



Building and Construction Industry Improvement Amendment (OHS) Bill 2007

This replaced the 8 May 2007 version of this Digest which contained an error in relation to schedule 1 items 3 and 4.

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Building and Construction Industry Improvement Amendment (OHS) Bill 2007

Date introduced: 29 March 2007

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: Sections 1 to 3, Schedule 1, item 1 and items 3 to 5 commence on the day on which this Act receives Royal Assent. Schedule 1, item 2 commences on a single day to be fixed by proclamation or within 6 months of Royal Assent.

Purpose

The purpose of the Bill is to amend the *Building and Construction Industry Improvement Act 2005* ('the Act') to:

- change the process of appointing Federal Safety Officers
- extend the application of the Australian Government Building and Construction Industry Occupational Health and Safety Accreditation Scheme ('the Scheme') administered by the Office of the Federal Safety Commissioner to cover situations where building work is indirectly funded by the Commonwealth or a Commonwealth authority. The Scheme was designed to allow the Government to 'use its influence as a client and as the provider of capital to improve the construction industry's occupational health and safety (OHS) performance'.¹
- ensure that persons are accredited under the Scheme at the time of entering into a contract for building work funded by the Commonwealth or a Commonwealth authority, and that the Commonwealth or a Commonwealth authority takes appropriate steps to see that such persons are also accredited while the building work is being carried out
- extend the accreditation requirement to direct and indirect funding arrangements and pre-construction agreements as defined, and widen the definition of 'builder'
- clarify that subsection 35(4) of the Act only overrides Commonwealth provisions to the extent of any inconsistency, and
- allow the Federal Safety Commissioner and persons working in the Office of the Federal Safety Commissioner to disclose 'protected information' gathered on the Scheme to the Minister.

Warning:

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Background

When introducing the Bill, Dr Sharman Stone, MP, Minister for Workforce Participation stated:

The Building and Construction Industry Improvement Amendment (OHS) Bill 2007 reinforces the government's commitment to improving the occupational health and safety performance of the building and construction industry.

In 2002-03, when Commissioner Cole reported on the Royal Commission into the Building and Construction Industry, the industry was one of the most dangerous to work in. There were 37 compensated fatalities in the industry, which comprised almost one-fifth (18 per cent) of all compensated workplace fatalities for the year. The industry also had the third highest incidence of workplace injuries with more than 12,500 compensated injuries, or 34 injuries per day.

...Occupational health and safety is a significant issue for all of us. It affects us, our families and our friends. The construction industry has traditionally been a poor performer in the area of health and safety. This government has taken the opportunity provided it to change this.²

Royal Commission into the Building and Construction Industry

The Bill is characterised as a response to recommendations made by the [Final Report](#) of the [Royal Commission into the Building and Construction Industry](#) tabled in March 2003. [Volume 6](#) deals with OHS issues.

The background to the Royal Commission process is dealt with at length by Peter Prince and Jacob Varghese '[Building and Construction Industry Improvement Bill 2003 and Building and Construction Industry Improvement Consequential and Transitional\) Bill 2003](#)', *Bills Digest* Nos. 129–130 2003-04.

The Australian Labor Party reportedly announced its intention recently to abolish the Australian Building and Construction Industry Commission. Building companies expressed their opposition to the proposal.³

Financial implications

The Explanatory Memorandum states that the measures in this Bill would have no significant impact on Commonwealth expenditure.⁴

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Main provisions

Schedule 1—Amendments to the Building and Construction Industry Improvement Act 2005

Item 1 amends existing section 34 of the Act to enable the Federal Safety Commissioner, rather than the Secretary, to appoint consultants and determine the terms and conditions of their engagement. The Federal Safety Commissioner may then appoint the person as a Federal Safety Officer if satisfied that it is an appropriate appointment (see existing section 60).

Currently, a person needs to be engaged by the Secretary as a consultant to the Federal Safety Commissioner prior to being appointed to the position of Federal Safety Officer. The Explanatory Memorandum describes this appointment process as ‘cumbersome’.⁵

Item 2 would repeal the existing Part 2 of Chapter 4 and replace it with a **proposed Part 2 of Chapter 4**.

Terms are defined in **proposed subsection 35(8)**. A ‘builder’ is defined to mean a person who carries out any of the building work. The Explanatory Memorandum states that it is intended that regulations under subsection 35(4) will be made to limit the accreditation requirement to head contractors.⁶

Existing subsection 35(4) prohibits the Commonwealth or a Commonwealth authority from entering into a contract for building work with an unaccredited person but does not extend to building work indirectly funded by the Commonwealth or a Commonwealth authority. It also does not require an accredited person to carry out the actual building work.

Proposed paragraph 35(4)(b) prohibits the Commonwealth or a Commonwealth authority from funding building work unless the contract is with builders who are accredited. **Proposed paragraph 35(4)(c)** further provides that the Commonwealth or Commonwealth authority must take ‘appropriate steps’ to ensure that builders will be accredited while the work is carried out. However, this subsection does not apply to contracts which have been prescribed under the regulations.

The Explanatory Memorandum states:

Some examples of steps that would be considered appropriate are placing a term in the contract that would require the builder to maintain accreditation, or making inquiries about the duration of the builder’s accreditation.⁷

The Commonwealth or Commonwealth authority would be considered to be ‘funding building work’ if it:

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- directly or indirectly pays for, funds or finances the building work, (**proposed paragraph 35(5)(a)**), or
- facilitates the carrying out of the building work by entering into, or otherwise funding or financing (directly or indirectly) a ‘pre-construction agreement’ that relates to the building work (**proposed paragraph 35(5)(b)**).

A pre-construction agreement is defined in **proposed subsection 35(8)** as an agreement to ‘lease or transfer land, a building, or a part of a building on the condition that building work will be carried out on the land, the building or the part of the building’.

Examples given in the Explanatory Memorandum of indirectly procured building work are:

Commonwealth-State funding agreements where the Commonwealth provides funding to a State or a third party who then arranges for the building work to be carried out;

works carried out by joint ventures involving the Commonwealth or Commonwealth authorities. These may be incorporated or unincorporated;

works carried out by a wholly owned subsidiary of a Commonwealth authority with money loaned by the Commonwealth authority.⁸

Proposed subsection 35(6) clarifies that subsection 35(4) only overrides Commonwealth law to the extent of any inconsistency, unless the other provision expressly refers to this section.

Proposed subsection 35(7) provides that a contravention of subsection 35(4) would not affect the validity of anything done by the Commonwealth or Commonwealth authority in relation to building work.

The widened application of section 35 achieved by these amendments may mean that the Scheme has a broader impact on the States and Territories than under the current provisions in the Act.

Items 3 and 4 make amendments to existing section 65 of the Act which relate to the prohibited disclosure of ‘protected information’. It is an offence to disclose or record protected information, carrying a penalty of 12 months imprisonment, unless certain exceptions apply to ‘designated officials’. **Item 3** inserts **proposed paragraph 65(5)(aa)** to insert that if an entrusted person is a ‘designated ABC official’, and discloses information to the Minister that is not for the purpose of reporting, then the exceptions do not apply and it is an offence.

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Item 4 amends subsection 65(8) to insert that designated ABC official does not include the Federal Safety Commissioner (FSC) or the Office of the Federal Safety Commissioner (OFSC) or consultants. The result of this interwoven drafting is to allow the FSC and the staff of the OFSC to disclose information to the Minister over and above reporting obligations. The amendments do not change or expand any of the powers of the Australian Building and Construction Commissioner.

Existing section 66 of the Act provides that any reports are not to include information relating to an individual's affairs if an individual is named or people would be able to work out the identity of that individual in context.

Endnotes

1. Explanatory Memorandum, p. 1.
2. House of Representatives, *Debates*, 29 March, 2007, p. 11.
3. Paul Heinrichs, 'Labor vows to muzzle union watchdog', *Sunday Age*, 22 April 2007, p. 7.
4. Explanatory Memorandum, p. 2.
5. Explanatory Memorandum, p. 3.
6. Explanatory Memorandum, p. 4.
7. Explanatory Memorandum, p. 3.
8. Explanatory Memorandum, p. 4.

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