



Building and Construction Industry Improvement Regulations 2005¹

Select Legislative Instrument 2005 No. 204

I, JOHN SANDERSON, Administrator of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Building and Construction Industry Improvement Act 2005*.

Dated 15 September 2005

JOHN SANDERSON
Administrator

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

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Chapter 1 Preliminary

1.1 Name of Regulations

These Regulations are the *Building and Construction Industry Improvement Regulations 2005*.

1.2 Commencement

These Regulations commence on 1 October 2005.

1.3 Definitions

In these Regulations:

Act means the *Building and Construction Industry Improvement Act 2005*.

Chapter 3 The Building Code

3.1 Reporting on compliance with Code

For subsection 28 (2) of the Act, a notice directing a person to give a written report to the ABC Commissioner must be in the form set out in Schedule 3.1.

Chapter 4 Occupational Health and Safety

4.1 Delegation by Federal Safety Commissioner

For paragraph 32 (1) (c) of the Act, an APS employee who is engaged for the purposes of the Office of the Federal Safety Commissioner is prescribed.

4.2 Accreditation scheme — prescribed contracts

For subsection 35 (4) of the Act, a contract entered into before an accreditation scheme is prescribed under subsection 35 (1) of the Act is a prescribed contract.

Chapter 7 Enforcement

7.1 Penalties — eligible persons

- (1) Subject to subregulation (2), for paragraph 49 (6) (d) of the Act, the following persons are eligible persons:
 - (a) the Federal Safety Commissioner;
 - (b) a Federal Safety Officer.
- (2) For subsection 49 (7) of the Act, a person mentioned in subregulation (1) is prescribed only in relation to occupational health and safety matters.

7.2 Notice requiring production of documents

For paragraph 52 (1) (d) of the Act, a notice requiring a person to produce documents to the ABC Commissioner, or to an assistant, must be in accordance with Schedule 7.1.

7.3 Identity cards — ABC Inspectors and ABC Commissioner

- (1) For subsection 58 (1) of the Act, an identity card issued to an ABC Inspector must contain:
 - (a) the name and signature of the ABC Inspector; and
 - (b) the signature of the ABC Commissioner; and
 - (c) the date on which the card was issued; and
 - (d) a statement that the card was issued under subsection 58 (1) of the Act, and that the person to whom the card was issued is an ABC Inspector.

Note Subsection 58 (1) of the Act requires an identity card to be issued to an ABC Inspector. The identity card must contain a recent photograph of the ABC Inspector.

- (2) For subsection 58 (2) of the Act, the identity card issued to the ABC Commissioner must contain:
 - (a) the name and signature of the ABC Commissioner; and
 - (b) the signature of the Minister; and
 - (c) the date on which the card was issued; and
 - (d) a statement that the card was issued under subsection 58 (2) of the Act, and that the person to whom the card was issued is the ABC Commissioner.

Note Subsection 58 (2) of the Act requires an identity card to be issued to the ABC Commissioner. The identity card must contain a recent photograph of the ABC Commissioner.

7.4 Taking samples of goods and substances — ABC Inspectors

- (1) For paragraph 59 (5) (b) of the Act, an ABC Inspector may take a sample of any goods or substances after giving notice to:
 - (a) the owner or other person in charge of the goods or substances; or

(b) an appropriate employee or other representative of that owner or person;
of the ABC Inspector's intention to do so.

(2) The notice must be in accordance with Schedule 7.2.

7.5 Notice requiring production of document — ABC Inspectors

For subsection 59 (6) of the Act, a notice issued by an ABC Inspector requiring a person to produce a document must be in accordance with Schedule 7.3.

7.6 Identity cards — Federal Safety Officers and Federal Safety Commissioner

(1) For subsection 61 (1) of the Act, an identity card issued to a Federal Safety Officer must contain:

- (a) the name and signature of the Federal Safety Officer; and
- (b) the signature of the Federal Safety Commissioner; and
- (c) the date on which the card was issued; and
- (d) a statement that the card was issued under subsection 61 (1) of the Act, and that the person to whom the card was issued is a Federal Safety Officer.

Note Subsection 61 (1) of the Act requires an identity card to be issued to a Federal Safety Officer. The identity card must contain a recent photograph of the Federal Safety Officer.

(2) For subsection 61 (2) of the Act, an identity card issued to the Federal Safety Commissioner must contain:

- (a) the name and signature of the Federal Safety Commissioner; and
- (b) the signature of the Minister; and
- (c) the date on which the card was issued; and
- (d) a statement that the card was issued under subsection 61 (2) of the Act, and that the person to whom the card was issued is the Federal Safety Commissioner.

Note Subsection 61 (2) of the Act requires an identity card to be issued to the Federal Safety Commissioner. The identity card must contain a recent photograph of the Federal Safety Commissioner.

7.7 Taking samples of goods and substances — Federal Safety Officers

- (1) For paragraphs 62 (5) (b) and 63 (5) (b) of the Act, a Federal Safety Officer may take a sample of any goods or substances after giving notice to:
 - (a) the owner or other person in charge of the goods or substances; or
 - (b) an appropriate employee or other representative of that owner or person;
of the Federal Safety Officer's intention to do so.
- (2) The notice must be in accordance with Schedule 7.4.

7.8 Notice requiring production of document — Federal Safety Officers

For subsections 62 (6) and 63 (6) of the Act, a notice issued by a Federal Safety Officer requiring a person to produce a document must be in accordance with Schedule 7.5.

Chapter 8 Miscellaneous

8.1 Notice of application to court (Act s 78 (2) (d))

- (1) A building industry participant must notify the ABC Commissioner of an application made to a court under the Act or the Workplace Relations Act if the application is made by, or otherwise involves, the building industry participant.
- (2) A notice under subregulation (1) must include the following information:
 - (a) the parties to the action;
 - (b) contact details for each of the parties;
 - (c) the Act, and provision, under which the application has been made;
 - (d) the jurisdiction in which the application has been made.

Regulation 8.1

- (3) A building industry participant must notify the ABC Commissioner of the outcome of any application to a court under the Act or the Workplace Relations Act made by, or otherwise involving the building industry participant.
- (4) A notice under subregulation (3) must include the following information:
 - (a) the parties to the action;
 - (b) contact details for the parties;
 - (c) the jurisdiction in which the application was made;
 - (d) the outcome of the application.
- (5) Subject to subregulation (6), Part 1 of Chapter 7 of the Act applies to a contravention of this regulation as if this regulation were a civil penalty provision under the Act.
- (6) The maximum pecuniary penalty for a contravention of this regulation is:
 - (a) if the defendant is a body corporate — 25 penalty units;
and
 - (b) in any other case — 5 penalty units.

Schedule 3.1 Notice directing industry participant to report on compliance with Code

(regulation 3.1)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING PRODUCTION OF DOCUMENTS

I, *[name]*, the Australian Building and Construction Commissioner, acting under section 28 of the *Building and Construction Industry Improvement Act 2005* and regulation 3.1 of the *Building and Construction Industry Improvement Regulations 2005*, direct you, a person who is required to comply with the Building Code in respect of the building work mentioned in Part 1 of the Schedule to this Notice, to give me a written report, within *[period within which report must be provided]* of the date of this Notice, containing the information mentioned in Part 2 of the Schedule to this Notice in relation to that building work.

Dated 20 .

.....
(ABC Commissioner's signature)

NOTICE GIVEN TO *[name]*

SCHEDULE

Part 1

[address and nature of building work]

Part 2

[specified information]

Schedule 7.1 Notice requiring production of documents — ABC Commissioner

(regulation 7.2)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING PRODUCTION OF DOCUMENTS

I, *[name]*, the Australian Building and Construction Commissioner, acting under section 52 of the *Building and Construction Industry Improvement Act 2005* and regulation 7.2 of the *Building and Construction Industry Improvement Regulations 2005*, require you to produce the documents mentioned in Part 1 of the Schedule to this notice, being documents in your possession that are relevant to an investigation in relation to the building work mentioned in Part 2 of the Schedule to this notice, by *[time by which documents are to be produced]* in the manner specified in Part 3 of the Schedule to this notice.

Dated 20 .

.....
(ABC Commissioner's signature)

NOTICE GIVEN TO *[name]*

SCHEDULE

Part 1

[documents]

Part 2

[address and nature of building work]

Part 3

[manner in which documents must be produced]

Schedule 7.2 Notice of taking of samples of goods and substances — ABC Inspectors

(regulation 7.4)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE THAT SAMPLE OF GOODS OR SUBSTANCES IS TO BE TAKEN

I, *[name]*, an ABC Inspector in the office of the Australian Building and Construction Commissioner, acting under section 59 of the *Building and Construction Industry Improvement Act 2005* and regulation 7.4 of the *Building and Construction Industry Improvement Regulations 2005*, give notice that I propose to take a sample of the goods and/or substances listed in the Schedule to this notice.

Dated 20 .

.....
(ABC Inspector's signature)

NOTICE GIVEN TO

[name]

- owner of the goods or substances
- person in charge of the goods or substances
- appropriate employee of the owner or person in charge
- representative of the owner or person in charge

SCHEDULE

[description of goods and/or substances]

Schedule 7.3 Notice requiring production of document — ABC Inspectors

(regulation 7.5)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING PRODUCTION OF DOCUMENT

I, *[name]*, an ABC Inspector in the office of the Australian Building and Construction Commissioner, acting under subsection 59 (6) of the *Building and Construction Industry Improvement Act 2005* ('the Act') and regulation 7.5 of the *Building and Construction Industry Improvement Regulations 2005*, require you to produce at the place specified in Part 2 of the Schedule to this Notice within the period specified in Part 3 of the Schedule to this Notice the documents mentioned in Part 1 of the Schedule to this Notice, being documents that you were required to produce under paragraph 59 (5) (e) of the Act on the date, and at the premises, mentioned in Part 4 of the Schedule to this Notice.

Dated 20 .

.....
(ABC Inspector's signature)

NOTICE GIVEN TO *[name]*

SCHEDULE

Part 1

[documents]

Part 2

[place at which documents must be produced]

Part 3

[period within which documents must be produced]

Part 4

[date on which, and premises at which, documents were required to be produced under paragraph 59 (5) (e) of the Act]

Schedule 7.4 Notice of taking of samples of goods and substances — Federal Safety Officers

(regulation 7.7)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE THAT SAMPLE OF GOODS OR SUBSTANCES IS TO BE TAKEN

I, *[name]*, a Federal Safety Officer in the office of the Federal Safety Commissioner, acting under section 62* / section 63* of the *Building and Construction Industry Improvement Act 2005* and regulation 7.7 of the *Building and Construction Industry Improvement Regulations 2005*, give notice that I propose to take a sample of the goods and/or substances listed in the Schedule to this notice.

Dated 20 .

.....
(Federal Safety Officer's signature)

* *omit inapplicable reference*

NOTICE GIVEN TO

[name]

- owner of the goods or substances
- person in charge of the goods or substances
- appropriate employee of the owner or person in charge
- representative of the owner or person in charge

SCHEDULE

[description of goods and/or substances]

Schedule 7.5 Notice requiring production of document — Federal Safety Officers

(regulation 7.8)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING PRODUCTION OF DOCUMENT

I, *[name]*, a Federal Safety Officer in the office of the Federal Safety Commissioner, acting under subsection 62 (6)* / subsection 63 (6)* of the *Building and Construction Industry Improvement Act 2005* ('the Act') and regulation 7.8 of the *Building and Construction Industry Improvement Regulations 2005*, require you to produce at the place specified in Part 2 of the Schedule to this Notice within the period specified in Part 3 of the Schedule to this Notice the documents mentioned in Part 1 of the Schedule to this Notice, being documents that you were required to produce under paragraph 62 (5) (e)* / paragraph 63 (5) (e)* of the Act on the date, and at the premises, mentioned in Part 4 of the Schedule to this Notice.

Dated 20 .

.....
(Federal Safety Officer's signature)

* *omit inapplicable references*

NOTICE GIVEN TO *[name]*

SCHEDULE

Part 1

[documents]

Part 2

[place at which documents must be produced]

Part 3

[period within which documents must be produced]

Part 4

[date on which, and premises at which, documents were required to be produced under paragraph 62 (5) (e) or 63 (5) (e) of the Act]

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.