

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 303

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. 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.

These Regulations make a number of amendments to the Accreditation Scheme Regulations arising from the amendments to the Principal Act. These Regulations prescribe several categories of building work to which the requirement that an accredited person is engaged to undertake the work does not apply, including:

- where building work that is directly funded by the Australian Government has a value of less than \$3 million;
- where building work is indirectly funded, and the Australian Government contribution to the project is less than \$5 million and that contribution represents no more than 50 per cent of the total construction project value, or the Australian Government contribution to the project is less than \$10 million irrespective of the total project value; and
- where the building work is undertaken by a subcontractor.

Extensive consultation was undertaken in regards to the developing of the Amendment Act. The Office of the Federal Safety Commissioner undertook

extensive consultation with industry associations, employers and government agencies in relation to the Accreditation Scheme Regulations.

Details of these Regulations are set out in the Attachment.

These Regulations commence on 1 October 2007.

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

ATTACHMENT

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

Regulation 2 – Commencement

Regulation 2 provides for the Regulations to commence on 1 October 2007.

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 Accreditation Scheme Regulations) are to be amended as set out in Schedule 1.

Regulation 4 – Transitional

Proposed regulation 4 provides that regulation 24 of the Accreditation Scheme Regulations as in force before the commencement of the proposed Regulations continues to apply to building work under a contract entered into before 1 March 2006.

Schedule 1 – Amendments

Item [1] – Part 3

This item substitutes current Part 3, which consists of only regulation 24, with a new Part 3.

Regulation 24

The new regulation 24 prescribes several categories of building work to which the requirement that an accredited builder is engaged to undertake the building work does not apply for the purpose of subsection 35(4) of the Principal Act. These are:

- building work that is carried out outside Australia;
- building work under a contract entered into on or after 1 March 2006 but before 1 October 2007 and has a value of less than \$6 million;
- building work directly funded by the Commonwealth or a Commonwealth authority under a contract with a value of less \$3 million;
- building work indirectly funded by the Commonwealth or a Commonwealth authority unless it is
 - under a contract with a value of more \$3 million; and

- the Commonwealth's contribution to the funding is at least \$5 million, and represents at least 50% of the total funding, and is made on or after 1 October 2007;
- building work indirectly funded by the Commonwealth or a Commonwealth authority unless it is
 - under a contract with a value of more \$3 million; and
 - the Commonwealth's contribution to the funding is at least \$10 million, and is made on or after 1 October 2007;
- building work carried out by a subcontractor. A subcontractor is defined as a builder who carries out some or all of the building work under a contract with another builder who carries out some or all of the building work.