



**Australian Government**  

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**Department of Employment**

**DISCUSSION PAPER**

**A REVIEW TO MODERNISE THE OFFICE OF THE FEDERAL  
SAFETY COMMISSIONER AND THE AUSTRALIAN  
GOVERNMENT BUILDING AND CONSTRUCTION OHS  
ACCREDITATION SCHEME**

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## Foreword

In 2003, the Cole Royal Commission into the Building and Construction Industry found that the safety record for the industry was unacceptable. It recommended that the Government use its influence as a client and provider of capital to foster improved Work Health and Safety (WHS) performance.

In response to the Royal Commission the Government established the Federal Safety Commissioner (FSC) to develop, implement and administer a WHS accreditation scheme for Government building and construction work.

The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) has been operational since 2006 and it is timely that it be reviewed. The scope of the Review is to modernise and streamline the Scheme while not reducing safety outcomes.

The Review provides an opportunity to examine a number of aspects of the Scheme, such as to: improve accessibility; reduce red tape; harmonise processes; eliminate duplication; increase effectiveness and consistency; implement risk-based approaches and better leverage the educational benefits arising from the Scheme.

## Terms of Reference

The Review will address:

- the costs of complying with the Scheme, including the cost of seeking and maintaining accreditation, particularly for smaller businesses/projects
- the suitability of current funding threshold limits applying to building work covered by the Scheme
- scope for improvements in the accreditation process to reduce red tape, including but not limited to:
  - application and other paperwork requirements at the accreditation and re-accreditation stages
  - scope to better target compliance effort (in particular, on-site audits) according to risk, and to increase voluntary compliance by companies
  - extending the period of accreditation for businesses with a good audit history
  - capacity of smaller businesses to achieve accreditation
  - the suitability of AS/NZS 4801 as a pre-requisite for the Scheme
  - options to charge for audits.
- changes to the Scheme criteria and/or associated guidance material which would streamline or clarify requirements (including any updates necessary to reflect current best practice)
- consistency, transparency and accountability in the application of Scheme criteria by Federal Safety Officers and the Office of the Federal Safety Commissioner
- the process for selecting and appointing Federal Safety Officers to ensure any potential for conflict of interest is appropriately managed
- awareness of, and adherence by, funding entities to the Scheme requirements
- interaction of the Scheme with state and territory pre-qualification arrangements for their building and construction procurements
- the interaction of the Scheme with other Commonwealth procurement processes.

A report on the outcome of the Review will be provided to the Minister for Employment by 30 June 2014.

## **Providing a Submission to the Review**

The Review will be undertaken by the Department of Employment (the Department) in consultation with an Advisory Panel comprising representatives of key industry associations, the Australian Council of Trade Unions, the FSC and government agencies that procure building works.

Accordingly, building industry participants and other stakeholders are encouraged to consult with their industry association in the first instance, as they will be the primary means by which views will be provided to the Review. Submissions must address the Terms of Reference, and should focus on tangible suggestions for changes to the way in which the Scheme operates. This Discussion Paper is designed to assist and focus input to the review, by suggesting a range of key questions that relate to the Terms of Reference.

A response template has been provided at the end of the Discussion Paper. Submissions can address any or all of the questions in the template. It is not necessary to provide a response to every question. The template also provides space for any additional comments that responders may have that have not been raised in the questions.

Submissions should be provided by 4 April 2014 to [ofscreview@employment.gov.au](mailto:ofscreview@employment.gov.au). Enquiries about the review can be made by email to the same address, or by phone: 1800 652 500.

## Background

### How does the Scheme operate?

#### *Legislative Basis*

The FSC and the Scheme are established under section 35 of the *Fair Work (Building Industry) Act 2012* (the FWBI Act). The Scheme is supported by the *Fair Work (Building Industry – Accreditation Scheme) Regulations 2005* (Scheme Regulations). The Scheme is maintained in the *Building and Construction Industry (Improving Productivity) Bill 2013* which is currently before the Australian Parliament.

#### *Rationale*

The objective of the FSC is to use the influence of the Government as a client and provider of capital to improve the safety culture of the building and construction industry. Only companies that are accredited under the Scheme can enter into head contracts for building work (above specified thresholds) funded (directly or indirectly) by the Government.

The FSC is not a regulator of the building industry – that role falls to the jurisdictional regulator set out in the relevant Commonwealth, state and territory work health and safety legislation. WHS regulators may issue penalties or stop work on building sites where specific breaches occur. The Scheme aims to complement the role of regulators by assessing and auditing how well builders systematically manage work health and safety (including risks and the cause of problems) to minimise the likelihood of incidents occurring.

#### *What is assessed?*

The Accreditation process evaluates both a company's documented Workplace Health and Safety Management System (WHSMS) and its observed application on site. Assessment is against the [criteria](#) which are available at [www.fsc.gov.au](http://www.fsc.gov.au)

In addition to system-based and on-site risk-based criteria, the Scheme pays particular attention to six broader categories. On establishment of the Scheme, these were considered to be central to developing and improving the safety culture of companies and the industry:

1. Senior Management Commitment
2. Integration of Design Issues
3. Whole of Project Consultation
4. Management of Subcontractor WHS
5. Project Performance Measurement
6. Training Arrangements.

#### *How is accreditation achieved and maintained?*

Applicants are required to submit a “gap analysis” document to the Office of the Federal Safety Commissioner (OFSC) which is a self-assessment of where in their WHSMS they address the criteria to be evaluated during the accreditation process<sup>1</sup>.

A two day on-site audit is conducted by a Federal Safety Officer (FSO) at a mutually agreed date and site. FSOs assess the documentation identified in the gap analysis and its implementation on site. The FSO also examines two pre-agreed, “high risk hazards” relevant to the work on site to evaluate how effectively the company has managed them.

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<sup>1</sup> Prior to January 2013 applicants submitted full system documentation for review by the OFSC prior to audit

Most companies require one or two subsequent audits to “close out” any shortcomings identified. Feedback and audits continue until a company achieves accreditation.

A company is normally accredited for three years. During that time, “maintenance audits” are undertaken (on a mutually agreed date and site) to verify the company’s continued commitment to Scheme requirements. At present, one or two maintenance audits per company are undertaken during each three year accreditation period (see Table 3).

Additional audits are undertaken during accreditation periods for companies that have compliance action underway (for example, as a result of trends in areas of non-compliance, inability to satisfactorily address non-conformances etc).

Accredited companies have six monthly incident and safety performance reporting obligations, and must provide other notifications of significant occurrences (for example, fatalities).

After three years, the reaccreditation process is largely identical to the initial accreditation process, with similar gap analysis paperwork, but with the possibility of a single day on-site audit for companies that have demonstrated a solid safety record during the period of their accreditation.

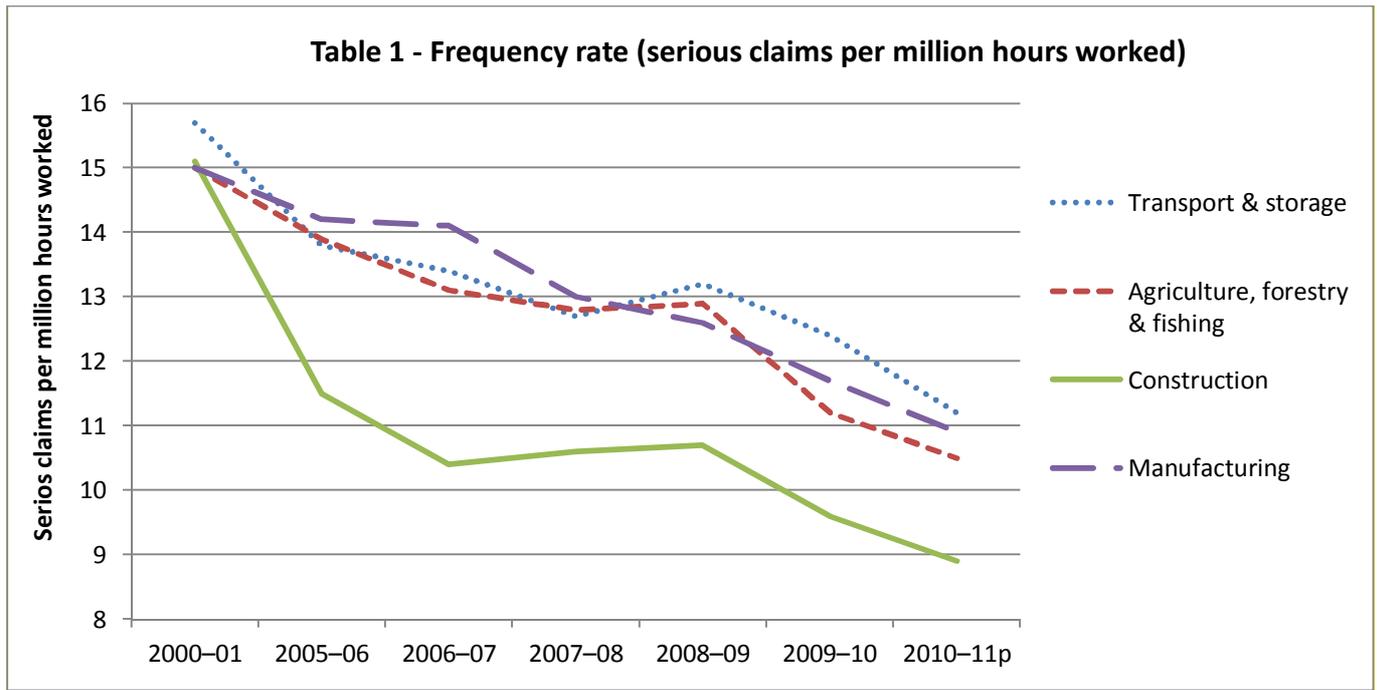
## **Safety in the Industry**

### Industry snapshot

In 2010-11, the Australian building and construction industry employed 1.03 million people, representing 9.1 per cent of the Australian workforce.

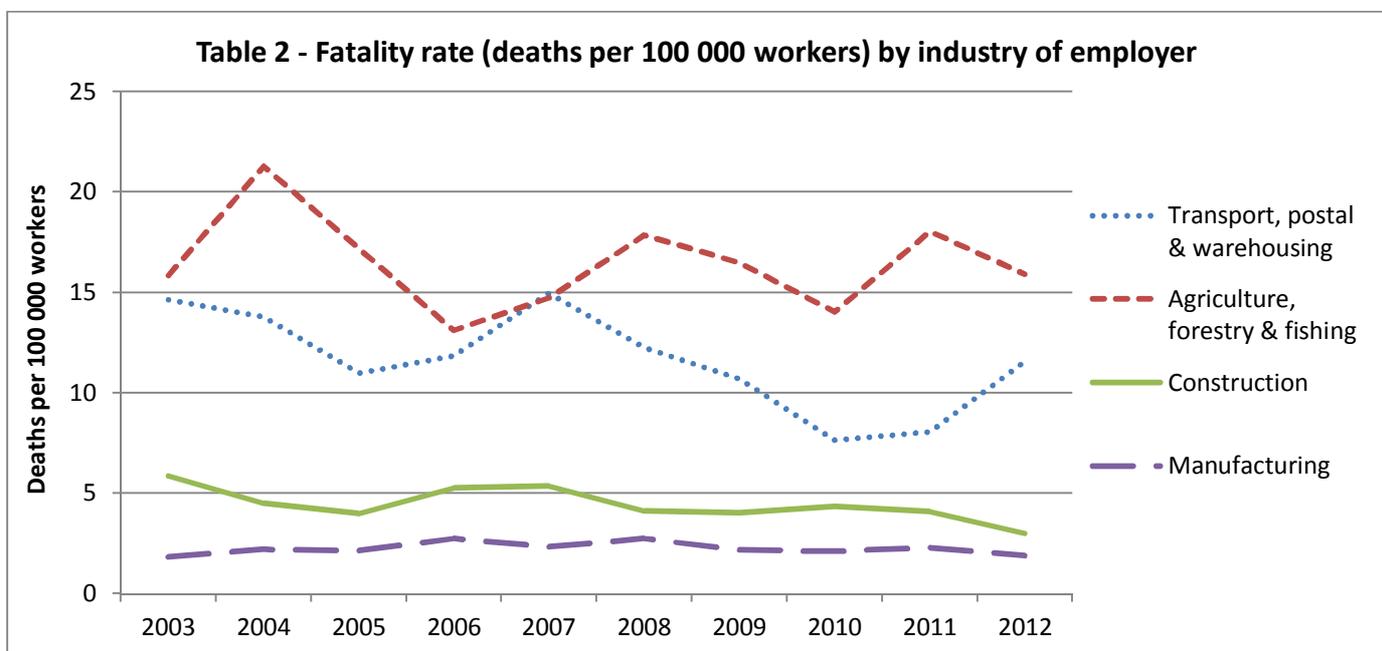
It is estimated that more than 30 per cent of building and construction industry turnover may be undertaken by Scheme accredited companies.

In 2000-01—just prior to the Cole Royal Commission recommendation to establish the Scheme—the industry recorded a serious claims frequency rate (serious claims per million hours worked) of 15.1; the second worst of all industries. By 2009-10 this figure had dropped 36 per cent to 9.6, representing the third biggest decrease across all industries.



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The fatality rate (deaths per 100 000 workers) for the building and construction industry in 2003 was 5.84; the fourth worst of all industries (including mining, not shown on the graph below). By 2012 that figure had dropped 49 per cent to 3.0. While construction still remains the fourth worst industry (data from Safe Work Australia for the three year period 2009 to 2011 shows that deaths in the construction industry from work-related injuries occurred at nearly twice the national fatalities rate), this 49 per cent decrease in fatality rate was the sixth biggest decrease recorded across all industries.



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Despite these improvements, building and construction remains a dangerous industry.

<sup>2</sup> Safe Work Australia Compendium of Workers' Compensation Statistics Australia 2010-11, Table 10.

<sup>3</sup> Safe Work Australia Work-Related Traumatic Injury Fatalities, Australia 2012, Table 9.

In 2012 the top five mechanisms leading to fatalities in Australian workplaces were vehicle incidents (39%), being hit by moving objects (12%), falls from height (11%), being hit by falling objects (9%) and being trapped between stationary and moving objects (5%)<sup>4</sup>; all of which represent everyday risks on building and construction sites.

### **Application of the Scheme**

The Scheme applies to projects funded directly or indirectly by the Commonwealth Government, subject to the following current thresholds:

#### Directly funded building work

Projects are considered to be directly funded where a Government agency is the client. This includes pre-commitment leases and similar arrangements. Typical examples of directly funded projects are the Department of Defence constructing a new military facility or an agency arranging for the construction of a new office or a fit out of an existing building.

- The Scheme must be applied to all directly funded head contracts for building work with a value of \$3 million and above (including GST).

#### Indirectly funded building work

Projects are considered indirectly funded where the Government contributes funding through a third party, such as a state government. Some typical examples of indirectly funded building work are where the Government provides funding for a state government to construct a road, or where the Government provides funding to a university to construct a research facility.

The Scheme applies where the Government contribution to the project is:

- at least \$5 million and represents at least 50 per cent of the total project value; or
- \$10 million, irrespective of the overall proportion and

the value of the head contract for building work is \$3 million and above.

#### Scheme coverage

As at 31 December 2013 there were 305 accredited companies with another 152 applications under consideration.

While the ability to tender for Scheme projects is a key motivator in applying for accreditation, 40 per cent of companies that have gained accreditation have not undertaken a Scheme project.

Since the inception of the Scheme, there have been more than 1000 Scheme projects worth almost \$53 billion. Of these, 324 projects are currently active and there are a further 342 potential Scheme projects at the tender or concept stage worth an additional \$49 billion.

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<sup>4</sup> Safe Work Australia Work-Related Traumatic Injury Fatalities, Australia 2012, Table 3.

## Scheme Performance

While a number of indicators suggest accredited companies have higher safety outcomes and improve their safety performance following accreditation, it is not possible to isolate the contribution of the Scheme from other variables. For example, accredited companies may achieve higher standards as a result of their size, pre-existing commitment to safety or other factors that are additional to the contribution of the Scheme accreditation process.

Comparison of OFSC data with broader industry data is also problematic due to inconsistent statistical and definitional approaches. For instance, Australian Bureau of Statistics (ABS) data on fatalities and injuries for the building and construction industry captures employees, whereas the OFSC captures data on employees and subcontractors. Similarly, incidents are recorded for the broader industry based on a compensation claim being lodged whereas OFSC data is reported at the time of an incident occurring, regardless of any subsequent compensation claim. Industry data measures a serious claim as being an incident that results in an absence from work of one week or more, whereas the OFSC capture incidents that result in an absence from work or regular duties of one day or more.

Data that is available suggests that accredited companies report improved injury rates and a reduction in compensation premiums. By the time companies have been accredited for six years (applying for their second re-accreditation):

- over 70 per cent recorded improvements to their Lost Time Injury Frequency Rate (LTIFR). Of those companies that recorded an improvement, their rates decreased by an average of 69 per cent.
- sixty per cent demonstrated improvements to their Worker's Compensation Premium Rates. Of those companies that recorded an improvement, their rates decreased by an average of 44 per cent.

Accredited companies recorded Worker's Compensation Premium Rates 20 per cent lower than the industry average in the July to December 2012 period.

During the July to December 2012 reporting period, 63 per cent and 58 per cent of accredited companies undertaking building work reported LTIFRs of zero for Scheme and non-Scheme projects respectively.

## Issues for comment

### Summary

Reducing red tape and compliance costs can be addressed in three main ways. Firstly, the coverage of the Scheme can be reduced. Secondly, some current paperwork and compliance requirements could be removed or streamlined, which could be done in conjunction with a more targeted, risk-based approach to compliance monitoring. Thirdly, actual and perceived barriers to achieving accreditation could be reduced by ensuring the Scheme is more accessible and “scalable” for any building company (for example, regardless of size).

### What projects are covered by the Scheme

Two factors determine the extent to which the Scheme covers head contractors in the building and construction industry: funding thresholds and the definition of building work.

Some stakeholders have raised the possibility of a third factor: exemptions to some or all of the requirements of the Scheme for individual funding agencies or programmes.

#### Funding thresholds

The current thresholds applying to the Scheme were first introduced in 2007, when the thresholds for direct funding were lowered from their original level of \$6 million and thresholds were introduced for indirect funding.

Some funding agencies, industry associations and companies have suggested raising the thresholds for both directly and indirectly funded work as they believe that accreditation is a significant barrier to obtaining Commonwealth funded building work. They have suggested accreditation should not be required for smaller building companies, lower value projects, or projects in regional or remote areas where the higher costs mean even small projects are captured by the thresholds. Conversely, some stakeholders have expressed the view that the funding thresholds do not require change.

There are three options for funding thresholds: lower or remove them, leave them at current levels, or raise them.

#### *Lower or remove the thresholds (that is, increase coverage)*

Some stakeholders have suggested that the thresholds should be lowered or removed altogether for Commonwealth Government funded building work. This would ensure uniform requirements for all Commonwealth Government funded building work and expand the coverage of the Scheme to more projects and potentially more companies. Given rising material and labour costs there has already been an effective lowering of the threshold values and smaller projects are being captured.

This would be likely to increase the requirement for accreditation to more head contractors, however the impact of such a change is not quantifiable as the number of Commonwealth Government funded construction contracts below current thresholds is currently not collected on a whole of Government basis.

### *Leave the thresholds at current levels*

Over 1000 projects have been captured by the Scheme to date (based on previous and current threshold levels). Current thresholds are a well-established requirement and some stakeholders have expressed the view they do not require any changes.

### *Raise the thresholds*

Two options exist for raising thresholds – either raise the head contract value in real terms to a higher level (examples of the impact of this are provided below) or raise the threshold levels only to reflect price movements since they were originally established (using consumer price or construction based indices).

As an example, raising the threshold to \$5 million for directly funded contracts:

- Would have exempted 55 awarded contracts (out of a total of 187 awarded contracts) with a total value of \$215 million over the previous three calendar years (11 per cent of all directly funded projects). Of these, 51 per cent were Commercial, 27 per cent Residential, and 22 per cent Civil.
- Of the contracts that would have been exempted, 29 per cent were with Defence Housing Australia, 25 per cent were with the Department of Defence, 5 per cent were with Airservices Australia, and a further 18 agencies make up the remainder.
- Five companies have only undertaken Scheme contracts under \$5 million dollars and in the event that the threshold was higher, may not have applied for accreditation.

Raising the threshold to \$10 million for both directly and indirectly funded contracts:

- Would have exempted 201 awarded contracts with a total value of \$1.1 billion over the three previous calendar years (19 per cent of all awarded contracts). Of these, 53 per cent were direct contracts, with the remaining 47 per cent indirect. Further, 60 per cent of contracts under \$10 million were Commercial, 27 per cent Civil, and 13 per cent Residential.
- Of the contracts that would have been exempted, 14 per cent were with Defence Housing Australia, 14 per cent with the Department of Defence, 12.5 per cent with the Department of Education Employment and Workplace Relations, 12 per cent with the Department of Health, 11 per cent with the Department of Infrastructure, with a further 38 agencies accounting for the remainder.
- A total of 24 companies have only undertaken Scheme contracts valued at less than \$10 million. It may be assumed that in the absence of a financial imperative to be accredited to undertake Scheme work, these companies may not have sought accreditation, thereby reducing the Scheme's coverage across the industry.

### *Increasing the thresholds by Indexation*

While there is no single index that covers all areas of construction relevant to the Scheme, there are a number of indices that can provide an indication of the change in costs over time in the construction sector. One such index is the Building Construction Index which covers residential and non-residential (commercial) construction. In the period from 2006 to 2013 this index showed an increase in the order of 20 per cent. Another relevant index is the Roads and Bridges Index which showed an increase in the order of 35 per cent for the same period.

While not directly relevant to construction, the Consumer Price Index (CPI) over the same period showed an increase of almost 22 per cent. Raising the funding thresholds to keep pace with changes in either the Building and Construction Index or the CPI would result in thresholds as follows:

Direct threshold	\$3.6 million	\$4 million (rounded for ease of use)
Indirect threshold (Lower)	\$6.1 million	\$6 million (rounded for ease of use)
Indirect threshold (Upper)	\$12.1 million	\$12 million (rounded for ease of use)

This may be an alternative to fixing the thresholds at a constant value where the value of the work continues to rise and therefore changes the nature of work that is covered by the thresholds.

Had there been annual price adjustment of the thresholds since the inception of the Scheme, 31 directly funded Scheme projects would not have been captured over the past seven years.

### Definition of Building Work

The current definition of building work is established under the FWBI Act. The definition is broad, and captures a wide range of construction related works.

*The Building and Construction Industry (Improving Productivity) Bill 2013* currently before the Parliament, seeks to further extend the definition of 'building work'. The new definition would capture, for example, any head contracts above the thresholds for prefabrication work (off site and on site), the transport or supply of goods for building work and building work that is performed on land used for the mining of oil, gas or minerals.

A small number of stakeholders have raised issues with the difficulties they face with meeting the Scheme criteria, noting that the nature of the work they do is difficult to describe as building work. For example, while the Scheme applies to the construction of solar power infrastructure, should it also apply to the installer of solar panels on domestic roofs? And where the Scheme applies to the construction of detention centres, should it also apply to the erection of security fences and installation of security cameras around the facility?

Elements of the FWBI Act (including the definition of building work) can be changed by introducing an amendment under the Scheme Regulations. As an example, the introduction of funding thresholds in the Scheme Regulations effectively limits the definition of building work to less than that described in the FWBI Act. The definition in the FWBI Act can be limited (but not expanded) through the Scheme Regulations to exclude certain types of building work (for example, the current financial thresholds).

### *Residential*

Some stakeholders have suggested that there should be exemptions from the Scheme for particular sectors of work, such as residential. These concerns sometimes relate to financial considerations – for example, a view that this increases costs and reduces the pool of suppliers for certain government agencies funding residential projects. Another issue is that current arrangements may make it difficult for Indigenous companies to participate as head contractors in government funded residential building programmes in some regional and remote areas. A further argument has been made that the higher costs in regional and remote areas mean that projects are being captured that would be below the thresholds in metropolitan areas.

In terms of safety performance, there appears to be no strong evidence to suggest that the residential sector warrants exclusion, however this needs to be balanced against competing financial and policy objectives.

One approach would be to further ensure that the Scheme requirements are scalable and readily achievable for all building industry participants so that accreditation is not a barrier. An alternative approach would be to amend the definition of building work through the Scheme Regulations (only as it applies to the Scheme). For instance, the definition in the Act means that the Scheme currently applies to projects of 5 or more residential dwellings – that could be amended to increase the threshold number of dwellings, or it could exclude residential work altogether.

#### **Questions - Scheme Coverage**

**Question 1:** Should the thresholds for directly and indirectly funded projects be lowered, removed, increased, or remain unchanged? To what levels?

**Question 2:** Should the definition of building work be changed? If yes, how should building work be defined?

**Question 3:** Should exemptions to the Scheme apply to particular agencies or sectors of work (for example, residential)?

#### **Accessibility of the Scheme**

The level of resourcing and WHS expertise of companies seeking accreditation varies dramatically according to size, experience, management culture, location, sector of operation and other factors. Coverage of the Scheme ranges from small, locally focussed “husband and wife” companies to nearly all of the major national and a number of international construction firms. Accordingly, the complexity and resources associated with safety systems varies significantly. A key challenge is to ensure the Scheme requirements are applied consistently but in a way that does not create unnecessary barriers to companies considering accreditation.

Feedback is sought about how to ease the burden for those seeking accreditation for the first time, and whether there are any barriers to commencing and completing the accreditation process that can be modified or removed.

#### **Time taken to achieve accreditation**

The time taken to achieve accreditation varies significantly across companies. There are two elements that contribute to the time taken from application to accreditation:

- OFSC administrative processes; and
- company processes, including audit timing and time taken to address non-conformances identified at audit.

Prior to January 2013, companies took, on average, approximately 8 months to achieve accreditation for the first time. Streamlined application processes were introduced in January 2013. These processes included removing the requirement for companies to provide significant volumes of documentary evidence and replacing it with a simplified gap analysis, a form of self-assessment whereby companies identify relevant procedures and documentation that will be provided as evidence at the audit.

Applications received under the streamlined arrangements that have achieved accreditation have done so in a significantly reduced time frame – four months on average. This time is further reduced to two and a half months when calculations are based on the time taken from first audit to accreditation (the company generally determines when and where the audit will take place).

Views are sought as to other measures that may be implemented to further reduce the time taken to gain accreditation.

### The accreditation process

Under the current model for accreditation, a company must submit an application for accreditation, undergo an on-site audit or audits to assess compliance against the Scheme criteria, and reach a point where no major corrective actions remain open in order for the FSC to grant accreditation.

During the accreditation process, all companies are required to demonstrate compliance against WHSMS criteria, Scheme specific criteria that address the development and improvement of safety culture and two hazards specific to the works underway on the project site.

There is no limit or cap on the number of audits companies may take to achieve accreditation. It takes an average of 2.3 audits to achieve accreditation for the first time. Where a company continues to make progress and demonstrates commitment to achieving accreditation, audits continue to be conducted until the company has closed or downgraded the identified corrective actions and are in a position to be recommended to the FSC for accreditation.

### Compliance costs

Virtually all companies need to modify some elements of their safety systems and practices in order to achieve accreditation and this entails costs to meet the standards currently set by the OFSC. Some stakeholders have reported that it is an expensive exercise to achieve accreditation and some funding agencies say that using an accredited company for a Scheme project increases the cost of that project.

There are no direct costs charged by the OFSC to become accredited under the Scheme. Applicants are not charged a fee to lodge an application and there is no charge for on-site auditing undertaken by FSOs.

Applicants are likely to incur costs in the application process and in meeting the criteria for accreditation. For example, a prerequisite of applying for accreditation is to have a WHS management system certified to AS/NZS 4801:2001 or the equivalent international standard OHSAS 18001:2007.

Some companies engage consultants or specialist WHS staff to assist in implementing their internal safety systems, including meeting Scheme criteria. Conversely, many smaller accredited companies have achieved accreditation relatively quickly and easily. The costs of achieving and maintaining accreditation therefore appear to vary widely from company to company, and depend on a range of factors including the size of the organisation, the safety culture and the quality of existing systems.

Some organisations have attributed the cost of state and territory legislative requirements as a cost of the Scheme. Those costs would be incurred regardless of seeking accreditation.

Feedback is encouraged about the nature and value of costs directly attributable to obtaining and retaining accreditation under the Scheme, and ideas about how to minimise those costs while not reducing safety standards.

There is a range of material that suggests that good WHS is good for productivity. Many accredited companies report an improved bottom-line because of the cost savings achieved by fewer safety incidents and reduced compensation payments. Other benefits also reported include higher staff morale and increased efficiency.

Some stakeholders emphasise that red tape impacts need to be balanced against the major productivity benefits to be gained by further improving safety performance across the industry.

#### AS/NZS 4801:2001 requirement

The Scheme Regulations require that a company's WHSMS has been certified to AS/NZS 4801:2001 before the FSC can decide an application for accreditation. The OFSC requires evidence of this certification as part of the initial application process. This certification was initially required to ensure that any company applying for accreditation had, as a minimum, an existing WHSMS. The WHSMS criteria applicable under the Scheme were initially based on the criteria for an AS/NZS 4801:2001 certification.

The cost to a company to achieve certification under AS/NZS 4801:2001 is dependent upon a number of factors including the extent to which a WHSMS is already in place within the company, the size of the company, the complexity of the business, the number of permanent and temporary locations the company operates in and the number of audit days required to achieve the certification.

Prices as advised by an accredited third party certification body would suggest that certification for WHS ranges from approximately \$8,000 for the smallest of businesses up to \$80,000 or more. Businesses that engage consultants to deliver certification to a business could spend between \$10,000 for a small three to four person business up to \$200,000 or more for a large organisation. Surveillance audits and recertification audits are required over a three year period to maintain certification.

An option is to remove the requirement of AS/NZS 4801:2001 certification as a pre-requisite to applying for accreditation as Scheme requirements currently subsume AS/NZS 4801:2001 requirements.

The impact of removing this requirement with recognition of Scheme accreditation by other jurisdictions is discussed later in the paper.

#### Smaller companies and the Scheme

The Scheme applies to Commonwealth funded projects subject to the thresholds outlined previously. Of the 249 accredited companies that submitted a biannual report in the January to June 2013 period, 41 (approximately 15 per cent) are small companies based on the definition used by the ABS (0-19 employees).

Many smaller companies, notably residential builders, have raised concerns that the requirements of the Scheme, particularly at audit, are too complex, too costly and in a number of cases off-putting enough to discourage them from applying for accreditation. Some small businesses engage consultants or enter into arrangements with external providers for WHS services as they do not have the appropriate internal resources.

Conversely, some companies have reported that their smaller size has not inhibited their accreditation process and has in fact helped in the process. For instance, they advise that reduced lines of communication and consultation within the company, flatter structures for review and approval processes and simpler emergency procedures are beneficial in addressing the audit criteria in a way that suits their own business.

The [Audit Criteria Evidence Guide](#) provides sector-specific information for the residential building sector that recognises differences that exist compared to other sectors.. As examples, the criteria require site-specific WHS management plans to be developed for projects. In the context of housing projects with multiple dwellings, this requirement is applied for the overall project, rather than for each individual house (site) within the project. Similarly, requirements for adequate emergency and first aid equipment on site do not necessarily have to be done on each individual house site and can apply at the overall project level.

It is clear that more can be done to assist small companies meet requirements without compromising the safety standards or integrity of the Scheme and feedback is sought on ways to achieve this.

#### Withdrawals from the accreditation application process

A total of 129 companies that submitted an application for accreditation have subsequently withdrawn the application. A total of 38 companies did not proceed with reaccreditation at the expiry of their first period of accreditation. Enquiries made by the OFSC as to why a company has withdrawn have revealed a range of reasons, including having an immature WHSMS, not being a builder for the purposes of the Scheme, the company being in duress/dissolved, a company restructure, not having AS/NZS 4801:2001 and no longer being involved in a Commonwealth Government tender process.

Some smaller companies indicated that they would have struggled with the administrative burden of obtaining and maintaining accreditation. Some suggested for example that they would need to engage a full-time safety manager. This is not a Scheme requirement but raises issues about how communication as well as actual processes can be improved. Some smaller companies also question the relevance of the Scheme criteria to residential construction.

#### **Questions - Accessibility of the Scheme**

**Question 4:** What measures can be implemented to reduce the time taken to gain accreditation?

**Question 5:** How can the accreditation process and communication of the process be improved to assist first time applicants?

**Question 6:** What are the net additional costs and benefits (e.g. beyond legislative requirements) of achieving and retaining accreditation under the Scheme? How can costs be minimised while not reducing safety standards.

**Question 7:** Should AS/NZS 4801:2001 certification be removed as a pre-requisite to applying for Scheme accreditation?

**Question 8:** What changes can be made to current requirements to make applying to the Scheme and achieving accreditation easier for smaller companies?

## Clarity of Scheme requirements

### Audit criteria and Guidance

The [audit criteria](#) have undergone a number of revisions since the Scheme was first introduced. A [guidance document](#) was also produced in July 2011 to assist companies in understanding the types of information able to be presented at audit that might demonstrate compliance against each audit criterion. However, further work can be done to improve the clarity of the criteria requirements.

Providing clearer information on the intent and scope of each criterion, using “plain English”, would assist companies in both the application and on-site audit components of the accreditation process. This may lead to less time required to prepare an application, and less time and number of audits required to achieve accreditation. The audit criteria are discussed later in this paper.

### Information on the process

While fact sheets are available on the FSC website about various aspects of the Scheme, and information is communicated to applicants through correspondence during the accreditation process, there are several common questions consistently asked by potential applicants and those going through the process.

Providing detailed information on what to expect during the accreditation process, what the typical next steps and timeframes are at each stage of the process and when a company needs to contact the OFSC throughout the process may also improve timeframes and outcomes for companies by better preparing them for the accreditation process.

In the early years of the Scheme, information sessions on the Scheme and its requirements were held around the country on a regular basis and provided the opportunity for companies to have their questions raised and concerns addressed. Resources no longer permit the conduct of information sessions in the same way, and it is timely to fully explore other options for communicating Scheme requirements. These options may include greater use of technology such as interactive webinars, online information sessions, teleconferencing or sessions conducted on a cost recovery basis. A more risk-based approach to compliance monitoring as discussed below may also entail greater attention to communication.

### Support/mentoring

In addition to the support offered by the OFSC, a mentoring programme is currently available to applicants whereby they can be paired with an accredited company that can provide insight into the accreditation process and their experience in gaining accreditation. The uptake on this programme is limited, and the understanding of the scope of the programme is poor (that is, the programme is not designed for the accredited company to give system advice, but advice on its experience of going through the accreditation process and tips on what worked for it in preparing for the application and audit stages).

Noting the issues associated with the mentoring initiative, consideration should be given to how to improve the programme, and what other support measures would benefit companies seeking accreditation.

## Interactions with subcontractors

The Scheme focusses on a whole of project approach to safety and imposes requirements on principal contractors in relation to communication, consultation and management of subcontractor WHS.

Accreditation is not a requirement for subcontractors and they are specifically excluded by the Scheme Regulations. However, a key element of the Scheme is improved safety through stakeholder management. Accordingly, a number of the criteria which apply to accredited companies create requirements relating to their interaction with subcontractors. This flow on effect to subcontractors has resulted in feedback from subcontractors about confusion or inconsistency in the expectations and requirements of different accredited contractors that they work with. Some stakeholders have indicated that consideration should be given to ways to reduce the costs for subcontractors working to accredited head contractors on Scheme projects.

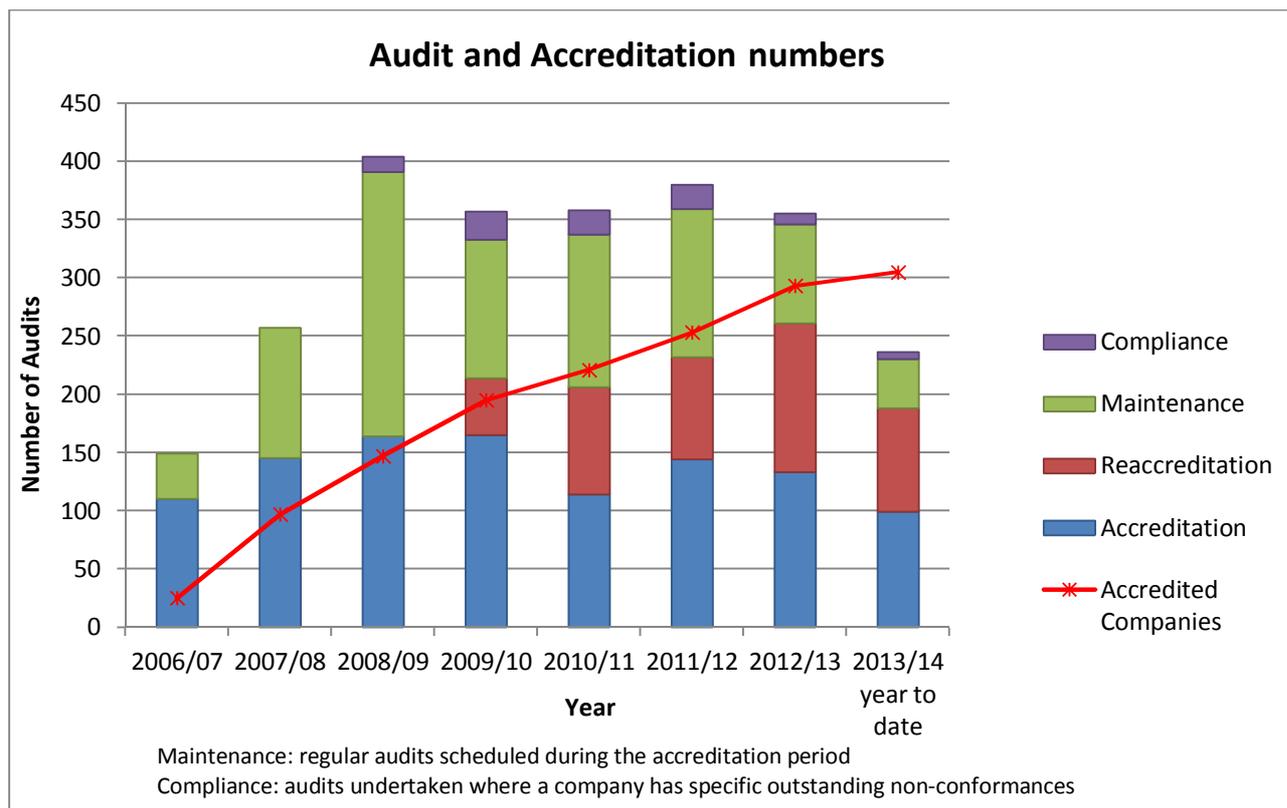
### **Questions – Clarity of Scheme requirements**

**Question 9:** What changes and support measures can be introduced to clarify criteria and Scheme requirements and assist companies in the accreditation process?

**Question 10:** In what ways can the interaction between principal contractors and subcontractors be improved to increase clarity of requirements and reduce compliance costs?

## **Ongoing accreditation compliance requirements**

Once accredited, companies are subject to several ongoing compliance requirements, including periodic maintenance audits, WHS data reporting and seeking reaccreditation prior to expiry. The following graph shows the number and type of audits undertaken by the OFSC since 2006-07.



Under the FWBI Act and the Scheme Regulations, audits must be undertaken for initial accreditation and re-accreditation every three years. Whether the reaccreditation audits should be mandated, particularly for companies with a good safety record, is a key issue for discussion. Audits are also undertaken to follow up on specific concerns, such as where a company receives accreditation with conditions attached. Finally, routine “maintenance” audits, while not mandated under the Scheme Regulations, are undertaken as a primary compliance measure during the three year accreditation period. These are undertaken as resources permit, but have declined over time in line with the increase in resources required for the mandated audits.

These ongoing requirements utilise both time and resources for companies and the OFSC. Consideration should be given to whether the current regime is appropriate and effective, and whether changes to the requirements can be made that reduce ongoing red-tape burdens on accredited companies without compromising safety standards on site. In particular, feedback is sought about whether a more targeted, risk-based approach to compliance would be preferable, and if so, options to implement such an arrangement.

Three key areas are discussed below in the context of possible modifications to existing processes to utilise evidence of a company’s good performance as compliance with Scheme requirements: the reaccreditation process, voluntary compliance and reporting requirements.

### The reaccreditation process

Under current legislation, accreditation can only be awarded for a period up to three years. At the end of this period a company must submit a new application and the FSC must have regard to this and an on-site audit in making a determination on a subsequent period of accreditation.

A company's good performance during the accreditation period will result in reduced audit requirements at reaccreditation (for example, a single day audit). However, a company must still have no identified major non-conformances to achieve reaccreditation and multiple audits may still occur to allow the company to achieve reaccreditation. OFSC data demonstrates that companies undergoing reaccreditation for the first or second time typically require two or more audits within a relatively tight timeframe.

Anecdotal evidence suggests that some companies focus significant resources on achieving accreditation and reaccreditation but that the same attention to maintaining that standard is not applied during the accreditation period. There is also anecdotal evidence that some companies maintain two systems – one for Scheme work and one for non-Scheme work (this could explain the variation in injury statistics across Scheme and non-Scheme work for the same accredited company); systems “placed on the shelf” pending reaccreditation; and two construction arms within a single company – one for Scheme work and one for non-Scheme work.

The current concentration of resources on reaccreditation seems to be to the detriment of more regular ongoing checks by both the company and the OFSC.

An alternative model for the reaccreditation process is one that rewards a company's good performance over the life of its accreditation by removing the need for an application and removes the concept of conducting a ‘reaccreditation’ audit or audits.

Instead, the FSC could have regard to audits undertaken by the company during its period of accreditation. This would require a schedule of audits over the three years, determined by a risk assessment of the company's performance and the results of these audits would factor into the reaccreditation process. Where a company has a history of good performance, the opportunity would exist for a smaller number of audits over the accreditation period and a simplified reaccreditation process. For these companies, the overall audit burden could be significantly reduced over each three year period of accreditation. An increase in the accreditation period from three to five years would further assist with reduced administration by increasing the time between accreditation audits.

This approach provides a better picture of a company's performance over the life of its accreditation and may address concerns that companies do not maintain the high standards required to achieve accreditation during the accreditation period.

The only exception to this process would be companies who reach the end of their accreditation period and have conditions attached to their accreditation or compliance action underway. These companies would be considered on a case by case basis with additional audit requirements likely. This would mean a greater emphasis and utilisation of resources in ongoing performance management, and a risk-based approach to auditing that reflects the fact that all companies are different and require varying levels of support and monitoring to maintain the requirements of accreditation.

#### Increasing voluntary compliance with Scheme requirements

In moving to a more risk-based approach to reaccreditation and ongoing accreditation, and in the context of budgetary constraints, ways to foster increased voluntary compliance need to be identified.

### *Adding an element of the unknown to audits*

All audits are currently organised several weeks in advance, projects sites are selected early and the criteria to be audited are sent well in advance of the audit date. This enables the project site to be 'cleaned', which doesn't necessarily present a true picture of the way the company may be operating and maintaining the standards required by the Scheme.

An element of the unknown could therefore be added to post accreditation audits by reducing the notice period, not notifying criteria or moving to a spot or surprise audit process.

### *Increasing the ramifications for poor performance*

A more risk-based approach, that lessened the monitoring of "low risk" companies, could be supported by an increase in the consequences should those companies not maintain the standards required under the Scheme.

### *Annual fee and charging for audits*

Other mechanisms for increasing voluntary compliance may be the introduction of an annual fee associated with maintaining accreditation and charging for audits.

Section 35(3) of the FWBI Act allows for the Scheme Regulations to prescribe fees for applications made under the Scheme. An annual fee for maintaining accreditation may foster greater value to be placed on maintaining the required standards as it would be a direct cost associated with maintaining accreditation. This could be a flat rate or tiered to the size of the company. It may act as a deterrent to companies that rely on multiple audits to achieve accreditation rather than proactively resolving any deficiencies themselves.

Charging for audits may detract from the current collaborative approach, and may lead to increased debate and tension where a company requires multiple audits to achieve the standards. Consideration would need to be given to whether different rates were applied to different companies (e.g. on the basis of their size), whether it was based on actual cost recovery (which may be inequitable for businesses outside metropolitan areas) and other factors.

### Reporting Requirements

A move to a risk-based approach would entail the collection of performance information to generate a risk profile. There may also be opportunity to better utilise data currently collected and to ensure consistency with data provided to other jurisdictions.

It is useful to consider whether the current OFSC reporting requirements target the right information at the right times, and whether the outcomes from this information are beneficial for companies.

The OFSC requires accredited companies to submit four types of reports throughout the period of their accreditation:

1. Contract Declaration (as required): To notify the OFSC of Scheme projects.
2. Incident reports (as required): For LTIs, MTIs, Fatalities and Dangerous Occurrences on Scheme projects, LTIs on non-Scheme projects over \$3 million, and fatalities on any projects regardless of contract value.

3. Scheme Project Report (every six months): Accredited contractors are required to provide reports on the safety performance of each of the Scheme projects they have undertaken during the reporting period. At the conclusion of the project, an 'end of project' Scheme project report, covering the entire project's performance, is required to be submitted by the accredited company.
4. Biannual Reports (every six months): Accredited contractors submit summaries of their safety performance company-wide on both Scheme and non-Scheme projects during the period.

During the most recent biannual reporting period (July to December 2012, available on [www.fsc.gov.au](http://www.fsc.gov.au)) 816 incident reports were submitted (352 non-Scheme and 464 Scheme). This was an average of 3.3 incident reports per accreditation. The incident report form focuses on the circumstances surrounding the incident (risks involved, mechanism, breakdown agency etc).

Every six months the OFSC uses the information provided by companies in the four reports above to produce a biannual data analysis report (available on [www.fsc.gov.au](http://www.fsc.gov.au)), and to update the performance comparison tool, allowing companies to benchmark their performance against all other accredited companies. Safety initiatives highlighted by companies in their biannual reports also form the basis for case studies and news articles published on [www.fsc.gov.au](http://www.fsc.gov.au).

In keeping with the Scheme criteria *Demonstrated effective subcontractor OHS management*, the OFSC collects data on the hours worked for both employees and subcontractors, and requires subcontractor incidents be reported by the accredited head contractor. This makes comparisons with Safe Work Australia data problematic as Safe Work Australia's serious claims figures measure injuries that result in a worker's compensation claim, excluding many self-employed subcontractors. OFSC incident data also includes MTIs and LTIs that aren't the subject of a compensation claim, and thus not captured by Safe Work Australia.

In addition to the biannual data analysis report, which summarises LTI, MTI and fatality data and analyses the circumstances behind incidents reported to the OFSC, the information collected from accredited contractors is also used to generate a performance comparison tool available on [www.fsc.gov.au](http://www.fsc.gov.au). The tool allows accredited companies and potential applicants to compare their performance data with those recorded by other accredited contractors, placing them on a percentile.

Feedback is also sought on ways in which the data collected by the OFSC can be better aligned with reporting requirements for other purposes.

### **Questions - Ongoing Accreditation Compliance requirements**

**Question 11:** Is the current accreditation period of up to three years appropriate? If not what should it be?

**Question 12:** Should reaccreditation be treated differently to accreditation? In what ways?

**Question 13:** How would we better ensure that companies maintain the standard achieved at accreditation into the future and across all projects? How can an element of the unknown be added to audits?

**Question 14:** What factors can be taken into account in undertaking a risk assessment of a company's performance during its accreditation? What would be the key risk indicators?

**Question 15:** Should there be an annual fee for maintaining accreditation once accredited? Would this fee foster greater voluntary compliance?

**Question 16:** Is the WHS data collected by the OFSC and the data analysis produced appropriate and beneficial? How could collection and analysis be improved?

**Question 17:** How could the information disseminated to industry be improved to better educate for best practice and benchmarking to provide self-help opportunities for companies?

### **OFSC and FSO performance**

Stakeholders have expressed concern about the consistency of the application of the audit criteria requirements and the approach to audits. Feedback is sought on options to increase the quality and consistency of FSO audits, and any improved communication arrangements. Current arrangements are described below.

#### FSO consistency

A number of mechanisms are in place designed to ensure quality and consistency of the audit programme:

- New FSOs are required to undergo induction training covering all criteria and auditing requirements as well as code of conduct requirements.
- All FSOs are observed at audits, with particular emphasis on new FSOs.
- FSOs are provided with material and guidance - documents include General Directions to Federal Safety Officers 2005, the FSO Code of Conduct and the FSO Guidelines.
- FSO Forums are conducted on average every six to 12 months to discuss issues of importance and help ensure consistency of approach amongst auditors.
- FSO selection for audit considers the skills and expertise of the FSOs, not just their location (that is, someone with relevant background in telecommunications would be matched where possible for a telecommunications audit).
- At the conclusion of each audit, companies are provided with an evaluation form seeking feedback on FSO performance, providing an opportunity for the review of any issues.
- All audit reports are reviewed by the OFSC prior to being issued to companies. This is to check for consistency of criteria interpretation and level of any findings made.

- Within accreditation and reaccreditation processes, the OFSC generally utilises the same FSO for follow up of findings to ensure a level of consistency for the company.

Any specific issues raised by companies with the OFSC are followed up with the company and FSO involved. There may be under-reporting of concerns where companies consider that it may jeopardise their accreditation process. Concerns that do arise are generally raised in the review of corrective actions identified at audit and in the behaviour of the FSO at audit. Where a company believes the FSO has acted outside of the scope of the criteria, or has provided findings inconsistent with previous findings, the OFSC seeks additional information from the FSO and company, and uses this information to determine what action needs to be taken regarding the findings.

OFSC experience is that in many cases, concerns about inconsistency arise from a misunderstanding about the criteria requirements by the company, and are resolved collaboratively through subsequent communication between the company, the OFSC and the FSO. Where an error on the part of the OFSC or FSO is apparent, or where the difference of opinion between the FSO and the company is significant enough for the company to not accept an auditor's findings, corrective actions have been set aside (a very small number of cases). In a few extreme cases entire audits have been set aside with an alternative FSO sent to conduct subsequent audits.

#### Federal Safety Officer appointment processes

FSOs are selected through competitive open tender processes (conducted every four to five years) with successful service providers engaged under a Deed of Standing Offer (the Deed) and specified personnel appointed as FSOs. FSOs are required to hold or demonstrate:

- Current WHS lead or principal auditor, or equivalent, certification to:
  - RABQSA International; or
  - International Register of Certified Auditors (IRCA) WHS Certification
- WHS and auditing experience in the construction industry
- familiarity with and the ability to apply the scope and general content of AS/NZS 4801:2001 and/or OHSAS 18001:1999
- a sound knowledge and understanding of WHS and Australian WHS laws, including relevant WHS codes of practice and standards
- the ability to assess the application of Australian WHS laws in the building and construction industry across all Commonwealth, state and territory jurisdictions
- a sound understanding and knowledge of risk management processes
- tertiary or other qualifications in WHS
- relevant licences and certificates of competency in relation to specific activities or hazards common in the construction industry (e.g. construction induction card such as a green card, dogman/riggers/scaffolders licence, plant operators licence etc.)
- demonstrated ability to meet deadlines and
- evidence of liaison and interpersonal skills that demonstrate a capacity to work collaboratively with companies.

Applicants who only hold quality and environmental qualifications are not considered for appointment as FSOs.

Once engaged, an induction and observation process is undertaken to ensure the suitability of FSOs. Further, the Deed provides no guarantee of work, meaning those FSOs who are observed to not meet the required standards are either not utilised, or are terminated (also provided for under the Deed). Feedback from companies assists in this regard.

As a condition of the Deed, FSOs are required to notify the OFSC of any actual or perceived conflicts of interest when they are approached to do audits on the OFSC's behalf. The most common scenario for a potential conflict of interest is where an FSO has been or is working for a company. The OFSC applies a policy where audits are not offered to an FSO, for a two year period, in relation to a company where the FSC has been working for that company. who had been engaged by the company within a two year period.

The process for selecting FSOs aims to engage experienced and qualified personnel and those likely to foster consistency and minimise any actual or potential conflicts of interest.

### OFSC performance

The functions of the FSC and by extension the OFSC include promoting WHS in relation to building work, accrediting companies to the Scheme and promoting the benefits of the Scheme.

As part of the commitment to promote sustainable WHS cultural change in the building and construction industry, the OFSC regularly undertakes education activities as well as formal and informal stakeholder consultation. For example, the FSC attends safety related conferences, forums and meetings of safety managers, industry representatives and undertakes site visits.

The FSC chairs two consultative reference groups, the Industry Reference Group and the Australian Government Agency Reference Group. Generally these groups meet two to three times a year.

The OFSC website [www.fsc.gov.au](http://www.fsc.gov.au) provides an opportunity to highlight examples of best practice from companies and more can be done in this area as a vehicle for communicating between the OFSC and the industry.

The OFSC has a range of internal KPIs that focus in the main on achieving accreditation for companies in as timely a manner as possible. For example FSOs are required to submit their audit reports within 5 working days and the OFSC benchmark is then to issue the report to the company within another 5 working days.

There is an opportunity to identify new KPIs. Company suggestions as to appropriate KPIs for the OFSC and FSOs are sought.

Views are sought as to other ways in which the OFSC can monitor its performance and that of the FSOs.

#### **Questions - OFSC and FSO performance**

**Question 18:** How can FSO consistency in behaviour and audit interpretation be improved and reporting of specific instances of inconsistency be increased?

**Question 19:** Is FSO conflict of interest an issue? If yes, in what ways can it be addressed?

**Question 20:** How can the OFSC improve its own performance? In what ways can the OFSC better articulate its message of improved safety and cultural change to the industry?

## **Agencies' adherence to Scheme requirements**

The biggest incentive of the Scheme is the benefit to be gained by becoming accredited and being able to secure Commonwealth Government funded building work. Funding agencies play a vital role in ensuring that their procurement processes reflect the requirements of the Scheme and therefore meet the Government's agenda to use its own purchasing power to improve safety in the building and construction industry.

The OFSC established the Australian Government Agency Reference Group early in the implementation of the Scheme to work with agencies to understand the Scheme and better deliver projects, safely, on time and on budget. The Australian Government Agency Reference Group also provides a forum where issues such as any resource implications of the Scheme, improvement strategies and possible synergies across agencies can be discussed.

The OFSC has initiated a range of activities to educate and support agencies in their role as model clients in the building and construction industry. The OFSC actively works with agencies on projects that will address and highlight different aspects of WHS. Agencies are also able to access expert advice on projects associated with the model client initiative which may lead to an increase in agencies' understanding and management of WHS.

Some agencies have experienced difficulties in adhering to the requirements of the Scheme. Most commonly, agency representatives involved in procurement processes are unaware of the Scheme requirements. To assist Government agencies to comply with Scheme requirements, the OFSC has developed a series of Model Clauses that may be included in tender, contract and funding agreement or grant documentation.

Further information is also available in the Advice to Agencies fact sheet and Guidance for Australian Government Agencies and Funding Recipients documents available on the website.

There have been instances where agencies have entered into a contract for building work with an unaccredited builder.

There have been 32 instances of identified non-compliance with the legislation during the life of the Scheme where funding agencies have entered into contracts with unaccredited companies; 18 relating to directly funded projects and 14 indirectly funded projects. Eleven of the directly funded instances occurred in the initial two years of the Scheme.

Where there has been non-compliance with Scheme requirements, an explanation is sought from the funding agency. If a satisfactory response is not forthcoming, the issue can be raised to departmental head and Ministerial levels.

Funding recipients or agencies have also occasionally split a single head contract for building work into two or more head contracts below the \$3 million threshold. In a number of examples, the same builder is engaged to undertake all of the resulting contracts.

Where there is a perception of contract splitting to avoid Scheme requirements, the OFSC will work to clarify the situation and work with the agency to ensure Scheme requirements are understood and with companies to encourage and assist them in the accreditation process.

The OFSC relies on agencies completing contract notifications as a source of information on Scheme projects. The response rate in this area is mixed, especially when it comes to declarations for indirectly funded projects. Suggestions are sought for ways to increase the submission of contract declaration forms by funding recipients and agencies. Client agencies are also required to complete an end of project report. The OFSC also monitors AusTender.gov.au and other procurement databases to determine contracts for tender or due for award that fall within the Scheme thresholds where an accredited builder is required to be engaged.

Where funding passes through several entities, it can be difficult to track where a Scheme contract is due to be let, and therefore often problematic to prevent non-compliance. Therefore, the question is asked what other mechanisms can be introduced to ensure compliance with the legislation and assist agencies to adhere to the requirement to utilise an accredited builder for Scheme contracts.

### **Question – Agencies’ adherence to Scheme requirements**

**Question 21:** What can the OFSC do to assist agencies to comply with Scheme requirements?

### **Interaction of the Scheme with other compliance requirements**

The Scheme operates in an environment of numerous existing regulatory requirements. With that in mind, there are several areas where the interaction of requirements has been problematic, or where steps can be taken to reduce the compliance burden on companies meeting multiple similar requirements.

Feedback is sought about areas in which the Scheme overlaps or duplicates the safety related requirements of state and territory jurisdictions. While the OFSC requirements aspire to set a higher benchmark for those companies that wish to secure Commonwealth government funded building work, a number of the criteria at an OFSC audit test compliance to the local laws. This directs resources away from those areas that would allow a company to demonstrate safety practices above and beyond local jurisdictional requirements.

#### **Safe Work Method Statements (SWMS)**

SWMS are a common cause of query and complaint to the OFSC from companies, unions and industry associations.

It is often assumed that the OFSC has responsibility for SWMS across the industry; this is not the case.

SWMS are a requirement of the jurisdictional WHS legislation. State and territory regulators introduced SWMS to entrench the requirement for a documented description of how work is to be done safely, formalise hazard identification and risk assessment processes within a systematic approach to managing and controlling health and safety in the workplace.

In the early days of the Scheme there was a significant push by the OFSC to improve the quality of SWMS offered up at audit; however, this approach has changed in the last couple of years following consultation with industry and FSOs.

The Scheme generally does not prescribe through which documents companies should address safety system criteria, although adherence to local legislation is required. So long as the criteria are met, the documentation of systems should be of maximum utility and relevance to the company's individual circumstances. Accordingly, FSOs review SWMS where they are presented by a company as evidence of documentation against Scheme criteria. FSOs do not dictate content but rather ensure that a SWMS reflects the work activity being undertaken and that the controls are being implemented. FSOs are directed to consider alternative methods (that is, other than SWMS) presented by companies that deliver the outcomes of a risk assessment process.

A small number of Scheme criteria directly reference SWMS and they require local laws to be met, and focus on ensuring the involvement of workers, management, and subcontractors in key safety systems. Specifically, the criteria require:

- subcontractor involvement in the development of SWMS
- control measures within SWMS reflect any relevant requirements of WHS Acts, Regulations, Codes of Practice and Australian Standards
- SWMS have been reviewed and accepted by the Principal Contractor prior to work
- workers are familiar with SWMS relevant to the work activities they are undertaking, and
- assessment and control of risks as identified for high risk construction activity.

Feedback is sought about how to streamline and better align the Scheme in relation to SWMS requirements, and any options to improve communication about those requirements.

#### Other Commonwealth procurement processes

There are a range of Commonwealth requirements related to procurement which may be difficult for companies to navigate. The procurement of goods and services, including the procurement of construction services by Commonwealth departments and agencies is governed by the:

- *Financial Management and Accountability Act 1997 (FMA Act)*
- *Commonwealth Authorities and Companies Act 1997 (CAC Act)*

The FMA Act and the CAC Act will be replaced by the *Public Governance, Performance and Accountability Act 2013* which commences on 1 July 2014.

The FMA Act currently provides that the Minister for Finance may issue regulations or rules about how procurements must be undertaken by Commonwealth agencies. In particular, all agencies covered by the FMA Act must comply (and where applicable, ensure suppliers comply) with the Commonwealth Procurement Rules (CPRs) and any other Procurement Connected Policies (PCPs) issued by agencies (that are relevant to the particular type of procurement being undertaken).

The CPRs apply to the procurement of construction services, where the procurement is valued over \$9 million. Similarly, some PCPs only apply to specific procurements and where the procurement value is above certain thresholds.

In relation to the procurement of construction services by Commonwealth agencies, tenderers are required to demonstrate compliance with the Building Code 2013 and the Scheme (subject to relevant financial thresholds). Commonwealth agencies are also encouraged to favourably consider those tenderers who demonstrate commitment to supporting apprenticeships and education and training in the workplace.

A complete list of PCPs is available on the Department of Finance website at:  
<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/policy-framework/procurement-policies/principles.html>

### **Interaction of the Scheme with state and territory pre-qualification arrangements**

The OFSC has sought to reduce the administrative burden for builders by progressing arrangements with states and territories to recognise the Scheme. The OFSC has entered into Scheme recognition arrangements with eight prequalification jurisdictions. This means that any builder accredited under the Scheme is automatically deemed to comply with the relevant state/territory WHS prequalification requirements in place for that jurisdiction. The following list identifies those state and territory schemes that recognise OFSC accreditation:

- ACT Government Prequalification Scheme for Construction Industry Contractors
- NSW Government Finance and Services - Contractor Prequalification And Best Practice Accreditation Scheme 2011-2014
- NSW Government Transport: Roads and Maritime Services - Prequalification System for Civil (Road and Bridge) Construction Contracts
- QLD Transport and Main Roads - National Prequalification System for Civil (Road and Bridge) Construction Contracts
- Tasmanian Department of Infrastructure, Energy and Resources - National Prequalification System for Civil (Road and Bridge) Construction Contracts
- WA Department of Finance – Builders Prequalification Scheme
- Main Roads WA – National Prequalification System for Civil (Road and Bridge) Construction Contracts
- NT – Contractor Accreditation Limited
- VicRoads – National Prequalification System for Civil (Road and Bridge) Construction Contracts
- SA Department of Planning, Transport and Infrastructure - National Prequalification System for Civil (Road and Bridge) Construction Contracts

The Department worked with the Council of Australian Governments (COAG) Infrastructure Working Group (through the Australasian Procurement and Construction Council) and Austroads to develop nationally consistent prequalification systems for civil and commercial construction. Harmonised prequalification arrangements took effect from 1 January 2011.

In seeking to further reduce the red tape burden, other state and territory prequalification schemes and requirements might be targeted for Scheme recognition. Further to this, the impact of the previously noted possible removal of AS/NZS 4801:2001 as a requirement for Scheme application will need to be scoped relative to current jurisdiction prequalification requirements to ensure no adverse impact.

#### **Questions - Interaction of the Scheme with other compliance requirements**

**Question 22:** What changes should be made to the way the industry utilises SWMS? What role can the OFSC play to facilitate this change?

**Question 23:** What measures can be considered to reduce procurement related compliance costs and administration?

**Question 24:** What are the other pre-qualification Schemes that can be considered for mutual recognition in order to further reduce red tape?

## Other issues

Other areas where feedback and ideas on improvements to current processes would be useful have been identified below.

### Feedback to the OFSC and actioning of issues

Feedback is provided by a range of individuals and organisations including companies, industry bodies, state and territory regulators, safety networks and members of the public through a range of mechanisms including formal surveys, via phone and email, and the Industry Reference Group. The most common form of contact is through the Accreditation and Audit Team Case Manager allocated for each audit and to whom companies provide both oral and written feedback regarding their audit experience.

A survey feedback form is provided to companies after each audit. Currently only 15 per cent of survey forms are returned to the OFSC. The information provided in the survey forms generally rates the OFSC and FSOs as 4 to 5 on a 5 point scale, with an overall average rating of 4.3.

At the completion of a Scheme project the Government agency or funding recipient that was the client for the project completes an assessment of the accredited contractor's performance against six elements, as well as rating their own performance throughout the project. The results of these assessments are used to inform the OFSC where companies or agencies would benefit from further education and support from the OFSC to achieve better outcomes.

Some companies may be reluctant to provide negative feedback to the OFSC because they fear jeopardising their accreditation. This reluctance would distort the positive conclusions that could be drawn from the small survey sample identified above.

### [Audit criteria](#) review

The Scheme was initially established to raise the bar and challenge companies to not only achieve legislative compliance but to strive beyond basic legislative compliance in WHS to improve the safety culture of the building and construction industry. To do that, audits have focussed on a mix of WHSMS criteria, the Scheme specific criteria such as Senior Management Commitment and Training Arrangements and hazard criteria. At a typical two day first accreditation audit, all companies are assessed against the same WHSMS criteria, and Scheme criteria. In addition, hazard specific criteria based on the works occurring on the site are assessed. At an ongoing maintenance audit, a reduced number of criteria are typically reviewed.

This approach to the content of audits has remained largely unchanged since the commencement of the Scheme. This review offers the opportunity to re-think the audit structure: existing criteria could be modified or removed, new criteria can be created, a new process that restores balance between system review and on-site practices could be considered. An opportunity also exists to focus on safety leadership and culture with additional or expanded criteria.

The focus of the current criteria should also be reconsidered in light of a number of legislative changes in the WHS environment, particularly the harmonised arrangements for WHS. A number of Scheme criteria relate to compliance with the legislative requirements, although others relate to systems and culture that ensure an effective and consistent organisational approach to ensuring those requirements are met and maintained.

Feedback is therefore sought about criteria that improve safety culture and behaviour, as well as those criteria that do not add value, are duplicative, or could be assumed to be met as a result of other requirements or other compliance processes. Suggestions are also sought about specific areas of the criteria that are confusing, or where further guidance is needed.

Suggestions about changes which would support continuous improvement in safety outcomes are also encouraged.

#### **Questions - Other issues**

**Question 25:** Are there ways to increase feedback (both positive and negative) on the Scheme?

**Question 26:** Are the audit criteria appropriate? Are there criteria that are redundant or could be removed without impacting safety outcomes? What are the audit criteria that will improve safety in the industry?

**Question 27:** Are there any other issues specific to the terms of reference that have not been addressed by the previous questions?

## Submitting a response

Submissions must be provided in electronic form using the Comment Response Form (found at attachment B) and emailed to [ofscreview@employment.gov.au](mailto:ofscreview@employment.gov.au) by 5:00pm AEST on 4 April 2014. Please include your name, position title, company/department or association details and postal address in the email.

Each submission must be accompanied by a completed cover sheet (found at attachment A). Anonymous submissions will not be accepted.

Submissions can address any or all of the questions in the template. It is not necessary to provide a response to every question. The template also provides space for any additional comments that responders may have that have not been raised in the questions.

For queries please phone 1800 652 500.

Alternatively you can submit your comment by contacting your employer association, union or state or territory WHS authority and have them incorporate your comment into their submission.

Please ensure that the submission provided to the Department is the final version and that you have removed any drafting notes, tracked changes, annotations, hidden text or marked revisions, as well as any internal links, large logos or decorative graphics (to minimise file sizes).

If your comment is confidential, please clearly mark your submission "IN CONFIDENCE"



**Australian Government**  
**Department of Employment**

**Attachment A**

**Comment Response Cover Sheet**

**Please complete and submit this form with your submission by 5:00pm AEST on 4 April 2014 to [ofscreview@employment.gov.au](mailto:ofscreview@employment.gov.au).**

Organisation:

Street address

Suburb/City:

State and Postcode:

Postal address:

Suburb/City:

State and Postcode:

Principal contact:

Position:

Phone:

Mobile:

Email address:

If you wish to make a submission that contains confidential information, please ensure that the material is clearly marked "IN CONFIDENCE".

## Comment Response Form

**Discussion Paper**  
**A REVIEW TO MODERNISE THE OFFICE OF THE FEDERAL SAFETY COMMISSIONER**  
**AND THE AUSTRALIAN GOVERNMENT BUILDING AND CONSTRUCTION OHS**  
**ACCREDITATION SCHEME**

Complete and submit this form and the coversheet at Attachment A  
 by 5:00pm AEST 4 April 2014 to [ofscreview@employment.gov.au](mailto:ofscreview@employment.gov.au)

It is not necessary to provide a response to every question. The template also provides space for any additional comments that responders may have that have not been raised in the questions.

When providing comment or feedback, please give tangible examples and suggestions for improvement/amendment where possible.

**Response to questions identified in the Discussion Paper**

<b><i>Application of the Scheme - see pages 10-13</i></b>
<b>Question 1: Should the thresholds for directly and indirectly funded projects be lowered, removed, increased, or remain unchanged? To what levels?</b>
<input type="checkbox"/> Lowered <input type="checkbox"/> Removed <input type="checkbox"/> Increased <input type="checkbox"/> Remain Unchanged <b>Comment:</b>
<b>Question 2: Should the definition of building work be changed? If yes, how should building work be defined?</b>
<input type="checkbox"/> Yes <input type="checkbox"/> No <b>Comment:</b>
<b>Question 3: Should exemptions to the Scheme apply to particular agencies or sectors of work (for example, residential)?</b>
<input type="checkbox"/> Yes <input type="checkbox"/> No <b>Comment (why/why not?):</b>
<b><i>Accessibility of the Scheme – see pages 13-16</i></b>
<b>Question 4: What measures can be implemented to reduce the time taken to gain accreditation?</b>
<b>Comment:</b>

**Question 5: How can the accreditation process and communication of the process be improved to assist first time applicants?**

**Comment:**

**Question 6: What are the net additional costs and benefits (for example, beyond legislative requirements) of achieving and retaining accreditation under the Scheme? How can costs be minimised while not reducing safety standards?**

**Comment:**

**Question 7: Should AS/NZS 4801:2001 certification be removed as a pre-requisite to applying for Scheme accreditation?**

Yes  No

**Comment:**

**Question 8: What changes can be made to current requirements to make applying to the Scheme and achieving accreditation easier for smaller companies?**

**Comment:**

*Clarity of Scheme requirements – see pages 14-18*

**Question 9: What changes and support measures can be introduced to clarify criteria and Scheme requirements and assist companies in the accreditation process?**

**Comment:**

**Question 10: In what ways can the interaction between principal contractors and subcontractors be improved to increase clarity of requirements and reduce compliance costs?**

**Comment:**

*Ongoing Accreditation Compliance requirements – see pages 18-22*

**Question 11: Is the current accreditation period of up to three years appropriate? If not what should it be?**

Yes  No

**Comment:**

**Question 12: Should reaccreditation be treated differently to accreditation? In what ways?**

Yes  No

**Comment:**

**Question 13: How would we better ensure that companies maintain the standard achieved at accreditation into the future and across all projects? How can an element of the unknown be added to audits?**

**Comment:**

**Question 14: What factors can be taken into account in undertaking a risk assessment of a company's performance during its accreditation? What would be the key risk indicators?**

**Comment:**

**Question 15: Should there be an annual fee for maintaining accreditation once accredited? Would this fee foster greater voluntary compliance?**

Yes  No

Yes  No

**Comment:**

**Question 16: Is the WHS data collected by the OFSC and the data analysis produced appropriate and beneficial? How could collection and analysis be improved?**

Yes  No

**Comment:**

**Question 17: How could the information disseminated to industry be improved to better educate for best practice and benchmarking to provide self-help opportunities for companies?**

Yes  No

**Comment:**

*OFSC and FSO performance – see pages 23-25*

**Question 18: How can FSO consistency in behaviour and audit interpretation be improved and reporting of specific instances of inconsistency be increased?**

**Comment:**

**Question 19: Is FSO conflict of interest an issue? If yes, in what ways can it be addressed?**

**Comment:**

**Question 20: How can the OFSC improve its own performance? In what ways can the OFSC better articulate its message of improved safety and cultural change to the industry?**

**Comment:**

*Agencies' adherence to Scheme requirements – see pages 26-27*

**Question 21: What can the OFSC do to assist agencies to comply with Scheme requirements?**

**Comment:**

*Interaction of the Scheme with other compliance requirements – see pages 27-29*

**Question 22: What changes should be made to the way the industry utilises SWMS? What role can the OFSC play to facilitate this change?**

**Comment:**

**Question 23: What measures can be considered to reduce procurement related compliance costs and administration?**

**Comment:**

**Question 24: What are the other pre-qualification Schemes that can be considered for mutual recognition in order to further reduce red tape?**

**Comment:**

***Other issues – see pages 30-31***

**Question 25: Are there ways to increase feedback (both positive and negative) on the Scheme?**

Yes  No

**Comment:**

**Question 26: Are the audit criteria appropriate? Are there criteria that are redundant or that could be removed without impacting safety outcomes? What are the audit criteria that will improve safety in the industry?**

Yes  No

**Comment:**

**Question 27: Are there any other issues specific to the terms of reference that have not been addressed by the previous questions?**

**Comment:**