



Fact Sheet – How to appeal a decision of the Federal Safety Commissioner

The Scheme

The Work Health and Safety Accreditation Scheme (the Scheme) was established by the Australian Government to improve safety in the building and construction industry by using its influence as a client and provider of capital to foster enhanced safety performance.

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 thresholds.

Authority for the Scheme

The Scheme and the role of the Federal Safety Commissioner (FSC) is established by the *Building and Construction Industry (Improving Productivity) Act 2016* (the Act) and the *Building and Construction (Improving Productivity) (Accreditation Scheme) Rules 2019* (the Rules).

The process for appealing decisions of the FSC is outlined in Division 9 of the Rules.

Decisions Made by the Federal Safety Commissioner

The FSC makes a range of decisions under the Rules related to the accreditation of contractors, the imposition of accreditation conditions and compliance actions.

Where the FSC makes a decision that is reviewable under the Rules an “Affected Person” may seek a review of that decision if they do not agree with it.

The following decisions of the FSC are reviewable.

Table 1 – Reviewable decisions

Decision	Provisions
To refuse to accredit	Section 8(1)
To accredit for less than 6 years	Section 8(1)
To impose a condition on an accreditation	Section 16(1) or paragraph 18(1)(a)
To suspend an accreditation	Paragraph 18(1)(b)
To revoke an accreditation	Paragraph 18(1)(c) or subsection 18(2)
To refuse to cancel an accreditation on request	Section 21

All reviewable decisions made by the FSC will be outlined in writing to the relevant applicant or accredited company and include information on how a review may be sought.

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.

The Steps for Seeking a Review?

There are three main steps in seeking a review of a decision by the FSC. These are outlined below.

Step 1 – Initial discussion with the Office of the Federal Safety Commissioner

As a first step, the affected person is encouraged to discuss their 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 the affected person and the OFSC with the opportunity to clarify any issue, explain the effects of the decision and correct any possible misunderstandings.

If the affected person still does not agree with the decision after a discussion with the contact officer, they may request an internal review of the decision.

Step 2 – Internal Review of Decision

A request for an Internal Review must be in writing and must give the reasons for the request. An appeal form is available at www.fsc.gov.au.

The affected person must lodge the request for review within 28 days after the date that the applicant or accredited entity first received notification of the decision. There is no fee to seek an Internal Review.

The review will be conducted by a senior officer of the Attorney-General's Department who was not involved in the initial decision-making process.

The reviewer will:

- write to the affected person advising that they will be undertaking a review of the decision
- look at the information used by the person who made the initial decision
- look at any new information that may have been 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 the 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 the affected person within 28 days of the review decision being made.

Step 3 – External Review of decision

If the affected person does not agree with the decision made by the internal reviewer, they can then apply to the Administrative Appeals Tribunal (AAT) for an external review of the decision. Please note that the AAT will not conduct the external review unless the internal review has been completed.

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. Please note that fees may apply in seeking a review by the AAT.

Lodging a Complaint

Separate arrangements are in place to cover complaints related to the Scheme or the administration of the Scheme by the OFSC. The process is detailed in our fact sheet: Complaints Process.

Freedom of Information

Further information or documents about a reviewable decision may be able to be obtained by making a request under the *Freedom of Information Act 1982*. Further information about how to make a request is available at:

<https://www.ag.gov.au/RightsAndProtections/FOI/Pages/default.aspx>

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

This fact sheet was last updated 16 January 2020. The Office of the Federal Safety Commissioner (OFSC) has prepared this fact sheet for general information only, and it does not replace professional advice. This fact sheet is derived from a variety of sources and has been prepared without taking into account your individual objectives, situations or needs. You should consider your personal circumstances, and if appropriate, seek independent legal, financial or other professional advice before acting. The OFSC has endeavoured to ensure the currency and completeness of the information in this fact sheet at the time of publication; however, this information may change over time. The OFSC expressly disclaims any liability caused, whether directly or indirectly, to any person in respect of any action taken on the basis of the content of this fact sheet.