

Australian Government Building and Construction OHS Accreditation Scheme

Compliance Policy Manual

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I. Introduction

OHS Accreditation Scheme

- 1) The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) operates such that, subject to certain thresholds, only head contractors (or 'persons') who are accredited under the Scheme can enter into contracts for building work that is funded directly or indirectly by the Australian Government. The Scheme was established under the *Building and Construction Industry Improvement Act 2005* (BCII Act).
- 2) The Scheme enables the Australian Government to use its influence as a major construction client and provider of capital to improve the building and construction industry's OHS performance. In this way, the Australian Government aims to promote that building and construction work must be performed safely, as well as on budget and on time.
- 3) The Scheme helps ensure that the benefits of investment in high quality OHS practices are recognised, and that the costs of poor OHS are properly taken into account.

Relationship with OHS Statutory Regimes

- 4) Compliance with the Scheme should be viewed as a structural improvement program distinct from an enforcement regime under other Commonwealth or state/territory OHS statutory regimes.
- 5) The Australian Government recognises the complexity of the current OHS regulatory framework and is not seeking to unduly add to that framework through the Scheme. The Australian Government is seeking to promote best practice OHS within the existing regulatory regime.

Scheme Application

- 6) The BCII Act places specific legal obligation on Australian Government agencies as clients of the building and construction industry. Clients must ensure that any building work which falls within the scope of the Scheme is conducted by an accredited person.
- 7) The Scheme was implemented in two stages. Stage One commenced on 1 March 2006 and required a person wishing to contract with the Australian Government for directly funded building and construction contracts, with a value of \$6 million or more, to hold accreditation. To facilitate the smooth implementation of Stage One, the Federal Safety Commissioner (FSC) implemented a period of provisional accreditation before full accreditation was required.
- 8) Stage Two commenced on 1 October 2007 and required a person:
 - a) wishing to contract with the Australian Government for directly funded building and construction contracts, with a value of \$3 million or more (lowered from \$6 million), to hold accreditation; and
 - b) to be accredited prior to undertaking building and construction contracts indirectly funded by the Australian Government, where the Australian Government's contribution is:
 - i. at least \$10 million; or

- ii. at least \$5 million and represents at least 50% of the total contract value.

Obtaining Accreditation

9) The Building *and Construction Industry Improvement (Accreditation Scheme) Regulations 2005* (the Regulations) provides the statutory framework for the Scheme. The Regulations provide the FSC with the power to accredit a person if that person meets the Scheme requirements as set out in Division 2.3 of the Regulations.

10) In deciding whether a person meets the Scheme requirements, the FSC must:

- a) take the following matters into account (as per regulation 6, sub-regulation 2):
 - i. whether the applicant's OHS Management System has been certified to the AS/NZs 4801:2001 or the international standard OHSAS 18001:1999;
 - ii. the applicant's experience (if any) in dealing with construction hazards or high risk activities;
 - iii. the applicant's record in relation to workplace safety; and
 - iii. the findings of a pre-accreditation audit.
- b) consider the applicant's performance against the Scheme criteria (regulation 6, sub-regulation 3):
 - i. demonstrated senior management commitment to OH&S;
 - ii. demonstrated effective subcontractor OH&S management;
 - iii. integration of safe design principles into the risk management process;
 - iv. whole of project OH&S consultation and communication;
 - v. whole of project OH&S performance measurement; and
 - vi. OH&S training requirements.

Decisions that the FSC can make

11) As the accrediting authority, the FSC can make the following decisions:

- a) to accredit a person, including the period of accreditation (regulation 12(1));
- b) not to accredit a person (applicant to be advised as per regulation 12(3)(d));
- c) to add further conditions on or after accreditation when there is no breach of accreditation conditions (regulation 15(1));
- d) to add further conditions after accreditation when there is a breach of the accreditation conditions (regulation 17(1)(a));
- e) to suspend accreditation status (regulation 17(1)(b)); and
- f) to revoke accreditation status (regulations 17(1)(c) and 17(2)).

Accreditation Conditions

12) Regulation 14(1) sets out the conditions that apply to all accredited persons:

- a) the person has at all times appropriate OH&S policies and procedures and safe work practices;

- b) the person agrees to the post-accreditation audits and the audit process mentioned in regulation 16;
 - c) the person agrees to comply with the reporting requirements notified to the person under sub regulation (2); and
 - d) the person complies with the conditions of accreditation.
- 13) Where a condition of accreditation is breached, the FSC may impose a range of sanctions under regulation 17.
- 14) This compliance policy manual sets out the processes followed by the Office of the Federal Safety Commissioner (OFSC) in ensuring compliance with the Scheme.

II. Show Cause

Procedural Fairness

- 15) The compliance process is initiated where there are concerns surrounding a person's safety performance or adherence to Scheme requirements.
- 16) Before deciding on what action will be taken, the FSC may issue the accredited person with a written request known as a show cause letter. This letter highlights the concerns identified and gives a full disclosure of the material and grounds that will be taken into account before any decision is made as to whether compliance action is required. This process allows for the principles of procedural fairness and natural justice.

Accredited Person's Response

- 17) The person will be given the opportunity to formally respond in writing to the substantive allegation outlined in the show cause letter and the possibility of a further condition or sanction being imposed. The person may also wish to provide further evidence to support actions undertaken, explain any aspect or aspects of the issues raised by the FSC, or describe actions to be taken to remedy the identified issue.
- 18) The person will be given the opportunity to meet and discuss issues with the FSC and a representative of the client agency (where relevant).
- 19) Unless otherwise determined by the FSC, a person will be given 30 days from the date the show cause letter is issued to respond. Should an extension be required, the accredited person must submit a written explanation to the FSC for approval, detailing why the additional time is needed

FSC Considerations

- 20) The FSC will take into account the accredited person's response when considering what, if any, action will be taken against the accredited person.
- 21) If the FSC considers that further action is appropriate, the FSC may:
 - a) impose on the accredited person a further condition of accreditation under regulation 15(1); and/ or
 - b) impose a sanction on the accredited person under regulation 17(1).
- 22) Further information in relation to further conditions and sanctions can be found at Section III of this Manual.

III. Compliance Measures

Collaborative Approach

- 23) The FSC has adopted a collaborative approach in ensuring compliance with the Scheme. This means that the FSC has taken the view that improvements in OHS within the building and construction industry would result from active partnership with Australian Government stakeholders, states and territories, key industry representatives and head contractors.
- 24) The collaborative approach is reflected in the structure of compliance measures. A two tiered system applies to compliance measures under the Scheme:

Tier One:	Regulation 15(1) further conditions
Tier Two:	Sanctions: <ul style="list-style-type: none">• Regulation 17(1)(a) further conditions• Suspension under regulation 17(1)(b)• Revocation under regulation 17(1)(c) and 17(2)

Tier One Actions

- 25) The first tier of compliance measures reflects the principle that OHS issues should be addressed in a collaborative manner between the FSC and the accredited person. It is used where no breach of the accreditation conditions has occurred and allows the accredited person an opportunity to address identified issues in consultation with the FSC prior to any sanction being imposed.
- 26) A tier one action is issued to an accredited person via a further condition of accreditation under regulation 15. The compliance measure may be in the form of (but not limited to):
- a) an improvement plan;
 - b) a requirement to provide specific documentation (e.g. reports or OHS policies/procedures);
 - c) self audits
 - d) policy and safety awareness program; and/or
 - e) safety commitment statement.
- 27) Compliance with the requirements of these above measures is a further condition of accreditation, imposed under regulation 15. For example, this means that if an accredited person fails to comply with an improvement plan that accredited person is in breach of an accreditation condition.
- 28) Regulation 17(1) provides that the FSC may impose sanctions where there is a breach of accreditation conditions. This means that if the accredited person fails to comply with a tier one action, the FSC may impose tier two compliance measures.
- 29) Further information in relation to tier one compliance measures can be found at Section V of this Manual.

Tier One Triggers

- 30) Without limiting the factors that the FSC can take into account, the FSC may issue a tier one action in relation to:
- a) safety issues of a less serious nature arising out of an audit;
 - b) general concerns of the FSC regarding the accredited person's OHS performance; or
 - c) receipt of late contractor reports (monthly, biannual, incidents and end of project).

Safety Issues of a Less Serious Nature

- 31) A safety issue of a 'less serious nature' is deemed to be an issue that has not resulted in, or is unlikely to result in, a personal injury or dangerous occurrence.

Tier Two – Sanctions

- 32) The second tier of compliance measures has been termed "Sanctions" because they apply in the event of a breach of accreditation conditions. There are three compliance measures that can be used as sanctions:
- a) further conditions of accreditation imposed under regulation 17(1)(a);
 - b) suspension of accreditation status carried out under regulation 17(1)(b); and
 - c) revocation of accreditation status in accordance with regulation 17(1)(c) and 17(2).

Sanction Triggers

- 33) Without limiting the factors that the FSC can take into account, the FSC may consider a sanction appropriate in the following cases (deemed to be a breach of regulation 14(1) accreditation conditions or regulation 15(1) further conditions):
- a) there is a demonstrable failure of the accredited person's OHS management system;
 - b) the person's actions pose an immediate threat to life;
 - c) the accredited person's over-all OHS performance is below the standard required for an accredited person;
 - d) the person fails to provide notification of a Scheme project; and
 - e) the willingness of the person to cooperate with the FSC to remedy the breach.
- 34) The FSC will determine the degree to which these and other factors are in evidence in deciding on the appropriate sanction and time period that sanction will apply.

Demonstrable Failure of OHS Management System

- 35) A demonstrable failure of the accredited person's OHS management system includes, but is not limited to:
- a) a proven OHS statutory breach;
 - b) major non-conformance of an OHS system as identified in the audit program;

- c) major failure to adhere to a site safety management plan; or
- d) ongoing unsafe work practices by the accredited person or an employee, a subcontractor or an employee of a subcontractor who is engaged by the accredited person.

Immediate Threat to Life

- 36) There is an immediate threat to life if an incident or event has occurred, or a work system is in place which results, or in the opinion of the FSC might result, in death or serious injury.

OHS Performance

- 37) An accredited person's OHS performance is that person's performance against accepted industry OHS performance measures. These may include:

- a) lost time injury frequency rate;
- b) claims incidence rate;
- c) average cost per claim and top five claims categories;
- d) workers compensation premium rate;
- e) fatalities on any of the person's building or construction sites;
- f) OHS improvement, prohibition or infringement notices issued to the person; and
- g) prosecution of the person for any breach of OHS law.

- 38) Without limiting the factors that the FSC may take into account in determining whether the accredited person meets the standard for OHS performance, the FSC may take into account such of the following factors as are relevant in the circumstances of the case:

- a) audit results;
- b) workplace incidents;
- c) complaint or investigation;
- d) end of project reports; and
- e) biannual contractor activity reports.

- 39) The accredited person will be subject to regular on-site audits conducted by Federal Safety Officers (FSOs) during the period of accreditation. All Scheme projects will be subject to Project Safety Audits. Where an accredited company has no Scheme project, the company will be required to undergo Maintenance Audits on an annual basis. Audits may be generated by other events; for example, a workplace incident or complaint.

- 40) As outlined in the OHS Performance Reporting Pack, at the end of the project the accredited person must deliver an End of Project OHS Report to the FSC, including performance data and information relevant to safety on site.

- 41) Each accredited person must lodge a Biannual Activity Report which covers selected performance data for all building or construction contracts.
- 42) The FSC monitors the overall performance of the Scheme and provides a progress report to the Minister for Education, Employment and Workplace Relations and other stakeholders on an annual basis.

IV. Key Principles

43) The following principles guide actions taken by the FSC when dealing with compliance matters:

- a) collaborative approach;
- b) transparency;
- c) consistency; and
- d) flexibility.

Collaborative Approach

44) The Scheme compliance policy does not follow a punitive-based enforcement model. Instead, it adopts a collaborative approach in providing an accredited person with opportunities for improvement. In most cases, sanctions will be imposed only where there has been a failure in the collaborative model or where the person failed to comply with the conditions of accreditation.

Transparency

45) The decision-making process must be transparent. This means that the FSC must be able to demonstrate the steps taken in making that decision, the reasons for making that decision and the evidence or information relied upon in making that decision. The accredited person must also be informed of any adverse information before the FSC and must be provided with the opportunity to comment.

Consistency

46) Compliance measures must be applied in a consistent way. Accredited persons and other stakeholders have a right to expect a consistent and objective application of compliance measures, and a right to a review of decision if they disagree with the decision.

Flexibility

47) The FSC must remain flexible in the decision-making process. The FSC will have regard to the circumstances of the particular accredited person in each individual case and will work together with the accredited person to determine the most appropriate compliance measure and timeframe to apply.

V. Tier One Compliance Measures

Further Conditions (imposed under regulation 15(1))

What are regulation 15(1) further conditions?

- 48) Regulation 15(1) provides the FSC with the power to impose further conditions on or after accreditation.
- 49) A further condition is any condition which the FSC determines as relevant to improve the accredited person's OHS performance on building and construction projects, to ensure Scheme requirements are met and high safety standards are achieved.

What is the purpose of further conditions imposed under regulation 15(1)?

- 50) Imposing further conditions after accreditation allows the FSC flexibility in identifying and applying appropriate management solutions to OHS issues, where no breach of the accreditation conditions has occurred.
- 51) Where imposed, the accredited person must comply with the further conditions in addition to those conditions already provided under regulation 14(1), in order to maintain accreditation and/or avoid sanctions.

When are regulation 15(1) further conditions imposed?

- 52) Please refer to 'Tier One Triggers' found at section III of this Manual.
- 53) If the FSC considers the accredited person has met the further conditions, the FSC may remove them. An accredited person will be notified in writing when further conditions have been lifted.
- 54) If required, a follow-up audit will be conducted to ascertain whether the accredited person has complied with the further conditions.
- 55) The FSC retains the right to amend or replace the further conditions where extenuating circumstances apply and the FSC considers that the specified timeframe to meet the further conditions is no longer reasonable. However, if the FSC determines that a breach of the further conditions has occurred a sanction may be imposed
- 56) The further conditions will continue to remain in force until and unless the FSC removes or replaces them.
- 57) The five tier one compliance measures listed below serve as common examples of, but are not limited to, further conditions that can be imposed under regulation 15(1).

Example A: Improvement Plan

What is an improvement plan?

- 58) An improvement plan is a written agreement between the FSC and accredited person which identifies OHS issues of a less serious nature and sets out a proposed plan to remedy these defects.
- 59) The FSC will provide the accredited person with a template which identifies the OHS issues that need remedying. The accredited person is then responsible for developing the improvement plan by proposing actions and specific timeframes to address the identified

issues. These actions and timeframes must be considered and approved by the FSC prior to commencement of the plan.

- 60) To comply with the improvement plan, the accredited person must implement the actions outlined in the improvement plan within the approved timeframes. Where required, an FSO review of evidence and/ or an on-site audit will be undertaken to verify the actions. Non-compliance with an improvement plan or audit process constitutes a breach of the accreditation conditions.
- 61) In summary, the improvement plan:
- a) alerts the accredited person to the unacceptable aspect of the work or identified issue;
 - b) prescribes the agreed outcomes that are expected in relation to the matter;
 - c) provides an agreed deadline for the remedial action to be completed; and
 - d) may result in an FSO review of evidence and/ or an audit to verify the actions.

What is the purpose of an improvement plan?

- 62) An improvement plan allows an accredited person an opportunity to address identified issues in consultation with the FSC. It also serves as a formal warning which may trigger a more serious compliance measure where:
- a) the identified shortcoming is not addressed;
 - b) a similar non-conformance is subsequently uncovered; or
 - c) the accredited person breaches an accreditation condition.

When is an improvement plan issued?

- 63) The FSC will issue the accredited person with an improvement plan if:
- a) there is an identified safety issue of a less serious nature arising out of an audit;
 - b) the accredited person has failed to appropriately address the issues referred to in the show cause letter; and/ or
 - c) the FSC has general concerns over the accredited person's OHS performance.

Example B: Requirement to Provide Specific Documentation

What specific documentation may be required?

- 64) The FSC may request the provision of any documentation that is of an OHS nature and/ or relates to the persons accreditation. It may include documentation already held by the accredited person or the preparation of new documentation that specifically relates to the identified issue and questions raised.

What is the purpose of imposing a requirement to provide specific documentation?

- 65) Requesting specific documentation aims to properly inform the FSC and further clarify issues where existing information (held by the OFSC) is limited. This compliance measure

is also used to reinforce requirements under the Scheme and assists a person to maintain their accreditation.

When is the requirement to provide specific documentation imposed?

- 66) This compliance measure may be used at anytime to address a specific issue or concern identified by the FSC or where documentation has been requested previously and not supplied.

Example C: Self Audits

What is a self audit?

- 67) A self audit is an audit or multiple audits undertaken by the accredited person, using a self audit tool, to assess their OHS Management System and hazards against Scheme criteria and requirements.
- 68) An accredited person is required to provide the FSC with completed audit reports within given timeframes. The frequency or number of self audits required will be set by the FSC.

What is the purpose of a self audit?

- 69) A self audit allows an accredited person an opportunity to address identified issues via self diagnosis of inadequacies of the person's OHS Management System and associated policies, procedures and safe work practices.
- 70) Non-conformances identified by a FSO in a Corrective Action Report can not be closed out by an accredited person. The OFSC will monitor the person's progress through the provision of completed audit reports and when appropriate arrange for an FSO to conduct a follow-up audit.
- 71) This compliance measure also serves as a formal warning and may result in a more serious measure should the person:
- a) fail to provide completed audit reports;
 - b) show lack of commitment to addressing issues identified in self audits.

When are self audits imposed?

- 72) Self audits may be imposed where a person has not made considerable improvements or improvements are stagnant. The self audits are designed to take place between scheduled OFSC audits to encourage continuing focus on identified issues.

Example D: Policy and Safety Awareness Program

What is a policy and safety awareness program?

- 73) The FSC may request that an accredited person develop and implement a policy and safety awareness program to address a specific identified OHS issue on a national level (company-wide).

What is the purpose of the policy and safety awareness program?

- 74) The purpose of this compliance measure is to resolve an identified OHS issue via creation of a company specific solution. It encourages an accredited person to raise further internal awareness and take steps to improving a safety culture.

When is a policy and safety awareness program imposed?

75) This compliance measure may be imposed where there are hazard related incidents occurring or to address specific Scheme criteria.

Example E: Safety Commitment Statement

What is a safety commitment statement?

76) A safety commitment statement is a written acknowledgement of failures associated with a specific issue and a recommitment to safety, signed by the accredited person's CEO and/or senior management team. The statement can be made directly to the FSC and/or as a public announcement on the person's website.

What is the purpose of a safety commitment statement?

77) The requirement to provide a safety commitment statement heightens awareness of an identified issue and allows the accredited person an opportunity to demonstrate their acknowledgement of, and commitment to resolving, the issue.

When is a safety commitment statement imposed?

78) This measure is to be used in conjunction with other compliance measures and may be imposed following a workplace incident or to address a specific issue.

VI. Tier Two Compliance Measures

Further Conditions (imposed under regulation 17(1)(a))

What are regulation 17(1)(a) further conditions?

- 79) Regulation 17(1)(a) provides the FSC with the power to impose further conditions on an accredited person if the accredited person breaches an accreditation condition.
- 80) A further condition is any condition which the FSC determines as relevant to improve the accredited person's OHS performance on building and construction projects, to ensure Scheme requirements are met and high safety standards are achieved. Further conditions could include, but are not limited to:
- a) procedural conditions – increasing the level of audit and/or inspection activity; requiring targeted reports on particular OHS issues; revising OHS Committee participation; improving communication systems on site; engaging technical specialists; or revising particular aspects of the OHS management system;
 - b) contractual limitations on Australian Government funded or indirectly funded projects – limiting the scope of work, size of projects, location of projects, or nature of projects that the accredited person can contract; and
 - c) any of the examples listed in section V of this Manual.

What is the purpose of further conditions imposed under regulation 17(1)(a)?

- 81) This sanction provides the FSC with flexibility in identifying and applying appropriate management solutions to OHS issues like systemic failures, without resorting to the higher level sanctions of suspending or revoking the person's accreditation status. It is used only where a breach of the accreditation conditions has occurred.
- 82) If further conditions have been imposed under regulation 17(1)(a), the accredited person must remedy the breach (within timeframes set by the FSC) and comply with the new conditions in order to maintain accreditation and/or avoid higher level sanctions.

When are regulation 17(1)(a) further conditions imposed?

- 83) The FSC may impose a further condition of accreditation under regulation 17(1)(a) if:
- a) the accredited person breaches an accreditation condition (includes those listed under regulation 14(1) and any further conditions imposed on the person under regulation 15(1)).
- 84) Please refer to 'Tier Two Triggers' found in section III of this Manual.
- 85) The FSC retains the right to amend or replace the further conditions where extenuating circumstances apply and the FSC considers that the specified timeframe to meet the further conditions is no longer reasonable.
- 86) If the FSC considers the accredited person has met the further conditions, the FSC may remove them. An accredited person will be notified in writing when further conditions have been lifted.
- 87) If required, a follow-up audit will be conducted to ascertain whether the person has complied with the further conditions.

- 88) However, if the FSC considers that the accredited person has not complied with the further conditions, the FSC may:
- a) add further conditions under regulation 17(1)(a);
 - b) suspend the person's accreditation status; or
 - c) revoke the person's accreditation status.
- 89) The further conditions will continue to remain in force until and unless the FSC removes or replaces them.

Suspension of Accreditation

What is suspension?

- 90) Regulation 17(1)(b) provides the FSC with the power to suspend a person's accreditation status if the accredited person breaches an accreditation condition. The accreditation conditions include those conditions set out in regulation 14 and those conditions made under regulation 15.

What is the purpose of suspension?

- 91) A suspension represents a change of accreditation status and is used to ensure a breach is resolved by the accredited person. It means that the accredited person cannot undertake building or construction contracts for which accreditation is required, for a specified period.

When is suspension imposed?

- 92) To reflect the emphasis on a collaborative approach in addressing OHS issues, the FSC will, in most cases, suspend a person's accreditation status only after further conditions under regulation 15(1) and/ or 17(1)(a) have been unsuccessful in addressing the matter or breach in issue. However, where the FSC is of the opinion that suspension is the most appropriate sanction, the FSC may suspend a person's accreditation status without having exhausted other compliance measures.
- 93) Suspending the accredited person's capacity to contract for Australian Government building and construction projects is a serious step and would only be taken in extreme cases.
- 94) The FSC may suspend a person's accreditation if:
- a) the accredited person breaches an accreditation condition under regulation 14(1), 15(1) or 17(1)(a); and
 - b) the FSC is of the opinion that suspension is the most appropriate sanction.
- 95) Please refer to 'Tier Two Triggers' found in section III of this Manual.
- 96) The FSC will stipulate the timeframe in which the suspension period is in force.
- 97) If the FSC considers that the accredited person has remedied the breach and/or complied with the suspension, the FSC may lift the suspension on the stipulated date.
- 98) The suspension can only be lifted if the person has remedied the breach and if no further breaches, that justify an extension of the suspension period, are identified.

- 99) If required, an audit will be conducted to ascertain whether the person has remedied the breach.
- 100) If the FSC considers that the accredited person has not remedied the breach and/or complied with the suspension, the FSC may:
- a) extend the suspension period;
 - b) add further conditions under regulation 17(1)(a); or
 - c) revoke the person's accreditation status under regulation 17(1)(c).

Revocation of Accreditation

What is revocation?

- 101) Revocation is the most serious sanction available under the Regulations. Regulation 17(1) (c) and 17 (2) provides the FSC with the power to revoke a person's accreditation status if the FSC is satisfied that the person's work practices are not safe.
- 102) Revocation means the person will be removed from the accreditation register and can not undertake Australian Government building work which falls within the scope of the Scheme, until and unless the person successfully re-applies for accreditation.

What is the purpose of revocation?

- 103) As a sanction, revocation is a punitive measure designed to maintain the integrity of the OHS performance standards stipulated under the Scheme and to ensure compliance with the Regulations. Revocation aims to reinforce the message that OHS is of utmost importance in every building and construction activity.

When is revocation imposed?

- 104) As the FSC emphasises a collaborative approach, revocation will generally occur only where other tier one and tier two compliance measures have been unsuccessful in resolving OHS issues. However, if the FSC is satisfied that the accredited person's work practices are not safe, the FSC may revoke the person's accreditation status in lieu of other compliance measures, or before the period specified for complying with other sanctions has passed.
- 105) The FSC may revoke a person's accreditation status if:
- a) the accredited person breaches an accreditation condition;
 - b) the FSC is of the opinion that revocation is the most appropriate sanction; or
 - c) having imposed further conditions or suspended the person's accreditation status in respect of a breach, regardless of whether the period for fulfilling such condition or the period of suspension has ended, the FSC is satisfied that the person's work practices are not safe either because of that first breach or because of another breach of an accreditation condition.
- 106) Please refer to 'Tier Two Triggers' found in section III of this Manual.

VII. Decision Review

- 107) If a person is not satisfied with a decision by the FSC to implement a compliance measure, that person may request the FSC to review that decision. A decision to impose a condition of accreditation (further condition) under regulation 15(1) or a sanction under regulation 17(1) is a reviewable decision under subregulation 20 of the Regulations.
- 108) The request must be in writing and be made within 28 days after the date that the person first received notice of the decision.
- 109) The FSC will appoint a delegate to review the decision. The delegate will be a senior officer of the Department of Education, Employment and Workplace Relations who was not involved in the initial decision-making process.
- 110) The person may provide the reviewer with information which the person believes is relevant to the request for review. The FSC (as the initial decision maker) may also make a formal submission to the reviewer.
- 111) The reviewer must put himself or herself in the place of the initial decision maker and consider based on all the evidence what should be the correct decision in accordance with the legislation. The reviewer is not confined to the information before the initial decision maker. He or she can have regard to all information available to him or her at the time of making the review decision, including new information provided by the person or a Federal Safety Officer.
- 112) The reviewer must apply procedural fairness principles in reviewing the decision. This includes providing the person with an opportunity to comment on any adverse material under consideration, and to take any comment that the person makes into account, before making a review decision.
- 113) The reviewer may affirm, vary, or set aside the decision under review and make such other decision as the reviewer considers appropriate.
- 114) The reviewer must also provide the person with a written statement setting out the review decision and reasons for that decision.
- 115) The initial decision remains valid until the reviewer makes a decision.
- 116) The review decision comes into effect on the date that it was made by the reviewer.
- 117) If the person is not satisfied with the review decision, the person has a right to apply to the Administrative Appeals Tribunal (AAT) for a review of that decision. The AAT is an independent body that resolves disputes between individuals and government agencies, including the FSC.
- 118) The AAT may affirm, vary or set aside the decision of the reviewer.
- 119) The person must submit an application for review to the AAT within 28 days after the date that the person received notice of the decision to be reviewed.
- 120) In most cases, no fee is payable to the AAT. If a fee is payable, the person may apply to have the fee waived if they believe that they cannot afford the fee.
- 121) After the application has been lodged, the AAT will notify the person and the FSC that the application has been received. The AAT will also provide information on what happens next.

122) More information on appealing to the AAT is available at www.aat.gov.au

123) More information on review of decisions is available in the fact sheet "**How to Appeal a Decision of the Federal Safety Commissioner**".