

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 198

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 2006 (No. 2)

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 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 *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005* (the Principal Regulations) established an occupational health and safety (OH&S) 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 Regulations add further criteria that the FSC must consider in order to accredit an applicant under the Scheme.

On 1 March 2006 the Office of the Federal Safety Commissioner (OFSC) commenced the process of accrediting contractors under the Principal Regulations. Accreditation is currently for a non-extendable period of 12 months.

Following what has been an initial regulatory settling and review period, the OFSC seeks to move from what it terms 'provisional accreditation' to 'full accreditation'. A staged approach to accreditation was adopted to ensure that the introduction of accreditation requirements did not reduce the pool of contractors available to contract for Australian Government construction projects, and did not adversely impact upon the Australian Government's ability to contract for services to support the delivery of Government objectives.

Under the Regulations, to achieve 'full accreditation' and be accredited for a period of up to three years, applicants are required to meet more comprehensive OH&S criteria.

The Principal Regulations are amended to:

- a) amend the factors that the FSC must have regard to when deciding an application under current subregulation 6(2);

- b) amend the matters that must accompany an application under regulation 9 to reflect the additional matters that must be considered under subregulation 6(2);
- c) remove the alternate form of Occupational Health and Safety Management System (OHSMS) in paragraph 6(3)(b); and
- d) amend the period of accreditation in subregulation 13(1).

Transitional arrangements phase out accreditations granted under the existing criteria and facilitate the smooth implementation of the new criteria for the Scheme. This includes amendments that achieve the objective of phasing out 'provisional accreditation' by 1 August 2007, whilst at the same time ensuring that no rights previously granted under the Principal Regulations are removed.

The Office of the Federal Safety Commissioner undertook consultation with industry associations, employers and government agencies in relation to the amendments.

Details of the Regulations are set out in the Attachment.

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

The Regulations commence on 31 July 2006.

ATTACHMENT**Details of the *Building and Construction Industry Improvement (Accreditation Scheme) Amendment Regulations 2006 (No. 2)*****Regulation 1 – Name of Regulations**

Regulation 1 provides that the title of the Regulations is the *Building and Construction Industry Improvement (Accreditation Scheme) Amendment Regulations 2006 (No. 2)*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence on 31 July 2006.

Regulation 3 - Amendment of *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*

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

Regulation 4 – Application

Regulation 4 details when the amendments made by the items apply to applications made for accreditation and the decisions of the Federal Safety Commissioner (FSC) to accredit.

Subregulation 4(1) provides that where accreditation has been granted and the period of accreditation has commenced before 31 July 2006, only the amendment made by item 5 detailing the period of accreditation applies to that accreditation.

Subregulation 4(2) provides that where an application has been made before 31 July 2006 or accreditation granted before that date but the period of accreditation commenced on or after 31 July 2006, only the amendment made by item 6 limiting the period of accreditation to 31 July 2007 applies.

Subregulation 4(3) provides that where an application has been made and accreditation granted on or after 31 July 2006 and before 1 October 2006 and the period of accreditation commences before 1 October 2006, only the amendment made by item 6 limiting the period of accreditation to 31 July 2007 applies.

Subregulation 4(4) provides that where an application has been made on or after 31 July 2006 and the accreditation granted and commenced on or after 1 October 2006, the amendments made by all items excluding item 5 applies to that accreditation meaning that the period of accreditation must not be longer than 3 years.

This means that on and from 1 October 2006 applicants will be required to meet the additional requirements in order to obtain accreditation under the scheme. Prior to that date it will be possible for an applicant to apply under the existing criteria or the amended criteria, however on and from 1 October 2006 applicants will only be able to apply for accreditation under the amended criteria.

The reason for the staged approach is to allow for the phasing out of persons accredited under the current regulations without removing any rights previously granted under the regulations.

The note at the bottom of subregulations 4(3) and 4(4) advises applicants to contact the Office of the Federal Safety Commissioner (OFSC) for assistance with determining the process that will best suit their circumstances.

Schedule 1 – Amendments

Item 1 – Subregulations 6(2) and (3)

This item substitutes subregulations 6(2) and (3). The effect of the amendment is that the Federal Safety Commissioner (FSC) is required to have regard to more factors than is currently the case when deciding an application.

Some of the factors listed in current subregulation 6(3) will be maintained, including the applicant's experience (if any) in dealing with construction hazards or high risk activities; the applicant's record in relation to workplace safety; and the findings of a pre-accreditation audit.

The ability of an applicant to have an Occupational Health and Safety Management System (OHSMS) that is of a standard comparable to AS/NZS 4801:2001 has been removed. This is because it was found by the OFSC that there was no other Australian standard that allowed practical comparability to AS/NZS 4801:2001. However, international standard OHSAS 18001:1999 has been added to cater for international contractors who may wish to apply under the Scheme for Australian Government building work. Therefore, updated subregulation 6(2) requires the applicant's OHSMS to be certified to either the AS/NZS 4801:2001 or the international OHSMS standard OHSAS 18001:1999.

In addition, the FSC is to have regard to the performance of an applicant for accreditation against six focus points. Each of the focus points is a factor that the FSC considers essential to improving OH&S performance in the construction industry. An applicant will be required to provide a statement of capability against each of the following accreditation focus points:

- demonstrated senior management commitment to OH&S practices (this requirement is currently reflected in paragraph 6(2)(b));
- demonstrated effective subcontractor OH&S management (this requirement is currently reflected in paragraph 6(2)(c));
- integration of safe design into the risk management process. To meet this focus point the applicant will be required to show how safe design principles are integrated into the risk management process for a construction project;
- whole of project consultation and communication. To meet this focus point the applicant will be required to demonstrate how they ensure that there is effective consultation and communication of OH&S issues across a project;
- whole of project performance measurement. This focus point will be met by the applicant providing details on their capacity to collect, analyse and report on OH&S performance across the whole project; and

- training requirements. For this focus point the applicant will be required to provide details of how they ensure that employees and workers on a project are suitably trained and competent to deal with the risks of the project and its changing requirements during the construction cycle.

Item 2 – Regulation 9

This item substitutes regulation 9 to specify the details of what must accompany an application in line with the amendments made by item 1. Current paragraph 9(g) will also be removed as the information required by that paragraph is requested in the application form.

Item 3 – Subregulation 12(1)

Item 4 – paragraph 12(3)(b)

Subregulation 12(1) currently requires the FSC to determine an application for accreditation and whether to impose any conditions on the accreditation. The FSC is also required to notify a successful applicant of the accreditation decision of the date from which the applicant is accredited (paragraph 12(3)(b)).

Item 3 substitutes subregulation 12(1) with a new subregulation that will also require the FSC to determine the period of accreditation (which must not be longer than 3 years).

Item 4 substitutes paragraph 12(3)(b) with a new paragraph that will also require the FSC to notify a successful applicant of the period of accreditation.

Item 5 – Subregulation 13(1)

Item 6 – After subregulation 13(2)

Current subregulation 13(1) provides that accreditation will be for a non-extendable period of 12 months.

Item 5 substitutes subregulation 13(1) with a new subregulation to specify that if the accreditation commenced before 31 July 2006 the period of accreditation ends 12 months after the date on which it commenced.

Item 6 inserts new subregulations 13(3) to (5). The new subregulations will provide that if the period of accreditation commences on or after 31 July 2006 and before 1 October 2006, the period of accreditation ends on 31 July 2007. However, if the period of accreditation commenced on or after 1 October 2006, the period of accreditation is the period determined by the FSC (which must not be longer than 3 years).

Items 5 and 6 facilitate the objective of phasing out the number of persons accredited under the current accreditation requirements by 31 July 2007.

Item 7 – Regulation 13, note

This item inserts a note at the foot of regulation 13 to alert the reader that in order to remain accredited at the end of the period of accreditation an accredited person must re-apply.

Item 8 – Regulation 19, table, after item 1

This item inserts into the table in regulation 19 that the decision of the FSC to determine a period of a person's accreditation is a reviewable decision.