

24<sup>th</sup> July 2023

Programmed Group

<b>Question 1</b> <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>
Apart from the evidence provided by FSC, there is little evidence available that connects the activities of the FSC to improvement in safety practice and performance in the building and construction industry. The reliance of Safe Work Australia data as the primary data source is reflective of the construction industry wholistically not the performance of FSC accredited companies. Whilst the LTIFR scheme statistics are demonstrably better than Safe Work Australia's data, Programmed does not believe that these are a true reflection of the facts.
<b>Question 2</b> <b>As a building industry participant observing a worksite, what are the signs, if any, that it is operated by an accredited entity?</b>
Most building sites will have some form of board displaying safety related information and contacts rather than the details of the accredited entity. As an industry participant there is little transparency or perceived advantage of having FSC accreditation other than just a pre-qualification ticket to play.
<b>Question 3</b> <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>
There are minimal differences as both require the entity to ensure the safety of workers, provide safe systems of work etc, including management of workplace injuries and ongoing worker support and rehabilitation.
<b>Question 4</b> <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>
Given that the onus on employer's is to provide safe systems of works, safe place of work etc, under existing WHS legislation. We feel that there would minimal to no impact on the WHS performance of currently accredited entities. The FSC should not operate as a quasi regulator as this creates more burden on employers rather than keeping the enforcement and compliance element to within the scopes of Safe Work Australia and the relevant WHS regulators. Current WHS inspectors perform regular interventions on all building and construction sites so why is there an additional requirement for additional audits by the FSC just for accredited sites. Cross sector performance is likely to be improved if there were greater resources allocated into the WHS regulator space both from an enforcement perspective as well as an educational one.
<b>Question 5</b> <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>
As noted above, the WHS regulatory landscape continues to evolve and it's important employers are provided with clear channels of support / guidance and direction. Having multiple audit/compliance channels creates confusion and introduces greater administration burden on employers just to maintain accreditation as opposed to focussing on the items that really matter.
<b>Question 6</b> <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>
In Programmed's opinion, it shouldn't, other than in the context of verifying that the accredited entity has consultative measures in place that are aligned to the jurisdictional requirements. Where organisations can demonstrate consultation mechanisms are in place through external audit certification such as ISO45000 than this should be considered as part of the compliance agenda.

**Question 7****Should the FSC be increasing its education role and what would that look like in practice?**

Programmed agrees that if the FSC scheme is to continue part of the role of the FSC should be about providing greater educational services to the building and construction industry on top of their existing audit function.

**Question 8****How can workers and their representatives be encouraged and supported to play an active role in the work of the FSC?**

The view of many in the industry is that the FSC is strictly an auditing body that does not proactively engage to support, educate and develop safe work practices in the building and construction industry. The FSC would need to inwardly look and define what it is trying to achieve beyond the scope of audit and how it aligned to the various support channels that exist and are available to workers such as Safe Work Australia, WHS regulators and other related support bodies.

**Question 9****Is auditing compliance with National Construction Code performance requirements in relation to building materials an appropriate function for the FSC?**

The Australian Building Codes Board provides guidance on this subject. The responsibility for compliance and conformance falls on the planning or building regulator in each geography as such our recommendation should be that auditing of the performance requirements relating to building materials should fall within their jurisdiction. Overlaying such compliance elements between bodies will only introduce confusion and additional administrative burden to employers.

**Question 10****Do the powers of the FSC remain appropriate to achieve the objectives of the Scheme? Are any other powers required?**

For the purpose of current accreditation scheme, Programmed are of the view that the scheme's FSO's hold sufficient powers necessary to exercise their function. That being said, if the scheme is to remain an accreditation scheme the question that begs to be asked is why do the FSO's require regulatory powers in any case. Organisations who are seeking accreditation are doing so on the back of commercial growth opportunities under the scheme, it is in their interest to be transparent and participate in the audit program much like an ISO certification in order to compete.

**Question 11****What are the appropriate steps that should be taken by the FSC when a fatality occurs on an accredited entity's worksite?**

Workplace deaths are closely managed by local Police and WHS Regulators. Programmed are of the view that these are the appropriate functions.

**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?**

It is important to note that one breach does not make an entity poor performing. In fact entities that are likely to be more transparent and open to reporting are more likely to be exposed than those that avoid reporting or provide transparency to regulators. In our view any action taken should be contextual and a breach isolated to one project is not necessarily reflective of the entity's performance or systems of work so this should be considered.

**Question 13****How can the FSC improve Commonwealth funding entities' compliance with the Act?**

Programmed is not in a position to respond to this question.

**Question 14****What powers should the FSC have to deal with compliance failures by CW, State and Territory funding entities?**

Programmed is not in a position to respond to this question.

**Question 15****Do the powers of the FSOs remain appropriate to achieve the objectives of the Scheme? Are any other powers required?**

Refer response to Question 10.

<p><b>Question 16</b></p> <p><b>Are the current financial thresholds appropriate for Scheme coverage? If not, what should the threshold be?</b></p>
<p>Whilst Programmed are performing work under the guise of the FSC, as a second tier provider, Programmed struggle to provide the FSC with qualifying projects. Consideration should be made to establishing a multiple tier accreditation scheme that accommodates for contractors of various size.</p>
<p><b>Question 17</b></p> <p><b>Are there situations where the Scheme requirements are not fit for purpose? How can they be repurposed?</b></p>
<p>Our current projects are not always able to be used to closed out corrective actions from previous audits due to the nature of the works not covering the corrective action. Corrective actions should be able to demonstrated from projects outside of qualifying projects as the intent of the action and the scheme is to demonstrate the application of safe systems of work.</p>
<p><b>Question 18</b></p> <p><b>Should there be a limit to how many FSO audits are available to achieve accreditation?</b></p>
<p>The number of audits should be related to the level of risk assessed by the FSC. For low level risks over the six year accreditation period, an audit every three years should be ample to verify systems are in place and managed accordingly. Other certifications related to ISO 9001, 14001 and 45001 could also be taken to account where the entity holds these certifications and can demonstrate ongoing management of such.</p>
<p><b>Question 19</b></p> <p><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></p>
<p>Various factors should be included when assessing an entity's audit requirements, length of FSC accreditation, other ISO and AS certifications and risk level of the entity.</p>
<p><b>Question 20</b></p> <p><b>How best could entities report WHS incidents, injuries and fatalities consistently across all of their activities (scheme and non-scheme)?</b></p>
<p>The current online 6 monthly reporting is an appropriate reporting system noting that organisations will define and interpret lag indicators differently which is highly likely to occur to limit their exposure. Programmed are of the view that the scheme should drop LTIFR as it's not a true measure of severity and rely on workers compensation claims data for lag related data. An accepted claim in one organisation is likely to be accepted in another so this should assist in driving greater consistency of reporting.</p>
<p><b>Question 21</b></p> <p><b>Should WHS incident reporting be streamlined to cater for all government agency and regulatory reporting requirements? If yes, how?</b></p>
<p>Yes, there should be one reporting system for all WHS incidents collated for Australia.</p> <p>The current reporting process is onerous and administrative and especially complicated for entities who perform work beyond just FSC accredited scope, such as maintenance services and particularly when working across multiple jurisdictions.</p>
<p><b>Question 22</b></p> <p><b>Could the FSC draw on existing data sources instead of requiring its own data?</b></p>
<p>Yes, the FSC should access data from other sources as entities are required to report across a number of agencies and this becomes a burden when reporting. Workers Compensation data is a perfect example rather than relying on organisations providing data and could be sourced from WorkSafe Australia by providing improved collection and reporting to the one data source for all Australia. This would also provide greater security of data rather than having information stored across a range of areas.</p>
<p><b>Question 23</b></p> <p><b>Are there any lead indicators that could be reported to the FSC?</b></p>
<p>Importantly organisations measure lead indicators in differently, they define lead indicators differently and may set targets according to their own priorities. If the FSC were to include lead indicator reporting, consideration to a flexible reporting style or</p>

approach must be made. No singular FSC style of lead indicator would be supported as many accredited entities have their own preferred lead indicator program in place relative to the level of maturity they are at.

**Question 24**

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

Consideration to integration of systems and data between SafeWork Australia and other WHS regulators will certainly improve transparency and administrative burden. The FSC should also consider establishing working groups with SafeWork and other WHS regulators to create greater consistency of focus on WHS construction risk, education programs, promotional campaigns etc. Employers should also be invited to participate and share as these are likely the stronger factors that will influence and improve safety in the building and construction sector.

**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?**

No. An organisation should either be determined by the FSC to warrant an accreditation or not. There are many factors that may influence an organisations risk rating and without context these may be poorly construed by the market.

**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?**

The current criteria used by the FSC being heavily construction focused could be limiting and not in-line with modern WHS practices.

Consideration should be given to develop a framework around modern WHS critical risks including lead incident indicator activities.

**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?**

The current WHS legislation includes oversight health and psychosocial risk, this should follow through. Guidance on criteria should be taken from Safe Work Australia.

**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?**

Costs should always be recoverable, though costs for low risk entities could be reduced by reducing the audit requirements. activities. Costs should be based on the level of risk though the current burden is high given the number of audits required, incident reporting and bi-annual reporting.

**Question 29**

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

We are against adding additional charges as industry costs are already significant when you take into account multiple ISO and AS certifications which already require annual audits to maintain.

**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?**

The goals of supporting local companies and improvements to the building and construction industries need to be encouraged. Where required changes can be made though they should not burden industry in the process. Any changes to the way the FSC supports the building and construction industry should remain aligned to the requirements of various state WHS regulators.

**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?**

If changes were implemented to have FSC identify whether product has been sourced from local manufactures, this would inevitably increase the current burden associated with the accreditation.

**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?**

The three inter-related themes highlighted as barriers to women in the construction industry relate to workplace culture. Any changes would need to focus on policy statements and how these are implemented.

**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?**

To further engage small business, the FSC will need to ensure any changes do not add extra burden onto the small business, otherwise this will drive these businesses away from accreditation. Any increased burden is a negative factor for all businesses.

**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?**

The Forum should be the basis for any change, not the FSC deciding it will now include further measures which will add to the burden on businesses.

**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?**

No changes are required for this providing that the scheme operates in true alignment with existing and aligned regulations

**Question 36**

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

Were these changes made, the FSC must ensure the burden falls on the contractor and not any associated business or entity. Again the burden of compliance is already large and must not further impact business.

**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?**

Australian business already have large burdens when it comes to compliance across a range of functions. The CW government should be looking to reduce the overall burden. One way would be to disband the FSC and provide extra funding for CW Safe Work Australia and State based WorkSafe functions. The functions could then collaborate on a more consultative process to identify improvements for all industry sectors. The burden of continuous compliance activities remain large and any reduction should be considered.

**Question 38**

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