct a person required to comply with the Building Code to provide a written report on compliance by that person with the Building Code. Regulation 3.1 sets out the form of a written report to the ABC Commissioner in compliance with a request under subsection 28(2).

#### Chapter 4

Chapter 4 of the Act sets out the functions and powers of the Office of the Federal Safety Commissioner and provides for the establishment of an occupational health and safety accreditation scheme to be administered by the Federal Safety Commissioner. Paragraph 32(1)(c) of the Act provides that the Federal Safety Commissioner may delegate all or any of his or her powers and functions to a person prescribed by the regulations. Regulations prescribe an Australian Public Service Officer engaged by the Office of the Federal Safety Commissioner as a prescribed person.

#### Chapter 7

Chapter 7 of the Act provides for an investigatory and enforcement regime and sets out the compliance powers of the ABC Commissioner, ABC Inspectors and Federal Safety Officers. The Regulations prescribe the form of identification for the ABC Commissioner, ABC Inspectors, the Federal Safety Commissioner and Federal Safety Officers and the form of notice to be given where an ABC Inspector or a Federal

Safety Officer takes a sample of any goods or substances or requires production of a document.

The Regulations require a building industry participant to notify the ABC Commissioner of any application made to a court under the Act or the *Workplace Relations Act 1996* and the outcome of the application.

The Regulations impose civil penalties for contravention of the regulations.

The Regulations prescribe the form and content of certain Notices required to be given under the Act. Extensive consultation was undertaken with building industry participants before the introduction of the Building and Construction Industry Improvement Bill 2003 and the Act.

Details of the Regulations are set out in the Attachment.

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on 1 October 2005.

**ATTACHMENT**

**Details of the *Building and Construction Industry Improvement Regulations 2005***

To assist the reader and for ease of amendment the first digit of each Regulation indicates the Chapter of the Act containing the corresponding provision.

Regulation 1.1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Building and Construction Industry Improvement Regulations 2005*.

Regulation 1.2 – Commencement

This regulation provides for the Regulations to commence on 1 October 2005.

Regulation 1.3 – Definitions

This regulation sets out definitions.

Regulation 3.1 – Reporting on compliance with Code

Regulation 3.1 provides that the notice issued by the ABC Commissioner directing a person to provide a written report about the extent to which the person has complied with the Building Code in respect of that building work, must be in the form set out in Schedule 3.1 of the Regulations.

Regulation 4.1 – Delegation by Federal Safety Commissioner

Regulation 4.1 provides that an APS employee engaged for the purposes of the Office of the Federal Safety Commissioner is a prescribed person for the purposes of paragraph 32(1)(c) of the Act.

Regulation 4.2 – Accreditation scheme – prescribed contracts

Regulation 4.2 provides that a contract entered into before an accreditation scheme is prescribed under subsection 35(1) of the Act, is a prescribed contract for the purposes of subsection 35(4) of the Act.

Regulation 7.1 – Penalties – eligible persons

Regulation 7.1 provides that the Federal Safety Commissioner and a Federal Safety Officer are prescribed as eligible persons for the purposes of paragraph 49(6)(d) of the Act, in relation to occupational health and safety matters.

Regulation 7.2 – Notice requiring production of documents

Regulation 7.2 provides that the notice requiring a person to produce documents to the ABC Commissioner or assistant under section 52 of the Act, must be in the form set out in Schedule 7.1 of the Regulations.

Regulation 7.3 – Identity cards – ABC Inspectors and ABC Commissioner

Regulation 7.3 sets out the information to be shown on the identity cards issued to the ABC Commissioner and an ABC Inspector. The identity card must include a recent photograph of the cardholder.

Regulation 7.4 – Taking samples of goods and substances – ABC Inspectors

Regulation 7.4 sets out the process before an ABC Inspector may take a sample of any goods or substances from premises entered by that ABC Inspector for compliance purposes. The form of the notice to be issued by an ABC Inspector must be in the form set out in Schedule 7.2 of the Regulations.

Regulation 7.5 – Notice requiring production of document – ABC Inspectors

Regulation 7.5 provides that the notice to be issued by an ABC Inspector requiring a person to produce a document to the ABC Inspector for the purposes of subsection 59(6) of the Act, must be in the form set out in Schedule 7.3 of the Regulations.

Regulation 7.6 – Identity cards – Federal Safety Officers and Federal Safety Commissioner

Regulation 7.6 sets out the information to be shown on the identity cards issued to the Federal Safety Commissioner and a Federal Safety Officer. The identity card must include a recent photograph of the cardholder.

Regulation 7.7 – Taking samples of goods and substances – Federal Safety Officers

Regulation 7.7 sets out the process before a Federal Safety Officer may take a sample of any goods or substances from premises entered by that Federal Safety Officer for compliance purposes. The form of the notice to be issued by a Federal Safety Officer must be in the form set out in Schedule 7.4 of the Regulations.

Regulation 7.8 – Notice requiring production of document – Federal Safety Officers

Regulation 7.8 provides that the notice to be issued by a Federal Safety Officer requiring a person to produce a document to the Federal Safety Officer for the purposes of subsections 62(6) and 63(6) of the Act, must be in the form set out in Schedule 7.5 of the Regulations.

Regulation 8.1 – Notice of application to court (Act, s 78 (2) (d))

Subregulation 8.1(1) requires a building industry participant to notify the ABC Commissioner of an application made to a court under the Act or the *Workplace Relations Act 1996* by, or involving, the building industry participant.

Subregulation 8.1(2) sets out the information which must be provided by a building industry participant to the ABC Commissioner about an application referred to in subregulation 8.1(1).

Subregulation 8.1(3) requires a building industry participant to notify the ABC Commissioner of the outcome of an application referred to in subregulation 8.1(1).

Subregulation 8.1(4) sets out the information that a building industry participant must provide to the ABC Commissioner about the outcome of an application referred to in subregulation 8.1(1).

Subregulation 8.1(5) provides that a civil penalty will apply if a building industry participant does not comply with Regulation 8.1.

Subregulation 8.1(6) sets out the maximum penalty for non-compliance with Regulation 8.1.

Schedule 3.1 – Notice directing industry participant to report on compliance with Code

Schedule 3.1 sets out the form of the notice directing a person to provide a written report to the ABC Commissioner on compliance with the Building Code as provided in Regulation 3.1.

Schedule 7.1 – Notice requiring production of documents – ABC Commissioner

Schedule 7.1 sets out the form of the notice requiring production of documents to the ABC Commissioner as provided in Regulation 7.2.

Schedule 7.2 – Notice of taking of samples of goods and substances – ABC Inspectors

Schedule 7.2 sets out the form of the notice to be issued by an ABC Inspector before taking a sample of any goods or substances as provided in Regulation 7.4.

Schedule 7.3 – Notice requiring production of document – ABC Inspectors

Schedule 7.3 sets out the form of the notice requiring production of documents to an ABC Inspector as provided in Regulation 7.5.

Schedule 7.4 – Notice of taking of samples of goods and substances – Federal Safety Officers

Schedule 7.4 sets out the form of the notice to be issued by a Federal Safety Officer before taking a sample of any goods or substances as provided in Regulation 7.7.

Schedule 7.5 – Notice requiring production of document – Federal Safety Officers

Schedule 7.5 sets out the form of the notice requiring production of documents to a Federal Safety Officer as provided in Regulation 7.8.