



Australian Government

Department of Employment and Workplace Relations
Office of the Federal Safety Commissioner

Australian Government
Building And Construction
OHS Accreditation Scheme

Compliance Policy Manual



Compliance Policy Manual

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I. Introduction

OHS Accreditation Scheme

- 1) The Building and Construction Industry Improvement Act 2005 provides for the establishment of an occupational health and safety (OHS) accreditation scheme to apply to building and construction work funded by the Australian Government.
- 2) The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) enables the Australian Government to use its influence as a client and provider of capital to improve the building and construction industry's OHS performance. In this way, the Australian Government aims to see building and construction work 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 Scheme places the onus on Australian Government agencies to only contract with accredited contractors for building and construction projects. The Scheme is being implemented in two stages.
- 7) Stage One requires head contractors 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) has implemented a period of provisional accreditation before full accreditation is required.
- 8) Stage Two will extend to all contracts for building and construction projects funded directly or indirectly by the Australian Government, subject to financial thresholds which are yet to be announced.

Obtaining Accreditation

- 9) The *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005* (the Regulations) provide the statutory framework for the Scheme. The Regulations provide the FSC with the power to accredit a contractor if that

contractor meets the following Scheme requirements as set out in Division 2.3 of the Regulations.

- 10) In deciding whether the contractor meets the Scheme requirements, the FSC must take the following matters into account:
 - a) whether the contractor has an appropriately certified OHS Management System;
 - b) the commitment of the contractor's senior management to safe OHS practices;
 - c) the contractor's OHS policies, procedures and work practices in relation to the contractor's building contractors and building sites;
 - d) the contractor's experience (if any) in dealing with construction hazards or high risk activities;
 - e) the contractor's record in relation to workplace safety; and
 - f) the findings of a pre-accreditation audit.

Decisions that the FSC can make

- 11) As the accrediting authority, the FSC can make a number of decisions to ensure compliance with the Scheme. The FSC can make the following decisions:
 - a) to accredit a contractor (regulation 12(1));
 - b) not to accredit a contractor (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)).

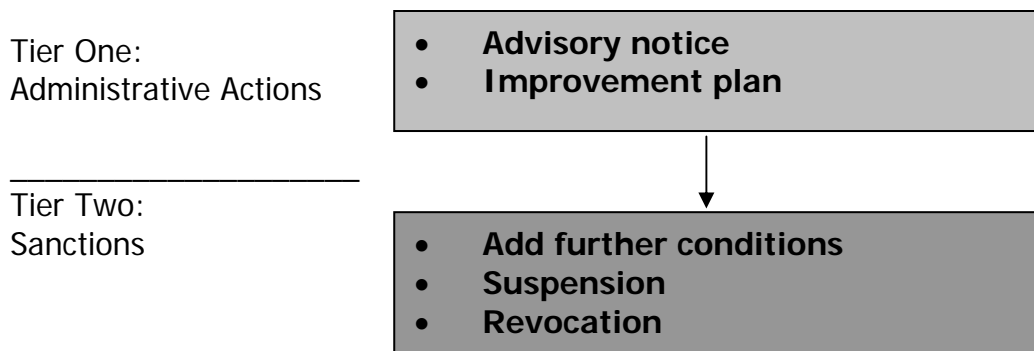
Accreditation Conditions

- 12) Regulation 14(1) sets out the conditions that apply to all accredited contractors:
 - a) the contractor has at all times appropriate OH&S policies and procedures and safe work practices;
 - b) the contractor agrees to the post-accreditation audits and the audit process mentioned in regulation 16;
 - c) the contractor agrees to comply with the reporting requirements notified to the contractor under sub regulation (2); and
 - d) the contractor complies with the conditions of accreditation.
- 13) Regulation 15(1) also enables the FSC to impose further conditions on the contractor on or after accreditation.
- 14) Where a condition of accreditation is breached, the FSC may impose a range of compliance measures.
- 15) This compliance policy manual sets out the relevant issues and process regarding the making of each compliance measure.

II. Compliance Measures

Collaborative Approach

- 16) 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 companies.
- 17) The collaborative approach is reflected in the structure of compliance measures. A two-tiered system applies to compliance measures under the Scheme:



Tier One – Administrative Actions

- 18) The first tier of compliance measures has been termed “Administrative Actions” to reflect the principle that OHS issues should be addressed in a collaborative manner between the FSC and the accredited contractor. There are currently two compliance measures under administrative actions:
- a) advisory notices; and
 - b) improvement plans.
- 19) In addition to the conditions set out in regulation 14, the FSC can issue further conditions under regulation 15 where no breach of the accreditation conditions has occurred.

Administrative Action Triggers

- 20) Without limiting the factors that the FSC can take into account, the FSC may take an administrative action in relation to:
- a) safety issues of a less serious nature arising out of an audit; or
 - b) general concerns of the FSC regarding the contractor’s OHS performance.
- 21) Compliance with the requirements of advisory notices and/or improvement plans is a further condition of provisional accreditation, imposed under regulation 15. This means that if an accredited contractor fails to comply with an advisory notice or improvement plan, that contractor is in breach of an accreditation condition.

- 22) Regulation 17(1) provides that the FSC may impose sanctions where there is a breach of accreditation conditions. This means that if the accredited contractor fails to comply with an administrative action, the FSC may impose tier two compliance measures.
- 23) Further information in relation to tier one compliance measures can be found at Section IV of this Manual.

Tier Two – Sanctions

- 24) 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;
 - b) suspension of accreditation status; and
 - c) revocation of accreditation status.

Sanction Triggers

- 25) Without limiting the factors that the FSC can take into account, the FSC may take into account such of the following factors as are relevant in the circumstances of the case:
 - a) there is a demonstrable failure of the contractor’s OHS management system;
 - b) the contractor’s actions pose an immediate threat to life;
 - c) the contractor’s over-all OHS performance is below the standard required for accredited contractors; and
 - d) the willingness of the contractor to cooperate with the FSC to remedy the breach.

Demonstrable Failure of OHS Management System

- 26) A demonstrable failure of the contractor’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 contractor or an employee, a subcontractor or an employee of a subcontractor who is engaged by the accredited contractor.

Immediate Threat to Life

- 27) 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

- 28) A contractor’s OHS performance is that contractor’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 contractor's building or construction sites;
 - f) OHS improvement, prohibition or infringement notices issued to the contractor; and
 - g) prosecution of the contractor for any breach of OHS law.
- 29) Without limiting the factors that the FSC may take into account in determining whether the accredited contractor 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) project completion assessment; and
 - e) annual contractor activity reports.
- 30) The accredited contractor is audited throughout the life of a particular building or construction project through on-site audits by Federal Safety Officers. Audits are scheduled according to a Project Surveillance Plan but may be generated by other events; for example, a workplace incident or complaint, or because of the complexity (high hazard nature) of the project.
- 31) As outlined in the FSC Reporting Guidelines, at the end of the project the contractor must deliver an End of Project Contractor OHS Report to the FSC, including performance data and information relevant to safety on site.
- 32) Each contractor must lodge an Annual Contractor Non Government Activity Report which covers selected performance data for completed non-government building or construction contracts.
- 33) The FSC monitors the overall performance of the Scheme and provides a report to the Minister for Employment and Workplace Relations and other stakeholders on an annual basis.

III. Key Principles

- 34) The following principles guide actions taken by the FSC to ensure compliance with the Scheme:
- a) collaborative approach;
 - b) transparency;
 - c) consistency; and
 - d) flexibility.

Collaborative Approach

- 35) The Scheme compliance policy does not follow a punitive-based enforcement model. Instead, it adopts a collaborative approach in providing contractors 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 contractor failed to comply with the conditions of accreditation.

Consistency

- 36) Compliance measures must be applied in a consistent way. Accredited Contractors 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.

Transparency

- 37) 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 contractor must also be informed of any adverse information before the FSC and must be provided with the opportunity to comment.

Flexibility

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

IV. Tier One Compliance Measures

A. Advisory Notice

What is an advisory notice?

- 39) An advisory notice consists of a written request to the accredited contractor to explain an aspect or aspects of their safety performance to the FSC. It identifies particular concerns in relation to adherence to required safety standards and requires a formal response by the accredited contractor. The issuing of an advisory notice also signals an intention of the FSC to take further action if identified matters are not remedied.

What is the purpose of an advisory notice?

- 40) An advisory notice provides an opportunity for the accredited contractor to respond to the issues raised in the notice. In response to an advisory notice, an accredited contractor may:
- a) describe actions to be taken to remedy the identified safety issue;
 - b) explain the context of the matter; and/or
 - c) discuss the matter identified in the notice.
- 41) The FSC may hold meetings with the accredited contractor and a representative of the client agency (where relevant) after an advisory notice has been issued.

When is an advisory notice issued?

- 42) An advisory notice may be issued where there are safety issues of a less serious nature arising out of an audit. The FSC can also issue an advisory notice if he/she has general concerns over the accredited contractor's OHS performance as evidenced in the audit reports or in the OFSC activity reports.
- 43) The actions and the timeframe to comply with the advisory notice will be determined by the FSC, in consultation with the accredited contractor.
- 44) If the FSC considers that the accredited contractor's response is satisfactory, no further action will be taken against the accredited contractor.
- 45) If the FSC considers that the response is not satisfactory, the FSC may:
- a) issue an improvement plan;
 - b) add further conditions (as non-compliance with an advisory notice constitutes breach of the accreditation conditions);
 - c) suspend the contractor's accreditation status; or
 - d) revoke the contractor's accreditation status.

B. Improvement Plan

What is an improvement plan?

- 46) An improvement plan involves written correspondence to the accredited contractor identifying an OHS issue of a less serious nature and setting out a proposed plan to remedy this defect. It requires the accredited contractor to implement specific OHS procedures stipulated by the client agency or the FSC within a specific time period.

What is the purpose of an improvement plan?

- 47) An improvement plan serves as a formal warning which may trigger a more serious sanction where:
- a) the identified shortcoming is not addressed;
 - b) a similar non-conformance is subsequently uncovered; and
 - c) the accredited contractor breaches an accreditation condition.

When is an improvement plan issued?

- 48) The FSC will issue the accredited contractor with an improvement plan outlining the specific OHS measures required to remedy the situation if:
- a) there is an identified safety issue of a less serious nature arising out of an audit;
 - b) the accredited contractor has failed to appropriately address the defects referred to in the advisory notice; and/or
 - c) the FSC has general concerns over the contractor's OHS performance.
- 49) The improvement plan:
- a) alerts the accredited contractor to the unacceptable aspect of the work;
 - b) prescribes the outcomes that are expected in relation to the matter;
 - c) provides a deadline for the remedial action to be completed; and
 - d) outlines the sanctions that may occur should the matter remain unresolved.
- 50) The actions and the timeframe to comply with the improvement plan will be determined by the FSC in consultation with the accredited contractor.
- 51) If the FSC considers that the accredited contractor's response is satisfactory, no further action will be taken against the accredited contractor.
- 52) If the FSC considers that the response is not satisfactory, the FSC may:
- a) add further conditions (as non-compliance with an improvement plan constitutes breach of the accreditation conditions);
 - b) suspend the contractor's accreditation status; or
 - c) revoke the contractor's accreditation status.

V. Tier Two Compliance Measures

A. Addition of further conditions

What are further conditions?

- 53) Regulation 17(1)(a) provides the FSC with the power to impose further conditions on an accredited contractor if the accredited contractor breaches an accreditation condition.
- 54) This sanction provides the FSC with flexibility in identifying and applying appropriate management solutions to systemic failures, without resorting to the higher level sanctions of suspending or revoking the contractor's accreditation status.

What is the purpose of further conditions?

- 55) A further condition is any condition which the FSC determines as relevant to improve the accredited contractor's OHS performance on a building and construction project. 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 – limiting the scope of work, size of projects, location of projects, or nature of projects that the accredited contractor can contract.
- 56) If further conditions have been imposed, the accredited contractor must remedy the breach and comply with the new conditions in order to maintain accreditation and/or avoid further sanctions.

When are further conditions imposed?

- 57) The FSC may impose a further condition of accreditation if:
 - a) the accredited contractor fails to remedy an issue that is the subject of an advisory notice or improvement plan; or
 - b) the accredited contractor breaches an accreditation condition.
- 58) Without limiting the factors that the FSC can take into account, the FSC may take into account such of the following factors as are relevant in the circumstances of the case:
 - a) there is a demonstrable failure of the contractor's OHS management system;
 - b) the contractor's actions pose an immediate threat to life;
 - c) the contractor's over-all OHS performance is below the standard required for accredited contractors; and
 - d) the willingness of the contractor to cooperate with the FSC to remedy the breach.
- 59) The FSC will determine the degree to which these and other factors were in evidence in deciding on the appropriate compliance measure.

- 60) The FSC will stipulate the timeframe in which the accredited contractor must remedy the breach and comply with the further conditions.
- 61) If the FSC considers that the accredited contractor has remedied the breach and complied with the further conditions, the FSC may:
 - a) take no further actions; and/or
 - b) remove the further conditions.
- 62) The further conditions will continue to remain in force until and unless the FSC removes or replaces them.
- 63) If the FSC considers that the response is not satisfactory, the FSC may:
 - a) add further conditions;
 - b) suspend the contractor's accreditation status; or
 - c) revoke the contractor's accreditation status.

B. Suspension

What is suspension?

- 64) Regulation 17(1) (b) provides the FSC with the power to suspend a contractor's accreditation status if the accredited contractor 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?

- 65) A suspension represents a change of accreditation status. It means that the contractor cannot enter into future building or construction contracts for which accreditation is required, for a specified period until and unless the breach is remedied.
- 66) To reflect the emphasis on a collaborative approach in addressing OHS issues, the FSC will, in most cases, suspend a contractor's accreditation status only after advisory notices, improvement plans or further conditions 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 contractor's accreditation status without having exhausted other compliance measures.

When is suspension imposed?

- 67) Suspending the accredited contractor's capacity to contract for Australian Government building and construction projects is a serious step and would only be taken in extreme cases.
- 68) The FSC may suspend a contractor's accreditation if:
 - a) the accredited contractor breaches an accreditation condition; and
 - b) the FSC is of the opinion that suspension is the most appropriate sanction.

- 69) Without limiting the factors that the FSC can take into account, the FSC may take into account such of the following factors as are relevant in the circumstances of the case:
- a) there is a demonstrable failure of the contractor's OHS management system;
 - b) the contractor's actions pose an immediate threat to life;
 - c) the contractor's over-all OHS performance is below the standard required for accredited contractors; and
 - d) the willingness of the contractor to cooperate with the FSC to remedy the breach.
- 70) The FSC will determine the degree to which these and other factors were in evidence in deciding on the appropriate compliance measure.
- 71) The FSC will stipulate the timeframe in which the suspension period is in force. This means that the contractor must remedy the breach and comply with further conditions (if any) within that timeframe.
- 72) If the FSC considers that the accredited contractor has remedied the breach and/or complied with the further conditions, the FSC may:
- a) lift the suspension on or before the stipulated date;
 - b) remove the further conditions;
 - c) add further conditions; and/or
 - d) remove the further conditions and add new ones in their place.
- 73) If the FSC considers that the response is not satisfactory, the FSC may:
- a) extend the suspension period;
 - b) add further conditions;
 - c) remove the further conditions and add new ones in their place; and/or
 - d) revoke the contractor's accreditation status.

C. Revocation

What is revocation?

- 74) Regulation 17(1) (c) and 17 (2) provides the FSC with the power to revoke a contractor's accreditation status if:
- a) the accredited contractor breaches an accreditation condition, and
 - b) the FSC is of the opinion that revocation is the most appropriate sanction; or
 - c) having imposed further conditions or suspended the contractor'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 contractor's work practices are not safe either because of that first breach or because of another breach of an accreditation condition.
- 75) The accreditation conditions include those conditions set out in regulation 14 and those conditions made under regulation 15.

76) Revocation is the most serious sanction available under the Regulations. It involves the permanent removal of the contractor's accreditation status, meaning that the accredited contractor will need to formally re-apply for accreditation in order to contract in the future for building and construction projects that require accreditation.

What is the purpose of revocation?

77) 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.

78) As the FSC emphasises a collaborative approach, revocation will generally occur only where all other tier one and tier two compliance measures have been unsuccessful in resolving OHS issues. However, if the FSC is satisfied that the contractor's work practices are not safe, the FSC may revoke the contractor's accreditation status in lieu of other compliance measures, or before the period specified for complying with other sanctions has passed.

When is revocation imposed?

79) Revocation is the most serious sanction and will only be applied in the most serious situations.

80) The FSC may revoke a contractor's accreditation status if:

- a) the accredited contractor breaches an accreditation condition; and
- b) the FSC is of the opinion that revocation is the most appropriate sanction.

81) Without limiting the factors that the FSC can take into account, the FSC may take into account such of the following factors as are relevant in the circumstances of the case:

- a) There is a demonstrable failure of the contractor's OHS management system;
- b) The contractor's actions pose an immediate threat to life;
- c) The contractor's over-all OHS performance is below the standard required for accredited contractors; and
- d) The willingness of the contractor to cooperate with the FSC to remedy the breach.

82) The FSC will determine the degree to which these and other factors were in evidence in deciding on the appropriate compliance measure.

83) If a contractor's accreditation status has been revoked, that contractor can still complete *existing* contracts but cannot enter into *future* building and construction contracts for which accreditation is required, until and unless the contractor successfully re-applies for accreditation.

VI. Decision Review

- 84) If a contractor is not satisfied with a decision by the FSC to implement a compliance measure, that contractor may request the FSC to review that decision. A decision to impose a compliance measure is a reviewable decision under subregulation 20 of the Regulations.
- 85) The request must be in writing and be made within 28 days after the date that the contractor first received notice of the decision.
- 86) The FSC will appoint a delegate to review the decision. The delegate will be a senior officer of the Department of Employment and Workplace Relations who was not involved in the initial decision-making process.
- 87) The contractor may provide the reviewer with information which the contractor believes is relevant to the request for review. The FSC (as the initial decision maker) will also make a formal submission to the reviewer.
- 88) 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 and preferable decision. 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 contractor.
- 89) The reviewer must apply procedural fairness principles in reviewing the decision. This includes providing the contractor with an opportunity to comment on any adverse material under consideration, and to take any comment that the contractor makes into account, before making a review decision.
- 90) The reviewer may affirm, vary, or set aside the decision under review and make such other decision as the reviewer considers appropriate.
- 91) The reviewer must also provide the contractor with a written statement setting out the review decision and reasons for that decision within 28 days after the date the reviewer has made the decision.
- 92) The initial decision remains valid until the reviewer makes a decision.
- 93) The review decision comes into effect on the date that it was made by the reviewer.
- 94) If the contractor is not satisfied with the review decision, the contractor 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.
- 95) The AAT may affirm, vary or set aside the decision of the reviewer.
- 96) The contractor must submit an application for review to the AAT within 28 days after the date that the contractor received notice of the decision to be reviewed.

- 97) In most cases, no fee is payable to the AAT. If a fee is payable, the contractor may apply to have the fee waived if they believe that they cannot afford the fee.
- 98) After the application has been lodged, the AAT will notify the contractor and the FSC that the application has been received. The AAT will also provide information on what happens next.
- 99) More information on appealing to the AAT is available at www.aat.gov.au
- 100) More information on review of decisions is available in the fact sheet "***How to Appeal a Decision of the Federal Safety Commissioner***".