



Fact Sheet

How to appeal a decision of the Federal Safety Commissioner

The Scheme

The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) is established by the *Building and Construction Industry Improvement Act 2005* (the BCII Act) and the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005* (the Regulations).

The Scheme operates such that only ‘builders’ who are accredited under the Scheme can enter into head contracts for ‘building work’ that is funded directly or indirectly by the Australian Government, subject to certain conditions.

Accreditation decisions

The Federal Safety Commissioner (FSC) determines the accreditation of contractors under the Scheme, including accreditation with conditions. In the event of a breach of a condition of accreditation, the FSC also determines the compliance measure that would be imposed.

Internal review

If you do not agree with a decision of the FSC, in the first instance discuss your concerns with the contact person mentioned in the correspondence from the FSC.

The contact person will be a staff member of the Office of the Federal Safety Commissioner (OFSC).

This provides you and the OFSC with the opportunity to clarify any issue, explain the effects of the decision and correct any possible misunderstandings.

If you still do not agree with the decision after a discussion with the contact officer, you may be able to request a review of the decision.

Requesting a review of a decision

Not all decisions made by the FSC can be reviewed. Under subregulation 19 of the Regulations only the following decisions are reviewable.

Table 1 – Reviewable decisions

| Decision | Provisions |
|---|---|
| To refuse to accredit | Subregulation 12(1) |
| To accredit for less than 3 years | Subregulation 12(1) |
| To impose a condition of accreditation | Subregulation 15(1) or paragraph 17(1)(a) |
| To suspend an accredited person’s accreditation | Paragraph 17(1)(b) |
| To revoke an accredited person’s accreditation | Paragraph 17(1)(c) or subregulation 17(2) |

If the decision you are appealing is a reviewable decision, you would also need to determine if you are a person whose interests are affected by the decision (an affected person). Only affected persons can appeal a reviewable decision.

Affected persons

You may be an affected person if you have a relevant financial or proprietary interest over and beyond that of the general public, and this interest has been or will be affected by the decision of the FSC.

Affected persons are not limited to applicants for accreditation or accredited contractors.

If you believe that you are an affected person, you may wish to formally request a review of the reviewable decision.

Lodging a request for review

Your request for a review must be in writing and must give the reasons for your request. An appeal form is available at fsc.gov.au.

You must lodge your request for review within 28 days after the date that you first received notification of the decision.

Review process

If the FSC was the initial decision-maker, he or she will appoint a senior officer of the Department of Education, Employment and Workplace Relations who was not involved in the initial decision-making process to conduct the review.

If the FSC was not the initial decision-maker, he or she may review the decision, or appoint a senior officer of the Department of Education, Employment and Workplace Relations who was not involved in the initial decision-making process, to conduct the review.

The reviewer will:

- look at the information used by the person who made the initial decision
- look at any new information that you may have provided
- clear up any misunderstanding
- correct any errors, if applicable and
- decide whether the initial decision should be upheld, varied or set aside.

The reviewer has 90 days from receipt of your request for review to make a decision. The reviewer is deemed to have upheld the initial decision if a decision has not otherwise been made within this timeframe.

Written notice of the outcome of the review and reasons for the decision will be provided to you within 28 days of the decision being made.

Administrative Appeals Tribunal

If you do not agree with the decision of the reviewer, you can then apply to the Administrative Appeals Tribunal (AAT) for a review of the decision.

The AAT is an independent body that resolves disputes between individuals and government agencies, including the FSC.

The AAT may affirm, vary or set aside the decision of the reviewer. More information on appealing to the AAT is available at www.aat.gov.au

For more information relating to the process for appealing decisions of the FSC, please refer to Part 2 Division 2.8 of the Regulations.

For further information you can:

- visit the FSC website at fsc.gov.au
- contact the FSC Assist Line on **1800 652 500**
- contact the OFSC via email at ofsc@deewr.gov.au

This fact sheet is correct as of 18 March 2008. Produced by the Office of the Federal Safety Commissioner.

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