

The Australian Workers' Union Submission to the Independent Review of the Federal Safety Commissioner

The AWU represents around 72,000 workers in a diverse range of industries including mining, energy, manufacturing, civil construction, agriculture, along with many others. The AWU has a responsibility to represent the interest of our members in relation to industrial and safety matter and therefore welcome the opportunity to provide the following submission to the Independent Review of the Federal Safety Commissioner.

Background

The Federal Safety Commissioner ('FSC') was established in 2005 with the intent to improve the safety culture of the building and construction industry. It does this by promoting safety in relation to building work¹ and by administering the Work Health and Safety (WHS) Accreditation Scheme ('the Scheme'). Fundamentally, the Scheme requires building and construction companies to adhere to a range of operational and reporting practices to improve site safety. Subject to certain financial thresholds, only builders that are accredited under the Scheme can enter into head contracts for building work that is funded directly or indirectly by the Australian Government.

On 3 July 2023, Ms Marie Boland released the Independent Review of the Federal Safety Commissioner Discussion Paper² ('**Discussion Paper**'). The following is the AWU's response to the Discussion Paper.

AWU Position

The AWU opposes the continuation of the FSC in its present form and believes its ongoing operations should be reassessed.

The primary objection stems from the FSC's inability to ensure safety on worksites under its jurisdiction. There is a lack of evidence indicating any improvement in safety practices due to the Scheme. The workplace fatality figures highlighted in the Discussion Paper support this viewpoint. As of 21 June 2023:

- Three fatalities were reported on FSC-accredited project worksites.

¹ Section 3, Federal Safety Commissioner Act 2022

² <https://www.dewr.gov.au/download/15493/independent-review-federal-safety-commissioner-discussion-paper/33682/discussion-paper-30-june-2023/pdf>

- Preliminary SWA data for the same timeframe shows a total of seven fatalities in the building and construction industry, including the three reported to the FSC.
- This means that 43% of all fatalities in this sector occur on Scheme-accredited worksites.

The Scheme seems to operate under the assumption that accreditation can lead to a safer working environment. The underlying idea is that compliance with the Scheme's protocols necessarily leads to improved safety outcomes.

However, this is a simplistic view of the complex reality of work health and safety in the construction industry. The relationship between accreditation and actual safety outcomes is less linear and direct than the Scheme might suggest, considering the diverse and multifaceted nature of the construction industry with its array of project sizes, scopes, and inherent risks. The AWU submits that while there is data provided in the Discussion Paper that suggests an increase in safety standards, this does not mean it is a result of the Scheme itself.

An example of data in the Discussion Paper that suggests increased safety standards is the lost-time injury frequency rates, provided in part 2.1.3. This data does seemingly provide some positive data, however, the data is not the same-for-same equivalent with the wider industry. Noting the 569 scheme entities of which 68 (12%) are small, 313 (55%) are medium and 188 (33%) large. Number of employees for scheme entities being 0-19 is small, 20-199 is medium, 200+ is large. This is not likely to reflect the equivalent industry-wide worksite data.

The Scheme's process of prequalification of construction companies is in theory commendable. However, in practice, the effectiveness of the scheme in a sector with such a large number of sites, diverse range of project scales, scopes and associated risk is not fit for purpose and may never be able to be fit for purpose. The Scheme's focus on documentation and processes detracts from the more practical aspects of on-the-ground safety improvements. Real-world health and safety in the construction industry goes beyond mere paperwork compliance from the level of the employer. It involves a host of factors including workers being a part of the decision-making process, workers understanding their rights and how to enforce them, how work is managed on site by local management, workplace culture, training, and the physical conditions on site. The Scheme's emphasis on procedural compliance has overshadowed these critical, practical elements of workplace safety.

There are substantial differences between the requirements of the Scheme and obligations under the Commonwealth WHS Act that may lead to safety outcomes on site. In the case of a PCBU, failure to comply with the WHS legislation may lead to financial penalties or prosecution. There is also the capacity for workers or HSRs to utilise the legislation to enhance

safety on site and for union officials to enter onto the site, without notice, to investigate suspected breaches. While not containing as strong provisions as the WHS Act and Regulations, the Scheme does allow for action to be taken against accredited entities. The two main levers the Scheme has to improve safety standards in the building and construction industry are firstly, the auditing processes and second, education and promotion of good WHS practices. The auditing process allows for sanction or removal of accreditation, while a big enough stick, the AWU is unaware of any FSC accreditation that has been withdrawn due to lack of safety standards.

An important aspect to consider is the dual role played by the FSC as both the accreditor and regulator of the Scheme. While this may seem practical from an administrative standpoint, it is not without potential conflicts. Being the accreditor, the FSC must maintain a certain level of impartiality to objectively assess an entity's compliance with health and safety standards. As a regulator of the Scheme, however, it must enforce these standards, which involves a more active and potentially adversarial relationship with the entities it oversees. 97% of accredited entities express approval of the service provided by the FSC. However, this figure raises a critical point. The purpose of the FSC and the Scheme is not primarily to gain the approval of the industry or the accredited entities within it, but to ensure health and safety standards are upheld. The question then arises, does this high approval rating indicate a good-natured relationship at the expense of enforcement? The AWU believe there is, at a minimum, a perceived conflict in this space.