



Australian Government

Attorney-General's Department
Office of the Federal Safety Commissioner



Model Clauses

Applying the Work Health and Safety Accreditation Scheme

July 2019



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The document must be attributed as the WHS Accreditation Scheme Model Clauses.

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Definitions

Act means the *Building and Construction Industry (Improving Productivity) Act 2016* as amended from time to time.

Builder, in relation to Building Work, means a person who carries out any of the Building Work, but does not include a Subcontractor (as defined in section 5 of the Rules).

Building Work means building work as defined in section 6 of the Act, but does not include 'prescribed building work' (see section 43 of the Act and section 26 of the Rules).

Corporate Commonwealth Entity means a corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

FSC means Federal Safety Commissioner.

OFSC means Office of the Federal Safety Commissioner.

Rules means the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* as amended from time to time.

Subcontractor, in relation to Building Work, means a person who carries out some of the Building Work under a contract with a Builder.

WHS Accreditation Scheme means the Work Health and Safety Accreditation Scheme referred to in section 43 of the Act.

Part 1: Introduction

1.1 Purpose

The model clauses contained in this guide will assist the Commonwealth and Corporate Commonwealth Entities to meet their obligations under section 43 of the Act.

The model clauses are suitable for inclusion in a funding agreement, tender, contract, grant or similar document by the Commonwealth, Corporate Commonwealth Entities, funding recipients, project managers, developers and others.

However, while these model clauses are recommended, they are not mandatory. The model clauses may be altered or substituted provided that the replacement clauses achieve at least the same effect of the model clauses.

If you require any further assistance regarding the application of the model clauses or the WHS Accreditation Scheme, please contact the OFSC.

FSC Assist Line: 1800 652 500

Email: ofsc@jobs.gov.au

1.2 The definition of 'direct' and 'indirect' funding

The WHS Accreditation Scheme applies to Building Work that is 'directly' or 'indirectly' funded by the Commonwealth or a Corporate Commonwealth Entity.

Directly funded Building Work

Building Work is considered directly funded where the Commonwealth or Corporate Commonwealth Entity enters into a contract with a Builder, project manager, developer or others who may arrange for the Building Work to be carried out. This does not include Building Work funded through a funding agreement or grant to a funding recipient.

The WHS Accreditation Scheme applies to Building Work that is carried out under a contract with a value of at least \$4,000,000 (GST inclusive) and forms part of a project that is directly funded by the Commonwealth or a Corporate Commonwealth Entity.

For further information on directly funded Building Work see the fact sheet titled '**Applying the Scheme to directly funded building work**'. This fact sheet is available at www.fsc.gov.au

Indirectly funded Building Work

Building Work is considered indirectly funded where the Commonwealth or a Corporate Commonwealth Entity provides funding through a funding agreement or grant to a funding recipient

(for example, a state or territory government) who contracts with a Builder, project manager, developer or others who arrange for the Building Work to be carried out.

The WHS Accreditation Scheme applies to Building Work that is indirectly funded by the Commonwealth or Corporate Commonwealth Entity if it is carried out under a contract with a value of \$4 million or more (GST inclusive) and the contribution made to the funding of the project by the Commonwealth or Corporate Commonwealth Entity is at least:

- \$6,000,000 (GST inclusive) and represents at least 50% of the total funding; or
- \$10,000,000 (GST inclusive).

For further information on indirectly funded Building Work see the fact sheet titled '**Applying the Scheme to indirectly funded building work**'. This fact sheet is available at www.fsc.gov.au

Part 2: Model clauses for use by the Commonwealth and Corporate Commonwealth Entities for directly funded Building Work

The clauses contained in Part 2 have been developed to assist the Commonwealth and Corporate Commonwealth Entities in applying the WHS Accreditation Scheme to directly funded Building Work. However, the clauses contained in this Part may also be of use to project managers, developers and others who are involved in the delivery of directly funded Building Work (see Part 2.4).

2.1 Advertisement clause

The clause below should be used for advertisements issued in connection with any call for expressions of interest or request for tender (however described) for directly funded Building Work.

The Work Health and Safety Accreditation Scheme

It is a requirement of this project that the builder/s contracted to undertake the building work be accredited under the Work Health and Safety Accreditation Scheme, established under the *Building and Construction Industry (Improving Productivity) Act 2016*, at the time of entering into the contract for the building work and while the building work is being carried out.*

The builder/s must comply with all conditions of Scheme accreditation.

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

2.2 Tender clauses

Accreditation is not a prerequisite for tendering for Building Work, however this requirement may be included in some tender documentation. Builders must be accredited at the time of entering into a contract for directly funded Building Work.

This is also the case where the tenderer is a project manager or developer. For example, if the Commonwealth or a Corporate Commonwealth Entity enters into a pre-construction agreement with a developer or building owner and Building Work is required as part of that agreement, the developer or building owner must be required to ensure contracts for Building Work are only entered into with accredited Builders.

Tenderer is the Builder

The clause below should be used in calls for expressions of interest or requests for tender (however described) for directly funded Building Work where it is expected that the tenderer will be the Builder.

The Work Health and Safety Accreditation Scheme

A successful tenderer must be accredited under the Work Health and Safety Accreditation Scheme (WHS Accreditation Scheme) when entering into contracts for building work covered by the WHS Accreditation Scheme and maintain accreditation while the building work is being carried out.*

The WHS Accreditation Scheme is established under the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

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

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

Tenderer is not the Builder

The clause below should be used in calls for expressions of interest or requests for tender (however described) for directly funded Building Work where it is expected that the tenderer will not be a Builder, but rather a project manager, developer or other.

The Work Health and Safety Accreditation Scheme

A successful tenderer must not contract with a builder who will carry out building work covered by the Work Health and Safety Accreditation Scheme (WHS Accreditation Scheme) if the builder is not accredited under the WHS Accreditation Scheme.*

The WHS Accreditation Scheme is established under the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

The successful tenderer must require that the builder/s contracted to undertake the building work remain accredited while carrying out the building work.

The builder/s must comply with all conditions of Scheme accreditation.

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

Schedule for inclusion in tender documentation where the tenderer is the Builder

The schedule below should be used in tender documentation where the request for tender requires potential tenderers to indicate if they are accredited under the WHS Accreditation Scheme, or to provide evidence of the steps taken to obtain accreditation.

Tender Schedule # – The Work Health and Safety Accreditation Scheme

[Insert details of accreditation status or joint venture arrangements, including the expiry date of accreditation or evidence that accreditation is being sought under the WHS Accreditation Scheme.]

2.3 Contracts

Contractor is the Builder

This clause should be used in contracts for Building Work directly funded by the Commonwealth or Corporate Commonwealth Entities. This clause should be used where the contracted person is a Builder.

The Work Health and Safety Accreditation Scheme

The builder must maintain accreditation under the Work Health and Safety Accreditation Scheme (WHS Accreditation Scheme),* while the building work is carried out.

The WHS Accreditation Scheme is established under the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

The builder must comply with all conditions of Scheme accreditation.

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

Contractor is not the Builder

This clause should be used in contracts for Building Work directly funded by the Commonwealth or Corporate Commonwealth Entities. This clause should be used where the contracted person is not a Builder, but rather a project manager, developer or other person.

The Work Health and Safety Accreditation Scheme

A contract for building work covered by the Work Health and Safety Accreditation Scheme (WHS Accreditation Scheme) must not be entered into with a builder that is not accredited under the WHS Accreditation Scheme.* This requirement does not apply to contracts entered into by builders with subcontractors.

The WHS Accreditation Scheme is established under the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

Any contract for building work covered by the WHS Accreditation Scheme must require that the builder maintains accreditation while carrying out the building work.

The builder must comply with all conditions of Scheme accreditation.

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

2.4 Information for project managers, developers and others involved with directly funded Building Work

Project managers, developers and others who are involved in the delivery of directly funded Building Work and who have responsibility for engaging a Builder should:

- a) Only engage an accredited Builder; and
- b) Require the Builder to maintain their accreditation while carrying out the Building Work.

These requirements are generally applied initially by the Commonwealth or a Corporate Commonwealth Entity through the contract or agreement.

In fulfilling these requirements project managers, developers and others may find it useful to use the above clauses in their advertisement, tender and contract documentation when engaging a Builder for directly funded Building Work.

In some cases, the project manager, developer or other person will not be responsible for engaging a Builder, but rather will rely on another person to carry out this function. In these cases the

Commonwealth or Corporate Commonwealth Entity is obliged to require the project manager, developer or other person 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 others may find it useful to use the above clauses in their advertisement, tender and contract documentation when engaging a Builder for directly funded Building Work.

Part 3: Model clauses for use by the Commonwealth or Corporate Commonwealth Entities for indirectly funded Building Work

The clauses contained in Part 3 have been developed to assist the Commonwealth and Corporate Commonwealth Entities in applying the WHS Accreditation Scheme to indirectly funded Building Work.

3.1 Funding agreements and grants

The Commonwealth and many Corporate Commonwealth Entities provide funding to third parties. These funds are usually provided on the basis of a shared agreement between the two parties or via a grant.

Typical examples include road projects or a new school built by a state or territory government using funding provided by the Commonwealth or a Corporate Commonwealth Entity.

Clauses where the funding use is not known

This clause should be included in a funding agreement or grant documentation that is issued by the Commonwealth or Corporate Commonwealth Entities where the specific use of the funding is not known but Building Work is likely to, or could, be procured using the funding.

The Work Health and Safety Accreditation Scheme

Certain building work procured using funds provided under this agreement may be covered by the Work Health and Safety Accreditation Scheme (WHS Accreditation Scheme).

The WHS Accreditation Scheme is established under *the Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

The WHS Accreditation Scheme applies to building work that is indirectly funded by the Commonwealth or a corporate Commonwealth entity if it is carried out under a contract with a value of \$4 million or more (GST inclusive) and the contribution made to the funding of the project that includes the building work by the Commonwealth or corporate Commonwealth entity is at least:

- \$6,000,000 (GST inclusive) and represents at least 50% of the total funding; or
- \$10,000,000 (GST inclusive).

Contracts for building work that use funds provided under this agreement and that meet the financial thresholds outlined above should:

- 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 WHS Accreditation Scheme*; and
 - ii. maintains their accreditation while carrying out the building work.

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

Clauses where funding is for building work

This clause should be included in a funding agreement or grant documentation that is issued by the Commonwealth or Corporate Commonwealth Entities where the funding is for indirectly funded Building Work. For example, road construction projects.

The Work Health and Safety Accreditation Scheme

Building work undertaken as part of the project/s funded under this agreement may be covered by the Work Health and Safety Accreditation Scheme (WHS Accreditation Scheme).

The WHS Accreditation Scheme is established under the *Building and Construction Industry (Improving Productivity) Act 2016* and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

The WHS Accreditation Scheme applies to building work that is indirectly funded by the Commonwealth or a corporate Commonwealth entity if it is carried out under a contract with a value of \$4 million or more (GST inclusive) and the contribution made to the funding of the project that includes the building work by the Commonwealth or corporate Commonwealth entity is at least:

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Contracts for building work that use funds provided under this agreement and that meet the financial thresholds outlined above should:

- 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 WHS Accreditation Scheme*; and
 - ii. maintains their accreditation while carrying out the building work.

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

Part 4: Model clauses for use by funding recipients and others responsible for the delivery of indirectly funded Building Work

The clauses contained in Part 4 have been developed for use by funding recipients, such as state or territory government agencies, who are responsible for the delivery of projects involving Building Work.

4.1 Advertisement clause

The clause below should be used for advertisements issued in connection with any call for expressions of interest or requests for tender (however described) for indirectly funded Building Work.

The Work Health and Safety Accreditation Scheme

It is a requirement of this project that the builder/s contracted to undertake the building work be accredited under the Work Health and Safety Accreditation Scheme, established under the *Building and Construction Industry (Improving Productivity) Act 2016*, at the time of entering into the contract for the building work and while the building work is being carried out.*

The builder/s must comply with all conditions of Scheme accreditation.

* Paragraph 26(g) of the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* outlines provisions applying to joint venture arrangements that include accredited and unaccredited builders.

4.2 Tender clauses

Accreditation is not a prerequisite for tendering for Building Work, however this requirement may be included in some tender documentation. Builders must be accredited at the time of entering into a contract for indirectly funded Building Work.

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[Insert details of accreditation status or joint venture arrangements, including the expiry date of accreditation or evidence that accreditation is being sought under the WHS Accreditation Scheme.]

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These requirements are generally applied initially by the Commonwealth or a Corporate Commonwealth Entity through the contract or agreement.

In fulfilling these requirements project managers, developers and others may find it useful to use the above clauses in their advertisement, tender and contract documentation when engaging a Builder for indirectly funded Building Work.

In some cases, the project manager, developer or other person will not be responsible for engaging a Builder, but rather will rely on another person to carry out this function. In these cases the

Commonwealth or Corporate Commonwealth Entity is obliged to require the project manager, developer or other person 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 others may find it useful to use the above clauses in their advertisement, tender and contract documentation when engaging a Builder for indirectly funded Building Work.

Part 5: Further information

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

Website: www.fsc.gov.au

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

FSC Assist Line: 1800 652 500

Email: ofsc@jobs.gov.au