

SOUTH AUSTRALIA'S SUBMISSION: INDEPENDENT REVIEW OF THE FEDERAL SAFETY COMMISSIONER

The CCF SA welcomes the opportunity to provide this submission, on behalf of the South Australian Civil Industry, in response to the Independent Review of the Federal Safety Commissioner.



**CIVIL CONTRACTORS
FEDERATION
SOUTH AUSTRALIA**

INTRODUCTION

The CCF SA welcomes the opportunity to provide a submission in response to the Independent Review of the Federal Safety Commissioner.

We are appreciative of the chance to offer input regarding the examination of the Federal Safety Commissioner (FSC). This is of critical importance in the civil construction sector, as safety for personnel and our industry is paramount.

In reference to the Discussion Paper from May 2023, we present the following opinion of CCF SA's Work Health and Safety Committee on the assessment of the FSC.

Details of the Review as posted by Australian Government, Department of Employment and Workplace Relations¹ website:

An independent review has commenced into the Federal Safety Commissioner. The Review aims to evaluate the Commissioner's effectiveness and examine the merits of adopting a similar approach in other areas of Government procurement.

Experienced WHS consultant, Ms Marie Boland, has been appointed to lead the Review. Ms Boland has extensive experience having spent more than 10 years in the Senior Executive of SafeWork South Australia, including 2 years as its Executive Director. Ms Boland also led the National Review of the Model WHS Laws in 2018.

As part of the Review, formal consultations with stakeholders will occur from May 2023 with a public discussion paper guiding consultations in July 2023. A final report with recommendations to Government will be finalised in December 2023.

The Federal Safety Commissioner was established in 2005 to improve the safety culture of the building and construction industry. The Commissioner is responsible for enhancing and monitoring safety in the industry through the development, administration and promotion of the WHS Accreditation Scheme.

The Review will be an opportunity for stakeholders to have their say on the Federal Safety Commissioner, the WHS Accreditation Scheme, and identify areas where improvements could be made.

The Terms of Reference for the review are available at Federal Safety Commissioner Review Terms of Reference.

ABOUT CCF SA

The Civil Contractors Federation (South Australia) (CCF SA) is the peak industry body representing, protecting, promoting, and connecting the civil construction industry in South Australia. The CCF SA has a growing diverse membership of 500 companies of all sizes that employ up to 50,000 South Australians. CCF SA also has a training arm, Civil Train SA, a Registered Training Organisation (RTO), that delivers nationally accredited and non-accredited training in South Australia, Western Australia, and the Northern Territory, to at least 15,000 people annually.

CCF SA members are involved in a variety of diverse projects and activities (from small to very large) including the development and maintenance of civil or 'horizontal' infrastructure such as roads, bridges, sewer, water and drainage pipelines, dams, wharves, airstrips, and commercial and housing land development. Members are also involved in the preparatory works for mining and other resource developments.

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¹ <https://www.dewr.gov.au/work-health-and-safety/review-federal-safety-commissioner>

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FEEDBACK

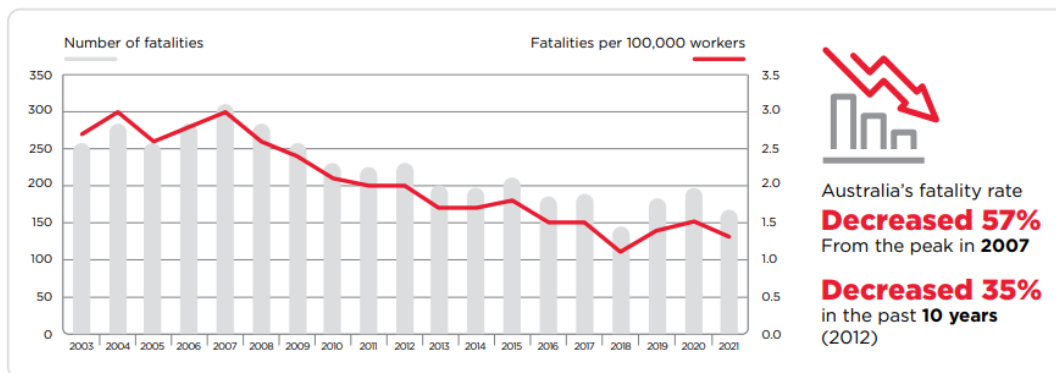
Question 1: What evidence is there to demonstrate the Scheme has improved safety practices within accredited entities or across the building and construction industry more broadly?

The data presented in the FSC WHS Accreditation Scheme Data Report suggest improved safety practices within accredited entities or across the building and construction industry.

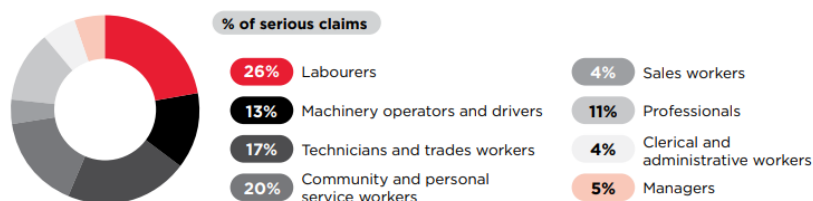
However, preliminary Safe Work Australia data suggests as per page 17 of the discussion paper that as at 21 June 2023 there have been 7 fatalities across the entire building and construction industry, inclusive of the 3 reported to the FSC. This data suggests that the Scheme may or may not be contributing as efficiently to a reduction in fatality or serious injury rates. Further review of **Safe Work Australia Work Related Injuries and Fatalities Report 2022²** supports the need for deep dive.

The Safe Work Australia Report shows a clear decline across all industries, this begs the question of whether the Scheme has contributed to the construction industry decline or if the decline is a result of general safety improvements across businesses and workplaces generally.

Trends in worker fatalities, 2003 to 2021



Serious claims by occupation, 2020-21*



Occupation	Number of serious claims	Frequency rate (serious claims per million hours worked)	Incidence rate (serious claims per thousand employees)
Labourers	33,309	21.9	30.5
Community and personal service workers	26,245	15.2	19.2
Machinery operators and drivers	16,443	11.7	21.8
Technicians and trades workers	22,255	7.9	14.5
Sales workers	4,825	3.6	4.4
Professionals	14,126	2.6	4.3
Managers	5,925	2.0	3.9
Clerical and administrative workers	5,536	2.1	3.2
Total**	130,195	6.5	10.5

*preliminary data subject to revision in future years as further claims are finalised.

**claims where the occupation was unknown are not included separately, but are included in the total.

² https://www.safeworkaustralia.gov.au/sites/default/files/2023-01/key_whs_stats_2022_17jan2023.pdf

Question 2: As a building industry participant observing a worksite, what are the signs, if any, that it is operated by an accredited entity?

Generally, feedback suggests that subcontractors and suppliers are aware they are engaged on a Scheme project based on the principal contractor's 'management system' and safety records requirements requested before commencing on a project and as required during construction.

Visitors and those who do not form part of the project team report that they are generally unaware of being on a Scheme project. One responder who provides apprentices under a group training arrangement suggested that apprentices are often unaware if they are on a Scheme project or not. This awareness may be unobservable in that the apprentice employer takes active steps to ensure all projects and workplaces hosting an apprentice are safe and have suitable safety management systems in place.

Further, verbal feedback provided by subcontractors, unfortunately, raises concerns that Principal Contractors on Scheme projects have varied and diverse safety management systems \ Scheme requirements. Subcontractors' sight cost and time concerns with achieving compliance across multiple Scheme projects. Subcontractors also provided feedback regarding their negative experiences where Scheme projects changed their requirements due to incidents, corrective actions or FSC compliance requests.

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?

It is generally felt that the Office of the Federal Safety Commissioner's (OFSC) expectations revolve around obtaining objective proof of how an accredited entity ensures Scheme compliance and that the safety management is carried out operationally.

The industry also provided feedback that recognition of ISO Standards such as ISO45001 (ISO 45001 is an International Organization for Standardization (ISO) standard for management systems of occupational health and safety) may be considered to remove duplication in comparison to Scheme requirements. ISO45001 was published in March 2018 with significant improvement on the previous AS4801 Australian Standard. Consideration of the Scheme's requirements should take into account an accredited entity who holds the ISO45001 accreditation.

The industry also highlighted duplication with WHS Harmonised Legislation and High-Risk Construction Work regulations and FSC Criteria H1 to H19. Investigation and research should be conducted to identify duplication between ISO and legislative requirements.

High-risk construction work is defined in WHS regulations as construction work that:

	FSC Hazard Criteria
• involves a risk of a person falling more than 2 metres (3 metres in South Australia)	Yes – Working at Heights
• involves the demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure	Yes
• involves, or is likely to involve, the disturbance of asbestos	Yes
• involves structural alterations or repairs that require temporary support to prevent collapse	Yes
• is carried out in an area at a workplace in which there is any movement of powered mobile plant	Yes
• is carried out in or near a confined space	Yes
• is carried out in or near:	
• a shaft or trench with an excavated depth greater than 1.5 metres	Yes
• a tunnel	Yes
• involves the use of explosives	Yes
• is carried out on or near pressurised gas distribution mains or piping	Yes
• is carried out on or near chemical, fuel or refrigerant lines	Yes
• is carried out on or near energised electrical installations or services	Yes
• is carried out in an area that may have a contaminated or flammable atmosphere	Yes
• involves tilt-up or precast concrete	Yes

• is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians	Yes
• is carried out on a telecommunication tower	Yes
• is carried out in an area at a workplace in which there is any movement of powered mobile plant	Yes
• is carried out in an area in which there are artificial extremes of temperature	Yes
• is carried out in or near water or other liquid that involves a risk of drowning or	Yes
• involves diving work.	Yes

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?

Refer to the answer to question 1.

More research and investigation is required to determine in the current trends in safety are directly attributed to the Scheme's existence or if improvements are a by-product of better business, systems, training and or other changes generally.

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?

Since 2012, when the South Australian Government adopted the WHS Act, the WHS environment has significantly changed in South Australia and therefore the role and relevancy of the FSC, this includes possible duplication of powers and functions.

Page 19 of the Discussion Paper speaks of these functions, such as "referring matters to other relevant agencies and bodies" and "any other functions conferred on the FSC by the Act or another Act". Furthermore, the same page contains notes regarding the 2003 Royal Commission recommendations that "have remained relatively unchanged since its establishment in 2005." As such, the implementation of the Model WHS Laws in all jurisdictions other than Victoria has provided for a "balanced and nationally consistent framework to secure the health and safety of workplaces."

An industry training provider also suggests that there have been significant changes in the Work Health and Safety (WHS) environment and operating context of the building and construction industry since the establishment of the FSC (presumably referring to the Fire Safety Certificate). The first major change came with WHS harmonisation, which led to several adjustments in the industry, particularly regarding mobile equipment licensing.

One notable change was the shift of forklifts to high-risk licensing, aligning them with many of the crane licensing accreditation processes. However, this change also resulted in some challenges, as we saw mobile plant lose its licencing status. This altered many factors, including the age requirement for mobile plant no longer being regulated by state and territory bodies and uncertainty about the evidence required to be deemed competent, which has raised concerns among employers.

Employers have attempted to address these changes through various means, including employer statements, verification of competency (VOC) processes, accredited units of competency facilitated by Registered Training Organisations (RTOs), and industry duty of care assessments. However, it seems that the industry is still grappling with how to fully adapt to these changes, and the lack of a unified national approach has hindered further progress since the introduction of harmonisation in 2012.

To address these challenges and uncertainties, the suggestion is made to link with industry RTOs. By doing so, the FSC can provide better clarity and develop a system that can be rolled out nationally. One way to incentivise this collaboration is by implementing a model that allows for financial gain through the endorsement process, enabling reinvestment in quality audits, resource checks, and curriculum support (training and assessment resources).

It is essential for the FSC to follow the examples set by other industries, such as the Elevated Work Platform Association (EWPA) and Austroads for traffic management endorsement, in developing substantial models to support the industry effectively.

To fully evaluate whether the functions of the FSC remain appropriate given these changes, a thorough assessment of the current state of the WHS environment and the specific challenges faced by the building and construction industry is necessary. Additionally, gathering feedback from employers, industry experts, and relevant stakeholders will provide valuable insights into the effectiveness of the FSC in its current form and any potential improvements needed to meet the evolving demands of the industry.

Further investigation into the functions of FSC to ensure relevance and effectiveness in the current legislative and WHS environment.

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?

Unfortunately, audit functions are not a reliable means to determine if genuine and effective consultation with workers is occurring. Many Scheme participants spend considerable time gathering evidence, records and preparing projects and teams for audit. An auditor can only trust the information and discussions presented to them at the time of audit. There is no guarantee that the auditor isn’t observing ‘good audit preparation’ evidence as opposed to a true culture and commitment towards genuine consultation.

A better and more dynamic mechanism to capture worker \ contractor engagement in consultation should be investigated.

The primary concern remains in the divergence of understanding, goal, and application of the criteria between auditors. The FSC could facilitate the model WHS Act’s goal of guaranteeing genuine and effectual dialogue with employees by lessening discrepancies and focusing on “objective” accomplishments that ought to be achieved all throughout the audit process rather than the “subjective” view of single auditors.

An industry training provider suggested: Given the challenges and changes in the industry, including the shift in mobile equipment licensing and the need for better clarity on competency requirements, it becomes evident that there is a demand for continuous education and information dissemination within the industry. When safety incidents and close calls occur, the industry often reacts slowly to address emerging trends, which can have serious consequences for worker safety.

One idea to support the increased education role of the FSC is to collaborate with the Industry Associations. For example: CCF SA (Civil Contractors Federation) training division would be interested in supporting the creation of a safety-focused podcast or communication channel. This podcast/channel could serve as a platform to deliver regular safety advice, updates on regulations, and other relevant information to the building and construction industry. Other Industry Associations may have other ideas \ suggestion to support FSC education and compliance.

CCF SA’s idea is born of the idea that by leveraging modern communication tools like podcasts or online channels, the FSC and CCF can rapidly deploy easy and accessible safety information to industry professionals. Podcasts are increasingly popular and convenient for on-the-go learning, making them an effective way to reach a wide audience within the industry.

The content of the podcast/channel could include:

- **Safety Tips and Best Practices:** Regular episodes could provide practical safety tips and best practices that workers and employers can implement on construction sites.
- **Regulatory Updates:** Information on changes in regulations, licensing requirements, and safety standards can be communicated to ensure everyone stays up-to-date.
- **Interviews with Industry Experts:** Inviting safety experts, regulators, and experienced professionals for interviews can provide valuable insights and guidance on various safety topics.
- **Incident Analysis and Case Studies:** Analysing real-life incidents and case studies can offer valuable lessons and help prevent similar accidents in the future.
- **Q&A Sessions:** Addressing common safety-related questions from the audience can enhance engagement and promote a sense of community.

- **Safety Culture and Communication:** Discuss ways to foster a safety-first culture on construction sites and improve communication regarding safety issues.

The FSC can actively participate in the development of content for the podcast/channel, contributing safety advice and insights based on incident data and trends. By collaborating with CCF's training division, the FSC can tap into their expertise in delivering training programs and reach a broader audience within the industry.

Additionally, the FSC can promote the podcast/channel through its own channels, website, and industry partnerships, ensuring maximum visibility and impact. The podcast/channel can be made easily accessible to workers and employers, enhancing their access to crucial safety information.

Overall, this collaboration between the FSC and CCF training division through a safety-focused podcast/channel would be an innovative and effective way to increase safety education, facilitate rapid communication, and promote a culture of safety within the building and construction industry.

Other Industry Associations should be invited to proposed similar initiatives – a 'grant' program or similar may facilitate this opportunity for great industry engagement and ownership at all levels.

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

CCF SA acknowledges FSC Education and Data - <https://www.fsc.gov.au/education-and-data> website page which supports FSC education role. CCF SA suggests a mechanism to capture worker completion of this training to support improved safety on site. Consideration whether education should be mandatory for all workers on FSC Scheme projects, where workers have greater ownership regarding compliance and understanding of FSC requirements. A card or other evidence of completion could be presented at the time of induction to ease induction time and costs for contractors and workers. An annual update or refresh may also be worthwhile.

CCF SA suggests there may also be an opportunity to share knowledge and support industry learnings regarding incident findings, best practice, non-compliance and lessons learnt.

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

Refer to answer to question 7 regarding worker evidence of FSC education completion.

The Scheme should not be in a position where it is reliant on 'worker representatives' to ensure a safe workplace or compliance with Scheme requirements. The Scheme by its very nature should be supportive of all workers being heard no matter their affiliations or memberships. The involvement of 'work representatives' suggest the Scheme project may somehow be flawed or inadequate to capture feedback directly from workers.

As with all regulations employer and employee associations should be involved at appropriate levels of this review, however, at the project level this type of representation should not be required. If his safety culture is true and right engagement should occur organically and be rich with input and opportunity.

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

Although this is existing in the current Act, consideration should be made regarding this ongoing responsibility with regard to adherence to the NCC.

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

The FSC powers remain appropriate and there are no 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?

- Be a central agency to track fatalities that occur within the construction industry.

- Support Incident Investigation processes as invited by the Accredited Entity or state-based regulator
- Collate causal factors and related ‘findings’ from investigation outcomes
- Develop and communicate lessons learnt from fatality investigations
- Alert Regulators of any identified patterns of causal factors \ systematic failures across the industry

Currently, the FSC requires the CEO of the accredited entity to meet with them upon notification of a fatality, this is to ensure the entity is investigating the causes of the fatality through its own investigation processes. The FSC will also consider whether it is appropriate for the entity to retain its accreditation. The FSC also changes the entity’s risk rating to high.

Time and support should be afforded to the entity where a fatality occurs. The State-based Safe Work Regulator shall investigate the incident as well the entity as per Scheme and legislative requirements. FSC should step back during this time in order that all energy and effort is directed to support the investigations. FSC’s actions arising should be guided by the outcomes of the investigation or prosecution.

Response to fatalities and investigations should remain the sole responsibility of the State WHS Regulator.

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?

Further investigation and enquiry should be made with regard to the type of breach under WHS Legislation that may trigger FSC response or change of status. For example, a Category 1 and or Industrial Manslaughter prosecution with a finding of ‘guilty’ may activate FSC to conduct a full re-audit and assessment of accreditation. Given the low number of fatalities, the Commissioner should review each case and determine steps based on evidence and understanding.

Responses to lesser category prosecution with a guilty finding should be reviewed via industry consultation.

Show cause processes should be activated where appropriate.

Question 13: How can the FSC improve Commonwealth funding entities’ compliance with the Act?

An independent reference panel might be used.

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

An independent reference panel might be used which includes consequences for breach \ non-compliance.

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

It is suitable to keep the current abilities, however, validation must be conducted to guarantee there is no repetition with the safe work Regulator capabilities in each State. As of now, there appears to be duplication.

Question 16: Are the current financial thresholds appropriate for Scheme coverage? If not, what should the threshold be?

There are several industry opinions in relation to thresholds, these may be addressed by the following two opportunities:

- Thresholds should be increased given cost escalation over time and since the commencement of the scheme, current thresholds appear too low particularly if FSC are seeking to encourage small to medium entities to apply for and maintain accreditation. However, and
- A risk-based threshold should be introduced. High-risk projects should attract Scheme coverage irrelevant to project funding value. High-risk accredited entities may also attract inclusion of all projects irrelevant to project funding value.
 - Hazards and risks which could be used to assess risk rating may include the following:
 - Incident and near-miss data

- Nominated high-risk criteria occurring on a project (nominated based on overall data, determined annually)
- Accredited entity under current enforceable undertaking or similar Regulatory condition

What thresholds apply to indirectly funded building work?

If a project is being indirectly funded by the Australian Government, the head contractor must be accredited under the Scheme if:

- The project includes building work of \$4 million or more (including GST) **AND**
- the value of the Australian Government contribution to the project is at least \$6 million (including GST) and represents at least 50 per cent of the total construction project; **OR**
- the Australian Government contribution to a project is \$10 million (including GST) or more, irrespective of the proportion of Australian Government funding.

If these conditions are met, the head contractor will need to have OFSC accreditation.

A head contractor is the entity who manages or controls a building site. Their responsibilities including engaging subcontractors and ensuring that all Scheme requirements are met when they are contracted to undertake building work that meets the Scheme thresholds.

Directly funded building work is when an Australian Government agency has responsibility for the project funding and development.

Examples include a Defence facility, Medicare or Centrelink Office, or a fit-out or refurbishment of existing Australian Government office accommodation.

If the value of the project is \$4 million or more, the head contractor needs to be accredited under the Scheme.

Question 17: Are there situations where the Scheme requirements are not fit for purpose? How can they be repurposed?

The Scheme requirements should be focused on specifically and industry workshops held to address this question.

Question 18: Should there be a limit to how many FSO audits are available to achieve accreditation?

A time limit should be set; specifically, ISO certification with Stages 1 and 2 must be fulfilled within three months if major items still need to be rectified. Where a project is unavailable to support CAR closure or provide evidence to support Scheme criteria a negotiated term should be entered once a project is available.

There should be no limit to the number of times you can apply for accreditation.

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?

Post-accreditation audits should be risk-based or task-specific as driven by project activity.

Question 20: How best could entities report WHS incidents, injuries and fatalities consistently across all of their activities (scheme and non-scheme)?

Online incident reporting remains the preferred method. However, consideration should be made regarding when this report is to be provided. For critical incidents, FSC reporting may not occur with the level of detail completed as per FSC expectations as investigations may still be underway at the time. Legal privilege should also be considered with regard to reports and this may prevent the provision of information.

Consideration should be given to the fact that the same information must be provided to various agencies.

Question 21: Should WHS incident reporting be streamlined to cater for all government agency and regulatory reporting requirements? If yes, how?

Yes, streamlined incident reporting would help avoid duplication.

Question 22: Could the FSC draw on existing data sources instead of requiring its own data?

Yes, by taking advantage of pre-existing information sources, the industry can generate a more detailed and reliable depiction of the industry's status, trends and opportunities.

Although the civil construction sector already keeps records of appraisals and comments, it could benefit from more thorough safety instruction, such as HIRAC training. As stated in the Discussion Paper (page 25), companies are mandated to submit notifications of all incidents, traumas, and deaths to relevant state organizations, particularly concerning major harms (emergency and hospital care) and death.

Question 23: Are there any lead indicators that could be reported to the FSC?

Yes, there are several lead indicators that support evidence of a true and healthy safety culture, these may include: Take 5, Uncontrolled Hazard Reports, Unsafe Practice or Process Reports, Best Practice Recognition, Worker Raised OFIs, Senior Manager \ Business Owner Inspection, State-Based Regulator Visits, Fair Work and Union Visits.

Question 24: How can we ensure greater collaboration and sharing of information between the FSC and other WHS agencies and regulators?

It would be beneficial for the FSC to execute the Royal Commission proposals in tandem with industry-focused workshops.

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?

The increase in transparency would be beneficial to increase collaboration and allow everyone to be on the same playing field.

If ratings are to be transparent to drive procurement decisions and ultimately better Safety outcomes, then the assessment and weighting of the ratings during procurement by State authorities should be mandated and transparent to ensure the ratings are used in a consistent and transparent way.

This will support the strongest and quickest innovations and improvements in FSC compliance and Safety outcomes. If this can't be done there is an industry belief that there is not much value in publishing ratings as they may be used by purchasers to weight or game procurement needs \ outcomes.

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?

Emerging risks in the construction sector, such as psychosocial hazards, respirable crystalline silica, and the chain of responsibilities, may be investigated however care should be taken not to duplicate existing Code of Practice (COPs) or legislation. Adoption of COPs or similar may demonstrate compliance.

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?

As per question 26. Care should be taken not to duplicate current legislation and emerging COPs

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?

No, accredited entities should not be charged. In order to promote optimal WHS performance across all sizes of businesses, the OFSC must be conscious of the potential costs associated with compliance, and strive to minimize or remove them whenever possible.

Question 29: What would be the impact of charging for accreditation and how could any charge be implemented fairly?

If a fee is to be introduced it must be reasonable and should reflect the scale of the organization requesting the accreditation. SME's should be exempt in order to reduce barriers to entry.

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?

Yes, the requirements of the Scheme should be revisited to support the dual policy objectives of improving building and construction industry safety through government procurement and to ensure FSC is supportive of local industry to take advantage of government purchasing opportunities.

Question 31: Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support the implementation of the Secure Jobs Code? If yes, what are those changes?

Safety should be given top priority and should not be interfered with by other policy concerns. Therefore, the Secure Jobs Code, which falls outside the bounds of Workplace Health and Safety (WHS) goals, should not be a consideration and or be included in the operations of the FSC.

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 that removes barriers to women’s participation and enables a safe working environment for women? If yes, what is that role?

The FSC’s powers and function should include an educational element that could foster a better understanding of employing every person, irrelevant of gender or how they identify, in the construction industry. Every person should be supported by systems and culture to ensure their well-being in situations where gender or choice of identification may lead to hazard or risk.

Question 33: Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support the implementation of the Better Deal for Small Business policy? If yes, what are those changes?

Education needs to prioritize the needs of small businesses instead of defaulting to a ‘bigger is better’ approach, which isn’t feasible for many small business owners. Furthermore, steps should be taken to ensure that smaller businesses have adequate protection when navigating the domain of larger contractors or clients.

This matter should be further workshopped with Small Business.

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?

More information is required regarding the terms and functions of the NCIF before suggestions can be provided. The industry is not across this new forum sufficiently to provide input.

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?

FSC and Safe Work Regulators need to work together to ensure both systems are supportive of improved safety outcomes, and improved efficiency to aid productivity and ensure duplication is not present. This matter should be further workshopped with industry and state-based safe work regulators.

Question 36: Should the Scheme be expanded to cover sub-contractors as contemplated by the Royal Commission?

This matter should be further workshopped with the industry. Although the idea and benefits are potentially obvious with regards to the inclusion of subcontractors the manner in which this is implemented and audited MUST be carefully considered and developed.

The current Scheme requirements, in their current form, would be overly burdensome and potentially would not improve safety for SMEs and or subcontractors. Current industry intel suggests at least 1 full FTE is required at a minimum to support FSC accreditation and compliance.

CCF SA notes that having a compliant management system that meets the Scheme’s requirements and or ‘works \ activity prepared for audit’ does not necessarily demonstrate or support true safety culture or practices.

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?

Evidence of Scheme's positive impact on industry safety should be thoroughly determined, without doubt, before this can be considered. Refer to question 1.

Question 38: What, if any, changes to the FSC's operations would be required by the expansion of the Scheme to other industries?

Refer question 37

ADDITIONAL POINTS FOR REVIEWER CONSIDERATION:

- Both FSC 2021 and 2020 WHS Accreditation Scheme Data Reports demonstrate a marked difference between Commercial and Civil projects,. The 2021 report states *“The LTIFR on civil projects conducted by Scheme accredited companies in 2021 was 0.82. This is substantially lower than the LTIFR on commercial construction projects conducted by Scheme accredited companies, which was 2.39.”* The Report states further: *“Over the past 5 years, lost time injuries reported by Scheme accredited companies have consistently occurred on commercial projects at approximately 3 times the rate of civil construction projects”*

Injury Frequency Rates – LTIFR – Civil v Commercial, source 2021 WHS Accreditation Scheme Data Reports

	2017	2018	2019	2020	2021
Civil Construction	0.93	0.95	0.73	0.73	0.82
Commercial Construction	2.98	2.69	2.21	2.41	2.39
Combined	1.89	1.73	1.45	1.48	1.50

Injury Frequency Rates – MTIFR – Civil v Commercial, source 2021 WHS Accreditation Scheme Data Reports

	2017	2018	2019	2020	2021
Civil Construction	3.82	3.53	3.94	2.90	2.82
Commercial Construction	11.33	10.53	10.61	9.21	8.69
Combined	7.34	6.66	7.18	5.74	5.37

The safety achievements of the Civil industry in comparison to Commercial industry begs the following question:

- should an analysis be conducted to determine what the civil industry is successfully doing that specifically supports its safety achievement?
 - Direct Civil Principal Contractor engagement of contractors v Builder Principal Contractor of contractors
 - Civil Principal Contractor enhanced understanding of civil hazards, risks and controls
 - Civil Principal Contractors have greater understanding of safety practices and culture on civil projects
 - does an opportunity exist for the review to consider the introduction of a lower risk rating generally for civil projects operating under a Scheme Accredited Civil Principal Contractor? This lower rating for a sector acknowledges the achievement and facilitates greater audit and scheme focus on the commercial sector.
 - why H16 Mobile Plant and H7 Excavation attract the highest Audit and CAR numbers ?
- Accredited Entity challenges across projects, across states, applicability to non-Scheme Projects
 - Accredited entities request the opportunity to review the implementation of Scheme requirements across their non-scheme projects. It is reported the requirement to apply the scheme across all accredited entity projects is unnecessarily onerous and does not improve safety outcomes or culture.
 - Refer to answer 16 regarding thresholds, a risk rating approach may assist by identifying projects where the Scheme must be applied and those which are exempt.
- Auditor validation and assurance of quality (removing subjectivity, enhancing consistency)
 - Existing measures to review and validate FSOs auditing approach and interpretation of FSC criteria may require review given industry feedback suggesting some auditors appear to audit with a ‘personal lens’ making audit outcomes feel subjective and inconsistent.

- Improve escalation processes to support ‘third party’ assessment of CARs and or other audit determinations and outcomes.

Other general comments raised generally by the civil industry:

- As a general theme on whether or how FSC legislation has been effective in achieving outcomes. I think that part of its value is having one national standard/harmonised approach and also a relatively consistent approach (ie not changing every 5 minutes) this allows organisations to keep chipping away at improving their compliance, their application and ultimately their safety performance and culture.

So as long as there is no direct conflict between FSC requirements and other state-based WHS legislation, I don't think it is so bad if there is a bit of overlap here and there.

- In terms of what FSC means for SME's, whilst no doubt some SME's see achieving FSC capability as an impossible or difficult task. However, those that have applied and are successful report a less complicated process than originally thought.

Further, these prime contractors are required to ‘cover’ subbies who don't have FSC accreditation to deliver contracts. Smaller contractors therefore who do not hold accreditation are effectively not being excluded from work opportunities by not having FSC accreditation.

It is important to keep a minimum standard to ensure that it actually does the intended job of improving outcomes.

A BIG IDEA - INDUSTRY ASSOCIATION AND FSC COLLABORATION:

FSC's Innovative Collaboration with CCF : Advancing Competency Assessment in the Civil Construction Industry

Introduction:

The Federal Safety Commissioner (FSC) could embark on an innovative collaboration with the Civil Contractors Federation (CCF) to revolutionise competency assessment in the civil construction industry. This proposal outlines the key features of the initiative, which aims to enhance the current verification of competency system and provide a more efficient and less intrusive audit process. By partnering with CCF and leveraging their expertise, the FSC could introduce a cutting-edge model that ensures industry standards are met while fostering skill development and confidence among workers.

Objectives:

The primary objectives of the collaboration between the FSC and CCF are as follows:

- **Establish a Modern Competency System:** Develop a state-of-the-art competency system that goes beyond the traditional approach of merely verifying licenses and equipment requirements. Instead, the system will focus on practical skills and actual job performance, allowing for a comprehensive assessment of operators' abilities.
- **Reduce Audit Intrusiveness:** Implement a less intrusive audit process by utilizing the industry's expertise and existing mechanisms. RTOs endorsed by the FSC will be empowered to conduct industry verification of competency assessments, streamlining the assessment process for businesses.
- **Enhance Industry Benchmarking:** Utilise data modelling techniques inspired by successful programs like NAPLAN to establish reliable industry benchmarks. This will enable businesses to compare their staff's competencies against national standards, leading to improved performance and professional growth.
- **Support Small Businesses and Underrepresented Groups:** Ensure that the competency system is accessible and inclusive, providing training opportunities to small businesses, family enterprises, and underrepresented groups. This will foster a diverse and skilled workforce within the civil construction sector.

Implementation:

The FSC's collaboration with CCF will proceed through the following stages:

- **Research and Development:** Conduct extensive research and development to design a competency system tailored to the needs of the civil construction industry. Engage industry stakeholders, RTOs, and training providers to gather valuable insights and expertise.
- **Pilot Program:** Implement a pilot program with select businesses to test and refine the competency system. Gather feedback from participants to make necessary improvements and adjustments.
- **National Roll-out:** After successful piloting, launch the competency system on a national scale. Collaborate with CCF to organize training sessions for RTOs and employers to ensure smooth implementation.
- **Inclusivity Measures:** Implement strategies to support small businesses, family enterprises, and underrepresented groups. Offer fee waivers or subsidies to reduce financial barriers and provide culturally appropriate training materials.
- **Ongoing Evaluation and Improvement:** Continuously evaluate the effectiveness and impact of the competency system. Seek feedback from stakeholders and adapt the model as needed to meet evolving industry needs.

The key differences between an audit and competency assessment lie in their purpose, scope, and focus:

Purpose:

Audit: An audit is a formal review process conducted to ensure compliance with established standards, regulations, or requirements. It aims to verify whether a company or individual meets specific criteria and adheres to prescribed guidelines.

Competency Assessment: Competency assessment, on the other hand, evaluates an individual's or team's actual skills and abilities related to their job tasks. It focuses on identifying strengths and weaknesses and aims to improve performance and proficiency.

Scope:

- **Audit:** Audits typically assess overall compliance and adherence to predefined standards across various aspects of a business or individual's operations.
- **Competency Assessment:** Competency assessments target specific skills and competencies required for job roles within a team or company. They are more focused on individual or team performance within their work environment.

Focus:

- **Audit:** The primary focus of an audit is on checking for compliance and adherence to established rules and regulations.
- **Competency Assessment:** The focus of competency assessment is on identifying individual and team gaps in skills and knowledge and determining areas for improvement.

In the context of the collaboration between the FSC and CCF to create a competency system, the competency assessment will be more granular and personalized. It will focus on evaluating the skills and abilities of individual workers and teams in the civil construction industry. This assessment will provide valuable data on individual performance and skill gaps, as well as identify trends in company-wide or industry-wide competencies.

The data collected through the competency assessment can help the FSC focus on key areas in several ways:

- **Individual Gaps:** The assessment will highlight individual workers' specific skill gaps, enabling targeted training and development plans to improve their performance and competence.
- **Team/Company Gaps:** By analyzing the aggregated data from various teams and companies, the FSC can identify common skill gaps across the industry. This information can guide the development of industry-wide training programs to address these common weaknesses.
- **Benchmarking:** The competency assessment data can be used to establish national standards and benchmarks for various job roles within the civil construction industry. This will provide a clear picture of the industry's overall proficiency levels and areas that require improvement.
- **Targeted Interventions:** Armed with detailed data on individual, team, and company competencies, the FSC can focus its efforts on providing targeted interventions and support to areas that need the most improvement.
- **Policy and Regulation:** The data can inform the development of policies and regulations that enhance competency standards in the civil construction industry. This ensures that safety and efficiency are prioritised in the sector.

By shifting the focus from traditional audits to competency assessments, the FSC can gain deeper insights into the industry's skill landscape and concentrate its resources on meaningful and impactful areas. This collaborative approach between the FSC and CCF will result in a more dynamic and responsive system that empowers individuals and businesses to continually improve and meet national standards in the civil construction industry.