



Australian Government

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

## Model Clauses

A large, faint, circular logo in the background. It features a central stylized 'A' inside a triangle, surrounded by the text 'FSC APPROVED • GET ACCREDITED' at the top and '• GET BUILDING' at the bottom.

Applying the Australian Government Building  
and Construction OHS Accreditation Scheme  
from 1 October 2007

Current at 11 March 2010

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# Section 1: Introduction

This document provides information to assist in the application of the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) to construction projects that are funded by the Australian Government.

## 1.1 Who should read this guide?

This document is intended for use by:

- **Australian Government employees** who are responsible for:
  - the procurement of building work on behalf of the Australian Government (see **Section 2**); or
  - the delivery and management of Australian Government funding agreements, grants and programs (see **Section 3**);
- **Funding Recipients** who are responsible for the procurement of building work using funding provided by the Australian Government through a funding agreement, grant or other program (see **Section 4**);
- **Project Managers** responsible for administering some or all of the responsibilities of the Australian Government or a Funding recipient in the delivery of a building project that utilises funds provided by the Australian Government (see **Section 2** and **Section 4**);
- **Developers and others** who are responsible for the delivery of a facility or infrastructure under a pre-commitment lease, or other such arrangement, for use by the Australian Government (see **Section 2** and **Section 4**); and
- **Public Private Partnerships (PPPs)** involved in the construction of facilities or infrastructure for the delivery of Australian Government functions or services (see **Section 2** and **Section 4**).

## 1.2 How to use this guide

This guide provides model clauses that Australian Government agencies, and where required, Funding Recipients and others, may include in tender, contract and funding agreement or grant documentation to assist in meeting their obligations under the Scheme.

However, while these model clauses are recommended, they are not mandatory. Australian Government agencies, Funding Recipients and others may substitute these model clauses with their own providing that the replacement clauses achieve at least an equivalent outcome.

## 1.3 Purpose of Model Clauses

These Model Clauses will assist Australian Government agencies to meet their obligations under section 35 of the *Building and Construction Industry Improvement Act 2005*.

Inclusion of the Model Clauses in funding agreement, grant or similar documentation will also ensure that Funding Recipients notify projects to the Office of the Federal Safety Commissioner (OFSC).

If you require further assistance regarding the application of the Scheme or require further clarification or information on any element of the Scheme, please contact the OFSC.

FSC Assist Line: 1800 652 500

Email: [ofsc@deewr.gov.au](mailto:ofsc@deewr.gov.au)

## 1.4 The meaning of 'direct' and 'indirect'

This document refers to building work that is funded 'directly' or 'indirectly' by the Australian Government. For the purposes of the Scheme, building work is determined to be funded directly or indirectly according to the following considerations.

### Directly funded building work

Building work is considered **directly** funded where the Commonwealth (Australian Government) or a Commonwealth authority enters into a contract with persons who:

- a) will carry out the building work; or
- b) may arrange for the building work to be carried out.

This includes building work that the Australian Government facilitates directly by agreement (for example pre-commitment lease, Build Own Operate (BOO) and Build Own Operate Transfer (BOOT) arrangements).

For further information on directly funded building work see the Federal Safety Commissioner (FSC) fact titled '*Applying the Scheme to directly funded building work*'.

### Indirectly funded building work

Building work is considered **indirectly** funded where it is funded by the Commonwealth (Australian Government) or a Commonwealth authority through grants and other programs. This includes building projects where the Australian Government provides money through a funding agreement or grant to a Funding Recipient (for example a state or territory government) who then may contract with persons who will:

- a) undertake the building work; or
- b) arrange for the building work to be carried out.

**Indirectly** funded building work also includes building projects that the Funding Recipient facilitates by agreement (for example pre-commitment lease, Build Own Operate (BOO) and Build Own Operate Transfer (BOOT) arrangements).

For further information on indirectly funded building work see the FSC fact sheet titled '*Applying the Scheme to indirectly funded building work*'.

## 1.5 Application of the Scheme to the Australian Government's Nation Building and Jobs Plan

An accredited builder does not need to be engaged where the building work:

- relates to expense measures announced in Appendix B of the *Updated Economic and Fiscal Outlook 2008-09*; or
- forms part of a project which relates to a measure announced in Appendix B of the *Updated Economic and Fiscal Outlook 2008-09*, updated February 2009. (Please see [http://www.budget.gov.au/2008-09/content/uefo/html/appendix\\_b.htm](http://www.budget.gov.au/2008-09/content/uefo/html/appendix_b.htm)); and
- is funded after 19 May 2009.

Australian Government agencies may choose to engage an accredited builder or to require their Funding Recipients to engage an accredited builder for projects announced in Appendix B of the *Updated Economic and Fiscal Outlook 2008-09*. In this case, Australian Government agencies may use these clauses to ensure that an accredited builder is engaged for the building work.

Projects that **do not** form a part of a measure announced in Appendix B of the *Updated Economic and Fiscal Outlook 2008-09* will still require the engagement of an accredited builder.

## Section 2: Model clauses for use by Australian Government agencies for *directly* funded building work

The clauses contained in this Section 2 have been developed principally to assist the Australian Government in applying the Scheme to directly funded building work.

However, the clauses contained in this Section may also be of use to Project Managers, Developers and others who are involved in the delivery of directly funded construction projects (see Section 2.3).

### 2.1 Approaching the market

The procurement process typically begins with an approach to market (ATM), whereby a notice is issued inviting potential suppliers to participate in the procurement process.

An ATM will generally involve either the issuing of requests for expressions of interest (REI) or requests for tender (RFT). The Commonwealth Procurement Guidelines 2005 require all such requests to be published on AusTender ([tenders.gov.au](http://tenders.gov.au)).

If an Australian Government agency is approaching the market to source directly funded building work, the agency may include some or all of the following elements in the REI and RFT documentation.

#### Specific reference to the Scheme – Model Clause 1

Model Clause 1 is recommended for inclusion in REI and RFT documentation where specific reference to the Scheme is necessary.

#### *Model Clause 1:*

##### **Australian Government Building and Construction OHS Accreditation Scheme**

The Australian Government is committed to improving occupational health and safety (OHS) outcomes in the building and construction industry. An important initiative to achieve this is the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme). The Scheme is established by the *Building and Construction Industry Improvement Act 2005* and specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

From 1 October 2007 only persons who are accredited under the Scheme are able to contract for building work directly funded by the Australian Government where the contract is valued at \$3 million or more.

Building work is considered **directly** funded where the Commonwealth (Australian Government) or a Commonwealth authority enters into a contract with persons who will carry out the building work or, who may arrange for the building work to be carried out. It includes building work that the Australian Government facilitates directly by agreement (for example pre-commitment lease, Build Own Operate (BOO) and Build Own Operate Transfer (BOOT) arrangements).

Contractors seeking accreditation are required to submit an application, addressing specific occupational health and safety criteria, to the Office of the Federal Safety Commissioner (OFSC). More information on the Scheme is available on the Federal Safety Commissioner (FSC) website at

[fsc.gov.au](http://fsc.gov.au) or by contacting the OFSC on 1800 652 500.

## Advertisements – Model Clause 2

Model Clause 2 is recommended for inclusion at the end of any advertisement which is issued as part of the approach to market:

### *Model Clause 2:*

It is a requirement of this project that the persons contracted to undertake the building work be accredited under the Australian Government Building and Construction OHS Accreditation Scheme, established by the *Building and Construction Industry Improvement Act 2005*, at the time of entering into the contract for the building work and while the building work is being carried out.

## Essential requirement for REI and RFT documentation (tenderer is the builder) – Model Clause 3

Accreditation is not a prerequisite for tendering for building work, although some clients may include this requirement in their tender documentation. However, builders must be accredited at the time of entering into a contract for directly funded building work which is captured by the Scheme.

Model Clause 3 will assist in alerting potential tenderers to the requirement that they must be accredited under the Scheme in order to enter into a contract for building work with the agency.

Model Clause 3 is recommended for inclusion in the REI and RFT documentation for directly funded building work where it is expected that the **tenderer will be the builder**.

### *Model Clause 3:*

#### **The Australian Government Building and Construction OHS Accreditation Scheme**

1. A successful tenderer must be accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005* when entering into contracts for building work covered by the Scheme, and maintain accreditation under that Scheme while the building work is being carried out.
2. A successful tenderer must comply with all conditions of Scheme accreditation.

## Essential requirement for REI and RFT documentation (tenderer is not the builder) – Model Clause 4

Accreditation is not a prerequisite for tendering, however, contracts for directly funded building work that is captured by the Scheme can only be entered into with accredited builders.

This is also the case where the tenderer is a Project Manager or Developer. For example, if an Australian Government agency enters into a pre-commitment lease agreement with a developer or building owner and building work is required as part of that agreement, the developer or building owner is required to ensure contracts for building work are only entered into with accredited builders.

Model Clause 4 is recommended for inclusion in the REI and RFT documentation for directly funded building work where it is expected that the **tenderer will not be a builder, but rather will be a Project Manager, Developer or other.**

**Model Clause 4:**

**The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme)**

1. A successful tenderer must not contract with a builder who will carry out building work as defined in section 5 of the *Building and Construction Industry Improvement Act 2005* (BCII Act) if the builder is not accredited under the Australian Government Building and Construction OHS Accreditation Scheme (established by the BCII Act) at the time the contract for building work is entered into.
2. The successful tenderer must require that the builder contracted to undertake the building work remains accredited under the Scheme while carrying out the building work.

**Schedule for inclusion in the REI or RFT documentation where the tenderer is the builder – Model Clause 5**

A schedule should be included within the REI or RFT documentation and require potential tenderers to indicate if they are accredited under the Scheme, or to provide evidence of steps taken to obtain accreditation.

Model Clause 5 will assist the agency to identify the tenderers accreditation status and determine if there will be any need to alert the OFSC of a need for urgent consideration of an application for accreditation.

Model Clause 5 is recommended for inclusion as a schedule to REI or RFT documentation:

**Model Clause 5:**

**Tender Schedule # – The Australian Government Building and Construction OHS Accreditation Scheme**

Insert details of accreditation status, including the expiry date of accreditation or evidence that accreditation is being sought under the Australian Government Building and Construction OHS Accreditation Scheme.

## 2.2 Contracts

**Contract clauses (contractor is the builder) – Model Clause 6**

Model Clause 6 should be included as an essential term in contracts for directly funded building work that is captured by the Scheme.

This clause is only suitable where **the contracted person is the builder.**

The clause ensures the builder maintains accreditation while carrying out the building work.

### **Model Clause 6:**

1. The builder must maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005*, while building work is carried out.
2. The builder must comply with all conditions of Scheme accreditation.

### **Contract Clauses (Contractor is not builder) – Model Clause 7**

Model Clause 7 should be included as an essential term in contracts for directly funded building work that is captured by the Scheme.

This clause is only suitable where **the contracted person is not a builder, but rather is a Project Manager, Developer or other.**

The clause ensures the contracted party only engages a Scheme accredited builder and that the builder maintains accreditation while carrying out the building work.

### **Model Clause 7:**

1. A contract must not be entered into with a builder who will carry out building work as defined in section 5 of the *Building and Construction Industry Improvement Act 2005* (BCII Act) if the builder is not accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the BCII Act at the time the contract for building work is entered into.
2. Any building contract must require that the builder remains accredited under the Scheme while carrying out the building work.

## **2.3 Information for Project Managers, Developers and Public Private Partnerships involved with *directly* funded building work**

Project Managers, Developers and PPPs who are involved in the delivery of directly funded Scheme projects, and hold responsibility for engaging a builder to the project, may be required to:

- a) only engage an accredited builder; and
- b) require the builder to maintain their accreditation while carrying out the building work.

These requirements would generally be applied initially by the Australian Government through the contract or agreement.

In fulfilling these requirements Project Managers, Developers and PPPs may find it useful to use **Clauses 1, 2, 3, 5 and 6** in their ATM and contract documentation when engaging a builder for a directly funded Scheme project.

In some cases the Project Manager, Developer or PPP will not be responsible for engaging a builder to the directly funded construction project, but rather will rely on another party to carry out this function. In these cases the Australian Government may require the Project Manager, Developer or PPP to impose an obligation on the other party to:

- a) only engage an accredited builder; and

b) require the builder to maintain their accreditation while carrying out the building work.

Where this occurs Project Managers, Developers and PPPs may find it useful to use **Clauses 1, 2, 4 and 7** in their ATM and contract documentation when engaging a builder for a directly funded Scheme project.

For complex arrangements or issues you are unsure of, please contact the OFSC for advice.

## Section 3: Model clauses for use by the Australian Government for *indirectly* funded building work

The clauses contained in this Section 3 have been developed to assist Australian Government agencies in applying the Scheme to indirectly funded building work.

### 3.1 Funding agreements and grants

Many Australian Government agencies provide funding to third parties. In the majority of instances these funds are provided on the basis of a shared agreement between the two parties.

Typical examples are road construction projects funded by the Australian Government or a new school built by a state or territory government using funding provided by the Australian Government.

Funds are provided through a bi-lateral agreement between the Australian Government and each of the states and territories. The bi-lateral agreement sets out the responsibilities of both parties under the agreement, and includes various conditions that the recipient party must meet in regards to the funding.

The same is true for grants provided by the Australian Government, in that the grant is given on the proviso that certain conditions are met.

Funding agreements and grants are, for all intents and purposes, legally binding contracts.

Please also refer to Section 1.5 concerning building work funded by the Australian Government's Nation Building and Jobs Plan.

#### Recitals – Model Clause 8

A recital is a formal statement that may appear at the beginning of a legal document, such as a contract, grant or funding agreement. Recitals typically identify the contracting parties', the overall purpose of the document and relevant background material.

Where relevant, Model Clause 8 is intended to be included in recitals (to provide Scheme background information) within funding agreement or grant documentation issued by Australian Government agencies.

#### ***Model Clause 8:***

Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, the Commonwealth is required by law to ensure that it applies the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) to Commonwealth funded building work

As necessary, [insert name of other contract party] will administer Commonwealth funding it receives under this contract in accordance with the requirements of the the Scheme.

**'The Scheme'** means the Scheme described at Section 35 of the *Building and Construction Industry Improvement Act 2005*.

**'Builder'** has the meaning given in Section 35(8) of the *Building and Construction Industry Improvement Act 2005*.

**'Building work'** has the meaning given in Section 5 of the *Building and Construction Industry Improvement Act 2005*.

### **Funding agreement and grant clauses (funding use is not known) – Model Clause 9**

Model Clause 9 should be included within funding agreement or grant documentation that is issued by Australian Government agencies **where the specific use of the funding is *not* known** but building work is likely to, or could, be procured using the funding.

The use of this clause ensures that only accredited builders are used on projects that are indirectly funded by the Australian Government, and that building work that is captured by the Scheme is notified to the OFSC.

#### ***Model Clause 9:***

### **Australian Government Building and Construction OHS Accreditation Scheme**

Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, construction projects that utilise funds provided under this agreement are bound by the application of the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) and the following conditions:

1. All head contracts for building work under the project that are valued at \$3 million or more must:
  - a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
  - b. contain a requirement that the builder:
    - i. is accredited under the Scheme;
    - ii. maintains Scheme accreditation for the life of the contract; and
    - iii. must comply with all conditions of the Scheme accreditation.

### **Funding agreement and grant clauses (funding is for building work) – Model Clause 10**

Model Clause 10 should be included within funding agreement or grant documentation that is issued by Australian Government agencies **where the funding is for building work** and the Scheme has been determined by the agency to apply to the indirectly funded project. For example, specific purpose payments for road construction projects.

The use of this clause will ensure that only accredited builders are used on projects indirectly funded by the Australian Government, and that building work captured by the Scheme is notified to the OFSC.

***Model Clause 10:***

**Australian Government Building and Construction OHS Accreditation Scheme**

This project is bound by the application of the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) and the following conditions:

1. All head contracts for building work under this project that are valued at \$3 million or more must:
  - a. be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market).
  - b. contain a requirement that the builder:
    - i. is accredited under the Scheme;
    - ii. maintains Scheme accreditation for the life of the contract; and
    - iii. must comply with all conditions of the Scheme accreditation.

## Section 4: Model clauses for use by Funding Recipients and others responsible for the delivery of *indirectly* funded building work

The clauses contained in this Section 4 have been developed for use by Funding Recipients, such as a state or territory government agency, who are responsible for the delivery of construction projects that use funding which is provided by the Australian Government through a funding agreement, grant or other program (i.e. indirectly funded projects) and are captured by the Scheme.

Funding Recipients will typically be notified by the Australian Government agency that is providing the funding, whether the construction project is covered by the Scheme.

### 4.1 Approaching the market

Procurement processes typically begin with an approach to market, whereby the client issues a notice/s inviting potential suppliers to participate in the procurement process.

If a Funding Recipient is approaching the market to source building work, and the building work will be paid for using Australian Government funding, the Funding Recipient may include some or all of the following elements in the approach to market documentation.

#### Specific reference to the Scheme – Model Clause 11

Model Clause 11 is recommended for inclusion in approach to market documentation where specific reference to the Scheme is necessary.

#### *Model Clause 11:*

##### **Australian Government Building and Construction OHS Accreditation Scheme**

The Australian Government is committed to improving occupational health and safety (OHS) outcomes in the building and construction industry. An important initiative to achieve this is the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme). The Scheme is established by the *Building and Construction Industry Improvement Act 2005* and specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005.

Only persons who are accredited under the Scheme are able to contract for building work that is **directly** funded by Australian Government agencies. Accreditation for directly funded Building works is only necessary where the contract is valued at \$3 million or more.

The Scheme accreditation requirement also applies to building work that is **indirectly** funded by the Australian Government where:

- the value of the Australian Government contribution to the project is at least \$5 million and represents at least 50 per cent of the total construction project value; or
- the Australian Government contribution to a project is \$10 million or more, irrespective of the proportion of Australian Government funding.

Building work is considered **indirectly** funded where it is funded by the Commonwealth (Australian Government) or a Commonwealth authority through grants and other programs. This includes building projects where the Australian Government provides money through a funding agreement or grants to a person, for example a state or territory government who then may contract with persons who will undertake the building work or persons who will arrange for the building work to be carried out.

**Indirectly** funded building work also includes building projects that the person, who receives Australian Government funding, facilitates by agreement (for example pre-commitment lease, Build Own Operate (BOO) and Build Own Operate Transfer (BOOT) arrangements).

If a project meets the above threshold amounts, the requirement that accredited builders carry out the building work only applies to contracts for building work that are valued at \$3 million or more.

To be accredited, contractors are required to apply to the Office of the Federal Safety Commissioner (OFSC) providing evidence against specific occupational health and safety criteria. More information on the Scheme is available on the Federal Safety Commissioner (FSC) website at [fsc.gov.au](http://fsc.gov.au) or by contacting the OFSC on 1800 652 500.

### Advertisements – Model Clause 12

Model Clause 12 is recommended for inclusion at the end of any advertisement which is issued as part of the approach to market:

#### *Model Clause 12:*

It is a requirement of this project that any persons contracted to undertake the building work be accredited under the Australian Government Building and Construction OHS Accreditation Scheme established by the *Building and Construction Industry Improvement Act 2005*, at the time of entering into the contract for the building work and while the building work is being carried out.

### Essential requirement (tenderer is the builder) – Model Clause 13

Accreditation is not a prerequisite for tendering for building work. However, contracts for building work that is indirectly funded by the Australian Government and is captured by the Scheme can only be entered into with accredited builders.

Model Clause 13 will help to alert potential tenderers to the requirement that they must be accredited under the Scheme in order to enter into a contract for building work with the Funding Recipient.

Model Clause 13 is recommended for inclusion in the approach to market documentation for building work that is indirectly funded by the Australian Government (see Section 1.2.2) where it is expected that the **tenderer will be the builder**.

#### *Model Clause 13:*

##### **The Australian Government Building and Construction OHS Accreditation Scheme**

1. A successful tenderer must be accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and*

*Construction Industry Improvement Act 2005* (BCII Act) when entering into contracts for building work as defined under section 5 of the BCII Act and maintain accreditation under that Scheme while the building work is being carried out.

2. A successful tenderer must comply with all conditions of Scheme accreditation.

### **Essential requirement (tenderer is a Project Manager) – Model Clause 14**

Model Clause 14 is recommended for inclusion in the approach to market documentation for building work that is indirectly funded by the Australian Government where it is expected that the **tenderer will be a Project Manager**.

For example, when a Funding Recipient:

- seeks the services of a Project Manager to manage aspects of the delivery of a construction project, including contracting with builders to carry out the building work; or
- enters into a pre-commitment lease agreement with a developer or building owner and building work is required as part of that agreement.

Model Clause 14 will help Funding Recipients to ensure that Project Managers only contract with an accredited builder, and require the builder to remain accredited while carrying out the building work.

#### ***Model Clause 14:***

##### **The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme)**

1. The Australian Government Building and Construction OHS Accreditation Scheme, established by the *Building and Construction Industry Improvement Act 2005* (BCII Act), applies to this project.
2. Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, the successful tenderer will be required to ensure that contracts for building work, as defined in section 5 of the BCII Act, are only entered into with builders who are accredited under the Scheme.
3. The successful tenderer will also be required to ensure that the builder contracted to undertake the building work remains accredited under the Scheme while carrying out the building work.

### **Schedule for inclusion in the REI or RFT documentation where the tenderer is the builder or civil contractor– Model Clause 15**

Where it is expected that the tenderer will be the builder, a schedule should be included within the approach to market documentation to require potential tenderers to indicate if they are accredited under the Scheme, or alternatively, to provide evidence of steps taken to obtain accreditation.

This material will assist the Funding Recipient to identify the tenderers accreditation status and determine if there will be any need to alert the OFSC of a need for urgent consideration of an application for accreditation.

The following Model Clause 15 is recommended for inclusion:

**Model Clause 15:**

**Tender Schedule # – The Australian Government Building and Construction OHS Accreditation Scheme**

Insert details of accreditation status, including the expiry date of accreditation or evidence that accreditation is being sought under the Australian Government Building and Construction OHS Accreditation Scheme.

## 4.2 Contracts

### Contract clauses (contractor is the builder) – Model Clause 16

Model Clause 16 should be included as an essential term in contracts for building work that is indirectly funded by the Australian Government and is captured by the Scheme.

This clause is only suitable where **the head contract is with a builder** and the head contract is valued \$3 million or more.

The clause ensures the builder maintains accreditation while carrying out the building work.

**Model Clause 16:**

1. Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, the builder must maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005* (BCII Act) while building work (as defined in section 5 of the BCII Act) is carried out.
2. The builder must comply with all conditions of Scheme accreditation

### Contract clauses (contractor is a Project Manager) – Model Clause 17

The following clause should be included as an essential term in contracts for building work that is indirectly funded by the Australian Government and is captured by the Scheme.

This clause is only suitable where **the contracted person is a Project Manager**.

The clause ensures the Project Manager only engages an accredited builder and requires the builder to remain accredited while carrying out the building work.

**Model Clause 17:**

1. Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, a contract must not be entered into with a builder who will carry out building work as defined in section 5 of the *Building and Construction Industry Improvement Act 2005* (BCII Act) if the builder is not accredited under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the BCII Act, at the time the contract for building work is entered into.

- |   |
|---|
| <p>2. Any building contract must require that the builder remains accredited under the Scheme while carrying out the building work.</p> |
|---|

### 4.3 Information for Project Managers, Developers and Public Private Partnerships involved with *indirectly* funded building work

Project Managers, Developers and PPPs who are involved in the delivery of indirectly funded construction projects and hold responsibility for engaging a builder to the project may be required to:

- c) only engage an accredited builder; and
- d) require the builder to maintain their accreditation while carrying out the building work.

Such requirements would generally be applied by the Funding Recipient through the contract or agreement.

In fulfilling these requirements Project Managers, Developers and PPPs may find it useful to use **Model Clauses 11, 12, 13, 15 and 16** in their ATM and contract documentation.

In some cases the Project Manager, Developer or PPP will not be responsible for engaging a builder to the indirectly funded construction project but rather will rely on another party to carry out this function. In these cases the Funding Recipient may require the Project Manager, Developer or PPP to impose an obligation on the other party to:

- c) only engage an accredited builder; and
- d) require the builder to maintain their accreditation while carrying out the building work.

Where this occurs; Project Managers, Developers and PPPs may find it useful to use **Model Clauses 11, 12, 14 and 17** in their ATM and contract documentation.

For complex arrangements or issues, please contact the OFSC for advice.

## Further information

The OFSC has developed a number of useful fact sheets and other materials that provide information and assistance in applying the Scheme. These fact sheets and materials can be downloaded from the FSC website.

Website: [www.fsc.gov.au](http://www.fsc.gov.au)

If you have any queries regarding the application of the Scheme or require further clarification or information on any element of the Scheme please contact the OFSC.

FSC Assist Line: 1800 652 500

Email: [ofsc@deewr.gov.au](mailto:ofsc@deewr.gov.au)

## Definitions

**BCII Act** means the *Building and Construction Industry Improvement Act 2005* as amended from time to time.

**Builder**, in relation to building work, means a person who carries out building work, may include a civil contractor but does not include subcontractors.

**Building work** is defined by the *Building and Construction Industry Improvement Act 2005* as:

- the construction, alteration, extension, restoration, repair, demolition or dismantling of buildings, structures or works that form, or are to form, part of land or land beneath water, whether or not the buildings, structures or works are permanent;
- the construction, alteration, extension, restoration, repair, demolition or dismantling of railways (not including rolling stock) or docks;
- the installation in any building, structure or works of fittings forming, or to form, part of land or land beneath water, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;
- any operation that is part of, or is preparatory to, or is for rendering complete, work covered above, for example:
  - site clearance, earth-moving, excavation, tunnelling and boring;
  - the laying of foundations;
  - the erection, maintenance or dismantling of scaffolding;
  - the prefabrication of made-to-order components to form part of any building, structure or works, whether carried out on-site or off-site;
  - site restoration, landscaping and the provision of roadways and other access works;

but does **not** include any of the following:

- the drilling for, or extraction of, oil or natural gas;
- the extraction (whether by underground or surface working) of minerals, including tunnelling or boring, or constructing underground works, for that purpose;
- any work that is part of a project for:
  - the construction, repair or restoration of a single-dwelling house; or
  - the construction, repair or restoration of any building, structure or work associated with a single-dwelling house; or
  - the alteration or extension of a single-dwelling house, if it remains a single-dwelling house after the alteration or extension;

- any multi-dwelling development that consists of, or includes, the construction of at least five single-dwelling houses.

**Client** means the person for whom the building work is being carried out or who has requested the building work to be carried out.

**Construction project** means a project on which building work is being carried out.

**Developer** means a person who is responsible for the delivery of a facility or infrastructure for use by the Australian Government. This includes pre-commitment lease and other such arrangements.

**Funding Recipient** means a person, not an individual, who obtains funding from the Australian Government through a funding agreement, grant or other program.

**Project Manager** means a person who administers some or all of the responsibilities of the client in the delivery of a project, including arranging for building work to be carried out utilising Australian Government funding. A Project Manager may include a developer or consortium.

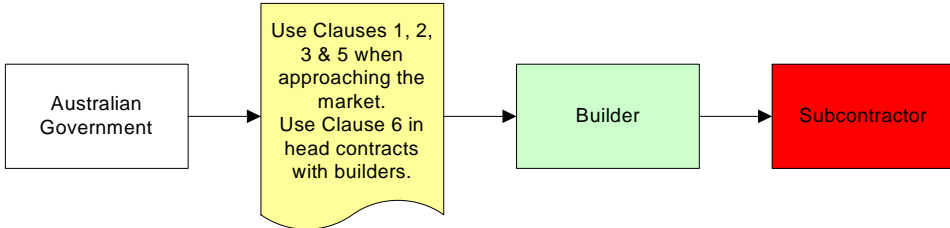
**Subcontractor** means a builder who carries out some or all of the building work, under a contract with another builder who:

- carries out some of the building work; or
- arranges for the building work to be carried out.

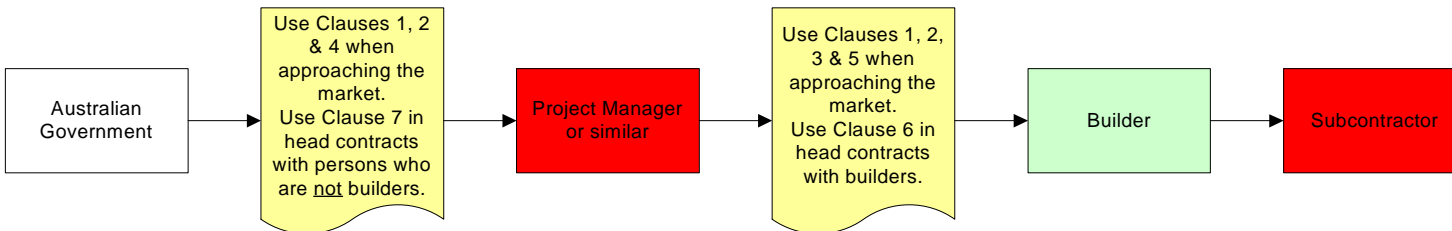
# Attachment A – Application of Model Clauses to direct funding arrangements



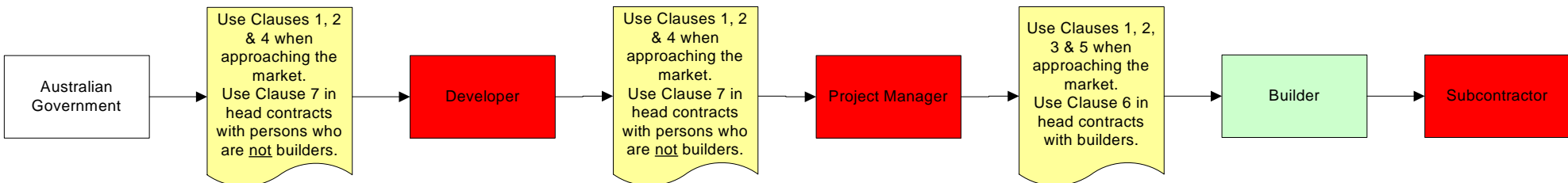
## EXAMPLE SCENARIO 1 - Directly funded building work where the Australian Government engages a Builder



## EXAMPLE SCENARIO 2 - Directly funded building work where the Australian Government engages a person who is not a Builder (e.g. a Project Manager, Developer or similar)



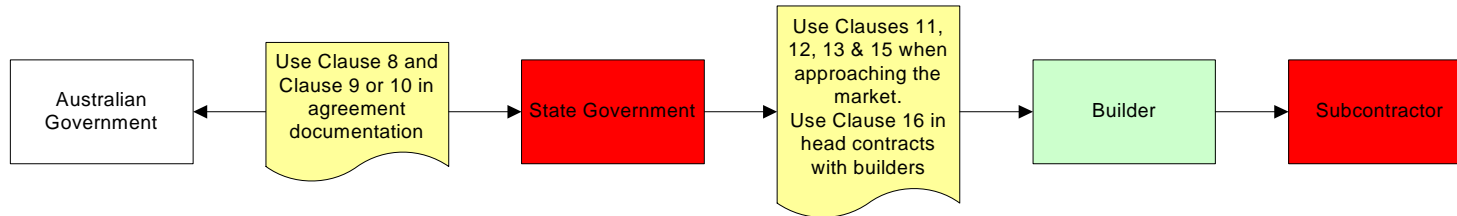
## EXAMPLE SCENARIO 3 - Directly funded building work where the Australian Government engages a person who is not a Builder (e.g. a Project Manager, Developer or similar), who in turn engages another person who is not a Builder.



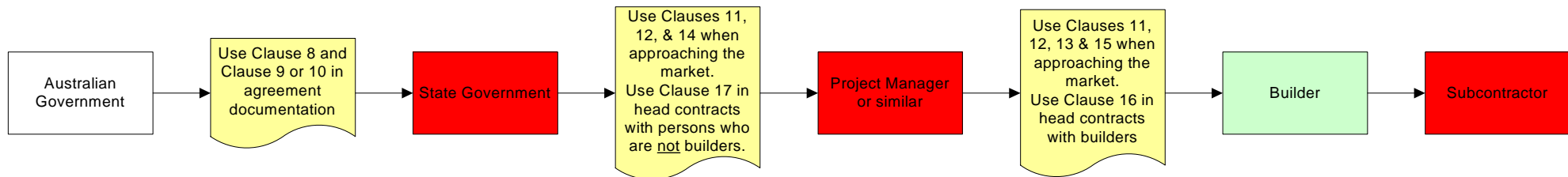
# Attachment B – Application of Model Clauses to indirect funding arrangements



## EXAMPLE SCENARIO 1 - Indirectly funded projects where the Funding Recipient engages a Builder



## EXAMPLE SCENARIO 2 - Indirectly funded projects where the Funding Recipient engages a person who is not a Builder (e.g. a Project Manager, Developer or similar)



## EXAMPLE SCENARIO 3 - Indirectly funded projects where the Funding Recipient engages a person who is not a Builder (e.g. a Project Manager, Developer or similar), who in turn engages another person who is not a Builder.

