

Public Works Committee Amendment Regulations 2004 (No. 1)

2004 No. 178

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 178

Issued by the Authority of the Parliamentary Secretary to the Minister for Finance and Administration

Public Works Committee Act 1989

Public Works Committee Amendment Regulations 2004 (No. 1)

Section 40 of the *Public Works Committee Act 1969* (the Act) provides in part that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Section 5 of the Act provides that a regulation may declare a work to be a public work.

Section 5 of the Act defines a work to mean an architectural or engineering work, and includes:

- (a) the construction, alteration, repair, refurbishment or fitting out of buildings and other structures;
- (b) the installation, alteration or repair of plant and equipment design to be used in, or in relation to, the provision of services for buildings and other structures;
- (c) the undertaking, construction, alteration or repair of landscaping and earthworks (whether or not in relation to buildings and other structures);
- (d) the demolition, destruction, dismantling or removal of:
 - i. buildings and other structures;
 - ii. plant and equipment falling within paragraph (b); and
 - iii. earthworks;
- (e) the clearing of land and the development of land for use as urban land or otherwise; and
- (f) any other matter declared by the regulations to be a work; but does not include:
- (g) the production of, or anything done in relation to, intangible things;
- (h) the production of, or anything done in relation to, movable property unless the work is, under regulations, a movable work to which this Act applies;
- (j) the installation, alteration or repair of plant or equipment where the plant or equipment:
 - i is not designed to be used in, or in relation to, the provision of services for a building or other structure; and

ii is not necessary or desirable to make a building or structure a complete building or structure; and

(k) any other matter declared by the regulations not to be a work.

Section 5 of the Act defines a public work to mean:

(a) a work:

i. that is proposed to be carried out by or for the Commonwealth, either within or outside Australia; and

ii. in respect of the carrying out of which public moneys which are appropriated by the Parliament are proposed to be expended by the Commonwealth;

(b) a work:

i. that is proposed to be carried out, either within or outside Australia, by or for an authority of the Commonwealth to which this Act applies; and

ii. in respect of the carrying out of which moneys appropriated by the Parliament, or moneys of the authority, are proposed to be expended by the authority;

(c) a work:

i. that is proposed to be carried out, either within or outside Australia, otherwise than by or for the Commonwealth or an authority of the Commonwealth for which this Act applies;

ii. of which the Commonwealth, or an authority of the Commonwealth to which this Act applies, is proposed to become the owner, and

iii. in relation to which moneys appropriated by the Parliament are proposed to be expended by the Commonwealth or an authority of the Commonwealth; or

(ca) a work declared by the regulations to be a public work;

but does not include:

(d) a work that is proposed to be carried out within the Parliamentary zone;

(e) a work that is proposed to be carried out by or for the Commonwealth by way of assistance to an overseas country; or

(f) a work declared by the regulations not to be a public work.

Subsection 18(8) of the Act requires that all public works for the Commonwealth, which are estimated to cost more than \$6 million (with certain exceptions), cannot commence unless the work has been referred to the Public Works Committee.

The purpose of the proposed Regulations is to amend the *Public Works Committee Regulations 1969*, (the Principal Regulations) to provide that a work includes a temporary and/or demountable building or structure. The Principal Regulations currently do not expand on the definitions of 'work' or 'public work', as set out in Section 5 of the Act.

The Public Works Committee has expressed concern about the practices agencies sometimes adopt, seemingly to avoid the obligation of referring construction projects to it. The Committee welcomes the proposed Regulations as a measure which will facilitate appropriate scrutiny of Commonwealth expenditure.

The proposed Regulations will provide that a temporary building or structure, or a demountable building or structure, is declared as a work for the purposes of paragraph (f) of the definition of work in Section 5 of the Act. This will mean that it would be taken into account when determining whether the work meets the threshold for referral to the Public Works Committee.

Paragraph 40(2)(b) of the Act provides that the Governor-General shall take into consideration any relevant recommendations made to the Minister by the Public Works Committee, before making regulations for the purposes of paragraph (ca) or (f) of the definition of public work in subsection 5(1) and paragraph (f) or (k) of the definition of work in subsection 5(1).

The Regulations will commence on the date of their notification in the *Gazette*.