Fair Work (Building Industry) Regulation 2015

Select Legislative Instrument No. 150, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret’d), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 03 September 2015

Peter Cosgrove
Governor-General

By His Excellency’s Command

Eric Abetz
Minister for Employment

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Part 1—Preliminary

1 Name

This is the Fair Work (Building Industry) Regulation 2015.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The whole of this instrument</td>
<td>The day after this instrument is registered.</td>
<td>5 September 2015</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the Fair Work (Building Industry) Act 2012.

3A Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the

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Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including **FW Act**.

In this instrument:

**Act** means the *Fair Work (Building Industry) Act 2012*.

**public transport** means any form of passenger transport that is available for use by the public on payment of a fare.
Part 2—Federal Safety Commissioner

5 Additional functions of Federal Safety Commissioner

For paragraph 30(h) of the Act, a function of the Federal Safety Commissioner is to record information about the work health and safety performance of:

(a) an accredited person; and

(b) a person who has applied to be accredited under the *Fair Work (Building Industry—Accreditation Scheme) Regulations* 2005.

6 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.
Part 3—Powers to obtain information etc.

Division 1—Determinations by Independent Assessor

7 Interested persons

For paragraph 36(2)(b) of the Act, a building industry participant who is involved in a building project, or who has a member involved in a building project, is prescribed as an interested person in relation to the building project.

8 Determining that powers to obtain information do not apply

For subparagraph 39(3)(a)(ii) of the Act, the matters that the Independent Assessor must have regard to are:

(a) the views of other interested persons in relation to the building project; and

(b) whether a building industry participant who is an interested person has complied with workplace laws (as defined in section 12 of the FW Act) in relation to the building project, including orders of a court or tribunal made in relation to the workplace laws.
Division 2—Examination notices

9 Application for examination notice

For paragraph 45(3)(b) of the Act, the information that must be included in an application for an examination notice for a person is information about the likely impact of complying with the examination notice.

10 Issue of examination notice

For paragraph 47(1)(g) of the Act, the matters that the presidential member must be satisfied of are:

(a) that the nature and seriousness of the suspected contravention justifies the issue of the examination notice; and

(b) that complying with the examination notice will not have an unreasonably detrimental impact on the person, in as far as the impact is known.

11 Form of examination notice

For paragraph 48(a) of the Act:

(a) Form 1 of Schedule 1 sets out the form of an examination notice that requires a person to give information to the Director; and

(b) Form 2 of Schedule 1 sets out the form of an examination notice that requires a person to produce documents to the Director; and

(c) Form 3 of Schedule 1 sets out the form of an examination notice that requires a person to attend before the Director to answer questions relevant to an investigation.

12 Information included in examination notice

For paragraph 48(f) of the Act, the information that must be included in an examination notice that requires a person to produce documents to the Director is the documents, or kinds of documents, that the person must produce.
Part 3  Powers to obtain information etc.
Division 3  Expenses incurred in attending an examination

Section 13

Division 3—Expenses incurred in attending an examination

13 Operation of this Division

(1) This Division is made for subsection 58(1) of the Act.

(2) This Division sets out the allowances payable to a person (the witness) who attends an examination as required by an examination notice.

14 Travelling allowance

(1) The witness is entitled to a payment (a travelling allowance) towards meeting the expenses that the witness incurs in travelling between the witness’s work or residence and the place (the examination place) where the examination takes place.

(2) The amount of the travelling allowance is as follows:

(a) if it is reasonable for the witness to travel by air—the amount that is payable for economy class air travel;

(b) if public transport is available—the amount that the witness actually and properly pays for the public transport;

(c) if public transport is not available and the witness travels using their private motor vehicle—the amount calculated at the rate of $0.74 per kilometre travelled.

(3) However, the maximum amount payable for the travelling allowance is $2 000.

(4) When deciding whether public transport is or is not available, regard must be had to whether a public transport system is operating by which the witness could conveniently:

(a) travel to the examination place in a reasonable time before the witness’s required attendance; and

(b) return to the witness’s work or residence in a reasonable time after the witness’s attendance at the examination place.
15 Accommodation allowance

(1) The witness is entitled to a payment (an accommodation allowance) towards meeting the expenses that the witness incurs for accommodation when the witness is necessarily absent overnight from the witness’s residence to attend the examination.

(2) The amount of the accommodation allowance is the amount calculated at the accommodation rate that is payable for the lowest salary range under the Determination that sets out the amounts that the Commissioner of Taxation considers are reasonable for the substantiation exception in Subdivision 900-B of the Income Tax Assessment Act 1997.

(3) The amount must be calculated having regard to:
   (a) the time of the latest public transport available by which the witness could conveniently travel to the examination place in a reasonable time before the witness’s required attendance; and
   (b) the time by which the witness could conveniently return to the person’s work or residence using the earliest public transport available in a reasonable time after the witness’s attendance at the examination place.

16 Attendance allowance

(1) The witness is entitled to a payment (an attendance allowance) towards meeting any loss of earnings that the witness incurs when the witness is necessarily absent from the witness’s work to attend the examination.

(2) The amount of the attendance allowance is the amount (the usual pay) that the witness would otherwise have been entitled to receive for performing his or her normal duties during the witness’s absence from work to attend the examination.

(3) When claiming the attendance allowance, the witness must provide evidence that confirms:
   (a) the witness’s usual pay; and
Part 3  Powers to obtain information etc.
Division 3  Expenses incurred in attending an examination

Section 17

(b) that the witness did not receive the witness’s usual pay for the time when the witness was necessarily absent from the witness’s work to attend the examination.

17 Legal allowance

(1) The witness is entitled to a payment (a legal allowance) towards meeting the legal costs and disbursements that the witness reasonably incurs for a lawyer to represent the witness at the examination.

(2) The amount of the legal allowance is an amount calculated using the costs set out in the Federal Circuit Court Rules 2001.
Part 4—Federal Safety Officers

18 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.

19 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
Section 20

(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 Form 4 of Schedule 1.

20 Notice requiring production of a 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 Form 5 of Schedule 1.
Part 5—Transitional matters

21 Things done under the *Fair Work (Building Industry) Regulations 2005*

(1) If:

(a) a thing was done for a particular purpose under the *Fair Work (Building Industry) Regulations 2005* as in force immediately before those Regulations were repealed; and

(b) the thing could be done for that purpose under this instrument;

the thing has effect for the purposes of this instrument as if it had been done under this instrument.

(2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

22 References to provisions of the *Fair Work (Building Industry) Regulations 2005*

A reference to a provision of the *Fair Work (Building Industry) Regulations 2005* in any Act or instrument made under an Act is taken to be a reference to the corresponding provision of this Regulation.
Schedule 1—Forms

Note: See sections 11, 19 and 20.

Form 1—Examination notice to give information

COMMONWEALTH OF AUSTRALIA

Fair Work (Building Industry) Act 2012

NOTICE ISSUED TO [name]

EXAMINATION NOTICE TO GIVE INFORMATION

I, [name], a nominated AAT presidential member, acting under subsection 47(1) of the Fair Work (Building Industry) Act 2012, require you to give the information specified in Part 1 of the Schedule to this notice.

The information is relevant to an investigation by the Director of the Fair Work Building Industry Inspectorate into a suspected contravention, by a building industry participant, of a designated building law or of a safety net contractual entitlement.

Note: The details relating to the investigation are specified in Parts 2 to 5 of the Schedule to this notice.

The information is to be given to the Director, by [time and date], in the manner and form specified in Part 6 of the Schedule to this notice.

WARNING—Under subsection 52(1) of the Fair Work (Building Industry) Act 2012 you will commit an offence if you have been given this notice and fail to give the information by the time, and in the manner and form, specified in this notice or by such later time as provided for under subsection 50(3) or (4) of the Fair Work (Building Industry) Act 2012.

PENALTY: Imprisonment for 6 months and/or the imposition of a maximum fine of 30 penalty units.

Note: Section 52 of the Fair Work (Building Industry) Act 2012 provides protection from the general requirement to give information if legal professional privilege or public interest immunity applies.

Dated 20 .

12 Fair Work (Building Industry) Regulation 2015 No. 150, 2015
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SCHEDULE

Part 1
[information to be given]

Part 2
[address (if any) to which the suspected contravention relates]

Part 3
[building industry participant or kind of building industry participant]

Part 4
[suspected contravention and designated building law or safety net contractual entitlement]

Part 5
[period during which the suspected contravention took place]

Part 6
[manner and form in which information must be given]
Form 2—Examination notice to produce documents

COMMONWEALTH OF AUSTRALIA

Fair Work (Building Industry) Act 2012

NOTICE ISSUED TO [name]

EXAMINATION NOTICE TO PRODUCE DOCUMENTS

I, [name], a nominated AAT presidential member, acting under subsection 47(1) of the Fair Work (Building Industry) Act 2012, require you to produce the documents specified in Part 1 of the Schedule to this notice.

The documents are relevant to an investigation by the Director of the Fair Work Building Industry Inspectorate into a suspected contravention, by a building industry participant, of a designated building law or of a safety net contractual entitlement.

Note: The details relating to the investigation are specified in Parts 2 to 5 of the Schedule to this notice.

The documents are to be produced to the Director, by [time and date], in the manner specified in Part 6 of the Schedule to this notice.

WARNING—Under subsection 52(1) of the Fair Work (Building Industry) Act 2012 you will commit an offence if you have been given this notice and fail to produce the documents by the time, and in the manner, specified in this notice or by such later time as provided for under subsection 50(3) or (4) of the Fair Work (Building Industry) Act 2012.

PENALTY: Imprisonment for 6 months and/or the imposition of a maximum fine of 30 penalty units.

Note: Section 52 of the Fair Work (Building Industry) Act 2012 provides protection from the requirement to produce a document or documents if legal professional privilege or public interest immunity applies.

Dated 20 .

................................................
Signature
SCHEDULE

Part 1
[documents/kinds of documents to be produced]

Part 2
[address (if any) to which the suspected contravention relates]

Part 3
[building industry participant or kind of building industry participant]

Part 4
[suspected contravention and designated building law or safety net contractual entitlement]

Part 5
[period during which the suspected contravention took place]

Part 6
[manner in which documents must be produced]
Form 3—Examination notice to attend and answer questions

COMMONWEALTH OF AUSTRALIA

Fair Work (Building Industry) Act 2012

NOTICE ISSUED TO [name]

EXAMINATION NOTICE TO ATTEND AND ANSWER QUESTIONS

I, [name], a nominated AAT presidential member, acting under subsection 47(1) of the Fair Work (Building Industry) Act 2012, require you to attend before the Director of the Fair Work Building Industry Inspectorate at:

[time] on [date] at [place]

to answer questions that are relevant to an investigation by the Director into a suspected contravention, by a building industry participant, of a designated building law or of a safety net contractual entitlement.

Note 1: The details relating to the investigation are specified in Parts 1 to 4 of the Schedule to this notice.

Note 2: For your right to be represented at the examination by a lawyer of your choice, see subsection 51(3) of the Fair Work (Building Industry) Act 2012.

WARNING—Under subsection 52(1) of the Fair Work (Building Industry) Act 2012 you will commit an offence if you have been given this notice and fail:

• to attend to answer questions at the time and place specified in this notice or at such later time as provided for under subsection 50(3) or (4) of the Fair Work (Building Industry) Act 2012; or
• to take an oath or make an affirmation, if required to do so under subsection 51(4) of the Fair Work (Building Industry) Act 2012; or
• to answer questions relevant to the investigation while attending as required by this notice.

PENALTY: Imprisonment for 6 months and/or the imposition of a maximum fine of 30 penalty units.

Note 1: Section 52 of the Fair Work (Building Industry) Act 2012 provides protection from the requirement to answer questions if legal professional privilege or public interest immunity applies.
Note 2: A person who attends an examination as required by an examination notice is entitled to be paid fees and allowances in accordance with the *Fair Work (Building Industry) Regulation 2015*.

Dated 20.

Signature

**SCHEDULE**

**Part 1**  
[address (if any) to which the suspected contravention relates]

**Part 2**  
[building industry participant or kind of building industry participant]

**Part 3**  
[suspected contravention and designated building law or safety net contractual entitlement]

**Part 4**  
[period during which the suspected contravention took place]
Form 4—Notice of taking samples of goods and substances—Federal Safety Officers

COMMONWEALTH OF AUSTRALIA

Fair Work (Building Industry) Act 2012

NOTICE ISSUED 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

NOTICE OF TAKING SAMPLE OF GOODS OR SUBSTANCES

I, [name], a Federal Safety Officer in the office of the Federal Safety Commissioner, acting under section 62* / section 63* of the Fair Work (Building Industry) Act 2012 and section 19 of the Fair Work (Building Industry) Regulation 2015, 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

SCHEDULE

[description of goods and/or substances]
Form 5—Notice requiring production of document

COMMONWEALTH OF AUSTRALIA

Fair Work (Building Industry) Act 2012

NOTICE ISSUED TO [name]

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 Fair Work (Building Industry) Act 2012 (“the Act”) and section 20 of the Fair Work (Building Industry) Regulation 2015, 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

SCHEDULE

<table>
<thead>
<tr>
<th>Part 1</th>
<th>[documents/kinds of documents to be produced]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 2</td>
<td>[place where documents must be produced]</td>
</tr>
<tr>
<td>Part 3</td>
<td>[period within which documents must be produced]</td>
</tr>
<tr>
<td>Part 4</td>
<td>[date on which, and place where, documents were required to be produced under paragraph 62(5)(e) or 63(5)(e) of the Act]</td>
</tr>
</tbody>
</table>

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Schedule 2—Repeals

Fair Work (Building Industry) Regulations 2005

1 The whole of the Regulations

Repeal the Regulations.