

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 56

Issued by the authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations

Building and Construction Industry Improvement Act 2005

Building and Construction Industry Improvement Amendment Regulations 2011 (No. 1)

The *Building and Construction Industry Improvement Act 2005* (the Act) permits the Australian Building and Construction Commissioner (the Commissioner) to issue a notice requiring a person to appear before the Commissioner, or an assistant, and answer questions relevant to an investigation. Schedule 7.7 to the *Building and Construction Industry Improvement Regulations 2005* (the Principal Regulations) provides a template for the notice.

Subsection 78(1) of the Act provides that the Governor-General may make regulations prescribing matters either 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. Paragraph 78(2)(c) of the Act provides that the Governor-General may make regulations which make provision for the form of notices that are required or permitted to be given under the Act.

These Regulations make a minor amendment to address a criticism from the South Australian Magistrates Court in *Commonwealth Director of Public Prosecutions v Ark Tribe* (24 November 2010) that a notice issued in the form specified by Schedule 7.7 to the Principal Regulations did not meet the requirements of paragraph 52(1)(e) of the Act which provides that a notice include the person before whom the recipient must appear.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. They commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Regulations have no compliance cost to business or impact on business and individuals or the economy.

Australian Building and Construction Commissioner was consulted during the development of these Regulations.