

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 306

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

Building and Construction Industry Improvement Act 2005

Building and Construction Industry Improvement Amendment Regulations 2005 (No. 1)

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 purpose of the Regulations is to amend provisions of the *Building and Construction Industry Improvement Regulations 2005* (the Principal Regulations), to prescribe the form and content of certain Notices required to be given under the Act.

The Regulations also have the effect of ensuring that compliance with the National Code of Practice for the Construction Industry 1997 (the National Code) and guidelines issued under the National Code does not constitute discrimination in relation to an industrial instrument as prohibited by section 45(1) of the Act.

- Subsection 45(1) prohibits a person from discriminating against an employer on the basis that the employment of its employees is covered by or proposed to be covered by a particular kind of industrial instrument.
- Subsection 45(3) provides that the prohibition does not apply to prevent conduct that is engaged in solely to encourage the inclusion of particular eligible conditions in an industrial instrument.
- The Regulations prescribe any condition relating to achieving compliance with the National Code and guidelines as an eligible condition.

The Regulations also make other minor amendments to the Principal Regulations to provide greater clarity.

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 purpose of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Details of the *Building and Construction Industry Improvement Amendment Regulations 2005 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Building and Construction Industry Improvement Amendment Regulations 2005 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of *Building and Construction Industry Improvement Regulations 2005*

Regulation 3 provides that the *Building and Construction Industry Improvement Regulations 2005* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 – Regulation 4.2

The amendment omits regulation 4.2 of the Principal Regulations. This amendment is consequential to the establishment an Occupational Health and Safety accreditation scheme by the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*.

Item 2 – After regulation 7.8

Item 6 – Schedule 7.1

Item 7 – After Schedule 7.5

Chapter 7 of the *Building and Construction Industry Improvement Act 2005* (the Act) provides for an investigatory and enforcement regime and sets out the compliance powers of the Australian Building and Construction (ABC) Commissioner, ABC Inspectors and Federal Safety Officers. The amendments prescribe the form of notice to be given where an ABC Inspector requires production of a document, information or attendance to answer questions in relation to an investigation.

Regulation 7.9 – Notice requiring information

Regulation 7.10 – Notice to attend and answer questions

Item 2 inserts regulations 7.9 and 7.10. Regulation 7.9 provides that the notice requiring a person to give information to the ABC Commissioner or an assistant, for the purposes of paragraph 52(1)(c) of the Act, must comply with Schedule 7.6 of the Regulations. Regulation 7.10 provides that the notice requiring a person to attend and answer questions before the ABC Commissioner or an assistant, for the purposes of paragraph 52(1)(e) of the Act, must comply with Schedule 7.7 of the Regulations.

Schedule 7.1 – Notice requiring production of documents

Item 6 substitutes existing Schedule 7.1 ‘Notice requiring production of documents – ABC Commissioner’ with a new Schedule 7.1 ‘Notice requiring production of documents’. Schedule

7.1 sets out the form of the notice requiring production of documents to the ABC Commissioner or an assistant, as provided for by paragraph 52(1)(d) of the Act and regulation 7.2.

Schedule 7.6 – Notice requiring information

Schedule 7.7 – Notice to attend and answer questions

Item 7 inserts Schedules 7.6 and 7.7. Schedule 7.6 sets out the form of the notice to be issued by an ABC Inspector before requiring a person to give information as provided for by paragraph 52(1)(c) of the Act and regulation 7.9. Schedule 7.7 sets out the form of the notice requiring a person to attend and answer questions as provided for by paragraph 52(1)(e) of the Act and regulation 7.10.

Item 3 – Subregulation 8.1 (1)

Item 4 – Subregulation 8.1 (3)

Items 3 and 4 amend subregulation 8.1 to clarify that a building industry participant is required to notify the ABC Commissioner, as soon as practicable, of any application made to a court under the Act or the *Workplace Relations Act 1996* and the outcome of the application.

Item 5 – After regulation 8.1

Chapter 6 of the Act deals with coercion and discrimination. Paragraph 45(1)(a) prohibits a person from discriminating against an employer on the basis that the employment of its employees is covered by or proposed to be covered by a particular kind of industrial instrument. Subsection 45(3) provides that the prohibition on discrimination does not apply to prevent conduct that is engaged in solely for the purpose of encouraging the employer to include eligible conditions in an industrial instrument covering its employees.

The definition of *eligible condition* in section 4 of the Act includes any matter prescribed by regulation. Item 5 prescribes any condition relating to achieving compliance with the National Code of Practice for the Construction Industry 1997 (National Code) and guidelines issued under the National Code for the purpose of paragraph 45(3)(b) of the Act.

Regulation 8.2 means that the prohibition on discriminating against an employer does not apply to prevent conduct by a person that is engaged in solely to encourage an employer to include a condition in an agreement relating to compliance with the National Code and guidelines.