



Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005¹

Select Legislative Instrument 2005 No. 305

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Building and Construction Industry Improvement Act 2005*.

Dated 15 December 2005

P. M. JEFFERY
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

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Regulation 1

Part 1 Preliminary**1 Name of Regulations**

These Regulations are the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Definitions

In these Regulations:

AAT means the Administrative Appeals Tribunal.

Act means the *Building and Construction Industry Improvement Act 2005*.

AS 1885.1-1990 means AS 1885.1-1990: Measurement of occupational health and safety performance, Part 1: Describing and reporting occupational injuries and disease known as the Workplace injury and disease recording standard.

AS/NZS 4801:2001 means AS/NZS 4801:2001: Occupational health and safety management systems — Specification with guidance for use.

claims incident rate is the number of standard workers' compensation claims per 1000 employees.

lost time injury frequency rate has the meaning given by AS 1885.1-1990.

Occupational Health and Safety Management System, or *OHSMS*, has the meaning given in the AS/NZS 4801:2001.

OH&S means occupational health and safety.

standard workers' compensation claims means the number of accepted workers' compensation claims which resulted in a fatality, permanent disability, or a temporary disability requiring an absence from work of 1 or more working weeks.

Regulation 3

Note Several other words and expressions used in these Regulations have the meaning given in the Act. For example:

- accredited person (subsection 35 (7))
- building contractor (section 4)
- building work (section 5)
- Commonwealth authority (subsection 35 (7))
- Commonwealth building contract (subsection 35 (7))
- constitutional corporation (section 4)
- Federal Safety Commissioner (section 4)
- Federal Safety Officer (section 4)
- occupier (section 4)
- premises (section 4).

Regulation 4

Part 2 Accreditation scheme

Division 2.1 Accreditation scheme

4 Accreditation scheme

For subsection 35 (1) of the Act, the following accreditation scheme is prescribed.

Division 2.2 Accreditation authority

5 Accreditation authority

For subsection 35 (2) of the Act, the Federal Safety Commissioner is the accrediting authority under the accreditation scheme.

Division 2.3 How persons are accredited under the accreditation scheme

Subdivision A Requirements for accreditation

6 Accreditation by the Federal Safety Commissioner

- (1) The Federal Safety Commissioner may accredit a person under the accreditation scheme if:
 - (a) the person is a person who, under Subdivision B, may apply for accreditation under the accreditation scheme; and
 - (b) the person (the *applicant*) applies as provided for in Subdivision C; and
 - (c) the applicant has agreed to the pre-accreditation audit and audit process mentioned in Division 2.4; and
 - (d) the Federal Safety Commissioner is satisfied that the applicant has appropriate OH&S policies and procedures and safe work practices.

Regulation 7

- (2) In deciding an application, the Federal Safety Commissioner must have regard to the following matters:
- (a) whether the applicant has an appropriately certified OHSMS (see subregulation (3));
 - (b) the commitment of the applicant's senior management to safe OH&S practices;
 - (c) the applicant's OH&S policies, procedures and work practices in relation to the applicant's building contractors and the applicant's building sites;
 - (d) the applicant's experience (if any) in dealing with construction hazards or high risk activities;
 - (e) the applicant's record in relation to workplace safety;
 - (f) the findings of a pre-accreditation audit.

Note For pre-accreditation audits see Division 2.4.

- (3) For paragraph (2) (a), the applicant will have an *appropriately certified OHSMS* if:
- (a) the applicant's OHSMS has been certified to the AS/NZS 4801:2001; or
 - (b) the applicant's OHSMS:
 - (i) is of a standard that the Federal Safety Commissioner is satisfied is similar to the standard mentioned in paragraph (a); and
 - (ii) has been assessed against the standard mentioned in subparagraph (i) by a person who is independent of the applicant.

Subdivision B Who may apply for accreditation under the scheme?

7 Who may apply for accreditation?

A person (other than an individual) may apply to the Federal Safety Commissioner for accreditation under the accreditation scheme.

Regulation 8

Subdivision C Application

8 Form of application

An application must be made in a form approved by the Federal Safety Commissioner for this regulation.

9 Matters to accompany application

The following must accompany an application made under regulation 7:

- (a) a copy of a certificate (if any) mentioned in paragraph 6 (2) (a);
- (b) if the applicant does not have such a certificate — evidence as to the standard of the applicant's OHSMS;
- (c) evidence of the commitment of the applicant's senior management to appropriate OH&S policies and procedures and safe work practices;
- (d) an indication that the applicant has agreed to the pre-accreditation audit and process mentioned in Division 2.4;
- (e) copies of the applicant's OH&S policies and procedures and evidence of the applicant's work practices in relation to the applicant's building contractors and the applicant's building sites;
- (f) evidence of the applicant's experience (if any) in dealing with construction hazards or high risk activities;
- (g) for each of the 3 completed financial years preceding the date that the application is made, the following information:
 - (i) the applicant's claims incident rate;
 - (ii) the average cost of the accepted workers' compensation claims made against the applicant;
 - (iii) the workers' compensation premium rate paid by the applicant;
 - (iv) the applicant's lost time injury frequency rate.

10 Further information

- (1) For the purposes of making a decision under subregulation 12 (1), the Federal Safety Commissioner may, by notice in writing, request further information from the applicant.
- (2) The notice must set out:
 - (a) the information sought; and
 - (b) the date by which the information is to be provided to the Federal Safety Commissioner.
- (3) The information must be provided within the period specified in the notice.
- (4) The Federal Safety Commissioner is not required to consider an application while waiting for the information to be provided.
- (5) If the information is not provided within the period specified in the notice, the application is taken to have been withdrawn.

Division 2.4 Pre-accreditation audits

11 Pre-accreditation audit and the audit process

- (1) For paragraph 6 (1) (c), the applicant must agree to be audited for the purpose of the Federal Safety Commissioner determining if he or she is satisfied that the applicant has appropriate OH&S policies and procedures and safe work practices (see paragraph 6 (1) (d)).
- (2) For paragraph 6 (1) (c), the audit process that the applicant must agree to is as follows:
 - (a) if the applicant is a constitutional corporation — a Federal Safety Officer (*FSO*) will carry out the audit exercising the powers set out in section 63 of the Act (the *section 63 powers*) in relation to the premises mentioned in section 63 of the Act;

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- (b) if the applicant is not a constitutional corporation — an FSO will carry out the audit exercising equivalent powers to the section 63 powers in relation to the following premises:
- (i) premises or building sites over which the applicant exercises control (as long as the premises are not premises covered by subsection 63 (4) of the Act);
 - (ii) premises or building sites that the occupier agrees to the FSO entering for the purposes of exercising the powers.

Note See Chapter 7 of the *Building and Construction Industry Improvement Regulations 2005* for matters relating to the exercise of section 63 powers.

Division 2.5 Decision on an application

12 Federal Safety Commissioner to decide application

- (1) The Federal Safety Commissioner must decide an application for accreditation, including whether or not the applicant is to be accredited subject to a condition.
- (2) As soon as practicable after deciding an application, the Federal Safety Commissioner must notify the applicant in writing of the decision.
- (3) The notice must set out:
 - (a) the decision; and
 - (b) if the applicant is successful, the date from which the applicant is accredited; and
 - (c) if the applicant is successful, the conditions on the accreditation operating at accreditation (see Division 2.6); and
 - (d) if the applicant is unsuccessful:
 - (i) the reasons for the decision; and
 - (ii) a statement of the applicant's review rights under Division 2.8.

13 Period of accreditation

- (1) The period of accreditation is 12 months from the date notified under paragraph 12 (3) (b).
- (2) The period must not be extended.

Note After 12 months, an accredited person must apply for a new accreditation.

Division 2.6 Conditions on accreditation

14 Conditions that apply to all accredited persons

- (1) The following conditions apply to an accredited person:
 - (a) the person has at all times appropriate OH&S policies and procedures and safe work practices;
 - (b) the person agrees to the post-accreditation audits and the audit process mentioned in regulation 16;
 - (c) the person agrees to comply with the reporting requirements notified to the person under subregulation (2);
 - (d) the person complies with the conditions of accreditation.
- (2) The Federal Safety Commissioner must notify the person in writing of the reporting requirements that the person must comply with.

15 Federal Safety Commissioner may impose further conditions

- (1) On or after the accreditation of a person, the Federal Safety Commissioner may, by notice in writing, impose on the accredited person a further condition of accreditation.
- (2) If the Federal Safety Commissioner imposes a further condition under subregulation (1) after accreditation, the Federal Safety Commissioner must give the person notice in writing of the imposition of the condition and the terms of the condition.
- (3) The notice must also include a statement:
 - (a) setting out the reason that the condition was imposed; and

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- (b) as to the person's review rights under Division 2.8.

16 Audit process

For paragraph 14 (1) (b), the audit process the accredited person must agree to is as follows:

- (a) if the person is a constitutional corporation or an accredited person undertaking building work in a Territory — a Federal Safety Officer (*FSO*) will carry out the audit exercising the powers set out in section 63 of the Act (the *section 63 powers*) in relation to the premises mentioned in section 63 of the Act;
- (b) if the person is not a person mentioned in paragraph (a) — an FSO will carry out the audit exercising equivalent powers to the section 63 powers in relation to the following premises:
- (i) premises or building sites over which the applicant exercises control (as long as the premises are not premises covered by subsection 63 (4) of the Act);
 - (ii) premises or building sites that the occupier agrees to the FSO entering for the purposes of exercising the powers.

Note See Chapter 7 of the *Building and Construction Industry Improvement Regulations 2005* for matters relating to the exercise of section 63 powers.

Division 2.7 Breach of conditions on accreditation

17 Breach of conditions

- (1) If an accredited person breaches a condition of accreditation, the Federal Safety Commissioner may do any or all of the following in respect of the breach:
- (a) impose a further condition of accreditation;
 - (b) suspend the person's accreditation;
 - (c) if the Federal Safety Commissioner is satisfied that the person's work practices are not safe, revoke the person's accreditation.

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- (2) If:
- (a) the Federal Safety Commissioner does a thing mentioned in paragraph (1) (a) or (b) in respect of a breach (the *first breach*); and
 - (b) the Federal Safety Commissioner later becomes satisfied that the person's work practices are not safe (either because of the first breach or because of another breach of a condition of accreditation);
- the Commissioner may revoke the person's accreditation even if the period for fulfilling any condition or the period of any suspension has not ended.

18 Notices under this Division

- (1) If the Federal Safety Commissioner imposes on a person a further condition of accreditation under paragraph 17 (1) (a), the Federal Safety Commissioner must give the person notice in writing of the imposition of the condition and the terms of the condition.
- (2) If the Federal Safety Commissioner suspends the person's accreditation under paragraph 17 (1) (b), the Commissioner must give the person notice in writing of the suspension, the date that the suspension takes effect and the period of the suspension.
- (3) If the Federal Safety Commissioner revokes the person's accreditation under paragraph 17 (1) (c) or subregulation 17 (2), the Commissioner must give the person notice in writing of the revocation and the date from which the revocation takes effect.
- (4) A notice under this regulation must also include a statement:
 - (a) setting out the reason that the condition was imposed or that the accreditation was suspended or revoked, as the case may be; and
 - (b) as to the person's review rights under Division 2.8.

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Division 2.8 Review of decisions

Subdivision A Reviewable decisions

19 Reviewable decisions

The decisions in the table are *reviewable decisions*.

Item	Decision	Provisions
1	To refuse to accredit a person	subregulation 12 (1)
2	To impose a condition of accreditation	subregulation 15 (1) or paragraph 17 (1) (a)
3	To suspend an accredited person's accreditation	paragraph 17 (1) (b)
4	To revoke an accredited person's accreditation	paragraph 17 (1) (c) or subregulation 17 (2)

Subdivision B Internal review of decisions

20 Internal review of decisions

- (1) A person whose interests are affected by a reviewable decision may request the Federal Safety Commissioner to reconsider the decision.
- (2) The person's request must be made by written notice given to the Federal Safety Commissioner within 28 days after the day on which the person first received the notice of the decision.
- (3) The notice must set out the reasons for making the request.
- (4) The Federal Safety Commissioner must, as soon as practicable after receiving the application, cause the decision to be reviewed by a person (the *reviewer*):
 - (a) to whom the Federal Safety Commissioner's powers under the accreditation scheme are delegated; and
 - (b) who was not involved in making the decision.

Regulation 22

- (5) A reviewer who reviews a reviewable decision may:
 - (a) make a decision affirming, varying or setting aside the reviewable decision; and
 - (b) if the reviewer sets aside the decision, make such other decision as the reviewer thinks appropriate.
- (6) The reviewer's decision takes effect:
 - (a) on the day specified in the decision on review; or
 - (b) if a day is not specified — on the day on which the decision is made.
- (7) The Federal Safety Commissioner is taken, for this Subdivision, to have affirmed the reviewable decision if the person does not receive notice of the review decision within 90 days after receiving the person's request.

21 Notice of decisions

The reviewer of a decision under regulation 20 must give a person whose interests are affected by the decision notice in writing within 28 days after making the decision:

- (a) of the decision; and
- (b) of the person's review rights under Subdivision C.

Subdivision C AAT review of reviewable decisions

22 AAT review

An application may be made to the AAT for the review of a reviewable decision that has been affirmed, varied or set aside under Subdivision B.

Regulation 23

**Division 2.9 Federal Safety Commissioner etc
not liable for conduct in good faith**

**23 Federal Safety Commissioner etc not liable for
conduct in good faith**

- (1) No one is liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done, or omitted to be done, in good faith and without negligence by a protected person in the exercise, or purported exercise, of functions, powers or duties under, or in relation to, these Regulations.
- (2) In this regulation, *protected person* means:
 - (a) the Federal Safety Commissioner; or
 - (b) a Federal Safety Officer; or
 - (c) a person acting under a delegation from the Federal Safety Commissioner.

Part 3 Prescribed contracts

24 Prescribed contracts

For subsection 35 (4) of the Act, each of the following contracts is prescribed:

- (a) a contract entered into before 1 March 2006;
- (b) a contract entered into on and after 1 March 2006 if the contract has a value of less than \$6 000 000;
- (c) a contract for building work that is to be carried out outside Australia.

Note An effect of this regulation is that if:

- (a) a person wishes to enter into a Commonwealth building contract with the Commonwealth or a Commonwealth authority on or after 1 March 2006; and
 - (b) the value of the contract would be \$6 000 000 or more;
- the person must be an accredited person.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.