



Australian Government

Department of Employment

Office of the Federal Safety Commissioner

Guidance for Australian Government Agencies and Funding Recipients

Applying the Australian Government building and construction industry Work Health and Safety Accreditation Scheme

April 2017



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Section 1: Introduction

The Australian Government, through its support of the Office of the Federal Safety Commissioner (OFSC), has emphasised the importance of working with industry and government stakeholders to achieve the highest possible work health and safety (WHS) standards on Australian building and construction projects.

The OFSC aims to promote and improve WHS within the building and construction industry. Through the administration of the Australian Government building and construction industry WHS Accreditation Scheme (the Scheme), the Government fosters a culture where safety on construction sites is a priority for all workers from senior management through to subcontractors.

Purpose of the Scheme

The Australian Government uses its influence as a client and provider of capital to encourage cultural and behavioural changes in the industry, which will, in turn, improve WHS. The purpose of this guide is to assist Australian Government agencies and recipients of Australian Government funding to understand their roles and responsibilities in relation to the application of the Scheme.

Legal authority for the Scheme

The *Building and Construction Industry (Improving Productivity) Act 2016 (BCIIP Act)* provides the legislative basis for the establishment of the Federal Safety Commissioner (FSC), the Scheme and the appointment of Federal Safety Officers (FSOs).

Australian Government agencies must contract only with accredited builders for projects which meet the threshold values. Section 43(4) of the BCIIP Act states:

‘The Commonwealth or a Commonwealth authority must not fund building work unless:

- a) contracts for the building work entered into with builders will be entered into with builders who are accredited persons; and
- b) at the time of the funding, the Commonwealth or Commonwealth authority takes appropriate steps to ensure that builders will be accredited persons when they carry out the building work’.

The BCIIP Act is further supported by the *Fair Work (Building Industry - Accreditation Scheme) Regulation 2016* (the Regulation). The Regulation continues to operate under the BCIIP Act as if they were rules made by the Minister for the purposes of section 43 of the BCIIP Act. The Regulation details the requirements of accreditation under the Scheme. While the term ‘builder’ is used in the BCIIP Act, this definition extends to persons undertaking civil construction work.

What this means for agencies and funding recipients

The Scheme requires that, subject to certain thresholds, only builders accredited under the Scheme can enter into contracts for building work funded directly or indirectly by the Australian Government. This guidance details what is required of agencies and funding recipients to meet their responsibilities under the BCIIP Act.

Information for Australian Government agencies; directly funded building work - **Section 2**

Information for Australian Government agencies; indirectly funded building work - **Section 3**

Information for recipients of Australian Government funding - **Section 4**

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**)

Australian Government employees who are responsible for the delivery and management of Australian Government funding agreements, grants and programs (see **Section 3**)

Persons who are responsible for the procurement of building work using funding provided by the Australian Government (see **Section 4**).

Section 2: Information for Australian Government agencies for directly funded building work.

2.1 What is directly funded building work?

Projects are considered to be directly funded where an Australian Government agency has responsibility for the project funding and development.

Directly funded building work includes projects where the Australian Government enters into contracts with persons who:

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

This includes building work that the Australian Government facilitates directly by agreement, for example, Build Own Operate (BOO), Build Own Operate Transfer (BOOT), and pre-commitment leases. All pre-commitment leases are covered by the Scheme, and where they are funded by the Australian Government, the direct threshold will apply.

A detailed definition of building work is available in our fact sheet 'Definition of Building Work', available on <http://www.fsc.gov.au/sites/fsc/resources/pages/factsheets>.

Further information regarding directly funded building work is available in the fact sheet 'Applying the Scheme to directly funded building work', also available at <http://www.fsc.gov.au/sites/fsc/resources/pages/factsheets>.

2.2 What thresholds apply to directly funded building work?

The Scheme requires Australian Government agencies and authorities, as defined by section 43(4) of the BCIIIP Act, to only use accredited builders when undertaking directly funded building or construction work where the value of the contract is \$4 million or more (including GST).

It is important to note that the Regulation does not distinguish the proportion of funding used for building work. If building work is being carried out under a contract with a value of at least \$4 million, you must engage an accredited builder.

2.3 Applying the Scheme to directly funded building work

There are three basic stages in the direct funding process: pre-construction, construction, and post-construction.

2.3.1 Pre-Construction

At the earliest possible opportunity, agencies should begin factoring the Scheme into their procurement processes. If there is any doubt as to whether a project meets either the Scheme thresholds or the definition of building work, agencies are encouraged to contact the OFSC on 1800 652 500 to seek clarification.

When it has been determined that the Scheme will apply to an upcoming directly funded project, your tender documentation must make accreditation under the Scheme a condition of engagement. A series of **Model Clauses** are available for use in tender documents, and are available at www.fsc.gov.au.

When selecting a builder, agencies must only enter into a contract with an accredited builder. An unaccredited builder is able to tender for the project, but must be accredited before entering into a contract.

A list of accredited builders is available at www.fsc.gov.au.

A series of **Model Clauses** are available for use in contracts under which building work will be carried out, and are also available.

When signing a contract with an accredited builder, agencies must submit a Contract Notification Form, found on our website, and at **Attachment A**.

If an agency engages a project manager, developer or other party that will not be carrying out the building work themselves, the agency must require that person to engage an accredited builder to carry out the building work. Please refer to the **Model Clauses** for appropriate clauses for tenders and contracts.

2.3.2 Construction

Though not a requirement of the Scheme, agencies may wish to consider enquiring about WHS performance in all discussions with the builder, and seek participation in site WHS meetings. Through these activities it will be clear to the builder that WHS is important to your agency, putting you in a better position to influence the cultural change needed in the industry.

The Agency should also take steps to ensure that the accredited builder retains their accreditation throughout the construction period. Accreditation periods may vary for accredited builders and the accreditation register will indicate the accreditation expiry date for each accredited company. The OFSC may be contacted to discuss re-accreditation requirements for companies whose accreditation will expire during the construction period.

2.4 Checklist

- *Include the Scheme in tender documentation*
- *Include the Scheme in contracts*
- *Engage an accredited builder or ensure an accredited builder is engaged*
- *Provide the OFSC with a Contract Notification Form*

The OFSC also encourages Australian Government agencies to adopt a best practice approach to WHS on their projects. Our publication *The Model Client Framework: Promoting Safe Construction* provides a practical and systematic approach to integrate WHS activities into the management of construction projects. You can download the resource from www.fsc.gov.au.

Section 3: Information for Australian Government agencies for indirectly funded building work

3.1 What is indirectly funded building work?

Projects are considered to be indirectly funded where an Australian Government agency contributes funding to a funding recipient, such as a state government, through an Australian Government funding agreement, grant or other program.

Indirectly funded building work includes projects where the Australian Government provides funding to a recipient, who may carry out the work themselves or contract with a person who:

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

A more detailed definition of building work is available in our 'Definition of Building Work' fact sheet, available at <http://www.fsc.gov.au/sites/fsc/resources/pages/factsheets>.

Further information is available in the fact sheet 'Applying the Scheme to indirectly funded building work' available at <http://www.fsc.gov.au/sites/fsc/resources/pages/factsheets>.

3.2 What thresholds apply to indirectly funded building work?

The Scheme applies to projects that are indirectly funded by the Australian Government where:

the value of the Australian Government contribution to the project is **at least \$6 million** and represents **at least 50 per cent** of the total project value; or

the Australian Government contribution to a project is **\$10 million** or more, **irrespective of the proportion** of Australian Government funding.

Subject to the above, where any 'head contracts' for building work are awarded that have a value of **\$4 million or more** (inc. GST), the Scheme will apply and an accredited builder must be appointed.

3.3 Applying the Scheme to indirectly funded building work

There are two basic stages in the indirect funding process; Funding and construction.

3.3.1 Funding

At the earliest possible opportunity, agencies should begin factoring the Scheme into their funding processes. If there is any doubt as to whether a construction project meets either the Scheme thresholds or the definition of building work, agencies are encouraged to contact the OFSC on 1800 652 500 to seek clarification.

Where the Scheme applies to an indirectly funded project, your funding agreement must make the engagement of an accredited builder a condition of the funding. A series of Model Clauses are available for use in funding agreements, and are available at www.fsc.gov.au.

Australian Government agencies are encouraged to discuss with their funding recipients the Scheme requirements outlined in their funding agreement. Ensuring that funding recipients are aware of their responsibilities under the Scheme is vital to improvements in WHS in the building and construction industry.

Australian Government agencies are also asked to provide the OFSC with the name of a contact person from the funding recipient organisation. This enables the OFSC to provide any further advice and assistance to the funding recipient, and also enables the OFSC to request a Contract Notification Form from the funding recipient.

3.4 Checklist

- *Include the Scheme in funding agreement*
- *Alert OFSC to Scheme project*

- *Provide details of a contact person from the funding recipient organisation*

The OFSC also encourages Australian Government agencies and funding recipients to adopt a best practice approach to WHS on their projects. Our publication *The Model Client Framework: Promoting Safe Construction* provides a practical and systematic approach to integrate WHS activities into the management of construction projects. You can download the resource from www.fsc.gov.au.

Section 4: Information for recipients of Australian Government funding

When receiving funding for building work from the Australian Government, **you must only engage a builder accredited under the Scheme**, subject to certain conditions and thresholds.

4.1 How to tell which projects are covered by the Scheme?

As a recipient of Australian Government funding, you will need to apply the Scheme to any project indirectly funded by the Australian Government, where your funding agreement requires the engagement of an accredited builder. If there are any doubts as to whether you will need to apply the Scheme to a project, please contact the OFSC Assist line on 1800 652 500.

4.2 What thresholds apply to indirectly funded building work?

The Scheme applies to projects that are indirectly funded by the Australian Government where:

the value of the Australian Government contribution to the project is **at least \$6 million** and represents **at least 50 per cent** of the total project value; or

the Australian Government contribution to a project is **\$10 million** or more, **irrespective of the proportion** of Australian Government funding.

Subject to the above, where any 'head contracts' for building work are awarded that have a value of **\$4 million or more** (inc. GST), the Scheme will apply and an accredited builder must be appointed.

The supporting legislation and regulation for the Scheme do not define a 'project'. The concept of a project for the purposes of the Scheme may vary depending on the funding arrangements for the program. If there are any doubts as to whether you will need to apply the Scheme to a project, please contact the OFSC Assist line on 1800 652 500.

4.3 Applying the Scheme to indirectly funded building work

There are three basic stages in the funding recipient procurement process: pre-construction, construction, and post-construction.

4.3.1 Pre-Construction

At the earliest possible opportunity, funding recipients should begin factoring the Scheme into their procurement processes. Check your funding agreement for mention of the Scheme, and discuss the implications of this with the Australian Government agency that is funding the building work. Where the Scheme applies to an upcoming indirectly funded project, your tender documentation must make accreditation under the Scheme a condition of engagement. A series of Model Clauses are available for use in tender documents and are available at www.fsc.gov.au.

When selecting a builder, funding recipients must only sign a contract with an accredited builder. An unaccredited builder is able to tender for the project, but must be accredited before entering into a contract.

A list of accredited companies is available at www.fsc.gov.au.

A series of Model Clauses are available for use in contracts under which building work will be carried out, and are available at www.fsc.gov.au.

When signing a contract with an accredited builder, funding recipients are asked to submit a contract declaration form, found on our website, and at **Attachment A**.

If a funding recipient engages a project manager, developer or other party that will not be carrying out the building work themselves, the funding recipient must require that person to engage an accredited builder to carry out the building work. Please refer to the Model Clauses for appropriate clauses for tenders and contracts.

4.3.2 Construction

Though not a requirement of the Scheme, funding recipients may wish to consider enquiring about WHS performance in all discussions with the builder, and seek participation in site WHS meetings. Through these

activities it will be clear to the builder that WHS is an important aspect of the project, putting you in a better position to influence the cultural change needed in the industry.

The funding recipient should also take steps to ensure that the accredited builder retains their accreditation throughout the construction period. Accreditation periods may vary for accredited builders and the accreditation register will indicate the accreditation expiry date for each accredited companies. The OFSC may be contacted to discuss re-accreditation requirements for companies whose accreditation will expire during the construction period.

4.3.3 Checklist

- *Include the Scheme in tender documentation*
- *Include the Scheme in contracts*
- *Engage an accredited builder, or ensure an accredited builder is engaged*
- *Provide the OFSC with a Contract Notification Form*

The OFSC also encourages funding recipients to adopt a best practice approach to WHS on their projects. Our publication *The Model Client Framework: Promoting Safe Construction* provides a practical and systematic approach to integrate WHS activities into the management of construction projects. You can download the resource from www.fsc.gov.au.

Section 5: Additional Information

For further information you can:

- 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@employment.gov.au

The Model Client Framework

To assist Australian Government agencies (as clients) in driving strong and positive safety cultures through their procurement processes, the OFSC has developed a series of booklets designed to guide agencies into becoming model clients of the building and construction industry.

The Model client framework provides support for integrating safety initiatives into the management of construction projects, and consists of the following five booklets:

- *The Model Client Framework*
- *The planning stage*
- *The design and procurement stage*
- *The construction stage*
- *The completion stage.*

The Model Client Framework is available on our website.

Roles and responsibilities for Australian Government agencies and FAQs

A full explanation of the roles and responsibilities for Australian Government agencies, and a list of Frequently Asked Questions can be found on fsc.gov.au.

The Scheme

For detailed information relating to the Australian Government Building and Construction WHS Accreditation Scheme (the Scheme), please visit the OFSC website at www.fsc.gov.au.

Relevant legislative references

- *Building and Construction Industry(Improving Productivity) Act 2016*
- *Fair Work (Building Industry – Accreditation Scheme) Regulation 2016*

These documents can be accessed from the FSC website at www.fsc.gov.au

The information provided in this publication is intended as general guidance. Australian Government agencies and their funding recipients may wish to seek their own legal advice regarding the application of the Scheme.

Attachment A – Contract Notification Form

Australian Government building and construction industry WHS Accreditation Scheme – Contract Notification Form

Department or Funding Recipient Name:	
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Department or Funding Recipient Contact Person

Name:	
Phone:	
Fax:	
Email:	

Project Manager or Joint Venture consortium [if applicable]

Name of Legal entity	
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Accredited Builder

Company name (inc. ACN)	
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Builder representative contact person

Name:	
Position:	
Phone:	
Fax:	
Email:	

Building Contract details

Contract value	
Funding Federal Agency	
Amount of Federal Funding? [if applicable]	
Is the Federal Funding Direct or Indirect? [if applicable]	<input type="checkbox"/> Direct <input type="checkbox"/> Indirect
Award Date	

Project details

Title	
Description	
Location	
Estimated start date	
Estimated end date	

Please return to: fscreporting@employment.gov.au ----- Phone: 1800 652 500

