

1 August 2023

Ms Marie Boland  
C/O Department of Employment and Workplace Relations  
GPO Box 9828  
Canberra ACT 2601

Sent via email: [WRSubmissions@dewr.gov.au](mailto:WRSubmissions@dewr.gov.au)

Dear Ms Boland,

The ACTU welcomes the opportunity to provide this brief submission into the review of the Federal Safety Commissioner (FSC). Following the submissions of our affiliates the AMWU, AWU, CFMEU and the ETU, it is clear as it stands, the FSC does not have the support of the major unions operating in the building and construction sectors.

Unions maintain that the FSC has not improved health and safety for building and construction workers within the Commonwealth's supply chain. This is further evidenced in the Consultation Paper<sup>1</sup>, with 3 of the 7 fatalities in 2023 across the building and construction industry having occurred on FSC project worksites. In addition, as submitted by the CFMEU, another fatality occurred on 5 July at the John Hunter Hospital site in NSW where Multiplex is the head contractor.<sup>2</sup> The ACTU notes the FSC's second and most critical function is; '*To promote WHS in relation to building work*'. By these figures alone, the FSC has failed in this function after 18 years of its operation. Further, the ACTU is not aware of any FSC accreditation that has been withdrawn from a company that has killed, maimed or psychologically injured a worker.

The ACTU and our affiliates' primary concerns with the FSC accreditation scheme is that it is not fit for purpose and continues to provide accreditation to builders who fail to meet satisfactory performance. Additionally, the FSC lacks any regulatory power that would enable it to undertake appropriate investigations to determine breaches of WHS duties and take action to ensure future compliance.

Despite these concerns we do believe that the Commonwealth Government should use its procurement power to ensure the health and safety of workers in its supply chain, both in the building and construction sectors but also more broadly. We believe this should be done by working in strong collaboration with the unions that represent those workers as well as the WHS regulators.

As submitted by the ETU, an option for recasting the scheme could be to apply it to all Commonwealth Funded Capital Works, regardless of industry. Given the Commonwealth Government has announced several major spending initiatives over the past 12 months in sectors such as manufacturing, housing, infrastructure, and energy, it could become a thorough and comprehensive procurement framework encompassing a broad range of best-practice considerations, including modern slavery.

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<sup>1</sup> Discussion Paper, p.17

<sup>2</sup> <https://www.abc.net.au/news/2023-07-05/worker-dies-at-john-hunter-hospital-construction-site/102565326>

Such a 'Commonwealth Capital Works Best Practice Procurement Framework' would need to operate along the lines of the principles set out in the AMWU's submission, as follows:

- a concept of the Commonwealth Government using its purchasing power to deliver safer workplaces and preferencing reputable employers who put the health & safety of workers as core to their business;
- that the workers whose health and safety is being protected must be broader than that of direct employees of accredited entities. That all workers<sup>3</sup> who work on projects which receive funding from taxpayers should be covered. So, the new body must work closely with State and Territory WHS Regulators and the scheme's accreditation and dis-accreditation powers should form part of State and Territory WHS Regulators compliance and enforcement policies;
- companies must ensure that in their health and safety management systems they strategically and systemically engage in consultation and participation with their workers and the workers' representatives, HSRs, delegates and unions. See the underpinning health and safety management systems standard, AS/NZS ISO 45001:2018, Clause 5.4;
- that reporting should be based on all workers (beyond fatalities as is the current practice) and include all injuries, physical and psychological down to and including first aid;
- that any entity which fails to report or dissuades others from reporting notifiable matters would lose its accreditation and future entitlement to tender or work on taxpayer funded projects;
- that any contractor or subcontractor engaged or directed by an approved entity which fails to report or dissuades others (including workers) from reporting notifiable matters, would be banned from work on taxpayer funded projects;
- that workers should be entitled to democratically elect their representatives without adverse interference by employers and where Health & Safety Representatives have been elected, should have their training expedited to allow the use of powers if required;
- that a company (or their representative or management) accused of,
  - (i) dismissing a worker, or
  - (ii) terminating a contract for services with a worker, or
  - (iii) putting a worker to his or her detriment in the engagement of the worker, or
  - (iv) altering the position of a worker to the worker's detriment, or
  - (v) refusing or fails to offer to engage a prospective worker, or
  - (vi) treating a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement.

Because the worker is or has previously been elected a representative or exercised or intends to exercise a function of power, should be suspended from tendering or operating on any project receiving taxpayer funds pending an independent investigation. Should such an investigation support the accusations, that approved entity should lose its approval and future entitlement to tender or work on taxpayer funded projects;

- that a body (including committees, councils etc) established for the purpose of providing advice, oversight, direction or representing the interests of stakeholders be made up of no less worker representatives than that of employers (including government agencies);
- that only elected representatives or workers' unions be authorised to sign documents to be used as evidence (i.e., consultation) on behalf of workers;

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<sup>3</sup> [Worker | SafeWork NSW](#)

- that should an agency/department be established for the purpose of administering and regulating a scheme, that such an agency/department must be supported by a tripartite advisory body and be fully equipped to carry out its statutory core functions and exercise any powers without reliance on external (contracted) services.

The ACTU notes that there *'will be an opportunity to respond to the consultation summary prior to the completion of the final report of the review'*. The ACTU is of the view that the Review Advisory Panel could be reconvened at this stage, to begin discussion over a Commonwealth Capital Works Best Practice Procurement Framework, as has been outlined here. This approach would require a broader range of ACTU affiliates to be involved and the ACTU would be willing to assist.

The FSC as it currently stands, clearly lacks any confidence from our affiliates that represent the workers that currently fall under its aegis. Reform within its current structure is not possible after 18 years of failing to provide healthy and safe building and construction workplaces. It is time for a better approach, one that protects workers, wherever Commonwealth funds are allocated, within a framework of genuine worker and union participation and best practice.

Yours sincerely



Liam O'Brien  
Assistant Secretary ACTU