



Fair Work (Building Industry—Accreditation Scheme) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 10 March 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Michaelia Cash
Minister for Employment

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Part 1—Preliminary

1 Name

This is the *Fair Work (Building Industry—Accreditation Scheme) Regulation 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	12 March 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Fair Work (Building Industry) Act 2012*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: Several other words and expressions used in this instrument have the meaning given by provisions of the Act. The following are examples:

- (a) accredited person (subsection 35(8));
- (b) builder (subsection 35(8));
- (c) building contractor (section 4);
- (d) building work (section 5);
- (e) Commonwealth authority (subsection 35(8));
- (f) constitutional corporation (section 4);
- (g) Federal Safety Commissioner (section 4);
- (h) Federal Safety Officer (section 4);
- (i) occupier (section 4);
- (j) premises (section 4).

Section 5

In this instrument:

AAT means the Administrative Appeals Tribunal.

Act means the *Fair Work (Building Industry) Act 2012*.

applicant: see subsection 8(1).

joint venture means an unincorporated enterprise that is constituted by 2 or more persons in common and in which:

- (a) each member is not an individual; and
- (b) at least one member is an accredited person and at least one member is not an accredited person.

post-accreditation audit: see section 17.

pre-accreditation audit: see section 12.

reviewable decision: see section 22.

reviewer: see subsection 23(3).

WHS means workplace health and safety.

WHSMS means a workplace health and safety management system.

Part 2—Accreditation scheme

Division 2.1—Accreditation scheme

6 Accreditation scheme

For subsection 35(1) of the Act, this Part prescribes the accreditation scheme for persons who wish to carry out building work funded by the Commonwealth or a Commonwealth authority.

Part 2 Accreditation scheme

Division 2.2 Accrediting authority

Section 7

Division 2.2—Accrediting authority

7 Accrediting 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

8 Accreditation by the Federal Safety Commissioner

- (1) The Federal Safety Commissioner may accredit a person for a period if:
 - (a) the person (the *applicant*) applies for accreditation under section 9; and
 - (b) the applicant has agreed to a pre-accreditation audit being carried out under section 12; and
 - (c) the Commissioner is satisfied that the applicant has appropriate WHS policies and procedures and safe work practices.

Note 1: For notice of a decision under this subsection, see section 14.

Note 2: For conditions of accreditation, see sections 15 and 16 and paragraph 18(1)(a).

- (2) The period of accreditation must not exceed 6 years, and may not be extended.

Note: To remain accredited after the end of a period of accreditation, an accredited person must apply for a new accreditation.

- (3) In making a decision under subsection (1), the Federal Safety Commissioner must have regard to the following matters:
 - (a) the applicant's WHSMS;
 - (b) the applicant's experience (if any) in dealing with construction hazards or high risk activities;
 - (c) the applicant's record in relation to workplace safety;
 - (d) subject to section 13, the findings of a pre-accreditation audit of the applicant.
- (4) The Federal Safety Commissioner must also have regard to the performance of the applicant in relation to the following focus points:
 - (a) demonstrated senior management commitment to WHS;
 - (b) demonstrated effective subcontractor WHS management;
 - (c) integration of safe design principles into the risk management process;
 - (d) whole of project WHS consultation and communication;
 - (e) whole of project WHS performance measurement;
 - (f) WHS training requirements.

9 Application for accreditation

- (1) A person may apply to the Federal Safety Commissioner for accreditation under the accreditation scheme.
- (2) The application must:
 - (a) be made in a form approved by the Federal Safety Commissioner; and
 - (b) include an indication that the applicant has agreed to a pre-accreditation audit being carried out under section 12.

Section 10

10 Evidence to accompany application

- (1) Subject to subsections (2) and (3), the following must accompany an application for accreditation:
 - (a) evidence of the applicant's experience (if any) in dealing with construction hazards or high risk activities;
 - (b) evidence of the commitment of the applicant's senior management to appropriate WHS policies and procedures and safe work practices;
 - (c) evidence of the applicant's work practices in relation to the applicant's building contractors and the applicant's building sites;
 - (d) evidence that the applicant integrates safe design principles into the risk management process;
 - (e) evidence that the applicant has mechanisms for effective consultation and communication of WHS issues across an entire project;
 - (f) evidence of the applicant's capability to collect and analyse information about, and report on, WHS performance across an entire project;
 - (g) evidence that the applicant ensures that workers at all levels on a project are suitably trained and competent to deal with WHS risks associated with the project.
- (2) However, evidence of a matter mentioned in subsection (1) need not accompany the application if the application:
 - (a) identifies documents that contain or constitute evidence of the matter, and that will be available for the purposes of a pre-accreditation audit of the applicant; and
 - (b) specifies the location of the documents.
- (3) The Federal Safety Commissioner may waive a requirement to provide evidence in relation to a matter mentioned in subsection (1), or a statement under subsection (2) in relation to such a matter, if:
 - (a) the applicant is, or has been, an accredited person; and
 - (b) the Commissioner is satisfied that the applicant has previously provided sufficient information in relation to that matter.

11 Further information

- (1) For the purposes of making a decision under subsection 8(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 day by which the information is to be provided to the Federal Safety Commissioner.
- (3) The information must be provided on or before the day 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 on or before the day specified in the notice, the application is taken to have been withdrawn.

Division 2.4—Pre-accreditation audits

12 Pre-accreditation audit

- (1) For paragraph 8(1)(b), an applicant for accreditation must agree to an audit (a *pre-accreditation audit*) being carried out under this section for the purpose of the Federal Safety Commissioner determining whether the applicant has appropriate WHS policies and procedures and safe work practices.
- (2) If the applicant is a constitutional corporation, a Federal Safety Officer is to carry out the audit exercising powers under section 63 of the Act in relation to any premises to which that section applies.

Note: Section 63 of the Act gives an officer certain powers for the purpose of ascertaining whether a constitutional corporation that is an applicant for accreditation meets the accreditation requirements.

- (3) If the applicant is not a constitutional corporation, a Federal Safety Officer is to carry out the audit as if the officer were exercising the powers mentioned in section 63 of the Act in relation to any premises to which that section applies, if:
 - (a) the applicant exercises control over the premises; or
 - (b) the occupier agrees to the officer entering the premises for the purposes of carrying out the audit.

Note: See Part 4 of the *Fair Work (Building Industry) Regulation 2015* for matters relating to the exercise of section 63 powers.

13 Pre-accreditation audit unnecessary in certain circumstances

- (1) Despite paragraph 8(3)(d), the Federal Safety Commissioner may accredit an applicant under section 8 without a pre-accreditation audit of the applicant having been carried out if:
 - (a) the applicant is, or has been, an accredited person; and
 - (b) a post-accreditation audit of the applicant has been carried out; and
 - (c) the Commissioner considers that it is appropriate to accredit the applicant without carrying out a pre-accreditation audit, having regard to:
 - (i) the findings of the post-accreditation audit mentioned in paragraph (b); and
 - (ii) any other matters that the Commissioner considers relevant.
- (2) Also, the Federal Safety Commissioner may accredit an applicant under section 8 without a pre-accreditation audit of the applicant having been carried out if:
 - (a) another person that is an accredited person has been subject to a pre-accreditation audit or a post-accreditation audit; and
 - (b) at the time the applicant made the application, the other person's WHSMS and the applicant's WHSMS were the same; and
 - (c) the Commissioner considers that it is appropriate to accredit the applicant without a pre-accreditation audit of the applicant, having regard to:
 - (i) the findings of the audit mentioned in paragraph (a); and
 - (ii) any other matters that the Commissioner considers relevant.

Note: An applicant for accreditation must agree to a pre-accreditation audit being carried out even if there is a possibility that the Federal Safety Commissioner will accredit the applicant under this section (see paragraph 8(1)(b)).

Section 14

Division 2.5—Notice of decision

14 Notice of decision

- (1) The Federal Safety Commissioner must give an applicant for accreditation written notice of:
 - (a) a decision under section 8 to accredit the applicant; or
 - (b) a decision under section 8 to refuse to accredit the applicant.
- (2) The Federal Safety Commissioner must give the notice as soon as practicable after making the decision.
- (3) If the Federal Safety Commissioner accredits the applicant, the notice must set out the following:
 - (a) the day on which the accreditation begins;
 - (b) the period of the accreditation;
 - (c) the conditions that apply to the accreditation under section 15;
 - (d) any further conditions imposed under section 16, together with the reasons for imposing the conditions.
- (4) If the Federal Safety Commissioner:
 - (a) refuses to accredit the applicant; or
 - (b) accredits the applicant for a period of less than 6 years; or
 - (c) imposes further conditions under section 16;the notice must include a statement of the applicant's review rights under Division 2.9.

Division 2.6—Conditions of accreditation

15 Conditions that apply to all accreditations

- (1) The following conditions apply to all accreditations:
 - (a) the accredited person must at all times have appropriate WHS policies and procedures, and safe work practices;
 - (b) the accredited person must agree to post-accreditation audits being carried out under section 17;
 - (c) the accredited person must take all reasonable steps to facilitate the post-accreditation audits;
 - (d) the accredited person must comply with the reporting requirements notified to the person under subsection (2) from time to time.

Note: Further conditions may be imposed under section 16 or paragraph 18(1)(a).

- (2) The Federal Safety Commissioner must notify the person in writing of the reporting requirements that the person must comply with.

16 Federal Safety Commissioner may impose further conditions

- (1) The Federal Safety Commissioner may impose a further condition of accreditation on an accredited person:
 - (a) at the time the accreditation is given; or
 - (b) during the period of the accreditation.
- (2) If the Federal Safety Commissioner imposes a further condition of accreditation during the period of the accreditation, the Commissioner must give the accredited person a written notice:
 - (a) setting out the condition; and
 - (b) setting out the reason for imposing the condition; and
 - (c) including a statement of the person's review rights under Division 2.9.

Note: For conditions imposed at the time an accreditation is given, these matters must be set out in the notice of accreditation (see subsections 14(3) and (4)).

17 Post-accreditation audit

- (1) For paragraph 15(1)(b), an accredited person must agree to audits (*post-accreditation audits*) being carried out under this section for the purpose of the Federal Safety Commissioner ascertaining whether the accredited person has complied, and is complying, with the conditions of the accreditation.
- (2) If the accredited person is a constitutional corporation, a Federal Safety Officer is to carry out the audit exercising powers under section 63 of the Act in relation to any premises to which that section applies.

Note: Section 63 of the Act gives an officer certain powers for the purpose of ascertaining whether a constitutional corporation that is an accredited person has complied, or is complying, with conditions of the accreditation.

- (3) If the accredited person is not a constitutional corporation:

Part 2 Accreditation scheme

Division 2.6 Conditions of accreditation

Section 17

- (a) for the purposes of ascertaining whether the accredited person has complied, or is complying, with conditions of the accreditation in respect of building work in a Territory or Commonwealth place—a Federal Safety Officer is to carry out the audit exercising powers under section 63 of the Act in relation to any premises to which that section applies; or
- (b) otherwise—a Federal Safety Officer is to carry out the audit as if the officer were exercising the powers mentioned in section 63 of the Act in relation to any premises to which that section applies, if:
 - (i) the accredited person exercises control over the premises; or
 - (ii) the occupier agrees to the officer entering the premises for the purposes of carrying out the audit.

Note: For paragraph (3)(a), section 63 of the Act gives an officer certain powers for the purpose of ascertaining whether an accredited person has complied, or is complying, with conditions of the accreditation in respect of building work in a Territory or Commonwealth place.

Division 2.7—Breach of conditions of accreditation

18 Breach of conditions

- (1) If the Federal Safety Commissioner is satisfied that an accredited person has breached a condition of accreditation, the 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) revoke the person's accreditation, if the Commissioner is satisfied that:
 - (i) the person's WHS policies and procedures constitute a risk to safety; or
 - (ii) the person's WHS policies and procedures are not being complied with, in a way that constitutes a risk to safety; or
 - (iii) the person's work practices are not safe.
- (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 Commissioner later becomes satisfied of a matter mentioned in paragraph (1)(c) (either in relation to the first breach or in relation to another breach of a condition of accreditation);

the Commissioner may revoke the person's accreditation even if the period for complying with any condition or the period of any suspension has not ended.

Accredited persons using the same WHSMS

- (3) Subsection (4) applies if:
 - (a) the Federal Safety Commissioner is considering whether to make a decision under this section in relation to an accredited person (the **first person**); and
 - (b) a post-accreditation audit (the **relevant audit**) of another accredited person has been carried out; and
 - (c) the first person's WHSMS is the same as the other person's WHSMS was at the time of the relevant audit.
- (4) Without limiting subsection (1) or (2), the Federal Safety Commissioner may be satisfied that the first person has breached a condition of accreditation, or be satisfied of a matter mentioned in paragraph (1)(c) or (2)(b) in relation to the first person, if the Commissioner considers it appropriate having regard to the findings of the relevant audit.

19 Notices under this Division

- (1) If the Federal Safety Commissioner imposes a further condition of accreditation on an accredited person under paragraph 18(1)(a), the Commissioner must give the person notice in writing of the imposition of the condition.
- (2) If the Federal Safety Commissioner suspends an accredited person's accreditation under paragraph 18(1)(b), the Commissioner must give the person

Part 2 Accreditation scheme

Division 2.7 Breach of conditions of accreditation

Section 19

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 an accredited person's accreditation under paragraph 18(1)(c) or subsection 18(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 section must also:
 - (a) set out the reason that the condition was imposed or that the accreditation was suspended or revoked, as the case may be; and
 - (b) include a statement of the person's review rights under Division 2.9.

Division 2.8—Variation and cancellation of accreditation

20 Variation of accreditation for change of name

If the name of an accredited person changes, the Federal Safety Commissioner may, by written notice to the person, vary the person's accreditation to reflect the change.

21 Cancellation of accreditation on request

The Federal Safety Commissioner may cancel an accredited person's accreditation if the person gives the Commissioner a request, in writing, for the accreditation to be cancelled.

Section 22

Division 2.9—Review of decisions

22 Reviewable decisions

The decisions in the following table are *reviewable decisions*.

Reviewable decisions		
Item	Decision	Provisions
1	To refuse to accredit a person	Subsection 8(1)
2	To determine a period of accreditation less than 6 years	Subsection 8(1)
3	To impose a condition on an accreditation	Subsection 16(1) or paragraph 18(1)(a)
4	To suspend an accreditation	Paragraph 18(1)(b)
5	To revoke an accreditation	Paragraph 18(1)(c) or subsection 18(2)
6	To refuse to cancel an accreditation on request	Section 21

23 Internal review of decisions

Application for review

- (1) A person whose interests are affected by a reviewable decision may request a reconsideration of the decision.
- (2) The request must:
 - (a) be given, in writing, to the Federal Safety Commissioner; and
 - (b) set out the reasons for the request; and
 - (c) be made within 28 days after the day the person first received the notice of the reviewable decision.

Review of decision

- (3) The Federal Safety Commissioner must, as soon as practicable after receiving the request, cause the decision to be reviewed by a person (the *reviewer*) specified in subsection (4).
- (4) The reviewer must be:
 - (a) if the Federal Safety Commissioner made the decision personally—a delegate of the Commissioner who was not involved in making the decision; or
 - (b) in any other case:
 - (i) the Federal Safety Commissioner personally; or
 - (ii) a delegate of the Commissioner who was not involved in making the decision.
- (5) The reviewer may:
 - (a) affirm, vary or set aside the reviewable decision; and

- (b) if he or she sets aside the reviewable decision—make such other decision as he or she thinks appropriate.
- (6) The decision on review takes effect:
 - (a) on the day specified in the decision on review; or
 - (b) if a day is not specified—on the day the decision on review was made.
- (7) The reviewer is taken to have affirmed the reviewable decision if a decision is not made under subsection (5) within 90 days after the request was received.

24 Notice of decision on review

- (1) The reviewer of a decision under section 23 must, within 28 days after making the decision on review, give a person whose interests are affected by the decision on review written notice:
 - (a) of the decision on review; and
 - (b) of the person's review rights under section 25.
- (2) A failure to comply with subsection (1) does not affect the validity of the decision on review.

25 AAT review

Applications may be made to the AAT for review of decisions of a reviewer under subsection 23(5).

Part 3—Prescribed building work

26 Prescribed building work

- (1) For subsection 35(4) of the Act, the following building work is prescribed:
- (a) building work carried out outside Australia;
 - (b) building work:
 - (i) carried out under a contract with a value of less than \$4 000 000; and
 - (ii) which forms part of a project that is directly funded by the Commonwealth or a Commonwealth authority;
 - (c) building work which forms part of a project that is indirectly funded by the Commonwealth or a Commonwealth authority, unless:
 - (i) the building work is carried out under a contract with a value of at least \$4 000 000; and
 - (ii) the contribution made to the funding of the project by the Commonwealth or a Commonwealth authority is at least \$6 000 000, and represents at least 50% of the total funding;
 - (d) building work which forms part of a project that is indirectly funded by the Commonwealth or a Commonwealth authority, unless:
 - (i) the building work is carried out under a contract with a value of at least \$4 000 000; and
 - (ii) the contribution made to the funding of the project by the Commonwealth or a Commonwealth authority is at least \$10 000 000;
 - (e) building work carried out by a subcontractor;
 - (f) building work which forms part of a project and which is carried out in the following circumstances:
 - (i) the project is undertaken by a joint venture;
 - (ii) the building work is to be carried out, in whole or in part, by a builder who is not an accredited person;
 - (iii) an accredited person in the joint venture (the *accredited member*) has given an undertaking, in writing, to take full responsibility for WHS for the life of the project;
 - (iv) the accredited member has given an undertaking, in writing, that the building work will be carried out in accordance with its WHSMS for the life of the project;
 - (v) each builder who carries out the building work, in whole or in part, has given an undertaking, in writing, that it will carry out the building work in accordance with the accredited member's WHSMS for the life of the project;
 - (vi) each builder who is not an accredited person has given an undertaking, in writing, that it will participate fully in any audit of the accredited member's WHSMS and the way in which it is implemented on-site;
 - (vii) before a person enters into a contract for building work in relation to the project on behalf of the joint venture, the person gives the Federal Safety Commissioner copies of the undertakings;

- (g) any work which is part of a project for:
 - (i) the construction, repair or restoration of a single-dwelling house; or
 - (ii) the construction, repair or restoration of any building, structure or work associated with a single-dwelling house; or
 - (iii) the alteration or extension of a single-dwelling house, if it remains a single-dwelling house after the alteration or extension.

(2) In this section:

subcontractor, in relation to building work, means a person who carries out some or all of the building work under a contract with a builder.

Part 4—Application, savings and transitional provisions

27 Application of provisions reflecting amendments made by the *Fair Work (Building Industry—Accreditation Scheme) Amendment Regulation 2014*

- (1) The condition in paragraph 15(1)(c) does not apply to an accredited person in relation to a period of accreditation that started before 1 January 2015.
- (2) Despite the repeal of the *Fair Work (Building Industry—Accreditation Scheme) Regulations 2005*, for building work carried out under a contract entered into before 1 January 2015:
 - (a) regulation 24 of the *Fair Work (Building Industry—Accreditation Scheme) Regulations 2005*, as in force immediately before the commencement of items 12 to 16 of Schedule 1 to the *Fair Work (Building Industry—Accreditation Scheme) Amendment Regulation 2014*, continues to apply; and
 - (b) section 26 of this instrument does not apply.

Note: The application provisions in this section relate to amendments of the repealed *Fair Work (Building Industry—Accreditation Scheme) Regulations 2005* made by the *Fair Work (Building Industry—Accreditation Scheme) Amendment Regulation 2014*.

28 Transitional—repeal of the *Fair Work (Building Industry—Accreditation Scheme) Regulations 2005*

- (1) If:
 - (a) a thing was done for a particular purpose under the *Fair Work (Building Industry—Accreditation Scheme) Regulations 2005* (the **old regulations**) before the old regulations were repealed; and
 - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to an accreditation, notice, application or other instrument being given or made.

Note: For example, an accreditation given under the old regulations before the repeal of the old regulations continues to have effect (until the end of the period of accreditation, or until the accreditation is cancelled or revoked) as if it were an accreditation given under this instrument.
- (3) If a person was purportedly accredited for a particular period under the old regulations without a pre-accreditation audit of the person having been carried out, and that period had not ended immediately before the commencement of this section, the accreditation has effect, on and after that commencement and until the end of that period, as if the person had been validly accredited under this instrument.

- (4) Nothing in this section prevents the variation, revocation or cancellation of an accreditation, notice, application or other instrument on or after the commencement of this section.

Schedule 1—Repeals

Fair Work (Building Industry—Accreditation Scheme) Regulations 2005

1 The whole of the Regulations

Repeal the Regulations.