



Submission
in Response to the
Independent Review of the Federal
Safety Commissioner Consultation
Summary

22nd September 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. On 3rd July 2023, Ms Boland released the Independent Review of the Federal Safety Commissioner Discussion Paper¹ (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.
3. The Construction, Forestry, Maritime, Mining and Energy Union (Construction and General Division) (the **CFMEU**) and several other parties made submissions in response to the Discussion Paper and on 24th August 2023 Ms Boland released the Independent Review of the Federal Safety Commissioner Consultation Summary² (the **Consultation Summary**). Ms Boland invited parties to provide feedback on the issues raised in the Consultation Summary, particularly if there were issues that parties hadn't consider in their original submission.
4. The CFMEU accepts that invitation and makes this brief submission in response to the Consultation Paper.

Improving Safety in the Building and construction Industry

5. In section 3 of the Consultation Summary, it includes parts of the FSC submission which refer to the data that the FSC relies on to show that its work has improved safety in the building and construction industry, particularly amongst accredited companies. The FSC refers to lower workers compensation premiums paid by accredited companies, lower rates of injuries and an annual anonymous census of accredited companies that has consistently confirmed that accredited companies consider their business to be safer since gaining accreditation.
6. The FSC's reliance on questionable data comparisons brings to mind the old adage of "*lies, damn lies and statistics*". The CFMEU submits that it is unrealistic to compare the performance of accredited companies, working as head contractors (many of which have a greater white collar workforce than on-site construction worker employees), on a limited range of jobs, with the whole of the building and construction industry which ranges from small scale residential to billion dollar heavy engineering projects. Further, it is hardly surprising that scheme accredited companies are highly engaged and supportive of the OFSC given that there is no charge for the accreditation and virtually nil chance of the accreditation being removed once accredited. The results of the OFSC's annual anonymous census are hardly surprising as companies are very unlikely to say that their business is less safe since gaining accreditation.

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

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

Federal Safety Commissioner – Functions and Powers

7. in section 4 of the Consultation Summary there is reference to the CCF SA suggestion that the FSC link with Registered Training Organisations (RTOs) to play some role in providing better clarity and developing a system to be rolled out nationally for the training (and licensing?) of plant operators. The CFMEU is not supportive of this proposal and notes that issues regarding training would fall within the jurisdiction of the newly created jobs and skills council for the building and construction industry, BuildSkills Australia, and any licensing changes should be progressed through Safe Work Australia and the State and Territory regulators (as is currently happening with the review of the high risk work crane licenses).
8. There is also a suggestion from the FSC to include a specific function in the legislation for the potential to “name and shame” poor performers as a motivator for behavioural change. Given the collaborative *modus operandi* of the FSC and its failure to use its existing powers to suspend, place conditions on or revoke the accreditation of poor performers, there can be no confidence that the FSC would ever use such a function.

The National Construction Code

9. In section 4.1 there is mention of a view put forward that the FSC functions should include a role in monitoring sites for illegally imported products like asbestos and for monitoring those products that link to WHS obligations. The CFMEU is totally opposed to this suggestion. As the FSC acknowledges FSOs are not qualified to identify and rectify non-conformance with NCC requirements and the FSC has no power to enforce conformance. The head contractors, HSR’s and site safety committees should be monitoring the products used on site, not an external auditor.

Reporting

10. In section 5.3 mention is made of the FSC’s desire to enhance its Risk Framework and its view that the Review was an opportunity to obtain stakeholder feedback on what lead indicators would be appropriate to report to the OFSC for the purpose of informing the Company Risk Framework.
11. The CFMEU is concerned at the fixation of the FSC with its Risk Framework, and notes that many accredited entities see the risk ratings produced by the Risk Framework as meaningless and that higher ratings only lead to more audits. As the Consultation Summary notes an FSO confirmed that the ratings of low, medium and high risk referred to the risk of non-conformance with Scheme requirements rather than the risk to workers on site. The FSC submission further explained that its Risk Framework was developed as an internal resource to help target operational activities and that risk ratings are not a strict measure of WHS performance. The CFMEU would therefore argue that the Risk Framework used by the FSC is not fit for purpose as a tool to improve safety on site.
12. The CFMEU would also take issue with the FSC’s assumption that an accredited company that is prosecuted for a fatality on one of its sites, but remains accredited, is unlikely to have the same safety systems and processes in place as at the time of the

incident/fatality. There is no evidence to back up this assumption and it indicates a clear reluctance on behalf of the FSC to take any adverse action against accredited companies.
