

EXPLANATORY STATEMENT

Issued by the authority of the Federal Safety Commissioner

Subject – *Fair Work (Building Industry) Act 2012*
Fair Work (Building Industry) Regulation 2015
General Directions to Federal Safety Officers 2016

Subsection 60(4) of the *Fair Work (Building Industry) Act 2012* (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 60(5) of the Act provides that if a direction under subsection (4) is of general application, the direction is a legislative instrument.

The *General Directions to Federal Safety Officers 2016* (the General Directions) replace the *General Directions to Federal Safety Officers 2005* (the 2005 General Directions). The 2005 General Directions are due to sunset on 1 April 2016 in accordance with Part 4 of the *Legislation Act 2003*.

The General Directions have the same substantive effect as the 2005 General Directions in that they 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.

Details of the General Directions are set out in Attachment A.

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 is 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 existing 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 [OBPR ID 20650].

The General Directions commence on 1 April 2016.

Attachment A

Details of the *General Directions to Federal Safety Officers 2016*

Clause 1 – Citation

Clause 1 provides that the legislative instrument may be cited as the *General Directions to Federal Safety Officers 2016* (the General Directions).

Clause 2 – Commencement

Clause 2 provides that the General Directions will commence on 1 April 2016.

Clause 3 – Interpretation

Clause 3 sets out certain defined terms used in the General Directions.

Clause 4 – General Conduct of Federal Safety Officers

Clause 4 provides that Federal Safety Officers must comply with the Federal Safety Officer Code of Conduct dated 1 January 2015 and issued by the Federal Safety Commissioner.

Clause 4 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 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 5 – Confidentiality

Clause 5 confirms that the confidentiality requirements imposed by section 64A of the *Fair Work (Building Industry) Act 2012* (the Act) apply to Federal Safety Officers.

Clause 6 – Handling of identity cards

Clause 6 confirms that, as required by subsection 61(6) 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 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 7 – Entry onto premises

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 in writing of that Federal Safety Officer's intention to enter premises under subsections 62(3) or 63(3) 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.

Clause 7 further requires that the Federal Safety 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 Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 8 – Notice to produce documents

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 Federal Safety Officer's intention to serve a notice on a person to produce a document under subsections 62(6) or 63(6) 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. 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 require production of documents under subsections 62(6) and 63(6) of the Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 9 – Notice of intention to take a sample of goods or substances

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 of that Federal Safety Officer's intention to serve a notice on a person (under section 19 of the *Fair Work (Building Industry) Regulation 2015* (the Regulation)) of that Federal Safety Officer's intention to take a sample of goods or substances under paragraphs 62(5)(b) and 63(5)(b) of the Act.

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 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 clause is to ensure that powers to take a sample of goods or substances under the Act and the Regulation are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 10 – Entry onto premises under subsections 62(9) or 63(9)

Subclause 10(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 subsections 62(9) or 63(9) 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 relevant information for compliance purposes. Subclause 10(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 subclause is to ensure that powers to enter premises under subsections 62(9) and 63(9) of the Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Subclause 10(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 subsections 62(11) or 63(11) 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 subclause is to ensure that powers to conduct interviews under subsections 62(11) and 63(11) of the Act are exercised in an appropriate manner, under the ultimate supervision of the Federal Safety Commissioner.

Clause 11 – Emergency Situations

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 Federal Safety 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 – Conflicts of interest and disclosure

Clause 12 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 clause 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.

Clause 13 – Failure to comply with Directions not to affect validity of decisions

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 Act or the Regulation.

Statement of Compatibility with Human Rights

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

General Directions to Federal Safety Officers 2016

The *General Directions to Federal Safety Officers 2016* (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 60(1) of the *Fair Work (Building Industry) Act 2012* (the Act). In accordance with subsection 60(4) of the Act, a Federal Safety Officer must, in exercising powers or performing functions as a Federal Safety Officer, comply with any directions issued by the Federal Safety Commissioner. The powers and functions of Federal Safety Officers are set out in Part 3 of Chapter 7 of the Act.

The purpose of the General Directions is to replace the *General Directions to Federal Safety Officers 2005* (the 2005 General Directions). The 2005 General Directions are due to sunset on 1 April 2016 in accordance with Part 4 of the *Legislation Act 2003*.

The General Directions have the same substantive effect as the 2005 General Directions in that they direct Federal Safety Officers to engage in proper conduct when exercising powers and performing functions under the Act, and to do so in a consistent fashion.

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.