



Fact Sheet – Scheme Rule Changes

Background

On 21 March 2019, the *Building and Construction (Improving Productivity) (Accreditation Scheme) Rules 2019* (the Rules) came into effect. The Rules repeal and replace the *Fair Work (Building Industry – Accreditation Scheme) Regulation 2016* which prescribe the WHS Accreditation Scheme (the Scheme) for persons who wish to carry out Commonwealth funded building work.

Why were the changes necessary?

The remade Rules reduce regulatory burden, clarify existing requirements, make technical amendments and formalise long-standing administrative practice. These changes will ensure the operating framework for the Scheme remains effective.

What are the changes?

National Construction Code (NCC) legislative function

The Rules facilitate the performance of the Federal Safety Commissioner's (FSC) function in relation to auditing compliance with National Construction Code (NCC) performance requirements in relation to building materials, and ensure that action can be taken by the FSC, including by suspending a person's accreditation, if they are found not to be complying with those requirements.

Condition of accreditation

The superseded Rules reference appropriate policies, procedures and safe work practices as a condition of accreditation. The Rules clarify that the condition of accreditation to have appropriate work health and safety (WHS) policies, procedures and safe work practices includes the implementation of these requirements.

Revocation of accreditation

The Rules provide an additional ground upon which the FSC may revoke a person's accreditation. Specifically, a person's accreditation may be revoked if the FSC is satisfied that the accredited person has, at two or more times while accredited, failed to have or implement appropriate work health and safety policies and procedures or safe work practices.

This will enable the FSC to revoke the accreditation of a person that consistently fails to meet the requisite safety standard determined by the FSC without needing to demonstrate there is a clear and present risk to safety or that a safety incident has occurred, which is consistent with the objectives of the Scheme.

Revocation of a person's accreditation will be managed in accordance with the OFSC compliance policy.

Definition of building work

The changes to the Rules limit the coverage of the building work definition for the purposes of the Scheme. It excludes offsite pre-fabrication or made-to-order components to form part of any building, structure or works, and the transport or supply of goods directly to building sites to be used in building work.

The Rules also provide that the Scheme does not apply to building work which forms part of a project to support the operations of an intelligence or security agency where the Minister responsible for the intelligence or security agency has determined in writing that disclosing the connection of the Commonwealth with the work or the project would prejudice security. The purpose is to ensure that compliance with the Scheme does not prejudice Australia's national security by identifying the Commonwealth's interest in certain sensitive building and construction projects.

Joint Ventures

The Rules were amended to remove ambiguity about whether or not persons in a joint venture that are separately accredited (but who are not the accredited builder in the joint venture taking WHS responsibility) must give undertakings.

Commonwealth Authorities

The superseded Rules contained references to Commonwealth authorities which do not exist under the current Commonwealth financial framework. An amendment was required to replace references to 'Commonwealth authorities' with 'Commonwealth entities' to ensure the Rules are consistent with the current Commonwealth financial framework and with the *Federal Safety Commissioner Act 2022*.

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@dewr.gov.au

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