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Office of the Federal Safety Commissioner  
Department of Employment and Workplace Relations  
GPO Box 9828  
Canberra ACT 2601

Via Email: [WRConsultations@dewr.gov.au](mailto:WRConsultations@dewr.gov.au)

## RE: REVIEW OF THE FEDERAL SAFETY COMMISSIONER

Dear Office of the Federal Safety Commissioner,

Thank you for providing us with the opportunity to be able to provide feedback on the review of the Federal Safety Commissioner ('FSC'). Ensuring the safety of our workforce is of primary significance for the civil construction industry.

### **About us**

Civil Contractors Federation Queensland Ltd ('CCF QLD') is the peak body that represents members of the civil construction industry from as far north as Cairns to as far south as Northern New South Wales. We are the voice of our members that support and provide essential infrastructure that contributes to the growth and prosperity of Queensland.

Our members encompass a range of industry perspectives from resources and services that support the delivery of infrastructure to the physical delivery of the infrastructure that builds up the nation.

There are no limitations on the size of the company – our contractor members range from small businesses to Tier 1 companies. We are here to assist businesses of every size across the civil construction industry. Contractor members are involved in all aspects of civil construction including:

- Roads and bridges – freeways, highways, urban and rural
- Land development – housing, commercial and industrial subdivisions
- Water treatment and reticulation
- Sewer treatment and reticulation
- Telecommunications infrastructure
- Electricity distribution

- Pipelines
- Dams
- Irrigation infrastructure
- Quarrying
- Land improvement – rural earthworks
- General excavation
- Drainage
- Marine civil
- Retaining walls
- Rail works
- Demolition
- Renewable infrastructure

Associate members are there to specifically cater to the needs of contractor members and provide support through the services and products they provide. Associate members include, but are not limited to:

- Manufacturers of products, such as pipes and steel
- Suppliers of raw materials, such as quarry products, concrete and bituminous products
- Equipment sales and hire
- Suppliers of fuels and lubricants
- Professional services, such as legal, accounting, recruitment, insurance and superannuation.

We represent a collection of perspectives across the whole of industry and these voices need to be heard as nothing would happen without the civil construction industry.

We also operate Civil Train, the Registered Training Organisation (RTO# 5708) of CCF QLD, which provides the educational foundations of the civil construction workforce. We have two Queensland Civil Industry Training Centres (QCITC) located in Brisbane and Townsville, with Brisbane being our head office.

## Review of the FSC

We have consulted with our members to best represent the industry's voice. Please see below the feedback of the CCF QLD's Work Health and Safety Committee made up of CCF QLD Contractor members, on the review of the FSC with reference to the Discussion Paper on 30 June 2023.

**Table 1: Feedback for the FSC review:**

No.	Question	Response
1	<b>What evidence is there to demonstrate the Scheme has improved safety practices within accredited entities or across the building and construction industry more broadly?</b>	The harmonisation across jurisdictions and the prescriptive nature of the guidelines has assisted in the strengthening of safety systems with indicator performance of "Lost Time Injury" and Workers Compensation premium providing evidence of improvement. Additional indicators, such as medical treatment of scheme and non-scheme regardless of cost, should be given consideration for inclusion to get a complete oversight of improvement.
2	<b>As a building industry participant observing a worksite, what are the signs, if any, that it is operated by an accredited entity?</b>	There seems to be minimal signs that can be observed on a worksite that would indicate that it is operated by an accredited entity, however, observations within the civil construction industry with the collective engagement of compliance could be sign that the project is operated by an accredited entity. Although there are non-accredited entities which also demonstrate a high level of collective engagement of compliance.
3	<b>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?</b>	The main difference would be that the WHS Regulator wants to see evidence of safety management through communication, competence, and risk management. The Office of the Federal Safety Commissioner ('OFSC') guidelines look for objective evidence on how the company looks to achieve safety management and how that is operationally implemented.
4	<b>If the Scheme no longer existed, do you think the WHS performance standards of currently accredited entities would remain the same, reduce or improve?</b>	<p>It is noted on Page 18 of the Discussion Paper that the "Scheme requires an entity to do 'extra' or implement WHS policies and procedures 'better' or 'to the highest possible standards' or to 'go beyond legal requirements.'" Safe Work Australia &amp; and the <i>Work Health and Safety Act 2011</i> (Qld) ('WHS Act') still require certain standards and legal requirements on the Person Conducting a Business or Undertaking ('PCBU') which would still require the PCBU to be held accountable.</p> <p>The introduction of industrial manslaughter laws in certain states such as Queensland has raised the bar for accountability above the Scheme. The Scheme has also created a two-speed application and compliance of safety between those who are accredited and non-accredited. For</p>

		best results the whole industry must be working together under a single system.
5	<b>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?</b>	<p>No, the changes in the WHS sphere since 2011 have changed the role and relevant of the FSC with duplications of the powers and functions of the FSC since the introduction of the WHS legislation in 2011. This is in specific reference to the functions and powers of “Referring matters to other relevant agencies and bodies” and “Any other functions conferred on the FSC by the Act or another Act” listed on Page 19 of the Discussion Paper. This is also in reference to the following notes on Page 19 of the Discussion Paper:</p> <p>“The FSC’s functions (apart from the NCC compliance function) remain consistent with the recommendations made in 2003 by the Royal Commission and have remained relatively unchanged since its establishment in 2005...Since the FSC’s establishment the WHS legislative environment within which it operates has changed dramatically. All jurisdictions except Victoria have implemented their versions of the model WHS laws with the objective of providing ‘for a balanced and nationally consistent framework to secure the health and safety of workplaces.’”</p>
6	<b>How can the FSC’s audit functions support the model WHS Act’s policy objective of ensuring genuine and effective consultation with workers?</b>	<p>There is a considerable lack of value being seen in the audit functions of the OFSC. There is a significant burden when preparing for audits on project teams which adds to the stress on a finite resource base within a very tight commercial delivery environment. The biggest issue remains in the inconsistency in the understanding, intent, and application of the criteria from auditor to auditor. The ways in which the FSC can support the model WHS Act’s policy objective of ensuring genuine and effective consultation with workers is by reducing inconsistencies and with a focus on “objective” outcomes that should be achieved across the whole of auditing rather than the “subjective” interpretation of individual auditors.</p>
7	<b>Should the FSC be increasing its education role and what would that look like in practice?</b>	<p>There would be great value in increasing the educational role of the FSC. Some educational initiatives that the FSC could implement could include face-to-face workshops/presentations, ongoing webinars and various marketing strategies (such as generated newsletters). The OFSC needs to drive change through education rather than relying on audits. Education is especially needed for common non-conformances that have been identified across the industry.</p>

8	<b>How can workers and their representatives be encouraged and supported to play an active role in the work of the FSC?</b>	To get worker involvement would mean changing the scope & role of WHS committees that workers are meant to be represented on. This would require the powers and functions to be changed so that the committees are truly independent. Representatives would need to demonstrate proactive collaborative involvement which adds to better WHS initiatives and outcomes.
9	<b>Is auditing compliance with National Construction Code performance requirements in relation to building materials an appropriate function for the FSC?</b>	It would not be appropriate for the FSC to extend its function to auditing compliance with the NCC as it is more appropriate to manage it within the industrial relations space.
10	<b>Do the powers of the FSC remain appropriate to achieve the objectives of the Scheme? Are any other powers required?</b>	The FSC powers remain appropriate and there are no other powers required.
11	<b>What are the appropriate steps that should be taken by the FSC when a fatality occurs on an accredited entity's worksite?</b>	An additional step that could be taken by the FSC when a fatality occurs on an accredited entity's worksite is to assist in the reviewing of Crisis Management procedures and provide possible recommendations for improvement.
12	<b>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?</b>	The FSC should take appropriate steps such as immediate full surveillance audit and review of accreditation, however, the FSC must make sure that the focus on discussions after someone is being found guilty remains collaborative and educational.
13	<b>How can the FSC improve Commonwealth funding entities' compliance with the Act?</b>	Participating in tender reviews and audit funding agencies on a separate set of guidelines.
14	<b>What powers should the FSC have to deal with compliance failures by CW, State and Territory funding entities?</b>	An independent reference panel might be used in this instance.
15	<b>Do the powers of the FSOs remain appropriate to achieve the objectives of the Scheme? Are any other powers required?</b>	Existing powers are appropriate but a review is needed to ensure there is no overlap with the regulator powers in each jurisdiction. Currently there is duplication.

16	<b>Are the current financial thresholds appropriate for Scheme coverage? If not, what should the threshold be?</b>	Thresholds should be removed. Good safety practices should not be determined by project value.
17	<b>Are there situations where the Scheme requirements are not fit for purpose? How can they be repurposed?</b>	There is no issue with the current criteria for Scheme projects, however, it can be noted that there are situations where there are inconsistencies of requirements due to company size when all companies should be on a level playing field.
18	<b>Should there be a limit to how many FSO audits are available to achieve accreditation?</b>	It would be appropriate to have a limit. For example, ISO certification with Stages 1 and 2 and if there are still majors in the stage 2 audit, they still have 3 months to rectify.
19	<b>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?</b>	The approach remains appropriate, and the scope of the selected project will always be the main indicator and should not depend on other factors such as time spent accredited under the Scheme.
20	<b>How best could entities report WHS incidents, injuries and fatalities consistently across all of their activities (scheme and non-scheme)?</b>	The reporting of entities could be improved by having an incident reporting set up similar to the regulator (i.e. complete an incident notification). Care must be taken that the same information is required to be given to different agencies. The reporting would also be improved by the removal of \$4M threshold. Additionally, the intent, implementation and reality of safe business practices should have more bearing on the accreditation. At present it is heavily reliant on documentation to determine whether a business is safe or not.
21	<b>Should WHS incident reporting be streamlined to cater for all government agency and regulatory reporting requirements? If yes, how?</b>	Yes, streamlined incident reporting would help avoid duplication.
22	<b>Could the FSC draw on existing data sources instead of requiring its own data?</b>	There would be benefits for drawing on existing data sources to provide a broader and more accurate snapshot of the performance of the industry.

23	<b>Are there any lead indicators that could be reported to the FSC?</b>	The civil construction industry already reports on feedback and awards, however, there could be room for improvement for safety training like HIRAC training. There may be a duplication (page 25 of the Discussion Paper) again as entities are already required to report all incidents injuries, fatalities to each state body, especially serious injuries (ambulance and hospital) and death.
24	<b>How can we ensure greater collaboration and sharing of information between the FSC and other WHS agencies and regulators?</b>	There needs to be jointly delivered industry workshops and it may be appropriate for the FSC to implement the Royal Commission recommendations.
25	<b>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?</b>	The increase of transparency would be beneficial to increase collaboration and allow everyone to be on the same playing field.
26	<b>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?</b>	There are risks that are rapidly emerging in the civil construction industry, namely psychosocial hazards, respirable crystalline silica, and the chain of responsibilities. These are felt to be lagging behind in the OFSC and should be included in the future scope of the FSC.
27	<b>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?</b>	The management of a worker's health (including occupation diseases and psychosocial risks) should have health surveillance and exposure monitoring as potential criteria. The chain of responsibilities would need a management criterion to make sure that companies have effective chain of responsibility management procedures.
28	<b>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?</b>	The OFSC needs to be mindful that cost can be a barrier for smaller businesses and if the OFSC wants everyone to have better WHS performance, these barriers need to be avoided or removed.

29	<b>What would be the impact of charging for accreditation and how could any charge be implemented fairly?</b>	Charging for accreditation means that not everyone will have the opportunity to participate. A fairly implemented charge would be one that is comparable to the size of the company that is seeking accreditation.
30	<b>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?</b>	Yes and No. The scheme has initially assisted in establishing a standard of compliance that has improved safety on sites. It can still provide this function, but it can't be applied to a segment of the industry. To support local industry changes would be needed that would break down the barriers of participation.
31	<b>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?</b>	The Secure Jobs Code largely relates to industrial relations, which is outside of the scope of WHS outcomes, and should not have an impact on the FSC's functions. Safety is too important to be distracted by other policy issues.
32	<b>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?</b>	The powers and function of the FSC needs to include an educational component that can help increase the awareness of hiring women in the civil construction industry and how to best protect their health and safety in circumstances where gendered differences create different risks. Again, care is needed to make sure that safety remains the primary importance and it is not diminished or detracted from.
33	<b>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?</b>	There should be an increased function of education to support small businesses as often it can be felt that there is a 'the bigger the better' approach taken which is not only difficult for small businesses, but highly unusable. There might also need to be an increased focus on the protection of small business when adventuring into bigger company territory to make sure that the smaller businesses are supported.



34	<b>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?</b>	The function of the FSC needs to be increasingly focused on education and awareness to ensure that the work done by the National Construction Industry Forum ('NCIF') becomes useful for the industry to influence change, such as common non-conformances that have been identified in the NCIF.
35	<b>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?</b>	There are no changes that can be noted as the regulators are looking for evidence of policy, training, implementation and monitoring versus a documented procedural approach for the OFSC. The two bodies in this question complement each other.
36	<b>Should the Scheme be expanded to cover sub-contractors as contemplated by the Royal Commission?</b>	Yes, most definitely. It's still a government funded project. All stakeholders have a part to play and a scheme which sets people in camps for other reasons apart from WH&S outcomes must be avoided.
37	<b>Does the safety performance of other industries (including emerging industries) which receive CW funding warrant expanding the Scheme? If yes, which industries and why?</b>	Transport (chain of responsibility) given the high risk of transport operations in the civil construction industry. Although it is important note that over-regulation needs to be avoided to be able to make sure that true collaboration between all stakeholders can be achieved.
38	<b>What, if any, changes to the FSC's operations would be required by the expansion of the Scheme to other industries?</b>	Addition of strong chain of responsibility guidelines that do not place unnecessary burdens on the industry. Sustainability, carbon neutrality and net zero in construction are also increasing becoming more important to achieve and is adding to demands on already strained project resources.

Thank you for taking your time to consider our feedback, we hope that together we can enhance the safety of our workforce in a collaborative, consultative, and educational manner.

Kind Regards,



CIVIL CONTRACTORS FEDERATION  
QUEENSLAND LIMITED  
ABN 65 619 498 690

**1300 CCF QLD**  
**[www.ccfqld.com](http://www.ccfqld.com)**



Damian Long  
Chief Executive Officer  
Civil Contractors Federation Queensland Ltd