

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 127

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

Building and Construction Industry Improvement Act 2005

Building and Construction Industry Improvement (Accreditation Scheme) Amendment Regulations 2007 (No. 1)

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

Section 78 of the Act provides, in part, that the Governor-General may make regulations 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 *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005* (the Accreditation Regulations) established an Occupational Health and Safety (OHS) accreditation scheme, administered by the Federal Safety Commissioner (FSC), for persons who wish to enter into building contracts with the Commonwealth or Commonwealth authorities. The scheme is known as the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme (the Scheme). The *Building and Construction Industry Improvement Regulations 2005* relate to any matters under the Act other than the Scheme.

The Regulations amend the Accreditation Regulations to modify the application of the Scheme in circumstances where the contracting person is not the actual builder.

Subsection 35(4) of the Act provides that the Commonwealth or Commonwealth authority must not enter into a Commonwealth building contract with persons who are not accredited under the Scheme. This requirement does not apply to contracts prescribed by the Accreditation Regulations.

Subsection 35(4) of the Act formerly operated to require that the Commonwealth or Commonwealth authority ensured that the person who it entered into a Commonwealth building contract with was accredited under the Scheme. However, in situations where the person who entered into a contract with the Commonwealth or Commonwealth authority did not perform the building work, but instead arranged for the building work to be carried out by a third party, the Scheme, in its previous form, did not operate to require that third party to be accredited.

The Regulations rectify this, by providing that a person does not necessarily have to be accredited under the Scheme when they agree to enter into a contract, provided that the contract ensures that the person only engages accredited persons to carry out that building work and the contract is approved by the Federal Safety Commissioner before it is signed on behalf of the Commonwealth or a Commonwealth authority. These changes ensure that

persons such as developers and consortiums, who do not undertake building work, do not require Scheme accreditation.

Section 30 of the Act lists the functions of the Federal Safety Commissioner. Paragraph 30(h) provides that the Federal Safety Commissioner has the functions conferred by the Accreditation Regulations. The Regulations also provide the Federal Safety Commissioner with an additional function of approving contracts as mentioned above.

Consultation in relation to the Regulations was undertaken with the Office of the Federal Safety Commissioner.

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

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

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