

## EXPLANATORY STATEMENT

### Issued by authority of the Minister for Employment and Workplace Relations

*Building and Construction Industry Improvement Act 2005*

*Building and Construction Industry Improvement Regulations 2005*

*General Directions to Federal Safety Officers 2005*

Subsection 60(4) of the *Building and Construction Industry Improvement Act 2005* 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 60(5) of the Act provides that if a direction under subsection (4) is of general application, the direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

To ensure that Federal Safety Officers conduct themselves properly when exercising powers and performing functions under the Act, and do so in a consistent fashion, the Federal Safety Commissioner has created the *General Directions to Federal Safety Officers 2005* ('the General Directions').

The General Directions provide as follows.

Clause 1 sets out how the General Directions may be cited.

Clause 2 sets out certain defined terms used in the General Directions.

Clause 3 provides that Federal Safety Officers must comply with the FSO Code of Conduct, which is a code of conduct, dated 25/11/2005, issued by the Federal Safety Commissioner. Clause 3 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 an FSO were 'APS employment' for the purposes of the *Public Service Act 1999*. The purpose of this clause is to ensure that Federal Safety Officers adhere to high standards of conduct and ethical behaviour in relation to the discharge of their duties.

Clause 4 confirms that the confidentiality requirements imposed by section 65 of the *Building and Construction Industry Improvement Act 2005* apply to Federal Safety Officers.

Clause 5 confirms that, as required by subsection 61(6) of the *Building and Construction Industry Improvement Act 2005*, 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 clause also imposes certain practical requirements for the safe-keeping of identity cards to ensure that they are only used for their intended purpose.

Clause 6 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 Officer's intention to enter premises under subsections 62(3) or 63(3) of the *Building and Construction Industry Improvement Act 2005* 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. Clause 6 further requires that the Officer must, if required, consult with the Federal Safety Commissioner before entering the premises. The purpose of this clause is to ensure that powers to enter premises under subsections 62(3) and 63(3) of the *Building and Construction Industry Improvement Act 2005*

are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 7 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 Officer's intention to serve a notice on a person to produce a document under subsections 62(6) or 63(6) of the *Building and Construction Industry Improvement Act 2005*. 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. Clause 7 further requires that the Officer must, if required, consult with the Federal Safety Commissioner before serving the notice. The purpose of this clause is to ensure that powers to require production of documents under subsections 62(6) and 63(6) of the *Building and Construction Industry Improvement Act 2005* are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 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 of that Officer's intention to serve a notice on a person (under regulation 7.7 of the *Building and Construction Industry Improvement Regulations 2005*) of that Officer's intention to take a sample of goods or substances under paragraphs 62(5)(b) and 63(5)(b) of the *Building and Construction Industry Improvement Act 2005*. In notifying the Federal Safety Commissioner, the Federal Safety Officer must specify the person on whom the notice is to be served and what substances or goods will be sought under the notice. Clause 8 further requires that the Officer must, if required, consult with the Federal Safety Commissioner before serving the notice. The purpose of this clause is to ensure that powers to take a sample of goods or substances under the *Building and Construction Industry Improvement Act 2005* and the *Building and Construction Industry Improvement Regulations 2005* are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 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 in writing of that Officer's intention to enter premises under subsections 62(9) or 63(9) of the *Building and Construction Industry Improvement Act 2005* 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 Officer believes has or have relevant information for compliance purposes. Clause 9 further requires that the Officer must, if required, consult with the Federal Safety Commissioner before entering the premises. The purpose of this clause is to ensure that powers to enter premises under subsections 62(9) and 63(9) of the *Building and Construction Industry Improvement Act 2005* are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 9 further 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 Officer's intention to interview a person under subsections 62(11) or 63(11) of the *Building and Construction Industry Improvement Act 2005*, identifying the persons to be interviewed and the subject matter of the interview. Clause 9 further requires that the Officer must, if required, consult with the Federal Safety Commissioner before conducting the interview. The purpose of this clause is to ensure that powers to conduct interviews under subsections 62(11) and 63(11) of the *Building and Construction Industry Improvement Act 2005* are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 10 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 Officer's intention to make an application to a court under section 49 of the *Building and Construction Industry Improvement Act 2005* regarding a possible contravention of a civil penalty provision. This notification is to be given as soon as possible and not less than 5 business days before the application is intended to be made. The notice must set out the particulars of the proposed application. Clause 10 further requires that the Officer must, if required, consult with the Federal Safety Commissioner before making the application. The purpose of this clause is to ensure that the power to make an application to a court under the *Building and Construction Industry Improvement Act 2005* is exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 11 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 Officer must immediately notify the Federal Safety Commissioner of the circumstances of that threat. The purpose of this clause 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.

Clause 12 requires that a Federal Safety Officer must notify the Federal Safety Commissioner of any conflicts of interest that might affect that Officer's proper discharge of his or her duties, or which could create a reasonable belief that Officer might not discharge his or her duties properly. The purpose of this clause is to ensure that Federal Safety Officers properly discharge their duties without being affected by personal interests, and that those Officers are also seen to discharge their duties in a proper and impartial manner.

Clause 13 provides that a failure to comply with the Directions does not affect the validity of any action or decision made by a Federal Safety Officer under the *Building and Construction Industry Improvement Act 2005* or the *Building and Construction Industry Improvement Regulations 2005*.