



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

I, Alan Edwards, Federal Safety Commissioner, make the following General Directions.

Dated 7 June 2017

Alan Edwards
Federal Safety Commissioner

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1 Name

This instrument is the *Building and Construction Industry (Improving Productivity) (Federal Safety Officers) General Directions 2017*.

2 Commencement

This instrument commences the day after it is registered on the Federal Register of Legislation.

3 Authority

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

4 Definitions

In this instrument:

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

Accreditation Scheme Rules means the *Fair Work (Building Industry – Accreditation Scheme) Regulation 2016* as continued in force by item 11 of Schedule 2 to the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* as rules made by the Minister for the purposes of section 43 of the Act;

APS Code of Conduct has the same meaning as in the *Public Service Act 1999*.

FSO Code of Conduct means the Federal Safety Officer Code of Conduct, dated 1 January 2015, issued by the Federal Safety Commissioner.

5 General conduct of Federal Safety Officers

- (1) Federal Safety Officers must comply with the FSO Code of Conduct in performing functions and exercising powers under the Act.
- (2) Federal Safety Officers who:
 - (a) are not APS employees for the purposes of the *Public Service Act 1999*; and
 - (b) who are not otherwise bound by that Act to comply with the APS Code of Conduct,

must comply with the APS Code of Conduct as if their service as a Federal Safety Officer were ‘APS employment’ as defined in that Act.

6 Confidentiality

Section 105 of the Act prescribes requirements that Federal Safety Officers must comply with in handling information obtained in the course of official employment. These General Directions do not limit any other confidentiality or privacy obligations that may be imposed on Federal Safety Officers.

7 Handling of identity cards

- (1) Subsection 69(4) of the Act provides that a Federal Safety Officer must carry the identity card issued to that Federal Safety Officer under section 69 at all times when performing functions or exercising powers as a Federal Safety Officer.
- (2) A Federal Safety Officer to whom an identity card is issued under section 69 of the Act must:
 - (a) keep the identity card in the wallet in which it was issued by the Federal Safety Commissioner;
 - (b) keep the identity card secured in a safe place when not in use;
 - (c) ensure that no other person uses the identity card;
 - (d) notify the Federal Safety Commissioner immediately if the card is lost or stolen; and
 - (e) only use the identity card consistently with the Act, rules made under the Act, and any directions issued by the Federal Safety Commissioner under subsection 68(5) of the Act.

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

Subject to any direction issued by the Federal Safety Commissioner under subsection 68(5) of the Act that relates to the particular case, before a Federal Safety Officer exercises the power to enter premises under paragraph 72(2)(a) or subparagraph 72(2)(b)(i) of the Act, that Federal Safety Officer must:

- (a) at least 5 business days before the proposed entry onto the premises is to occur, notify the Federal Safety Commissioner in writing of the proposed entry, setting out the location of the premises and the date and approximate time of the proposed entry; and
- (b) if required by the Federal Safety Commissioner, consult with the Federal Safety Commissioner before entering the premises.

9 Notice to produce documents

Subject to any direction issued by the Federal Safety Commissioner under subsection 68(5) of the Act that relates to the particular case, before a Federal Safety Officer serves a notice on a person to produce a record or document under section 77 of the Act, that Federal Safety Officer must:

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- (a) notify the Federal Safety Commissioner, specifying the person on whom the notice is to be served and what documents will be sought under the notice; and
 - (b) if required by the Federal Safety Commissioner, consult with the Federal Safety Commissioner before serving the notice.

10 Taking samples of any goods or substances

Subject to any direction issued by the Federal Safety Commissioner under subsection 68(5) of the Act 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.

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

- (1) Subject to any direction issued by the Federal Safety Commissioner under subsection 68(5) of the Act that relates to the particular case, before a Federal Safety Officer exercises the power to enter premises under subparagraph 72(2)(b)(ii) of the Act, that Federal Safety Officer must:
 - (a) at least five 5 business days before the proposed entry onto the premises is to occur, notify the Federal Safety Commissioner in writing of the proposed entry, setting out the location of the premises, the date and approximate time of the proposed entry, and the identity of the person or persons on the premises who the Federal Safety Officer believes has or have information relevant to compliance purposes; and
 - (b) if required by the Federal Safety Commissioner, consult with the Federal Safety Commissioner before entering onto the premises.
- (2) Subject to any direction issued by the Federal Safety Commissioner under subsection 68(5) of the Act that relates to the particular case, before a Federal Safety Officer interviews a person under subsection 74(2) of the Act, that Federal Safety Officer must:
 - (a) notify the Federal Safety Commissioner of that Federal Safety Officer's intention to conduct the interview, identifying the persons to be interviewed and the subject matter of the interview;
 - (b) if required by the Federal Safety Commissioner, consult with the Federal Safety Commissioner before conducting the interview.

12 Emergency Situations

If, in the course of his or her duties as a Federal Safety Officer, a Federal Safety Officer becomes aware of circumstances on premises where building work is being carried out that represent an immediate threat to the health or safety of persons on those premises, that Federal Safety Officer must immediately notify the Federal

Safety Commissioner, or other such persons as requested by the Federal Safety Commissioner, of those circumstances.

13 Conflicts of interest and disclosure

(1) If a Federal Safety Officer is aware, or becomes aware, of any direct or indirect pecuniary interest, fact or thing that could:

- (a) cause that Federal Safety Officer to fail to properly exercise a power or perform a function under the Act; or
- (b) create a reasonable belief that the Federal Safety Officer might fail to properly exercise a power or perform a function under the Act,

that Federal Safety Officer must notify the Federal Safety Commissioner immediately of the relevant interest, fact or thing and disclose to the Commissioner the full details of that interest, fact or thing.

(2) Examples of interests, facts or things that could cause a Federal Safety Officer to fail to properly exercise a power or perform a function, or that could create a reasonable belief that this might occur, include:

- (a) if the Federal Safety Officer (or his or her employer) has provided services relating to work health and safety to the person being audited under the Act; or
- (b) if the Federal Safety Officer had a material interest (such as an ownership interest) in a company being audited by that Federal Safety Officer under the Act.

These are examples only and are not an exhaustive list of the interests, facts or things that could create an apparent or actual conflict of interest.

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

A failure to comply with these 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.