



Submission

to the

Independent Review of the Federal

Safety Commissioner

31st July 2023

Introduction

1. On 16th May 2023, the Federal Government announced an independent review (the **Review**) of the Federal Safety Commissioner (the **FSC**) led by Ms Marie Boland.
2. According to the Federal Safety Commissioner Review Terms of Reference¹, the review will examine whether:
 - the FSC and the Scheme have improved work health and safety practices in the building and construction industry;
 - the powers and functions of the FSC, as well as the Scheme's requirements, are adequate and appropriate to drive safety improvements within the building and construction industry;
 - the FSC and the Scheme sufficiently address currently understood hazards within the building and construction industry, including more recently acknowledged hazards;
 - it is appropriate to charge companies seeking accreditation in accordance with the Australian Government Cost Recovery Guidelines and, if so, what impact this may have on the industry and how could such charging be levied fairly noting the varying size of accredited companies;
 - changes to the functions of the FSC or the requirements and implementation of the Scheme are necessary to support implementation of the Government's priorities such as the Buy Australia Plan and a Better Deal for Small Business; and
 - whether the safety performance of other industries which Government funds warrants expanding the FSC and the Scheme, taking into consideration factors such as cost, resources and existing regulation. If expansion to other industries is proposed, the review should outline how implementation should occur.
3. On 3rd July 2023, Ms Boland released the Independent Review of the Federal Safety Commissioner Discussion Paper² (the **Discussion Paper**). The Discussion Paper outlined the Work Health and Safety Accreditation Scheme (the **Scheme**), identified a number of relevant statistics, and posed a number of questions (38 in total) on different issues and concerns related to the operation of the FSC. Interested parties were invited to submit a written response to the questions or respond to a brief survey that is available on the Review webpage. In the Foreword of the Discussion Paper, Ms Boland noted that the topics covered in the Discussion Paper are not exhaustive and other issues can be raised.³
4. The Construction, Forestry, Maritime, Mining and Energy Union (Construction and General Division) (the **CFMEU**) is the primary union in the Australian building and

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

² <https://www.dewr.gov.au/work-health-and-safety/resources/independent-review-federal-safety-commissioner-discussion-paper>

³ Ibid., p.4

construction industry and a major stakeholder representing tens of thousands of workers. The CFMEU has a substantial interest in health and safety matters affecting our members and therefore welcome this opportunity to make a submission to the Review and to express our views on the role of the FSC and its operations.

5. The CFMEU does not intend answering all the questions posed in the Discussion Paper as it will be readily apparent from our response in the next section that no response is required to many of them, however we have included all the questions in this submission to aid in the preparation of a consultation summary.

CFMEU Position on the FSC

6. The CFMEU does not support the continued operation of the FSC, as from our perspective it has not made any significant impact on improving health and safety in the building and construction industry.
7. The Scheme that it administers is not fit for purpose in preventing builders, with unsatisfactory work health and safety records or performance, from benefiting from Commonwealth funded building and construction work. There is no transparency with the Scheme and workers are left in the dark on any Corrective Action Reports that the FSC has issued, or any sanctions imposed on builders.
8. The CFMEU does not support the continued operation of a Government agency that seeks to regulate and specifically target one industry or a part of it. It is noted that this stance is consistent with the stated position and policy of the ALP, the party in Government, who adopted the following in its 2021 Platform:

Safer workplaces

44. Labor believes that all workers have an equal right to healthy and safe work. Every worker deserves to know that their working life will be safe, healthy and respectful.

Response to Questions from the Discussion Paper

3.1 Improving Work Health and Safety Practices

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?

9. The FSC was established by the Howard Coalition Government after the Cole Royal Commission into the Building and Construction Industry found the incidence of workplace related injury unacceptable and in need of reform. On 6th May 2002 The Honourable Terence Cole RFD QC made a public statement on health and safety in the building and construction industry in which he stated:

“The statistical compendium for the industry, shortly to be issued [by the Commission], makes clear that the safety record in the industry is poor. The likelihood of suffering a workplace-related injury or fatality is greater for workers in the building and construction industry than for workers generally.

The only industries where the risk of injury is higher are the maritime, agricultural, forestry and fishing, mining and transport and storage industries. In only the transport and storage industry is there a higher risk of a fatality. Although there is a downward trend in the risk of injury, the number of injuries remains unacceptably high. Fatalities are not acceptable.”⁴

10. The unfortunate reality is nothing has materially changed. As the Discussion Paper points out,

2.1.1 Fatalities in the Construction Industry

The most recent publicly available Safe Work Australia data demonstrates the ongoing dangers construction workers face on site, with the industry experiencing the fourth highest fatality rate in Australia in 2021 at 2.1 fatalities per 100,000 workers.

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2.1.2 Workers’ Compensation in the Construction Industry

Construction industry workers also feature prominently in serious workers’ compensation claims by occupation, with labourers (21.9 serious claims per million hours worked) and machinery operators and drivers (11.7 serious claims per million hours worked) in the top three.⁵

11. Data from Safe Work Australia shows that there were 647 fatalities in the construction industry over the period 2003 to 2021,⁶ the second highest behind the transport, postal and warehousing, and agriculture, forestry and fishing industries. The number of fatalities was nearly double that of the manufacturing industry. The CFMEU understands that these figures do not include workers who have died because of medical conditions related to workplace exposure to asbestos and other harmful dusts such as silica, therefore the Safe Work Australia data underestimates the number of fatalities.
12. Perhaps the most damning statistic is the one that is correlated from the following paragraph of the Discussion Paper:

“As at 21 June 2023, three fatalities were reported to the FSC on Scheme project worksites. Preliminary SWA data for the same period shows there have been seven fatalities across the entire building and construction industry (inclusive of the three reported to the FSC).”⁷

13. These figures indicate that **43% of fatalities in the building and construction industry occurred on Scheme project worksites.** This percentage may be even higher following the death of a 20 year old worker on 5th July 2023, who was crushed by falling

⁴ Final Report of the Royal Commission into the Building and Construction Industry, Vol 6 - Reform – Occupational Health and Safety, February 2003 , p.5

⁵ Discussion Paper, p. 12-13

⁶ <https://data.safeworkaustralia.gov.au/interactive-data/topic/work-related-fatalities>

⁷ Discussion Paper, p.17

reinforcement at the John Hunter Hospital site in NSW where Multiplex is the head contractor.⁸

14. The only conclusion that can be reached is that there is no evidence to demonstrate that the Scheme has improved safety practices across the building and construction industry since the establishment of the FSC back in 2005.

Question 2

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

15. There are no signs that we have observed that indicate that a worksite is operated by an accredited entity.

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?

16. There are significant differences. Under the model and Victorian WHS legislation:
- (a) PCBU's have legal obligations, so far as is reasonably practicable, to ensure the health and safety of workers and other people like visitors and volunteers. A PCBU has further obligations if involved in specific kinds of activities like:
 - the management and control of workplaces, or fixtures, fittings or plant at workplaces
 - the design, manufacture, import or supply of plant, substances or structures
 - installation, construction or commissioning of plant or structures.
 - (b) PCBUs must also have meaningful and open consultation about work health and safety with workers, health and safety representatives, and health and safety committees.
 - (c) A PCBU must also consult, cooperate and coordinate with other PCBUs if they share duties.
 - (d) A PCBU has a primary duty of care to ensure workers and others are not exposed to a risk to their health and safety.
 - (e) A person owes this duty of care when as a PCBU they:
 - direct or influence work carried out by a worker
 - engage or cause to engage a worker to carry out work (including through sub-contracting)
 - have management or control of a workplace.⁹
17. Failure to comply with the requirements of WHS legislation is an offence and a PCBU may be prosecuted and have penalties imposed by the courts.
18. Under the Scheme the only penalty provision is either a sanction or removal of the accreditation, however this does not stop a builder working on Commonwealth funded

⁸ <https://www.abc.net.au/news/2023-07-05/worker-dies-at-john-hunter-hospital-construction-site/102565326>

⁹ <https://www.safework.nsw.gov.au/about-us/glossary/glossary-acordion/pcbu>

projects as they can be a subcontractor for another entity that has accreditation. Further, it appears that not all Government Departments insist on using accredited entities and the history of the FSC shows that it has been very reluctant to use the limited powers that it does have and is therefore seen by many as a “toothless tiger”.

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?

19. In our opinion removal of the Scheme would have no impact on the WHS performance standards of currently accredited entities.

3.2 Powers and functions

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?

20. In the Discussion Paper it suggests that “*The FSC’s functions (apart from the NCC compliance function) remain consistent with the recommendations made in 2003 by the Royal Commission*”.¹⁰ The CFMEU does not believe this statement to be accurate.
21. Appendix A to this submission contains an extract from Volume 6 of the *Final Report of the Royal Commission into the Building and Construction Industry*, February 2003. This extract includes recommendations 29 and 33. The following are those parts of the recommendations that have not been implemented nor included in the functions of the FSC:
- 29(b)(iv) – “*The Commissioner for Health and Safety should determine from time to time the list of hazards and controls against which applicants will be audited, and the standard required at audit in order to attain a pre-tender occupational health and safety qualification. The Commissioner for Health and Safety should determine these matters in consultation with at least the National Occupational Health and Safety Commission; regulatory authorities; workers compensation and other relevant insurers; and employer and employee representatives, including such unions as have the right to enrol employees engaged in the relevant work. The Commissioner for Health and Safety should periodically review determinations in relation to these matters to ensure their currency and effectiveness.*”
 - 29(e) – “*The audits must be more than an audit of paper systems. There must be a significant element of effective on-site random physical inspections of the existence, application and effectiveness of controls in place to guard against the selected range of identifiable hazards.*”

¹⁰ Discussion Paper. P.19

- 29(j) – “The Commissioner for Health and Safety should at the end of a Commonwealth project, and otherwise at reasonable intervals, review the health and safety performance of a pre-tender health and safety qualified contractor and, in cases where the review is not favourable, have the authority to implement a range of sanctions, reflective of those recommended by the Final Report of the Queensland Building and Construction Industry (Workplace Health and Safety) Taskforce including but not limited to:
 - (i) a notice to show cause to the Commissioner for Health and Safety requiring an explanation regarding any aspect of a contractor’s occupational health and safety performance;
 - (ii) the imposition of special conditions for future tenders;
 - (iii) the imposition of a period of probation to enable the contractor to implement specific occupational health and safety measures identified by the Commissioner for Health and Safety;
 - (iv) the imposition of limitations on projects for which the contractor will be considered for tender;
 - (v) suspension from tender lists for all or some classes of Commonwealth projects for a specified period of time; and
 - (vi) the cancellation of the contractor’s pre-tender occupational health and safety qualification.”
- 29(k) – “The Commissioner for Health and Safety should in relation to each Commonwealth project determine the contractors or class thereof to which the pre-tender occupational health and safety qualification scheme should apply, provided that in relation to each project the scheme must apply to the head contractor and any subcontractors that will perform work that in the opinion of the Commissioner for Health and Safety may involve a particular or unusual risk to health and safety.”
- 33(c)(iii) - determining the categories of available qualification under the pre-tender occupational health and safety qualification scheme. Initially the pre-tender occupational health and safety qualification might be offered to major builders. Once the scheme is bedded down it might be extended to smaller builders and major subcontractors and so on. The evolution of the scheme will in turn take account of the particular hazards which the consultation process referred to above will identify. Thus the scheme might be extended at an early time to subcontractors whose work exposes them to those particular hazards;”
- 33(d) – “Supervising the scheme for increased inspections on Commonwealth projects. This will involve requiring the Commissioner to consult with employee representatives, the site safety committee, representatives of the head contractor and such of the subcontractors as the Commissioner deems appropriate having regard to the size of the project, as to the proposed detail of a scheme of regular inspections by workplace health and safety inspectors, to be negotiated by the

Commissioner with the relevant State or Territory occupational health and safety regulatory authority.”

22. It is clear from the above recommendations that there was an expectation that the FSC would take a firm approach in dealing with builders and not “*the collaborative approach of the FSC which is demonstrated most visibly by the fact that it keeps working with entities ‘until they get it right’*”¹¹.
23. Turning to the specific question asked, the CFMEU does not believe that functions of the FSC remain appropriate. The significant changes in WHS legislation that have occurred since 2005, including increased penalty and industrial manslaughter provisions, have overtaken the need for the FSC. Further much of the work of the FSC such as administering the Scheme, promoting the benefits of the Scheme, disseminating information about the Scheme and promoting WHS in relation to building work, are nothing more than self-serving functions that have little or no impact on the industry.

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?

24. It is not the FSC’s role to administer the WHS legislation, this is the role of the regulators.

Question 7

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

25. As we do not support the continuation of the FSC, the short answer is no.

Question 8

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

26. As we do not support the continuation of the FSC, we provide no response.

Question 9

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

27. As the FSC has no expertise in this area it should not be part of its function. It should be added that the Federal Government needs to do more in regard to non-conforming building products, both in regard to stopping their use and importation.

Question 10

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

¹¹ Discussion Paper, p.18

28. As we do not support the continuation of the FSC, we provide no response.

Question 11

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

29. As we do not support the continuation of the FSC, we provide no response.

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?

30. As we do not support the continuation of the FSC, we provide no response.

Question 13

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

31. As we do not support the continuation of the FSC, we provide no response.

Question 14

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

32. As we do not support the continuation of the FSC, we provide no response.

Question 15

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

33. As we do not support the continuation of the FSC, we provide no response.

3.3 Scheme Requirements

Question 16

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

34. As we do not support the continuation of the FSC, we provide no response.

Question 17

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

35. As we do not support the continuation of the FSC, we provide no response.

Question 18

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

36. As we do not support the continuation of the FSC, we provide no response.

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?

37. As we do not support the continuation of the FSC, we provide no response.

Question 20

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

38. There should be a requirement under WHS legislation for entities and PCBU's to report all WHS incidents, injuries and fatalities to the regulator.

Question 21

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

39. See the response above.

Question 22

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

40. As we do not support the continuation of the FSC, we provide no response.

Question 23

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

41. As we do not support the continuation of the FSC, we provide no response.

Question 24

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

42. As we do not support the continuation of the FSC, we provide no response.

3.4 Current and Recently Acknowledged Hazards

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?

43. As we do not support the continuation of the FSC, we provide no response.

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?

44. As we do not support the continuation of the FSC, we provide no response.

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?

45. As we do not support the continuation of the FSC, we provide no response.

3.5 Cost Recovery

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?

46. As we do not support the continuation of the FSC, we provide no response.

Question 29

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

47. As we do not support the continuation of the FSC, we provide no response.

3.6 Government Priorities

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?

48. As we do not support the continuation of the FSC, we provide no response.

Question 31

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

49. As we do not support the continuation of the FSC, we provide no response.

Question 32

Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support a culture across the building and construction industry which removes barriers to women's participation and enables a safe working environment for women? If yes, what is that role?

50. As we do not support the continuation of the FSC, we provide no response.

Question 33

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

51. As we do not support the continuation of the FSC, we provide no response.

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?

52. As we do not support the continuation of the FSC, we provide no response.

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?

53. As we do not support the continuation of the FSC, we provide no response.

3.7 Expansion

Question 36

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

54. As we do not support the continuation of the FSC, we provide no response.

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?

55. As we do not support the continuation of the FSC, we provide no response.

Question 38

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

56. As we do not support the continuation of the FSC, we provide no response.

Appendix A - Extract From Volume 6 of the Final Report of the Royal Commission into the Building and Construction Industry, February 2003

Issue

I have concluded that

- (a) the effect that the fiercely competitive nature of the industry can, and often does, have on occupational health and safety,
- (b) the part that clients, including governments, can, and again often do, have in introducing these forces to the contractual chain, particularly at the tendering stage of a project,
- (c) the powerful driver for change that could be generated by the risk of losing the opportunity to obtain work

point to the need to harness these aspects of the industry to work for, and not against, occupational health and safety in the building and construction industry. Governments are well placed to do this by means of pre-tender qualification on occupational health and safety grounds. The Commonwealth should introduce such a scheme, and take the lead in developing and promoting the concept. A contractor's opportunity to tender for any project for which the Commonwealth (or its departments or agencies) is the direct client or in relation to which it provides or contributes funds or other assistance (Commonwealth projects) should depend on the contractor attaining and maintaining its qualification. The tests and standards that are applied should be practical and rigorous. The qualification held by each contractor should be a matter of public record. A Commonwealth pre-tender occupational health and safety qualification will identify those contractors whose capacity and performance in this area has been rigorously tested against an exacting standard. The Commonwealth should refuse to accept a tender from any relevant contractor in relation to any project to which the scheme applies unless the contractor has the requisite pre-tender occupational health and safety qualification. Once qualified, and a tender for a Commonwealth project is accepted, a contractor should continue to be audited throughout the project, both as to the adequacy of the contractor's safety management system for the project, and the contractor's actual performance during the project. The information that these audits will produce should be collected and reviewed.

Recommendation 29

The Commonwealth introduce a pre-tender occupational health and safety qualification scheme which has at least the following attributes:

- (a) The guiding principle of the pre-tender occupational health and safety qualification scheme is that the Commonwealth will only deal, whether directly on those projects for which it or its departments or agencies is the client, or indirectly in relation to those projects for which it provides or contributes funds or other assistance, with relevant contractors if they attain and maintain a current pre-tender occupational health and safety qualification.
- (b) Each applicant for pre-tender occupational health and safety qualification must be audited by or on behalf of a new Commonwealth Office of the Commissioner for Occupational Health & Safety in the Building and Construction Industry (Commissioner for Health and Safety) against identified criteria. Each aspect of the audit criteria should be determined from time to time by the Commissioner for Health and Safety. They should include at least:
 - (i) the applicant has adopted at the highest level of direction and management a safety policy which complies with such principles or standards as the Commissioner for Health and Safety shall promulgate from time to time;
 - (ii) the applicant's chief executive officer has ultimate responsibility to the applicant's board of directors for the applicant's compliance with its safety policy in every aspect of its operations;
 - (iii) the applicant has employed a person or persons with express responsibility for the applicant's compliance with its safety policy in such intermediate positions of responsibility and authority as the Commissioner for Health and Safety considers appropriate having regard to the circumstances of the applicant, including matters such as the size, standing and organisation of the applicant;
 - (iv) the applicant has taken such steps as the Commissioner for Health and Safety considers appropriate to communicate its safety policy to every person whom it employs or engages to manage its work on building and construction projects and sites, and to ensure that they comply with the policy; and
 - (v) the applicant satisfies the Commissioner for Health and Safety that on projects that are the subject of an audit it has in place effective controls against identified hazards. The Commissioner for Health and Safety should determine from time to time the list of hazards and controls against which applicants will be audited, and the standard required at audit in order to attain a pre-tender occupational health and safety qualification. The Commissioner for Health and Safety should determine these matters in consultation with at least the National Occupational Health and Safety Commission;

regulatory authorities; workers compensation and other relevant insurers; and employer and employee representatives, including such unions as have the right to enrol employees engaged in the relevant work. The Commissioner for Health and Safety should periodically review determinations in relation to these matters to ensure their currency and effectiveness.

- (c) The audit process should not cease when a contractor attains pre-tender occupational health and safety qualifications. It should be carried out at at least three stages:
 - (i) pre-tender qualification;
 - (ii) post tender award of a project safety management system for the project at hand; and
 - (iii) at intervals during the course of a project.
- (d) The audits are to be external to both the Commissioner for Health and Safety and the contractor. The Commissioner for Health and Safety will accredit external auditors to conduct the pre-tender occupational health and safety qualification audits, the post award of tender audits of contractors' project safety management systems and the audits during the currency of the project.
- (e) The audits must be more than an audit of paper systems. There must be a significant element of effective on-site random physical inspections of the existence, application and effectiveness of controls in place to guard against the selected range of identifiable hazards.
- (f) A contractor with, or applying for, pre-tender occupational health and safety qualification must agree to make available for audit all of its sites, and not just those where the Commonwealth is the client or has provided funding or made a capital contribution. The sites to be audited should be selected by, and at the absolute discretion of, the Commissioner for Health and Safety. Contractors must agree to co-operate in the conduct of the audit, including by making available to the Commissioner for Health and Safety such reasonable opportunities and facilities for the audit as the Commissioner for Health and Safety may require, including opportunities and facilities to inspect sites, work, plant, equipment and documents, and to interview any person.
- (g) The costs associated with an application for pre-tender occupational health and safety qualification should be borne by the applicant. Pre-tender health and safety qualifications for Commonwealth projects should be a matter of public record. Such qualifications are intended to be of such a standard that they will indicate to the world at large the attainment and maintenance of a level of excellence in occupational health and safety.
- (h) With time one would expect a number of important benefits of the pre-tender occupational health and safety qualification scheme to be transferred to the wider industry beyond the immediate reach of the Commonwealth. In order to facilitate and promote this transfer:
 - (i) State and Territory Governments should be encouraged to recognise and adopt the pre-tender occupational health and safety qualification scheme, and in order to promote this the details of the scheme should be designed with a view to complementing so far as possible existing State and Territory schemes of pre-qualification; and
 - (ii) the insurance industry should be encouraged to take the pre-tender occupational health and safety qualification scheme into account in fixing workers compensation and other insurance premiums. This encouragement might begin with the involvement of that industry in the process of identifying the list of hazards, controls and standards against which audits are to be conducted and in the process of accrediting auditors.
- (i) The cost of the post award of tender audit of the contractor's project safety management system and of the periodic audits during the life of a project should be absorbed by the Commonwealth on Commonwealth projects.
- (j) The Commissioner for Health and Safety should at the end of a Commonwealth project, and otherwise at reasonable intervals, review the health and safety performance of a pre-tender health and safety qualified contractor and, in cases where the review is not favourable, have the authority to implement a range of sanctions, reflective of those recommended by the Final Report of the Queensland Building and Construction Industry (Workplace Health and Safety) Taskforce including but not limited to:
 - (i) a notice to show cause to the Commissioner for Health and Safety requiring an explanation regarding any aspect of a contractor's occupational health and safety performance;
 - (ii) the imposition of special conditions for future tenders;
 - (iii) the imposition of a period of probation to enable the contractor to implement specific occupational health and safety measures identified by the Commissioner for Health and Safety;
 - (iv) the imposition of limitations on projects for which the contractor will be considered for tender;
 - (v) suspension from tender lists for all or some classes of Commonwealth projects for a specified period of time; and

- (vi) the cancellation of the contractor's pre-tender occupational health and safety qualification.
- (k) The Commissioner for Health and Safety should in relation to each Commonwealth project determine the contractors or class thereof to which the pre-tender occupational health and safety qualification scheme should apply, provided that in relation to each project the scheme must apply to the head contractor and any subcontractors that will perform work that in the opinion of the Commissioner for Health and Safety may involve a particular or unusual risk to health and safety.
- (l) Once the Commissioner for Health and Safety has made such a determination, then no such contractor should be allowed the opportunity to tender in relation to any Commonwealth project, unless the contractor has a pre-tender occupational health and safety qualification.
- (m) The success of the pre-tender occupational health and safety qualification scheme be measured periodically against the national and industry targets set by and under the National Occupational Health and Safety Strategy 2002-2012 using such measures and benchmarks as are developed for the purposes of the National Occupational Health and Safety Strategy and the Comparative Performance Monitoring project.

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Establishment of the Office of the Commissioner for Occupational Health and Safety in the Building and Construction Industry

250 Central to the reforms that I have recommended above is the Commissioner for Occupational Health and Safety. This office is necessary to implement and drive the reforms to occupational health and safety which the Commonwealth can promote as a model client.

Issue

An Office of the Commissioner for Health and Safety in the Building and Construction Industry is necessary to implement and drive the reforms recommended above.

Recommendation 33

The Commonwealth establish the Office of the Commissioner for Occupational Health and Safety in the Building and Construction Industry (Commissioner for Health and Safety), the essential features of which are as follows:

Primary object

The primary object of the Commissioner for Health and Safety is to promote and enhance occupational health and safety in the building and construction industry. Every other consideration, including the cost of building and construction work, is subordinate to this purpose.

Independence

The Commissioner for Health and Safety must be independent and have control of an adequate budget. This is essential in order to protect the integrity of the reforms for which the Commissioner will have responsibility.

Place in the Australian Public Service

The Commissioner for Health and Safety should be located within the Safety, Rehabilitation and Compensation Commission (SRC Commission) which is established under the *Safety, Rehabilitation and Compensation Act 1988 (C'wth)*. Given its role in relation to occupational health and safety matters within the Commonwealth the SRC Commission seems ideally suited to house the Commissioner for Health and Safety.

Functions of the Commissioner for Health and Safety

The principal functions of the Commissioner for Health and Safety ought to include:

- (a) Administering the scheme requiring contractors to have a pre-tender health and safety qualification prior to being eligible to tender for work on projects where the Commonwealth is the client or has provided funding or other capital (Commonwealth projects).

- (b) Supervising all contracts for building or construction work of or above the prescribed contract value on Commonwealth projects with a view to ensuring that the pre-tender health and safety qualification scheme applies.
- (c) His or her duties under the pre-tender occupational health and safety qualification scheme shall include:
 - (i) consulting widely with participants in the industry including the major builders, employer representatives, employee representatives, occupational health and safety experts and consultants with a view to establishing a list of health and safety hazards against which the health and safety performance of applicants for a pre-tender occupational health and safety qualification will be audited;
 - (ii) accrediting and maintaining a register of occupational health and safety auditors to be used for the purpose of conducting the audits at the three levels required as part of the scheme;
 - (iii) determining the categories of available qualification under the pre-tender occupational health and safety qualification scheme. Initially the pre-tender occupational health and safety qualification might be offered to major builders. Once the scheme is bedded down it might be extended to smaller builders and major subcontractors and so on. The evolution of the scheme will in turn take account of the particular hazards which the consultation process referred to above will identify. Thus the scheme might be extended at an early time to subcontractors whose work exposes them to those particular hazards;
 - (iv) entering into memoranda of understanding on behalf of the Commonwealth with such entities as from time to time seek pre-tender occupational health and safety qualification which embody the obligations and responsibilities of those seeking the qualification and the Commonwealth under the scheme;
 - (v) promoting the pre-tender occupational health and safety qualification scheme so as to encourage all State and Territory Governments and private clients to adopt it;
 - (vi) promoting the pre-tender occupational health and safety qualification scheme with insurers with a view to gaining recognition of the scheme and its benefits for occupational health and safety, and thereby securing incentives reflected in lower insurance premiums for workers' compensation and employers, and public liability;
 - (vii) promoting the pre-tender occupational health and safety qualification scheme so as to support the concept of the qualification as a badge of honour in the industry, which would necessarily involve favourable publicity for those that achieve pre-tender occupational health and safety qualification status; and
 - (viii) adjudicating upon the performance of those contractors that have pre-tender occupational health and safety qualification status during the life of, and after the completion of, projects with a view to monitoring their occupational health and safety performance, imposing such sanctions as may be appropriate in the circumstances and monitoring the performance of the pre-tender occupational health and safety qualification scheme generally.
- (d) Supervising the scheme for increased inspections on Commonwealth projects. This will involve requiring the Commissioner to consult with employee representatives, the site safety committee, representatives of the head contractor and such of the subcontractors as the Commissioner deems appropriate having regard to the size of the project, as to the proposed detail of a scheme of regular inspections by workplace health and safety inspectors, to be negotiated by the Commissioner with the relevant State or Territory occupational health and safety regulatory authority.
- (e) Reporting to the Minister for Employment and Workplace Relations on the operation of the pre-tender occupational health and safety qualification scheme and the scheme for increasing inspections on Commonwealth projects. This ought to be a periodical report. In recognition of the likelihood that many of the projects covered by the scheme are likely to be large and therefore likely to have lives measured in years rather than months I suggest that the reporting intervals be in the order of three years. The Minister should cause a copy of each such report to be tabled in each House of the Parliament.
- (f) Educating the building and construction industry about the pre-tender occupational health and safety qualification scheme, and promoting occupational health and safety in the industry.
- (g) Promoting, monitoring and reporting on compliance with the occupational health and safety aspects of the National Code of Practice for the Construction Industry and the Implementation Guidelines.