

BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT ACT 2005

SUBSECTION 60(4)

GENERAL DIRECTIONS TO FEDERAL SAFETY OFFICERS

I, Thomas Fisher, Federal Safety Commissioner, under subsection 60(4) of the *Building and Construction Industry Improvement Act 2005*, make the following directions of general application to be complied with by Federal Safety Officers.

Dated 8 December 2005



Thomas Fisher

Federal Safety Commissioner

1. Citation

These directions may be cited as the *General Directions to Federal Safety Officers 2005*.

2. Interpretation

(1) In these Directions unless the contrary intention appears –

Act means the *Building and Construction Industry Improvement Act 2005*.

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

FSO Code of Conduct means the Code of Conduct, dated 25/11/2005, issued by the Federal Safety Commissioner.

Regulations means the *Building and Construction Industry Improvement Regulations 2005*.

(2) These Directions should be read together with the Act and the Regulations, and terms used in these Directions which are defined in the Act or the Regulations have the same meaning in these Directions as in the Act or Regulations.

3. 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 an FSO were 'APS employment' as defined in that Act.

4. Confidentiality

Section 65 of the Act prescribes requirements that Federal Safety Officers must comply with in handling protected information obtained in the course of official employment. This Direction does not limit any other confidentiality or privacy obligations that may be imposed on Federal Safety Officers.

5. Handling of identity cards

- (1) Subsection 61(6) of the Act provides that a Federal Safety Officer must carry the identity card issued to that Officer under section 61 at all times when exercising powers or performing functions as a Federal Safety Officer.
- (2) A Federal Safety Officer to whom an identity card is issued under section 61 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, Regulations and any directions issued by the Federal Safety Commissioner under subsection 60(4) of the Act.

6. Entry onto premises

Subject to any direction issued by the Federal Safety Commissioner under subsection 60(4) of the Act that relates to the particular case, before a Federal Safety Officer exercises the power to enter premises under subsections 62(3) or 63(3) 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.

7. Notice to produce documents

Subject to any direction issued by the Federal Safety Commissioner under subsection 60(4) of the Act that relates to the particular case, before a Federal Safety Officer serves a notice on a person to produce a document under subsections 62(6) or 63(6) of the Act, that Federal Safety Officer must:

- (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.

8. Notice of intention to take a sample of goods or substances

Subject to any direction issued by the Federal Safety Commissioner under subsection 60(4) of the Act that relates to the particular case, before a Federal Safety Officer issues a notice to a person, under regulation 7.7 of the Regulations, giving notice of that Federal Safety Officer's intention to take a sample of goods or substances under paragraphs 62(5)(b) or 63(5)(b) of the Act, that Federal Safety Officer must:

- (a) notify the Federal Safety Commissioner, specifying the person on whom the notice is to be served and what substances or goods 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.

9. Entry onto premises under subsections 62(9) or 63(9)

- (1) Subject to any direction issued by the Federal Safety Commissioner under subsection 60(4) of the Act that relates to the particular case, before a Federal Safety Officer exercises the power to enter premises under subsections 62(9) or 63(9) 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 Officer believes has or have relevant information for 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 60(4) of the Act that relates to the particular case, before a Federal Safety Officer interviews a person under subsections 62(11) or 63(11) 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.

10. Power to apply to a court for orders in relation to a civil penalty

Subject to any direction issued by the Federal Safety Commissioner under subsection 60(4) of the Act that relates to the particular case, before a Federal Safety Officer makes an application to a court under section 49 of the Act regarding a possible contravention of a civil penalty provision, that Federal Safety Officer must:

- (a) notify the Federal Safety Commissioner in writing as soon as possible (and not less than 5 business days before making the proposed application) of that Federal Safety Officer's intention to make the application, setting out the particulars of the proposed application; and
- (b) if required by the Federal Safety Commissioner, consult with the Federal Safety Commissioner before making the application.

11. 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.

12. 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 occupational 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 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.

13. Failure to comply with Directions not to affect validity of decisions

A failure to comply with these Directions does not affect the validity of any action or decision made by a Federal Safety Officer under the Act or Regulations.