

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 304

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 2007 (No. 2)

The *Building and Construction Industry Improvement Act 2005* (the Principal Act) provides for improved workplace relations practices in the building and construction industry. The Principal Act and the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005* (the Accreditation Scheme Regulations) established the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme (the Scheme), administered by the Federal Safety Commissioner, for persons who wish to enter into building contracts with the Commonwealth or Commonwealth authorities.

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 Amendments (OHS) Act 2007* (the Amendment Act), which was recently given Royal Assent, made a number of amendments to the Principal Act. The amendments include, among other things: extending the application of the Scheme to cover situations where building work is indirectly funded by the Commonwealth, ensuring that persons are accredited under the Scheme at the time of entering into a contract and while the building work is being carried out, and extending the accreditation requirement to Commonwealth funding arrangements beyond those currently contemplated by the legislation.

The *Building and Construction Industry Improvement Regulations 2005* (the Principal Regulations) set out certain matters necessary to give effect to the Principal Act, including matters relating to the disclosure of certain information about accredited persons.

The Principal Regulations allow designated officials (as defined in the Principal Act) to record and disclose certain information to an Agency or Commonwealth authority for the purpose of assessing the suitability of accredited persons when entering into Commonwealth building contracts. The disclosure of such information about non-accredited persons, such as companies who have applied for accreditation but have not yet been accredited, is not permitted.

These Regulations amend the Principal Regulations by extending the disclosure provisions to enable protected information to be disclosed for the purpose of assessing the suitability of those who have applied to be accredited under the Scheme. These Regulations also remove the reference to Commonwealth building contracts consequential to the amendments contained in the Amendment Act.

Extensive consultation was undertaken by Office of the Federal Safety Commissioner in regards to the developing of the Amendment Act. As these amendments were minor and machinery in nature no further consultation was undertaken.

Details of these Regulations are set out in the Attachment.

These Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

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

ATTACHMENT

Details of the *Building and Construction Industry Improvement Amendment Regulations 2007 (No. 2)*

Regulation 1 – Name of Regulations

Regulation 1 provides that the title of the Regulations is the *Building and Construction Industry Improvement Amendment Regulations 2007 (No. 2)*.

Regulation 2 – Commencement

Regulation 2 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* are to be amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Subregulation 4.1(2)

Subregulation 4.1(2) expands current regulation 4.1 to provide the Federal Safety Commissioner (FSC) with an additional function to allow for the recording and disclosing of information regarding the Occupational Health and Safety (OHS) performance of persons who have applied for accreditation under the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme. Disclosure of information under this additional function would need to be made in accordance with regulations 8.1A and 8.1B.

Item [2] – Subregulation 8.1A(2)

Subregulation 8.1A(2) expands current regulation 8.1A to enable designated officials as defined in section 65 of the *Building and Construction Industry Improvement Act 2005* (the Principal Act) to disclose protected information for the purposes of assessing the suitability of persons who have applied to be accredited, to undertake future Commonwealth building work.

The ability to disclose protected information in these situations are in addition to the circumstances which permit disclosure under subsection 65(3) of the Principal Act.