

FEDERAL SAFETY COMMISSIONER (ACCREDITATION SCHEME)
AMENDMENT RULES 2023

EXPLANATORY STATEMENT

Issued by authority of the Minister for Employment and Workplace Relations

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Federal Safety Commissioner Act 2022* (the Act) establishes a scheme for the promotion of work health and safety in relation to building work undertaken by a constitutional corporation, the Commonwealth or a corporate Commonwealth entity.

The *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (the Rules) prescribe:

- the criteria and process for obtaining and maintaining accreditation;
- the conditions that apply to all accredited persons;
- the circumstances in which accreditation may be made subject to further conditions, or may be suspended or revoked, and the rights of review available in such cases; and
- the building work to which the Accreditation Scheme does not apply.

The Rules also:

- clarify which members of joint ventures are required to give undertakings to the Federal Safety Commissioner (the FSC) prior to entering a contract for building work;
- prescribe additional types of building work to which the Accreditation Scheme does not apply;
- confirm compliance with the National Construction Code performance requirements in relation to building materials is a consideration in assessing an application for accreditation and a condition that applies to all accreditations;
- clarify the process for undertaking audits in relation to persons who are not constitutional corporations, the Commonwealth or a corporate Commonwealth entity; and
- update terminology and cross references to reflect those in the Act.

Subsection 120(1) of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make rules the power shall, unless the contrary intention appears, be construed as

including a power to repeal, rescind, revoke, amend or vary the rules.

On 6 February 2023, Division 2 of Part 3 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (SJBPA Act) came into force. This amended the former *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIPA Act) to abolish the Australian Building and Construction Commission (ABCC). The SJBPA Act renamed the BCIIPA Act to the *Federal Safety Commissioner Act 2022* to reflect the ABCC's abolition.

The *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023* (Amendment Rules) are made for the purpose of reflecting the new name of the Act.

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

Details of the Amendment Rules are set out in Attachment A.

CONSULTATION

No consultation was undertaken in the preparation of the Amendment Rules. As the content proposed by the Amendment Rules is simply to reflect the renaming of the enabling Act and enhance their readability – it is considered that public consultation is not necessary under section 17 of the *Legislation Act 2003*. This is because the changes are minor or machinery in nature and do not substantially alter existing arrangements. Therefore, consultation was not considered necessary or appropriate.

IMPACT ANALYSIS

The Office of Impact Analysis advised that an Impact Analysis was not required (reference **OIA23-04667**).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed for the Amendment Rules, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the Rules do not engage any human rights. A copy of the Statement is at Attachment B.

The Hon. Tony Burke MP, Minister for Employment and Workplace Relations

NOTES ON SECTIONS

Title

This provides that the title of the Amendment Rules is the *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023*.

Section 1 – Name

This section provides that the title of the Amendment Rules is the *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023*.

Section 2 – Commencement

This section provides that the Amendment Rules commence on the day after registration.

Section 3 – Authority

This section provides that the Amendment Rules are made under section 120 of the *Federal Safety Commissioner Act 2022* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 – Title

Item 2 – Section 1

These items substitute the title ‘*Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*’ with ‘*Federal Safety Commissioner (Accreditation Scheme) Rules 2023*’.

Item 3 – Section 3

This item substitutes ‘*Building and Construction Industry (Improving Productivity) Act 2016*’ with ‘*Federal Safety Commissioner Act 2022*’ to reflect the new title of the Act.

Item 4 – Section 5 (definition of Act)

This item substitutes ‘*Building and Construction Industry (Improving Productivity) Act 2016*’ with ‘*Federal Safety Commissioner Act 2022*’ to reflect the new title of the Act.

Item 5 – Section 27 (note 1)

This item inserts ‘(now renamed the *Federal Safety Commissioner Act 2022*)’ after ‘*Building and Construction Industry (Improving Productivity) Act 2016*’ to reflect the new title of the Act.

Item 6 – Schedule 1, section 1 (note)

The item inserts ‘(now renamed the *Federal Safety Commissioner Act 2022*)’ after ‘*Building and Construction Industry (Improving Productivity) Act 2016*’ to reflect the new title of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023

This Legislative Instrument does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023* amends and renames the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (the Rules). The amendments ensure that the Rules have the correct reference to the renamed *Federal Safety Commissioner Act 2022*, originally known as the *Building and Construction Industry (Improving Productivity) Act 2016*.

Human Rights Implications

The amendments are machinery in nature and do not engage any applicable human rights.

Conclusion

The Legislative Instrument does not engage any human rights.