



Building and Construction Industry Improvement Regulations 2005

Select Legislative Instrument 2005 No. 204 as amended

made under the

Building and Construction Industry Improvement Act 2005

This compilation was prepared on 1 July 2009
taking into account amendments up to SLI 2009 No. 163

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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Regulation 1.1

Chapter 1 Preliminary

1.1 Name of Regulations [see Note 1]

These Regulations are the *Building and Construction Industry Improvement Regulations 2005*.

1.2 Commencement

These Regulations commence on 1 October 2005.

1.3 Definitions

In these Regulations:

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

Note Several other words and expressions used in these Regulations have the meaning given by subsection 4 (1) of the Act. For example:

- FW Act.

Chapter 3 The Building Code

3.1 Reporting on compliance with Code

For subsection 28 (2) of the Act, a notice directing a person to give a written report to the ABC Commissioner must be in the form set out in Schedule 3.1.

Regulation 4.1

Chapter 4 Occupational Health and Safety

Part 1 Federal Safety Commissioner

4.1 Additional functions of Federal Safety Commissioner

- (1) For paragraph 30 (h) of the Act, this regulation sets out functions of the Federal Safety Commissioner.
- (2) It is a function to record information about the occupational health and safety performance of:
 - (a) an accredited person; and
 - (b) a person who has applied to be accredited under the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*.
- (3) It is a function to disclose the recorded information in accordance with these Regulations.

4.2 Delegation by Federal Safety Commissioner

For paragraph 32 (1) (c) of the Act, an APS employee who is engaged for the purposes of the Office of the Federal Safety Commissioner is prescribed.

Chapter 7 Enforcement

7.1 Penalties — eligible persons

- (1) Subject to subregulation (2), for paragraph 49 (6) (d) of the Act, the following persons are eligible persons:
 - (a) the Federal Safety Commissioner;
 - (b) a Federal Safety Officer.
- (2) For subsection 49 (7) of the Act, a person mentioned in subregulation (1) is prescribed only in relation to occupational health and safety matters.

7.2 Notice requiring production of documents

For paragraph 52 (1) (d) of the Act, a notice requiring a person to produce documents to the ABC Commissioner, or to an assistant, must be in accordance with Schedule 7.1.

7.3 Identity cards — ABC Inspectors and ABC Commissioner

- (1) For subsection 58 (1) of the Act, an identity card issued to an ABC Inspector must contain:
 - (a) the name and signature of the ABC Inspector; and
 - (b) the signature of the ABC Commissioner; and
 - (c) the date on which the card was issued; and
 - (d) a statement that the card was issued under subsection 58 (1) of the Act, and that the person to whom the card was issued is an ABC Inspector.

Note Subsection 58 (1) of the Act requires an identity card to be issued to an ABC Inspector. The identity card must contain a recent photograph of the ABC Inspector.

Regulation 7.4

- (2) For subsection 58 (2) of the Act, the identity card issued to the ABC Commissioner must contain:
- (a) the name and signature of the ABC Commissioner; and
 - (b) the signature of the Minister; and
 - (c) the date on which the card was issued; and
 - (d) a statement that the card was issued under subsection 58 (2) of the Act, and that the person to whom the card was issued is the ABC Commissioner.

Note Subsection 58 (2) of the Act requires an identity card to be issued to the ABC Commissioner. The identity card must contain a recent photograph of the ABC Commissioner.

7.4 Taking samples of goods and substances — ABC Inspectors

- (1) For paragraph 59 (5) (b) of the Act, an ABC Inspector may take a sample of any goods or substances after giving notice to:
- (a) the owner or other person in charge of the goods or substances; or
 - (b) an appropriate employee or other representative of that owner or person;
- of the ABC Inspector's intention to do so.
- (2) The notice must be in accordance with Schedule 7.2.

7.5 Notice requiring production of document — ABC Inspectors

For subsection 59 (6) of the Act, a notice issued by an ABC Inspector requiring a person to produce a document must be in accordance with Schedule 7.3.

7.6 Identity cards — Federal Safety Officers and Federal Safety Commissioner

- (1) For subsection 61 (1) of the Act, an identity card issued to a Federal Safety Officer must contain:
- (a) the name and signature of the Federal Safety Officer; and

Regulation 7.7

- (b) the signature of the Federal Safety Commissioner; and
- (c) the date on which the card was issued; and
- (d) a statement that the card was issued under subsection 61 (1) of the Act, and that the person to whom the card was issued is a Federal Safety Officer.

Note Subsection 61 (1) of the Act requires an identity card to be issued to a Federal Safety Officer. The identity card must contain a recent photograph of the Federal Safety Officer.

- (2) For subsection 61 (2) of the Act, an identity card issued to the Federal Safety Commissioner must contain:
 - (a) the name and signature of the Federal Safety Commissioner; and
 - (b) the signature of the Minister; and
 - (c) the date on which the card was issued; and
 - (d) a statement that the card was issued under subsection 61 (2) of the Act, and that the person to whom the card was issued is the Federal Safety Commissioner.

Note Subsection 61 (2) of the Act requires an identity card to be issued to the Federal Safety Commissioner. The identity card must contain a recent photograph of the Federal Safety Commissioner.

7.7 Taking samples of goods and substances — Federal Safety Officers

- (1) For paragraphs 62 (5) (b) and 63 (5) (b) of the Act, a Federal Safety Officer may take a sample of any goods or substances after giving notice to:
 - (a) the owner or other person in charge of the goods or substances; or
 - (b) an appropriate employee or other representative of that owner or person;of the Federal Safety Officer's intention to do so.
- (2) The notice must be in accordance with Schedule 7.4.

Regulation 7.8

7.8 Notice requiring production of document — Federal Safety Officers

For subsections 62 (6) and 63 (6) of the Act, a notice issued by a Federal Safety Officer requiring a person to produce a document must be in accordance with Schedule 7.5.

7.9 Notice requiring information

For paragraph 52 (1) (c) of the Act, a notice requiring a person to give information to the ABC Commissioner, or to an assistant, must be in accordance with Schedule 7.6.

7.10 Notice to attend and answer questions

For paragraph 52 (1) (e) of the Act, a notice requiring a person to attend and answer questions before the ABC Commissioner, or an assistant, must be in accordance with Schedule 7.7.

Chapter 8 Miscellaneous

8.1A Permitted recording or disclosure of protected information by designated official

- (1) For paragraph 65 (3) (d) of the Act, a designated official may:
- (a) make a record of protected information; and
 - (b) disclose the protected information;
- in accordance with this regulation.

Examples of protected information

- 1 The adequacy of the performance of an accredited person.
- 2 Details of an occupational health and safety incident on the building site of an accredited person.
- 3 The reason for a sanction or penalty imposed by the Federal Safety Commissioner against an accredited person.

Note The recording and disclosure of information in accordance with this regulation is in addition to the recording and disclosure that is permitted by the Act.

- (2) Protected information may be recorded and disclosed for the purpose of assessing the suitability of:
- (a) an accredited person; or
 - (b) any person who has ever applied to be accredited under the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*; to undertake Commonwealth building work.
- (3) Protected information may be recorded for any other purpose if the accredited person to whom the information relates, has consented, in writing, to the recording of the information for that purpose.

Regulation 8.1B

- (4) Protected information that has been recorded in accordance with subregulation (3) may be disclosed to a person for any other purpose, if the accredited person to whom the information relates, has consented, in writing, to the disclosure of the information.

8.1B Permitted publication of protected information by Federal Safety Commissioner

- (1) For paragraph 65 (3) (d) of the Act, and in addition to regulation 8.1A, the Federal Safety Commissioner may disclose protected information in accordance with this regulation, about:
- (a) occupational health and safety policies; or
 - (b) occupational health and safety procedures; or
 - (c) safety work practices and performance; relating to the building work of an accredited person.
- (2) Protected information mentioned in subregulation (1) may be:
- (a) disclosed to any person if the Federal Safety Commissioner considers that it is in the public interest to disclose it; or
 - (b) disclosed to a person appointed or employed by:
 - (i) the Commonwealth, a State or Territory; or
 - (ii) an authority of the Commonwealth, a State or Territory.

8.1 Notice of application to court (Act s 78 (2) (d))

- (1) A building industry participant must, as soon as practicable, notify the ABC Commissioner of an application made to a court under the Act, the FW Act, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, the Workplace Relations Act or section 34 of the *Independent Contractors Act 2006* if:
- (a) the application is made by, or otherwise involves, the building industry participant; and
 - (b) the proceedings in which the application is made relate to building work.

Regulation 8.2

- (2) A notice under subregulation (1) must include the following information:
 - (a) the parties to the action;
 - (b) contact details for each of the parties;
 - (c) the Act, and provision, under which the application has been made;
 - (d) the jurisdiction in which the application has been made.
- (3) A building industry participant must, as soon as practicable, notify the ABC Commissioner of the outcome of an application mentioned in subregulation (1).
- (4) A notice under subregulation (3) must include the following information:
 - (a) the parties to the action;
 - (b) contact details for the parties;
 - (c) the jurisdiction in which the application was made;
 - (d) the outcome of the application.
- (5) Subject to subregulation (6), Part 1 of Chapter 7 of the Act applies to a contravention of this regulation as if this regulation were a civil penalty provision under the Act.
- (6) The maximum pecuniary penalty for a contravention of this regulation is:
 - (a) if the defendant is a body corporate — 25 penalty units; and
 - (b) in any other case — 5 penalty units.

8.2 Definition of eligible condition

For the purposes of paragraph (c) of the definition of *eligible condition* in section 4 of the Act, a prescribed matter is compliance with the following, as in force from time to time:

- (a) the National Code of Practice for the Construction Industry 1997;
- (b) any guidelines issued by the Commonwealth under that National Code.

Schedule 3.1 Notice directing industry participant to report on compliance with Code
(regulation 3.1)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING PRODUCTION OF DOCUMENTS

I, *[name]*, the Australian Building and Construction Commissioner, acting under section 28 of the *Building and Construction Industry Improvement Act 2005* and regulation 3.1 of the *Building and Construction Industry Improvement Regulations 2005*, direct you, a person who is required to comply with the Building Code in respect of the building work mentioned in Part 1 of the Schedule to this Notice, to give me a written report, within *[period within which report must be provided]* of the date of this Notice, containing the information mentioned in Part 2 of the Schedule to this Notice in relation to that building work.

Dated 20 .

.....
(ABC Commissioner's signature)

NOTICE GIVEN TO *[name]*

SCHEDULE

Part 1

[address and nature of building work]

Part 2

[specified information]

Schedule 7.1 Notice requiring production of documents

(regulation 7.2)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING PRODUCTION OF DOCUMENTS

I, [name], [position], acting under paragraph 52 (1) (d) of the *Building and Construction Industry Improvement Act 2005*, and regulation 7.2 of the *Building and Construction Industry Improvement Regulations 2005*, require you to produce the documents specified in Part 1 of the Schedule to this notice.

The documents are relevant to an investigation by the ABC Commissioner into a contravention, by a building industry participant, of a designated building law.

Note 1 The information relating to the investigation is specified in Parts 2 to 5 of the Schedule to this notice.

Note 2 **Investigation** is defined in subsection 52 (8) of the *Building and Construction Industry Improvement Act 2005*.

The documents are to be provided to the ABC Commissioner, or an assistant, by [time and date] in the manner specified in Part 6 of the Schedule to this notice.

WARNING — Under subsection 52 (6) of the *Building and Construction Industry Improvement Act 2005* you will commit an offence if you have been given this notice and fail to produce the required documents by the time, and in the manner, specified in the notice.

PENALTY: Imprisonment for 6 months

Dated 20 .

.....

signature

NOTICE GIVEN TO [name]

SCHEDULE

Part 1
[documents]

Part 2
[address (if any) to which the contravention relates]

Part 3
[building industry participant or kind of building industry participant]

Part 4
[contravention and designated building law]

Part 5
[period during which the contravention took place]

Part 6
[manner in which documents must be produced]

**Schedule 7.2 Notice of taking of samples of
goods and substances — ABC
Inspectors**
(regulation 7.4)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

**NOTICE THAT SAMPLE OF GOODS OR SUBSTANCES IS TO
BE TAKEN**

I, *[name]*, an ABC Inspector in the office of the Australian Building and Construction Commissioner, acting under section 59 of the *Building and Construction Industry Improvement Act 2005* and regulation 7.4 of the *Building and Construction Industry Improvement Regulations 2005*, give notice that I propose to take a sample of the goods and/or substances listed in the Schedule to this notice.

Dated 20 .

.....
(ABC Inspector's signature)

NOTICE GIVEN TO

[name]

- owner of the goods or substances
- person in charge of the goods or substances
- appropriate employee of the owner or person in charge
- representative of the owner or person in charge

SCHEDULE

[description of goods and/or substances]

Schedule 7.3 Notice requiring production of document — ABC Inspectors

(regulation 7.5)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING PRODUCTION OF DOCUMENT

I, *[name]*, an ABC Inspector in the office of the Australian Building and Construction Commissioner, acting under subsection 59 (6) of the *Building and Construction Industry Improvement Act 2005* ('the Act') and regulation 7.5 of the *Building and Construction Industry Improvement Regulations 2005*, require you to produce at the place specified in Part 2 of the Schedule to this Notice within the period specified in Part 3 of the Schedule to this Notice the documents mentioned in Part 1 of the Schedule to this Notice, being documents that you were required to produce under paragraph 59 (5) (e) of the Act on the date, and at the premises, mentioned in Part 4 of the Schedule to this Notice.

Dated 20 .

.....
(ABC Inspector's signature)

NOTICE GIVEN TO *[name]*

SCHEDULE

Part 1

[documents]

Part 2

[place at which documents must be produced]

Part 3

[period within which documents must be produced]

Part 4

[date on which, and premises at which, documents were required to be produced under paragraph 59 (5) (e) of the Act]

**Schedule 7.4 Notice of taking of samples of
goods and substances —
Federal Safety Officers**
(regulation 7.7)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

**NOTICE THAT SAMPLE OF GOODS OR SUBSTANCES IS TO
BE TAKEN**

I, *[name]*, a Federal Safety Officer in the office of the Federal Safety Commissioner, acting under section 62* / section 63* of the *Building and Construction Industry Improvement Act 2005* and regulation 7.7 of the *Building and Construction Industry Improvement Regulations 2005*, give notice that I propose to take a sample of the goods and/or substances listed in the Schedule to this notice.

Dated 20 .

.....
(Federal Safety Officer's signature)

* *omit inapplicable reference*

NOTICE GIVEN TO

[name]

- owner of the goods or substances
- person in charge of the goods or substances
- appropriate employee of the owner or person in charge
- representative of the owner or person in charge

SCHEDULE

[description of goods and/or substances]

Schedule 7.5 Notice requiring production of document — Federal Safety Officers

(regulation 7.8)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING PRODUCTION OF DOCUMENT

I, *[name]*, a Federal Safety Officer in the office of the Federal Safety Commissioner, acting under subsection 62 (6)* / subsection 63 (6)* of the *Building and Construction Industry Improvement Act 2005* ('the Act') and regulation 7.8 of the *Building and Construction Industry Improvement Regulations 2005*, require you to produce at the place specified in Part 2 of the Schedule to this Notice within the period specified in Part 3 of the Schedule to this Notice the documents mentioned in Part 1 of the Schedule to this Notice, being documents that you were required to produce under paragraph 62 (5) (e)* / paragraph 63 (5) (e)* of the Act on the date, and at the premises, mentioned in Part 4 of the Schedule to this Notice.

Dated 20 .

.....
(Federal Safety Officer's signature)

* *omit inapplicable references*

NOTICE GIVEN TO *[name]*

SCHEDULE

Part 1

[documents]

Part 2

[place at which documents must be produced]

Part 3

[period within which documents must be produced]

Part 4

[date on which, and premises at which, documents were required to be produced under paragraph 62 (5) (e) or 63 (5) (e) of the Act]

Schedule 7.6 Notice requiring information

(regulation 7.9)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE REQUIRING INFORMATION

I, [name], [position], acting under paragraph 52 (1) (c) of the *Building and Construction Industry Improvement Act 2005*, and regulation 7.9 of the *Building and Construction Industry Improvement Regulations 2005*, require you to give the information specified in Part 1 of the Schedule to this notice.

The information is relevant to an investigation by the ABC Commissioner into a contravention, by a building industry participant, of a designated building law.

Note 1 The information relating to the investigation is specified in Parts 2 to 5 of the Schedule to this notice.

Note 2 **Investigation** is defined in subsection 52 (8) of the *Building and Construction Industry Improvement Act 2005*.

This information is to be provided to the ABC Commissioner, or an assistant, by [time and date] in the manner and form specified in Part 6 of the Schedule to this notice.

WARNING — Under subsection 52 (6) of the *Building and Construction Industry Improvement Act 2005* you will commit an offence if you have been given this notice and fail to give the required information by the time, and in the manner and form, specified in the notice.

PENALTY: Imprisonment for 6 months

Dated 20 .

.....
signature

NOTICE GIVEN TO *[name]*

SCHEDULE

Part 1
[information]

Part 2
[address (if any) to which the contravention relates]

Part 3
[building industry participant or kind of building industry participant]

Part 4
[contravention and designated building law]

Part 5
[period during which the contravention took place]

Part 6
[manner and form in which information must be given]

Schedule 7.7 Notice to attend and answer questions

(regulation 7.10)

COMMONWEALTH OF AUSTRALIA

Building and Construction Industry Improvement Act 2005

NOTICE TO ATTEND AND ANSWER QUESTIONS

I, [name], [position], acting under paragraph 52 (1) (e) of the *Building and Construction Industry Improvement Act 2005*, and regulation 7.10 of the *Building and Construction Industry Improvement Regulations 2005*, require you to attend at:

[time] on [date] at [place]

to answer questions that are relevant to an investigation by the ABC Commissioner into a contravention, by a building industry participant, of a designated building law.

Note 1 The information relating to the investigation is specified in Parts 1 to 4 of the Schedule to this notice.

Note 2 **Investigation** is defined in subsection 52 (8) of the *Building and Construction Industry Improvement Act 2005*.

WARNING — Under subsection 52 (6) of the *Building and Construction Industry Improvement Act 2005* you will commit an offence if you have been given this notice and fail:

- to attend to answer questions at the time and place specified in this notice; or
- to take an oath or make an affirmation, when required to do so under subsection 52 (4) of the *Building and Construction Industry Improvement Act 2005*; or
- to answer questions relevant to the investigation while attending as required by this notice.

PENALTY: Imprisonment for 6 months

Dated 20 .

.....

signature

NOTICE GIVEN TO [name]

SCHEDULE

Part 1
[address (if any) to which the contravention relates]

Part 2
[building industry participant or kind of building industry participant]

Part 3
[contravention and designated building law]

Part 4
[period during which the contravention took place]

Table of Instruments

Notes to the *Building and Construction Industry Improvement Regulations 2005***Note 1**

The *Building and Construction Industry Improvement Regulations 2005* (in force under the *Building and Construction Industry Improvement Act 2005*) as shown in this compilation comprise Select Legislative Instrument 2005 No. 204 amended as indicated in the Tables below.

Table of Instruments

Year and number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2005 No. 204	16 Sept 2005 (see F2005L02570)	1 Oct 2005	
2005 No. 306	20 Dec 2005 (see F2005L04067)	21 Dec 2005	—
2006 No. 337	15 Dec 2006 (see F2006L04078)	16 Dec 2006	—
2007 No. 22	21 Feb 2007 (see F2007L00414)	1 Mar 2007	—
2007 No. 304	27 Sept 2007 (see F2007L03837)	28 Sept 2007	—
2009 No. 163	30 June 2009 (see F2009L02564)	1 July 2009	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 1	
Note to r. 1.3	ad. 2009 No. 163
Chapter 4	
Part 1	
Part 1	ad. 2006 No. 337
R. 4.1	rs. 2006 No. 337 am. 2007 No. 304
R. 4.2	rep. 2005 No. 306 ad. 2006 No. 337
Chapter 7	
R. 7.9	ad. 2005 No. 306
R. 7.10	ad. 2005 No. 306
Chapter 8	
R. 8.1A	ad. 2006 No. 337 am. 2007 No. 304
R. 8.1B	ad. 2006 No. 337
R. 8.1	am. 2005 No. 306; 2006 No. 337; 2007 No. 22; 2009 No. 163
R. 8.2	ad. 2005 No. 306
Schedule 7.1	
Schedule 7.1	rs. 2005 No. 306
Schedule 7.6	
Schedule 7.6	ad. 2005 No. 306
Schedule 7.7	
Schedule 7.7	ad. 2005 No. 306