



Fact Sheet - Advice to Agencies: Applying the Work Health and Safety Accreditation Scheme

The Work Health and Safety Accreditation Scheme is established under the *Building and Construction Industry (Improving Productivity) Act 2016* (the Act) and specified in the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016** (the Regulation*).

The Act places specific legal obligations on Commonwealth funding agencies as clients of the building and construction industry. These obligations exist whether building work is procured directly by the funding agency, or indirectly through funding arrangements with third parties, such as national partnership agreements and other programmes.

All staff involved in the procurement of building work must understand these obligations and ensure that tender documentation, funding agreements, and building contracts reflect Scheme requirements.

What is the purpose of the Scheme?

The Scheme is administered by the Office of the Federal Safety Commissioner (OFSC) and enables the Australian Government to use its influence as a major construction client and provider of capital to improve the WHS performance of the building and construction industry. The objective of the Scheme is to foster a culture where work must be performed on budget, on time **and safely**.

The Scheme operates such that, subject to certain thresholds, only principal/head contractors who are accredited under the Scheme can enter into contracts for building work that is funded **directly** or **indirectly** by the Australian Government.

The Act, in particular, provides that a Government agency or authority must not fund building work unless the contract entered into for building work is with an accredited company. Regulation 26(1)(f) of the Regulation* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders. Please refer to “Joint venture arrangements” below.

A list of accredited companies is available on the OFSC website at www.fsc.gov.au.

Agencies should note that where a non-accredited company is engaged by a funding agency, or by third party funding recipient, this may result in the funding agency being in breach of Scheme requirements.

What is directly funded building work?

Building work is considered to be directly funded where an Australian Government agency is the direct client of the building and construction industry. This includes instances when an agency undertakes the procurement process directly, or engages a third party representative to undertake the process on their behalf. Pre-commitment leases and similar arrangements are also considered direct funding arrangements.

Typical examples of directly funded projects would include the Department of Defence constructing a new military facility or another agency arranging for the construction of a new office or a fit out of an existing building.

An accredited builder must be engaged for all building work directly funded by the Commonwealth with a contract value of \$4 million or more (GST Inclusive).

What is indirectly funded building work?

Building work is considered indirectly funded where the Australian Government contributes funding to a third party recipient, such as a state government, through funding agreements, grants or other programmes.

Some typical examples of indirectly funded building work would include the Australian Government providing funding to a state government to construct a road, or where the Australian Government provides funding to a university to construct a research facility.

In each of these examples, agencies should note the obligation to comply with Scheme requirements provided for under the FWBI Act, remains with the Commonwealth funding agency. These obligations do not transfer to the third party (eg. the state government) funding recipient along with the transfer of funds.

The Scheme applies to projects that are indirectly funded by the Australian Government where a head contract under the project includes building work of \$4 million or more (GST inclusive) AND:

- the value of the Australian Government contribution to the project is at least \$6 million (including GST) and represents at least 50 per cents of the total construction project; OR
- the Australian Government contribution to a project is \$10 million (including GST) or more, irrespective of the proportion of Australian Government funding.

Joint venture arrangements

In joint venture arrangements only the person conducting 'building work' will require Scheme accreditation. Provisions apply for joint ventures that include both accredited and unaccredited builders, seeking to undertake Australian Government funded building work.

Agencies should note that parties to a joint venture arrangement that includes an unaccredited builder are required to provide certain undertakings to the Federal Safety Commissioner, before they may enter into a contract for building work.

The Federal Safety Commissioner will provide written acknowledgement to the joint venture partners, that the required undertakings have been received.

For information on joint venture arrangements under the Scheme, please refer to the Fact Sheet on Joint Venture Arrangements or please contact the OFSC.

Model clauses

To assist agencies, the OFSC 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 FWBI Act and the Scheme.

Agencies should note that while the 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 the same effect of the model clause. The OFSC model clauses are available at www.fsc.gov.au.

Contract notification

Agencies are encouraged to notify the OFSC about the engagement of a successful builder after completing a procurement process, by completing a 'Client Agency Contract Notification Form'. This form and additional information on contract notifications are available on the OFSC's website at www.fsc.gov.au.

Early notification of tenders

One recommendation arising from the 2014 review of the Scheme is that agencies will be required to provide advance notice of upcoming tenders and, commencement of Scheme tender processes, and actively assist in ensuring adherence to Scheme requirements.

The objective of this agency obligation is to allow the OFSC to better target its educational and

communication resources to areas where high volume of Commonwealth-funded building and construction work is expected to occur. This will assist agencies by ensuring the availability of Scheme accredited builders, particularly in regional and remote regions, where identifying an accredited builder has been historically difficult for agencies.

The OFSC will work with agencies to develop mechanisms to collect upcoming tender information that is practical and efficient, noting that in many cases it will be necessary for funding agencies to obtain information about procurement processes from their respective funding recipients.

For further information:

- Visit the FSC website at www.fsc.gov.au
- Contact the FSC Assist Line on **1800 652 500**
- Contact the OFSC via email at ofsc@jobs.gov.au

**The Fair Work (Building Industry – Accreditation Scheme) Regulation 2016 (which was continued in force by item 11 of Schedule 2 to the Building and Construction Industry (Consequential and Transitional Provisions) Act 2016 as rules made by the Minister for the purposes of section 43 of the Building and Construction Industry (Improving Productivity) Act 2016 (BCI Act)).*

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