



Fact Sheet – Applying the Scheme to indirectly funded building work

The *Federal Safety Commissioner Act 2022* (the Act) establishes the Work Health and Safety Accreditation Scheme (the Scheme) to improve work, health and safety (WHS) in the building and construction industry.

Subject to certain exemptions, only ‘builders’ who are accredited under the Scheme can enter into contracts for building work that is funded directly or indirectly by the Commonwealth or a corporate Commonwealth entity. Information on the exemptions are in this fact sheet below.

The information within this factsheet and the flowchart at [Appendix 1](#) can assist organisations in understanding whether the Scheme applies to individual projects.

For more information on what constitutes building work, refer to our fact sheets [Definitions of ‘Builder’ and ‘Building Work’](#) and [Contracting for Australian Government funded building work](#).

What is directly funded building work?

Projects are considered to be directly funded where a Commonwealth or a corporate Commonwealth entity has responsibility for the project funding and development. An accredited builder must be engaged if a ‘head contract for building work’ for such a project has a value of at least \$4 million (GST inclusive).

Where a Commonwealth or corporate entity has responsibility for the project funding and development, it is immaterial if the contract is made with either a builder or a third party (such as a project manager). Both of these scenarios would be considered direct funding.

Directly funded building work includes building work that the Australian Government facilitates directly by agreement, for example, Build Own Operate (BOO), Build Own Operate Transfer (BOOT), and pre-commitment leases. All pre-commitment leases are covered by the Scheme, and where they are funded

by the Australian Government, the direct threshold will apply.

Examples of directly funded building work include:

- a new Medicare office
- Department of Defence facilities
- a fit-out or refurbishment of existing Australian Government office accommodation

For more information on directly funded building work see the fact sheet [Applying the Scheme to Directly funded building work](#).

What is indirectly funded building work?

Projects are considered indirectly funded where the Commonwealth or a corporate Commonwealth entity contributes funding to a recipient through a funding agreement, facility, grant or other program. The recipient of such funding, such as a state government, council or private company may carry out the work themselves or contract with a person who:

- will carry out building work; or
- will arrange for building work to be carried out.

This includes building work funded by the Commonwealth or a corporate Commonwealth entity through a funding agreement or grant, for example Build Own Operate (BOO) or Build Own Operate Transfer (BOOT) arrangements. This also includes building work funded by take-out and acquisition financing arrangements, where the commitment by the Commonwealth or a corporate Commonwealth entity to provide funding facilitates the construction proceeding. The existence of a pre-construction agreement that facilitates building work (even in part) means the building work is likely to be covered by the Scheme where one of the parties to the agreement is in receipt of funding from the Commonwealth or a corporate Commonwealth entity, subject to certain exemptions.

Examples of indirectly funded building work include:

- road construction projects where the Commonwealth is the source of funds for a road project managed by a local council

- a new school built by a state or territory government using funding provided by the Commonwealth or a corporate Commonwealth entity.
- housing projects built by community housing providers funded by the Commonwealth or a corporate Commonwealth Entity.

What is “funding”?

Section 43(5) of the *Federal Safety Commissioner Act 2022* states that the Commonwealth or a corporate Commonwealth entity funds building work if it:

- pays for, or otherwise funds or finances, the building work (whether directly or indirectly); or
- facilitates the carrying out of the building work by entering into, or otherwise funding or financing (whether directly or indirectly), a pre-construction agreement that relates to the building work.

Are there any indirectly funded projects the Scheme does not apply to?

The Scheme does not apply to projects indirectly funded by the Commonwealth or a corporate Commonwealth entity if:

- the building work is prescribed under section 26 of the *Federal Safety Commissioner (Accreditation Scheme) Rules 2023*; or
- the value of the funding contribution made by the Commonwealth or a Corporate Commonwealth Entity to the project or the value of the ‘head contract for building work’ is below the specified indirect funding thresholds (see below); or
- the funding does not facilitate building work, for example, if a dwelling/s, building/s or part of a building/s are already existing and the Commonwealth or a corporate Commonwealth entity then makes a commitment to indirectly fund the purchase and operation of the unmodified dwelling/s or building/s.

For examples of indirectly funded building work that is and isn’t funded by Housing Australia under the Housing Australia Future Fund Facility (HAFFF) and the National Housing Accord Facility (NHAF) see:

[Does the Scheme Apply to me and my project?](#)

What thresholds apply to indirectly funded building work?

The thresholds under the Scheme for indirectly funded building work apply at both the project and contract/funding agreement level. Determining

whether an accredited builder is required to undertake building work under a project involves a two-step process.

The first step is to establish the value of funding provided by the Commonwealth or a corporate Commonwealth entity to support a project. A project includes all the activities that are encompassed by a separate funding arrangement including any building work. If the contribution to the project by the Commonwealth or a corporate Commonwealth entity is:

- at least \$6 million (GST inclusive) and represents at least 50 per cent of the total funding; **OR**
- is at least \$10 million (GST inclusive),

the project will be captured under the Scheme, unless another exemption applies. If these thresholds are not met, there is no requirement for an accredited builder to undertake any building work under the project.

Where a project is captured under the Scheme, the second step is to establish whether an accredited builder is required to undertake any building work under the project. This will be dependent on the contractual arrangements for the project. An accredited builder must be engaged if a ‘head contract for building work’ under the project has a value of at least \$4 million (GST inclusive).

The flowchart at Appendix 1 provides further assistance in determining whether an accredited builder must be engaged for a project.

What is a head contract for building work?

A ‘head contract for building work’ is the highest-level contract or funding agreement enacted for a project that includes building work and where the entity entering into the contract or agreement undertakes the building work themselves. This entity is defined as a ‘builder’ for the purposes of the Scheme.

The total value of the contract or agreement must be considered when establishing whether the head contract for building work exceeds the \$4 million threshold, regardless of the value of the building works component of the contract or agreement.

Where a funding recipient enters into a contract or funding agreement to complete a project that includes building work, but that entity will not be undertaking the building work themselves (for example a contract entered into with a Project Management company), this contract or agreement is not considered to be a ‘head contract for building

work'. For this project, the 'head contract for building work' will sit at a lower contractual level depending on who is engaged to undertake the building work. The highest-level contract or agreement that is enacted with a different entity, that:

- forms part of the funded project; and
- includes building work that will be undertaken by the different entity;

will constitute a 'head contract for building work'.

There may be more than one 'head contract for building work' under an individual project. For example, a funding recipient may choose to undertake a project in three discrete stages as follows:

- Stage 1 – Demolitions and site clearance
- Stage 2 – Establishment of building foundations
- Stage 3 – Building construction

If the funding recipient issues separate tenders for each stage and engages different entities to undertake the building works under each stage, the separate contracts or funding agreements for each stage will all constitute a 'head contract for building work'.

Examples of how the indirect funding thresholds apply

The following examples explain how the Scheme thresholds are applied in practice:

Example 1:

A funding agreement is enacted for a bridge replacement project with the Commonwealth contributing \$7 million and the State Government contributing \$10 million. The project is not captured under the Scheme as the Commonwealth contribution, although in excess of \$6 million, does not constitute 50% or more of the funding. An accredited builder will not be required to undertake the building work even though a 'head contract for building work' under the project is likely to exceed the \$4 million threshold.

Example 2:

A funding agreement is enacted to support road improvements with the Commonwealth and State Government providing matching funding of \$8 million each. The funding agreement provides the State Government discretion in determining what individual road improvement works will be funded. For the purposes of the Scheme, the project is

considered to be all roadworks completed using the \$16 million. The project is captured under the Scheme as the \$6 million threshold is met and the Commonwealth contribution is at least 50 per cent.

The application of the \$4 million threshold will be dependent on the individual road works packages that the State Government decides to fund. For this project, the State Government decides to fund four building work packages put forward by four different Councils. Two packages are funded for \$5 million and two packages for \$3 million. The \$3 million packages are below the threshold and therefore the building works can be undertaken by a non-accredited builder. In the case of the \$5 million packages, the \$4 million funding threshold will be triggered, and the Councils will need to be accredited if they undertake the building work themselves. Alternatively, if they contract the works out, an accredited builder will need to be engaged where any 'head contract for building work' has a value of at least \$4 million.

Example 3:

A funding agreement is enacted to support the construction of a university research laboratory fully funded by the Commonwealth at a cost of \$12 million. The agreement commits \$3 million to build the data centre, \$6 million to purchase and install equipment and \$3 million to meet ongoing operational costs. For the purposes of the Scheme, the project is considered to cover all sub-components of the agreement and will be captured under the Scheme as the \$10 million threshold is triggered.

The University issues a tender for the full build of the centre, including the supply and installation of the equipment. Two tenders are submitted. Tender one outlines that the full project will be undertaken by the tendering entity. Tender two indicates that the tendering entity will act as a project manager and separately subcontract the centre build and supply/installation of equipment.

If tender one is selected, the entity would be required to be accredited under the Scheme to meet the legislative requirements. This is because the contract that will be entered into is over \$4 million and includes building work that will be undertaken by the entity signing the contract.

If tender two is selected, the entity would not require accreditation, and neither would the builder sub-contracted to undertake the build of the centre (assuming the value of any 'head contract for

building work' under the project was below the \$4 million threshold).

For advice on your specific indirect funding arrangement, please contact the OFSC at the details below.

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**

This fact sheet was last updated 19 December 2024. The Office of the Federal Safety Commissioner (OFSC) has prepared this fact sheet for general information only, and it does not replace professional advice. This fact sheet is derived from a variety of sources and has been prepared without taking into account your individual objectives, situations or needs. You should consider your personal circumstances, and if appropriate, seek independent legal, financial or other professional advice before acting. The OFSC has endeavoured to ensure the currency and completeness of the information in this fact sheet at the time of publication; however, this information may change over time. The OFSC expressly disclaims any liability caused, whether directly or indirectly, to any person in respect of any action taken on the basis of the content of this fact sheet.



Which entity needs to hold accreditation under the WHS Accreditation Scheme?

This flowchart can be used by recipients of funding from **the Commonwealth*** to determine whether an entity is required to hold accreditation under the WHS Accreditation Scheme (the Scheme). In this flowchart, the term **'value of the contract'** refers to the full value of the contract and is **not** limited to the value of any building work that may be undertaken as part of the contract.

