



Independent Review
of the
Federal Safety Commissioner

“Nothing about us, without us”

A photograph of several white hard hats lined up on a surface, likely in a workshop or factory. The hats are in focus, with the background being a blurred industrial environment. The lighting is warm and slightly dim, creating a sense of a busy manufacturing space.

Australian Manufacturing
Workers' Union

Introduction

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture.

Our members are engaged in maintenance services & work across all industry sectors. We cover many workers throughout the resources sector, mining, aviation, aerospace and **building and construction industries**. We also cover members in the technical and supervisory occupations across diverse industries including food technology and **construction**.

Our union welcomes the opportunity to provide this submission into the review of the Federal Safety Commissioner. At the outset, we submit, noting **the Federal Safety Commissioner (FSC)** was established to play a role in ensuring building and construction workplaces are healthy and safe, **has failed**. The discussion paper highlights that the 569 accredited entities, represents approximately one third of industry turnover. On the 21 June 2023, the then three fatalities that were reported to the FSC on Scheme project worksites represented 43% of the total seven fatalities across the entire building and construction industry. The statistics presented indicate that you are more likely to be killed on the job if you are working on one of the 569 accredited entities worksites.

The latest SafeWork Australia Preliminary Worker Deaths by Industry of Workplace¹ show in construction, preliminary worker deaths year to date, 20 July 2022 were thirteen, preliminary worker deaths year to date, 20 July 2023 are now seventeen. The FSC, has in our view, played a role elevating risks in construction workplaces because of it disempowering workers and their representatives, turning a blind eye to toxic industry practices, whilst engaging in unhealthy relationships with the approved entities.

Our union believes that the FSC has become a captured accreditation agency, noting recent statistics recording 97% of all accredited entities are happy with the service provided by the FSC². A key problem with this, is the FSC was not established for the service of the industry, in particular the accredited entities, but was moreover established for the service of Australian Taxpayers, to ensure that organisations which are eligible to tender for taxpayer funded projects prioritise health and safety and have good health and safety records. The regulator performance framework – measures³, is more akin to an accredited entities Wishlist, than a robust framework for the regulation of a high-risk industry.

We observe that on the FSCs website⁴, whenever there is a reference to 'industry', it is limited to employers in the industry and then only the accredited entities. This odd use of language is not only reflective of the deliberate isolation of workers and their voices from the operation of an accreditation body paradoxically established to improve their workplace health and safety, but mirrors what the FSC

¹ [Preliminary work-related fatalities | Safe Work Australia](#)

² [WHS Accreditation Scheme Snapshot - 31-03-23.pdf \(fsc.gov.au\)](#)

³ [Regulator Performance Framework Measures.pdf \(fsc.gov.au\)](#)

⁴ [Home | Office of the Federal Safety Commissioner \(fsc.gov.au\)](#)

espouses to be 'governance and operations'⁵ via the establishment of the Industry Reference Group (IRG). We note that members of the IRG are drawn from a cross-section of employer industry bodies and accredited companies, supposedly to ensure a balance of views. We question what the FSC means by *a balance of views* when they all sit on the one side?

The AMWU is concerned by advice in the review paper stating, *\$4.025m for supplier expenses (approximately 90% of the latter is spent engaging WHS professionals as FSOs to undertake audits)*. This amount equates to \$3,622,500.00 spent engaging WHS professionals as FSOs to undertake audits. The FSC's website⁶ advises, *Audits for companies applying for accreditation or reaccreditation and being assessed against all criteria can take up to two days. All other audits are generally one day audits*. The most current WHS Accreditation Scheme Data Report from 2021 advises there was 452 safety audits in 2021, based on trend data this reflects the high end of audits per annum. In that same year, the FSC approved thirty-four new accreditations.

Should the number of audits remain the same for the following year with thirty-four audits taking two days and 418 taking a day this equates to 486 days of audits **costing \$7453.70 per audit day**. How is this considered value for money, particularly whilst at the same time the scheme delivered no health and safety dividend?

Whilst engaged by the FSC these same contracted Federal Safety Officers are engaged, either directly or via their employers, by the construction and building industry providing WHS professional services, we submit at a minimum this is a perceived conflict of interest. Despite a requirement to disclose and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with Federal Safety Officer engagement⁷, the FSC does not report on the number of disclosures.

The FSC will liaise with the company and the Federal Safety Officer to set an agreed audit date and site *in order to give the company the best opportunity to demonstrate their WHS Management System in place and achieve the best audit outcome possible*. This provides companies an unprecedented opportunity to present health and safety management systems (which have never been consulted with workers in contravention of WHS laws) and never implemented in the normal operation of the entity, whilst also staging a site for the audit. For the FSC to believe that this is appropriate in providing for the *work health and safety in relation to building work undertaken* is reflective of complete capture of the FSC by the entities it is tasked with regulating.

The AMWU does not support a continuation of the FSC in its current form. We do support the object of the *Federal Safety Commissioner Act 2022, The object of this Act is to promote work health and safety in relation to building work undertaken by a constitutional corporation, the Commonwealth or a corporate Commonwealth entity*. We consider an object of the Commonwealth should be more ambitious than to simply *'promote work health and safety'*.

If the Commonwealth government is of an opinion following this review to maintain the FSC, we recommend this be done whilst adopting the following principles, in the alternative the Commonwealth may consider the abolishment of the FSC, and the principles adopted via Commonwealth procurement policy.

⁵ [Governance and operations | Office of the Federal Safety Commissioner \(fsc.gov.au\)](https://www.fsc.gov.au/governance-and-operations)

⁶ [Auditing | Office of the Federal Safety Commissioner \(fsc.gov.au\)](https://www.fsc.gov.au/auditing)

⁷ [Federal Safety Officer Code of Conduct \(fsc.gov.au\)](https://www.fsc.gov.au/federal-safety-officer-code-of-conduct)

Principles

The AMWU supports,

- 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 workers⁸ who work at building and construction sites which receive funding from taxpayers should be covered.
- That the Commonwealth work closely with all WHS regulators.
- that reporting should be based on all workers (beyond fatalities as is the current practice) and include all injuries 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 elected 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

⁸ [Worker | SafeWork NSW](#)

investigation support the accusations, that approved entity should lose its approval and future entitlement to tender or work on taxpayer funded projects.

- that representatives of workers employed by registered organisations (unions), where those organisations have rights under their rules to represent those workers, shall in addition to any statutory rights provided in work health and safety laws, also be able to direct cease work where there is imminent or immediate risk to the health and safety of workers (who they are entitled to represent) following consultation with those workers.
- 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.
- That should an agency/department be established for the purpose of administering and regulating a scheme, that such an agency/department must be fully equipped to conduct its statutory core functions and exercise any powers without reliance on external (contracted) services.

Reviewers Questions

Question 1

What evidence is there to demonstrate the Scheme has improved safety practices within accredited entities or across the building and construction industry more broadly?

We have not been provided or been able to attain any independent evidence the Scheme has improved safety practices within accredited entities or across the building and construction industry more broadly.

Question 2

As a building industry participant observing a worksite, what are the signs, if any, that it is operated by an accredited entity?

Our experience is there is little to separate out building and construction sites operated by an accredited entity verses non-accredited entities carrying out similar work. The unhealthy culture within this industry is absolute, lots of words and occasional promises, but in the end, it is about profit.

Question 3

What is the difference (if any) between the requirements of the Scheme and obligations under WHS and workers compensation (for those who are self-insured) legislation?

We do not consider there being any difference between the requirements of the Scheme and obligations under WHS and workers compensation. Due to the poor regulation of those other schemes and the culture of the industry, using financial levers in government procurement we concede has become a viable mechanism to drive companies towards compliance.

Question 4

If the Scheme no longer existed, do you think the WHS performance standards of currently accredited entities would remain the same, reduce or improve?

Any benefit of the current scheme is realised only at the point of accreditation, it does not continue over the period of accreditation. Our members do not see evidence of the Work Health and Safety Management Systems (WHSMS) put into practice. It is difficult to predict if there would be a decline in health and safety if the Scheme no longer existed.

Question 5

Do the functions of the FSC remain appropriate given the changes that have occurred in the WHS environment and operating context of the building and construction industry since its establishment?

We do not believe that the functions remain appropriate. The functions should be commensurate with the object of the legislation. As previously stated, the object of this Act is far from ambitious enough if the goal is to secure the health and safety of workers in the building and construction industry.

Question 6

How can the FSC's audit functions support the model WHS Act's policy objective of ensuring genuine and effective consultation with workers?

We recommend that all audits should be inclusive of the consultation 'stream' and not be subject to auditors' discretion. To this the audit should firstly ensure that all statutory requirements are being met and then audit to best practice, we recommend using ISO 45001:2018. It has been noted that evidence of consultation provided to auditors is often suspect, in some cases management representatives signing off that consultation occurred without a correlating signature for workers. It is because of this lax in precision by the auditor or potential deceptiveness, that we are recommending a narrow band of worker representatives which are authorised to sign documents for the purposes of evidence for audits.

Question 7

Should the FSC be increasing its education role and what would that look like in practice?

Question 8

How can workers and their representatives be encouraged and supported to play an active role in the work of the FSC?

For a scheme which espouses to secure the health and safety of workers in the building industry, it has done an incredible job of isolating both these workers and their representatives. AMWU members are often heard saying, "nothing about us, without us". This is not just born by a demand that workers are

treated with dignity and respect, but evidence-based knowledge that when decisions are made about workers health and safety in the absence of those workers at best those decision fail to meet their objectives.

The FSC should require companies to adopt within their health and safety management systems, the systematic engagement of their workers and the workers' representatives, HSRs, Delegates, Unions in WHS consultation and participation, in line with AS/NZS ISO 45001:2018 Clause 5.4.

Worker representatives must be part of any body (including committees, councils etc) established for the purpose of providing advice, oversight, direction or representing the interests of stakeholders. A worker representative should hold the role of Chairperson of any such body to ensure the agenda of such a body does not move away from the purpose of protecting workers. Any such body should have accountability to the relevant Minister to avoid capture by the FSC.

Significant penalties need to be introduced preventing companies (including their management or representatives) from engaging in practices which discriminate, intimidate, or coerce workers or their representatives from exercising rights, or companies providing misleading information.

Due to the nature of building and construction often groups of workers are not on a worksite for a period that enables an elected HSR to have received their training. These HSRs need to have their training expedited to ensure they have the skills and knowledge to adequately represent the interests of workers in their workgroups and access to their powers.

If an FSO is attending a worksite, they should be required to firstly meet with any elected representatives of workers (both HSRs and Union Delegates) and if requested meet with workers to discuss work health and safety.

As a result of the under representation of HSRs at building sites, union officials of a union which has rights under their rules to represent a worker/s, need in addition to any statutory rights provided in work health and safety laws, to be able to direct a cease work where there is imminent or immediate risk to the health and safety of workers.

The FSC should require accredited entities to build into their health and safety management systems including their induction/ annual training calendar provisions which will accord with AS/NZS ISO 45001:2018 Clause 7.3 (f), *'Workers shall be made aware of the ability to remove themselves from work situations that they consider present an imminent and serious danger to their life or health, as well as the arrangements for protecting them from undue consequences for doing so.'*

The FSC should look at facilitating an annual meeting of elected worker representatives including their unions to provide direct feedback and feed-in with respect to the activities of the FSC.

The FSC may consider the development of a default consultation/issue resolution arrangement. This would need to be approved by all building unions and could be supplanted by a local agreement.

Question 9

Is auditing compliance with National Construction Code performance requirements in relation to building materials an appropriate function for the FSC?

Yes, though limited to those products listed as prohibited goods for the purpose of importation.

Question 10

Do the powers of the FSC remain appropriate to achieve the objectives of the Scheme? Are any other powers required?

Question 11

What are the appropriate steps that should be taken by the FSC when a fatality occurs on an accredited entity's worksite?

It is appropriate that the FSC would cooperate with all parties which have statutory rights with regards to an investigation of a fatality.

There is required a legislative duty for companies to provide internal company investigation records to any party who have a statutory right to obtain such records upon request and a suspension of an accreditation (including all work on any taxpayer funded project) until such time as the request has been compiled with.

Question 12

What are the appropriate steps that should be taken by the FSC if an accredited entity is prosecuted and found guilty of a breach of WHS legislation?

We feel this question should be expanded to also include "enters into an enforceable undertaking". In such circumstances the accredited entity should be required, within a period of no more than 2 months of a guilty verdict, to provide a submission to the FSC as to why it should not lose its accreditation. The submission should include no less than,

- a statement of regret,
- a record of any apology provided to an injured party or family of the deceased,
- a statement of what measures it has taken to ensure the contravention does not occur again,
- evidence of direct engagement with workers who may have been impacted by the contravention and any union representing them when considering the remedy for the contravention,
- a statement of what measures it has taken to support an injured worker or the family of a deceased worker,
- a statement of what measures it has taken to support the workmates of an injured or deceased worker,
- in the case of a permanently disabled worker, whether that worker is still employed and working in the same or equivalent position (subject to medical capacity).

Question 13

How can the FSC improve Commonwealth funding entities' compliance with the Act?

Remove the thresholds, in doing so remove the confusion.

Question 14

What powers should the FSC have to deal with compliance failures by CW, State and Territory funding entities?

Where there is a failure by the Commonwealth, advice of such failings in the first instance should be tabled and the next relevant senate estimates hearing. Should this failure be repeated than that part of the Commonwealth should lose the ability to directly procure and manage building and construction work.

Question 15

Do the powers of the FSOs remain appropriate to achieve the objectives of the Scheme? Are any other powers required?

As previously advised, we do not believe the object of the scheme is comprehensive enough. Consideration of additional powers should be inline with a broadening of the object of the Act.

Question 16

Are the current financial thresholds appropriate for Scheme coverage? If not, what should the threshold be?

The AMWU does not support the use of artificial thresholds. We support a principle that the commonwealth government should use its purchasing power to deliver safer workplaces.

Question 17

Are there situations where the Scheme requirements are not fit for purpose? How can they be repurposed?

We are concerned by the nature of this question. The scheme requirements are not set at a level higher than the legislative requirements. This question is suggesting, when read in the context of the leading text in the discussion paper, that some companies should be allowed to operate at a standard below minimum legislative requirement.

Question 18

Should there be a limit to how many FSO audits are available to achieve accreditation?

Yes, the paper suggests that in practice three is the limit which maybe reasonable. We would also add that after the first audit, the entity should be meeting all costs of auditing.

Question 19

Does the approach to post-accreditation audits remain appropriate? For example, should the nature of the audits or the criteria chosen for assessment change depending on factors such as time spent accredited under the Scheme?

We are concerned by the approach taken for all FSC audits as previously stated, they are an illusion of compliance and by their design created to deceive. We submit that audits should be benchmarked

against best practice not simply minimum standards. Post-accreditation audits should not be an exercises of winding back auditing, rather used as a mechanism of ensuring ongoing continuous improvement mirroring the objective of the WHS Act, *providing a framework for continuous improvement and progressively higher standards of work health and safety.*

Question 20

How best could entities report WHS incidents, injuries and fatalities consistently across all of their activities (scheme and non-scheme)?

Question 21

Should WHS incident reporting be streamlined to cater for all government agency and regulatory reporting requirements? If yes, how?

Question 22

Could the FSC draw on existing data sources instead of requiring its own data?

No. Apart from health and safety regulators across Australia not having authority to share information in many cases except where it is made public, the delays in relying upon public information alone makes this proposal unfeasible. Added to this there are extensive gaps in the information these regulators hold.

Question 23

Are there any lead indicators that could be reported to the FSC?

We recommend a number of lead indicators which should be reported on including,

- Number of HSRs (elected and trained) per site,
- Number of HSRs per workers on site (ratio),
 - Number of HSRs per workers (accredited entities)
 - Number of HSRs per workers (contractors)
 - Number of contractors without HSRs
- Number of training hours completed per worker (medium),
- Average time to close out corrective actions,
- Number of safety walks (with worker representatives) per week,
- Number of health and safety meeting with worker representatives directly held by accredited entity,
- Number of emergency drills (per month),
- Number of **atmospheric monitoring** conducted,
- Number of **health monitoring** conducted,
- Investment in health and safety technology, higher controls (per site).

Question 24

How can we ensure greater collaboration and sharing of information between the FSC and other WHS agencies and regulators?

This is unlikely. We note that SafeWork Australia have recently announced their withdrawal from HWSA due to being locked out of participation, notwithstanding that the AMWU also has concerns regarding the HSWA.

Question 25

Should the risk ratings of accredited entities be transparent to allow for a comparative assessment of their safety record and capacity as part of the procurement requirements for CW funded projects?

Yes

Question 26

Do the audit criteria remain relevant to building and construction workplaces in 2023? If not, are there any new criteria you would suggest be included?

A review of the criteria is merited, we are particularly of a view that the worker consultation needs to be a criterion in its own rights as it is a pillar of the legislation. Importantly the tools used to carry out the audits also require review.

Question 27

Should the hazard criteria highlight the management of risks to a worker's health (for example risks of contracting occupational diseases and psychosocial risks) as well as the hazards to physical safety? If yes, what criteria do you suggest be included?

Yes.

- Psychosocial hazards
- UV radiation
- Fumes
- Dusts
- Inclement weather

Question 28

Given the costs associated with administering a growing Scheme, the substantial auditing service being provided to entities and the Charging Policy, is it reasonable and appropriate to charge entities seeking accreditation?

The AMWU would benefit from having a number of models proposed to better understand what might be considered. We are mindful that it is not desirable to be moving costs only to have those costs remerge (setting a floor) within tenders, as would happen particularly at the top end (high value projects) where there are only a few accredited entities. We also suspect those accredited companies would seek to also monetise the administration of this as well.

Question 29

What would be the impact of charging for accreditation and how could any charge be implemented fairly?

Question 30

Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support

the dual policy objectives of improving building and construction industry safety through government procurement and supporting local industry to take advantage of government purchasing opportunities?

Section 36 of the Act states, *...The Commissioner has 2 main functions: in relation to work health and safety in building work and the Work Health and Safety Accreditation Scheme.* We note that the Buy Australian Plan (Plan) aims to improve ‘the way government contracts work and build domestic industry capability through the Australian Government’s purchasing power’. If there is an intention for the FSC to play a role in this Plan, then both the object and functions will need to be reviewed.

Question 31

Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support implementation of the Secure Jobs Code? If yes, what are those changes?

There is no proposal of any role the FSC might play to support implementation of the Secure Jobs Code. We would need this information to provide a response. If there is an intention for the FSC to play a role in this Code, then both the object and functions will need to be reviewed.

Question 32

Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support a culture across the building and construction industry which removes barriers to women’s participation and enables a safe working environment for women? If yes, what is that role?

Yes. The AMWU has a long history of supporting women on our industries. Some practical things that could be done to improve women’s participation and enables a safe working environment for women include,

- Require accredited entities to develop a policy to encourage women in construction and procedures for how they will accomplish this,
- Establish a minimum number of women apprentices per tender (based on the value of the tender),
- FSC to fund women’s Liaison Officers
- FSC to develop an Industry Standard for, Requirements for Women’s Health and Safety in Construction.

Question 33

Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support implementation of the Better Deal for Small Business policy? If yes, what are those changes?

Question 34

Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support the work of the National Construction Industry Forum? If yes, what are those changes?

There should be an additional function for the FSC to report to the National Construction Industry Forum, and report back to any stakeholder body the FSC has established any recommendations from the Forum.

Question 35

Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support the regulatory stewardship approach to regulation? If yes, what are those changes?

Question 36

Should the Scheme be expanded to cover sub-contractors as contemplated by the Royal Commission?

We do not believe that the scheme has bedded down, as such the Commissions vision should not at this time be implemented. There should however be capacity for sub-contractors to be temporarily or permanently banned from taxpayer funded projects in relation to contraventions. Importantly there is a need to recognise that it is the **principals** (accredited entities) which hold most control on building and construction sites, they need to be held accountable for the conduct of their contractors.

Question 37

Does the safety performance of other industries (including emerging industries) which receive CW funding warrant expanding the Scheme? If yes, which industries and why?

Any consideration of expanding to other industries would need to be done based on risk to health and safety and exploitation of workers. Given though the failure of the FSC to assist in securing the health and safety of construction workers it currently has had influence over, we do not see any benefit of expanding the authority of the FSC. We do support the principle of the commonwealth government using its purchasing power to deliver safer workplaces, as such this should be built into all Commonwealth procurement practices.

Question 38

What, if any, changes to the FSC's operations would be required by the expansion of the Scheme to other industries?

Per previous answer.

END