

REPLACEMENT EXPLANATORY STATEMENT

Issued by the authority of the Federal Safety Commissioner

Subject – *Building and Construction Industry (Improving Productivity) Act 2016*

Building and Construction Industry (Improving Productivity) (Federal Safety Officers) General Directions 2017

Subsection 68(4) of the *Building and Construction Industry (Improving Productivity) Act 2016* (the Act) provides that in exercising powers or performing functions as a Federal Safety Officer, a Federal Safety Officer must comply with any directions of the Federal Safety Commissioner. Subsection 68(5) of the Act states the Federal Safety Commissioner may give directions for the purpose of subsection 68(4).

Subsection 68(6) of the Act provides that if a direction under subsection 68(5) is of general application, the direction is a legislative instrument.

The purpose of the *Building and Construction Industry (Improving Productivity) (Federal Safety Officers) Directions 2017* (the General Directions) is to direct Federal Safety Officers on how to conduct themselves properly when exercising powers and performing functions under the Act, and to do so in a consistent fashion.

The General Directions substantially replicate the *General Directions to Federal Safety Officers 2016* (the old General Directions) with updated references to reflect the provisions of the Act and other technical amendments. The old General Directions ceased when their enabling legislation, the *Fair Work (Building Industry) Act 2012* was repealed by the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016*.

Details of the General Directions are set out in [Attachment A](#).

The General Directions commence on the day after they are registered on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights has been completed for the General Directions in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the General Directions are compatible with human rights. A copy of the Statement is at [Attachment B](#).

Consultation on the General Directions was not undertaken as they are technical in nature and continue previous arrangements that inform the operational activities of Federal Safety Officers.

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required as it is machinary in nature [OBPR ID 22407].

Attachment A

Details of the *Building and Construction Industry (Improving Productivity) (Federal Safety Officers) General Directions 2017*

Section 1 – Name

Section 1 provides that the legislative instrument is named the *Building and Construction Industry (Improving Productivity) (Federal Safety Officers) General Directions 2017* (the General Directions).

Section 2 – Commencement

Section 2 provides that the General Directions will commence the day after registration on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the instrument is made under subsection 68(5) of the *Building and Construction Industry (Improving Productivity) Act 2016* (the Act).

Section 4 – Definitions

Section 4 sets out certain defined terms used in the General Directions.

Section 5 – General Conduct of Federal Safety Officers

Section 5 provides that Federal Safety Officers must comply with the Federal Safety Officer Code of Conduct (FSO Code of Conduct) dated 1 January 2015 and issued by the Federal Safety Commissioner. In accordance with section 14 of the *Legislation Act 2003*, the FSO Code of Conduct is incorporated into the General Directions as in force at the time when the General Directions commenced.

The FSO Code of Conduct is a statement of the standards of behaviour and conduct that are expected of Federal Safety Officers when they are conducting audits on behalf of the Federal Safety Commissioner. It is made available as part of the package of information issued to prospective Federal Safety Officer applicants, provided to Federal Safety Officers during an induction at the commencement of their engagement and is also available to the public on the Federal Safety Commissioner's website (<http://www.fsc.gov.au/sites/fsc/resources/az/pages/federal-safety-officer-code-of-conduct-document>).

Section 5 further requires that Federal Safety Officers who are not otherwise bound by the APS Code of Conduct, must comply with it as if their service as a Federal Safety Officer were 'APS employment' for the purposes of the *Public Service Act 1999*.

The purpose of this section is to ensure that Federal Safety Officers adhere to high standards of conduct and ethical behaviour in relation to the discharge of their duties.

Section 6 – Confidentiality

Section 6 confirms that the confidentiality requirements imposed by section 105 of the Act apply to Federal Safety Officers.

Section 7 – Handling of identity cards

Section 7 confirms that, as required by subsection 69(4) of the Act, a Federal Safety Officer must carry his or her identity card at all times when exercising powers or performing functions as a Federal Safety Officer. The section also imposes certain practical requirements for the safe-keeping of identity cards to ensure that they are only used for their intended purpose.

Section 8 – Entry onto premises other than under subparagraph 72(2)(b)(ii)

Section 8 requires that, subject to any direction issued by the Federal Safety Commissioner that relates to the particular case, a Federal Safety Officer must notify the Federal Safety Commissioner in writing of that Federal Safety Officer's intention to enter premises under paragraph 72(2)(a) or subparagraph 72(2)(b)(i) of the Act at least 5 business days before the proposed entry is to occur. The notification must set out the location of the premises as well as the date and time of the proposed entry.

Section 8 further requires that the Federal Safety Officer must, if required, consult with the Federal Safety Commissioner before entering the premises.

The purpose of this section is to ensure that powers to enter premises under paragraph 72(2)(a) or subparagraph 72(2)(b)(i) of the Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Section 9 – Notice to produce documents

Section 9 requires that, subject to any direction issued by the Federal Safety Commissioner that relates to the particular case, a Federal Safety Officer must notify the Federal Safety Commissioner of that Federal Safety Officer's intention to serve a notice on a person to produce a record or document under section 77 of the Act.

The Federal Safety Officer must specify the person on whom the notice is to be served and what documents will be sought under the notice. Section 9 further requires that the Federal Safety Officer must, if required, consult with the Federal Safety Commissioner before serving the notice.

The purpose of this section is to ensure that powers to require production of documents under section 77 of the Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Section 10 – Taking samples of any goods or substances

Section 10 requires that, subject to any direction issued by the Federal Safety Commissioner that relates to the particular case, if a Federal Safety Officer intends to take samples of any goods or substances under paragraph 74(1)(f) of the Act that Federal Safety Officer must,

before taking any steps to do so, consult the Federal Safety Commissioner about the Federal Safety Officer's intention to take samples of any goods or substances.

The purpose of this section is to ensure that powers to take a sample of goods or substances under paragraph 74(1)(f) of the Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Section 11 – Entry onto premises under subparagraph 72(2)(b)(ii)

Subsection 11(1) requires that, subject to any direction issued by the Federal Safety Commissioner that relates to the particular case, a Federal Safety Officer must notify the Federal Safety Commissioner in writing of that Federal Safety Officer's intention to enter premises under subparagraph 72(2)(b)(ii) of the Act at least 5 business days before the proposed entry is to occur.

The notice must set out the location of the premises, the date and time of the proposed entry, and the identity of the person(s) on the premises who the Federal Safety Officer believes has or have information relevant to compliance purposes. Subsection 11(1) further requires that the Federal Safety Officer must, if required, consult with the Federal Safety Commissioner before entering the premises.

The purpose of this subsection is to ensure that powers to enter premises under subparagraph 72(2)(b)(ii) of the Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Subsection 11(2) requires that, subject to any direction issued by the Federal Safety Commissioner that relates to the particular case, a Federal Safety Officer must notify the Federal Safety Commissioner of that Federal Safety Officer's intention to interview a person under subsection 74(2) of the Act, identifying the persons to be interviewed and the subject matter of the interview. Further, the Federal Safety Officer must, if required, consult with the Federal Safety Commissioner before conducting the interview.

The purpose of this subsection is to ensure that powers to conduct interviews under subsection 74(2) of the Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Section 12 – Emergency Situations

Section 12 requires that if, in the course of his or her duties as a Federal Safety Officer, a Federal Safety Officer becomes aware of an immediate threat to the health or safety of persons on premises where building work is carried out, that Federal Safety Officer must immediately notify the Federal Safety Commissioner of the circumstances of that threat.

The purpose of this section is to ensure that the Federal Safety Commissioner is made aware of immediate threats to health and safety so that appropriate action can be taken.

Section 13 – Conflicts of interest and disclosure

Section 13 requires a Federal Safety Officer to notify the Federal Safety Commissioner of any conflicts of interest that might affect that Federal Safety Officer's proper discharge of his or

her duties, or which could create a reasonable belief that Federal Safety Officer might not discharge his or her duties properly.

The purpose of this section is to ensure that Federal Safety Officers properly discharge their duties without being affected by personal interests, and that those Federal Safety Officers are also seen to discharge their duties in a proper and impartial manner.

Section 14 – Failure to comply with General Directions not to affect validity of decisions

Section 14 provides that a failure to comply with the General Directions does not affect the validity of any action or decision made by a Federal Safety Officer under the Act, rules made under the Act or the Accreditation Scheme Rules.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

**Building and Construction Industry (Improving Productivity) (Federal Safety Officers)
General Directions 2017**

The *Building and Construction Industry (Improving Productivity) (Federal Safety Officers) General Directions 2017* (the General Directions) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Federal Safety Commissioner has the power to appoint Federal Safety Officers under subsection 68(1) of the *Building and Construction Industry (Improving Productivity) Act 2016* (the Act). In accordance with subsection 68(4) of the Act, a Federal Safety Officer must, in exercising powers or performing functions as a Federal Safety Officer, comply with any General Directions issued by the Federal Safety Commissioner under subsection 68(5) of the Act. The powers and functions of Federal Safety Officers are set out in Part 3 of Chapter 7 of the Act.

The purpose of the *Building and Construction Industry (Improving Productivity) (Federal Safety Officers) General Directions 2017* (the General Directions) is to direct Federal Safety Officers on how to conduct themselves properly when exercising powers and performing functions under the Act, and to do so in a consistent fashion.

The General Directions substantially replicate the *General Directions to Federal Safety Officers 2016* (the old General Directions) with updated references to reflect the provisions of the Act and other technical amendments. The old General Directions ceased when their enabling legislation, the *Fair Work (Building Industry) Act 2012* was repealed by the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016*.

Human rights implications

The General Directions are technical in nature and do not engage human rights.

Conclusion

The General Directions do not engage human rights.