



Building and Construction Industry (Improving Productivity) Regulations 2017

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 regulations.

Dated 23 February 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Michaelia Cash
Minister for Employment

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Part 1—Preliminary

1 Name

This instrument is the *Building and Construction Industry (Improving Productivity) Regulations 2017*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	25 February 2017

Note: This table relates only to the provisions of this instrument as originally made.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 *Building and Construction Industry (Improving Productivity) Act 2016*.

4 Definitions

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

- (a) ABC Commissioner;
- (b) examination notice;
- (c) person.

In this instrument:

Act means the *Building and Construction Industry (Improving Productivity) Act 2016*.

Part 2—Powers to obtain information

5 Application for examination notice

For the purposes of paragraph 61B(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.

6 Issue of examination notice

For the purposes of paragraph 61C(1)(f) 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.

7 Form of examination notice

For the purposes of paragraph 61D(a) of the Act:

- (a) Form 1 of Schedule 1 to this instrument sets out the form of an examination notice that requires a person to give information to the ABC Commissioner; and
- (b) Form 2 of Schedule 1 sets out the form of an examination notice that requires a person to produce documents to the ABC Commissioner; and
- (c) Form 3 of Schedule 1 sets out the form of an examination notice that requires a person to attend before the ABC Commissioner to answer questions relevant to an investigation.

8 Information included in examination notice

For the purposes of paragraph 61D(f) of the Act, the information that must be included in an examination notice that requires a person to produce documents to the ABC Commissioner is the documents, or kinds of documents, that the person must produce.

Part 3—Transitional matters

Division 1—Application of Part 2

9 Application of Part 2

Application of Part 2

- (1) Section 5 applies in relation to an application made on or after the commencement of this item.
- (2) Section 6 applies in relation to issuing an examination notice on or after the commencement of this item, whether the application for the examination notice was made before, on or after that commencement.
- (3) Sections 7 and 8 apply in relation to an examination notice issued on or after the commencement of this item, whether the application for the examination notice was made before, on or after that commencement.

Old regulations cease to be in force

- (4) Regulations that were continued in force by item 14B of Schedule 2 to the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* cease to be in force on the commencement of this section.

Schedule 1—Forms

Note: See section 7.

Form 1—Examination notice to give information

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry (Improving Productivity) Act 2016

NOTICE ISSUED TO [name]

EXAMINATION NOTICE TO GIVE INFORMATION

I, [name], a nominated AAT presidential member, acting under subsection 61C(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*, require you to give the information specified in Part 1 of the Schedule to this notice.

The information is relevant to an investigation by an inspector into a suspected contravention, by a building industry participant, of the *Building and Construction Industry (Improving Productivity) Act 2016* or of a designated building law.

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 Australian Building and Construction Commissioner, by [time and date], in the manner and form specified in Part 6 of the Schedule to this notice.

WARNING—Under subsection 62(1) of the *Building and Construction Industry (Improving Productivity) Act 2016* 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 61E(3) or (4) of the *Building and Construction Industry (Improving Productivity) Act 2016*.

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

Note: Subsection 62(2) of the *Building and Construction Industry (Improving Productivity) Act 2016* provides protection from the general requirement to give information if legal professional privilege or public interest immunity applies.

Dated 20 .

.....
Signature

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 of the Building and Construction Industry (Improving Productivity) Act 2016 or designated building law]

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

Building and Construction Industry (Improving Productivity) Act 2016

NOTICE ISSUED TO [name]

EXAMINATION NOTICE TO PRODUCE DOCUMENTS

I, [name], a nominated AAT presidential member, acting under subsection 61C(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*, require you to produce the documents specified in Part 1 of the Schedule to this notice.

The documents are relevant to an investigation by an inspector into a suspected contravention, by a building industry participant, of the *Building and Construction Industry (Improving Productivity) Act 2016* or of a designated building law.

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 Australian Building and Construction Commissioner, by [time and date], in the manner specified in Part 6 of the Schedule to this notice.

WARNING—Under subsection 62(1) of the *Building and Construction Industry (Improving Productivity) Act 2016* 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 61E(3) or (4) of the *Building and Construction Industry (Improving Productivity) Act 2016*.

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

Note: Subsection 62(2) of the *Building and Construction Industry (Improving Productivity) Act 2016* 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 of the Building and Construction Industry (Improving Productivity) Act 2016 or designated building law]

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

Building and Construction Industry (Improving Productivity) Act 2016

NOTICE ISSUED TO [name]

EXAMINATION NOTICE TO ATTEND AND ANSWER QUESTIONS

I, [name], a nominated AAT presidential member, acting under subsection 61C(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*, require you to attend before the Australian Building and Construction Commissioner at:

[time] on [date] at [place]

to answer questions that are relevant to an investigation by an inspector into a suspected contravention, by a building industry participant, of the *Building and Construction Industry (Improving Productivity) Act 2016* or of a designated building law.

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 61F(3) of the *Building and Construction Industry (Improving Productivity) Act 2016*.

WARNING—Under subsection 62(1) of the *Building and Construction Industry (Improving Productivity) Act 2016* 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 61E(3) or (4) of the *Building and Construction Industry (Improving Productivity) Act 2016*; or
- to take an oath or make an affirmation, if required to do so under subsection 61F(4) of the *Building and Construction Industry (Improving Productivity) Act 2016*; 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: Subsection 62(2) of the *Building and Construction Industry (Improving Productivity) Act 2016* 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 rules made by the Minister for the purposes of subsection 63(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*.

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 of the Building and Construction Industry (Improving Productivity) Act 2016 or designated building law]

Part 4

[period during which the suspected contravention took place]