Fair Work (Building Industry—Accreditation Scheme) Regulations 2005

Select Legislative Instrument No. 305, 2005

made under the

*Fair Work (Building Industry) Act 2012*

Compilation No. 8

Compilation date: 1 January 2015

Includes amendments up to: SLI No. 189, 2014

Registered: 21 January 2015

Prepared by the Office of Parliamentary Counsel, Canberra
About this compilation

This compilation

This is a compilation of the *Fair Work (Building Industry—Accreditation Scheme) Regulations 2005* that shows the text of the law as amended and in force on 1 January 2015 (the *compilation date*).

This compilation was prepared on 6 January 2015.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.
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Part 1—Preliminary

1 Name of Regulations

These Regulations are the *Fair Work (Building Industry—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 *Fair Work (Building Industry) Act 2012*.

*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.

*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.

*WHS* means workplace health and safety.

*WHSMS* means a workplace health and safety management system.

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

* accredited person (subsection 35 (8))
Part 1 Preliminary

Regulation 3

- builder (subsection 35 (8))
- building contractor (section 4)
- building work (section 5)
- Commonwealth authority (subsection 35 (8))
- constitutional corporation (section 4)
- Federal Safety Commissioner (section 4)
- Federal Safety Officer (section 4)
- occupier (section 4)
- premises (section 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 WHS policies and procedures and safe work practices.

(2) In deciding an application, 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) the findings of a pre-accreditation audit.

(3) The Federal Safety Commissioner must also have regard to the performance of the applicant against 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;
Part 2  Accreditation scheme
Division 2.3  How persons are accredited under the accreditation scheme

Regulation 7

(f) WHS training requirements.

Subdivision B—Who may apply for accreditation under the scheme?

7 Who may apply for accreditation?

A person may apply to the Federal Safety Commissioner for accreditation under the accreditation scheme.

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

(1) The following must accompany an application made under regulation 7:

(b) evidence of the applicant’s experience (if any) in dealing with construction hazards or high risk activities;

(c) an indication that the applicant has agreed to the pre-accreditation audit and process mentioned in Division 2.4;

(d) evidence of the commitment of the applicant’s senior management to appropriate WHS policies and procedures and safe work practices;

(e) evidence of the applicant’s work practices in relation to the applicant’s building contractors and the applicant’s building sites;

(f) evidence that the applicant integrates safe design principles into the risk management process;

(g) evidence that the applicant has mechanisms for effective consultation and communication of WHS issues across an entire project;
Regulation 10

(h) evidence of the applicant’s capability to collect and analyse information about, and report on, WHS performance across an entire project;
(i) 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) The Federal Safety Commissioner may waive a requirement to provide evidence or an indication in relation to a matter under subregulation (1) 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.

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 WHS 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;

(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:
   (a) the period of accreditation (which must not be longer than 6 years); and
   (b) 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:
      (i) the date from which the applicant is accredited; and
      (ii) the period of accreditation; 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) If the period of accreditation commenced before 31 July 2006, the period of accreditation ends 12 months after the date on which the period of accreditation commenced.

Note: The period of accreditation commenced on the date notified under paragraph 12 (3) (b).
(2) The period must not be extended.

(3) If the period of accreditation commences on or after 31 July 2006, and before 1 October 2006, the period of accreditation ends at the end of 31 July 2007.

   Note: The period of accreditation commences on the date notified under paragraph 12 (3) (b).

(4) If the period of accreditation commences on or after 1 October 2006, the period of accreditation is the period determined by the Federal Safety Commissioner under subregulation 12 (1).

   Note: The period of accreditation commences on the date notified under paragraph 12 (3) (b).

(5) The period under subregulation (3) or (4) must not be extended.

   Note: At the end of the period of accreditation, to remain accredited, 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 WHS policies and procedures and safe work practices;
   (b) the person agrees to the post-accreditation audits and the audit process mentioned in regulation 16;
   (ba) the person agrees to take all reasonable steps to facilitate 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
   (b) as to the person’s review rights under Division 2.8.
Part 2  Accreditation scheme
Division 2.6  Conditions on accreditation

Regulation 16

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 accredited person 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.

(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.
Part 2  Accreditation scheme
Division 2.7  Breach of conditions on accreditation

Regulation 18

(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.
Division 2.8—Review of decisions

Subdivision A—Reviewable decisions

19 Reviewable decisions

The decisions in the table are reviewable decisions.

<table>
<thead>
<tr>
<th>Item</th>
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<th>Provisions</th>
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<td>To refuse to accredit a person</td>
<td>subregulation 12 (1)</td>
</tr>
<tr>
<td>1A</td>
<td>To determine a period of less than 6 years’</td>
<td>subregulation 12 (1)</td>
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<tr>
<td></td>
<td>accreditation</td>
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<tr>
<td>2</td>
<td>To impose a condition of accreditation</td>
<td>subregulation 15 (1) or paragraph 17 (1) (a)</td>
</tr>
<tr>
<td>3</td>
<td>To suspend an accredited person’s accreditation</td>
<td>paragraph 17 (1) (b)</td>
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<tr>
<td>4</td>
<td>To revoke an accredited person’s accreditation</td>
<td>paragraph 17 (1) (c) or subregulation 17 (2)</td>
</tr>
</tbody>
</table>

Subdivision B—Internal review of decisions

20 Internal review of decisions

(1) A person whose interests are affected by a reviewable decision may request a reconsideration of 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 a notice under subregulation (2), cause the decision...
Part 2  Accreditation scheme
Division 2.8  Review of decisions

Regulation 21

to be reviewed by a person (the reviewer) specified in subregulation (5) or (6).

(5) If the Federal Safety Commissioner made the decision—a person:
   (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.

(6) If the Federal Safety Commissioner did not make the decision—either:
   (a) the Federal Safety Commissioner; or
   (b) a person:
      (i) to whom the Federal Safety Commissioner’s powers under the accreditation scheme are delegated; and
      (ii) who was not involved in making the decision.

(7) A person who reviews a reviewable decision under subregulation 20 (5) or (6) 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.

(8) 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.

(9) The reviewer is taken, for this Subdivision, to have affirmed the reviewable decision if a decision is not made under subregulation (7) 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:
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.
Part 2  Accreditation scheme
Division 2.9  Federal Safety Commissioner etc not liable for conduct in good faith

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 building work

24 Prescribed building work

(1) For subsection 35(4) of the Act, the following building work is prescribed:

(a) building work that is carried out outside Australia;

(b) building work under a contract:
   (i) entered into on or after 1 March 2006 but before 1 October 2007; and
   (ii) that has a value of less than $6,000,000;

(c) building work:
   (i) under a contract with a value of less than $4,000,000; and
   (ii) that forms part of a project that is directly funded by the Commonwealth or a Commonwealth authority;

(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 greater than $4,000,000; and
   (ii) the contribution made to the funding of the project by the Commonwealth or a Commonwealth authority:
      (A) is at least $6,000,000; and
      (B) represents at least 50% of the total funding; and
      (C) is made on or after 1 October 2007;

(e) 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 greater than $4,000,000; and
   (ii) the contribution made to the funding of the project by the Commonwealth or a Commonwealth authority:
Part 3  Prescribed building work

Regulation 24

(A) is $10 000 000 or more; and
(B) is made on or after 1 October 2007;

(f) building work carried out by a subcontractor;

(g) building work:
   (i) under a contract that relates to an expense measure
described in Appendix B of the Updated Economic and
Fiscal Outlook 2008–09, published in February 2009; or
   (ii) which forms part of a project that relates to an expense
measure described in Appendix B of the Updated
Economic and Fiscal Outlook 2008–09;

(h) 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:
      (A) an undertaking, in writing, to take full
responsibility for WHS for the life of the
project; and
      (B) an undertaking, in writing, that the building
work will be carried out in accordance with its
WHSMS for the life of the project;
   (iv) 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;
   (v) 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;
   (vi) 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;

(i) any work that is part of a project for:
Regulation 24

(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 regulation:

project means building work consisting of a number of separate contracts.

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—Transitional

25 Application of the Fair Work (Building Industry—Accreditation Scheme) Amendment Regulation 2014

(1) Item 4 of Schedule 1 to the Fair Work (Building Industry—Accreditation Scheme) Amendment Regulation 2014 applies to a decision on an application made by the Federal Safety Commissioner on or after the commencement of that item, whether or not the application was made before the commencement of that item.

(2) Item 10 of Schedule 1 to the Fair Work (Building Industry—Accreditation Scheme) Amendment Regulation 2014 applies to an accredited person in relation to a period of accreditation that starts on or after the commencement of that item.

(3) Items 12 to 16 of Schedule 1 to the Fair Work (Building Industry—Accreditation Scheme) Amendment Regulation 2014 apply to building work carried out under a contract entered into on or after the commencement of item 12.
Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.
Endnotes

Endnote 2—Abbreviation key

A = Act
ad = added or inserted
am = amended
amdt = amendment
c = clause(s)
C[x] = Compilation No. x
Ch = Chapter(s)
def = definition(s)
Dict = Dictionary
disallowed = disallowed by Parliament
Div = Division(s)
exp = expires/expired or ceases/ceased to have effect
F = Federal Register of Legislative Instruments
gaz = gazette
LI = Legislative Instrument
LIA = Legislative Instruments Act 2003
(md) = misdescribed amendment
mod = modified/modification
No. = Number(s)
o = order(s)
Ord = Ordinance
Orig = original
par = paragraph(s)/subparagraph(s)
prev = previous
(prev...) = previously
Pres = present
r = regulation(s)/rule(s)
Reg = Regulation/Regulations
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
(s) = section(s)/subsection(s)
Sch = Schedule(s)
Sdiv = Subdivision(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
Sub-Ch = Sub-Chapter(s)
SubPt = Subpart(s)
underlining = whole or part not commenced or to be commenced
### Endnote 3—Legislation history

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<td>20 Dec 2005</td>
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<td>198, 2006</td>
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<td>80, 2012</td>
<td>29 May 2012</td>
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Compilation date: 1/1/15  
Registered: 21/1/15

Rectified 29/04/2015 Federal Register of Legislative Instruments F2015C00070
## Endnote 4—Amendment history

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### Endnote 4—Amendment history

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