



AIHS

Australian
Institute of
Health & Safety

Think forward

Independent Review of the Federal Safety
Commissioner:

Consultation Submission

31 July 2023

Acknowledgement of Aboriginal and Torres Strait Islander Peoples

We acknowledge the Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Australia and their ongoing strength in practising the world's oldest living culture. We acknowledge the Traditional Owners of the lands and waters on which we live and work, and we acknowledge that sovereignties of these lands and waters were never ceded. We pay our respects to Traditional Owners' Elders past and present, and commit to supporting them and Aboriginal and Torres Strait Islander emerging leaders to create more equitable, healthy, and safe workplaces for all Australians, and in particular for disadvantaged Australians.

About us

The Australian Institute of Health and Safety (AIHS) is the national association for people who work in generalist health and safety roles, including practitioners and professionals. The AIHS represents more than 1,000 occupational health and safety (OHS) practitioners and professionals in Victoria, and more than 4,000 nationally. Beyond our membership, we advocate for the >20,000 people who work in health and safety across Australia.

In July 2019 our name changed from the Safety Institute of Australia to emphasise the importance of occupational health as well as safety. For more than 70 years we have worked towards our vision of safe and healthy people in productive workplaces and communities.

Our voice as a profession and association of health and safety experts is often distinct from those of government, employers, and workers. Our focus is on the science-, evidence-, and risk-based practice of health and safety, to create safer and healthier workplaces.

For more information see www.aihs.org.au.

ATT: Ms Marie Boland
Independent Review Lead, on behalf of the Minister for Workplace Relations
(By email: WRSubmissions@dewr.gov.au)

Dear Ms Boland,

We are pleased to make this submission to you on behalf of the AIHS.

We have reviewed the Discussion Paper (*Independent Review of the Federal Safety Commissioner 30 June 2023*) and a range of publications relevant to the Office of the Federal Safety Commissioner to provide this submission.

The AIHS acknowledges the risks associated with the construction industry, and the sobering outcomes around fatalities and serious injuries that continue to occur throughout Australian construction projects. To this end we commend those responsible for instigating this independent review.

This submission has been prepared in alignment with the guidance provided in the Discussion Paper and is respectfully presented for consideration. While this submission has not attempted to provide detailed feedback from all AIHS members involved in the construction industry, and may not reflect all AIHS members' specific views, this submission has involved various AIHS members' input with the principal purpose of providing feedback aligned to the AIHS *Vision* and established *Position Statements* (<https://www.aihs.org.au/aihs-policy>). Contributors include those with detailed, first-hand knowledge and experience of the Office of the Federal Safety Commissioner Scheme.

The AIHS broadly supports the role that the FSC Scheme plays in positively influencing the construction industry to achieve improved WHS outcomes. We have responded to the Discussion Paper questions and provided additional recommendations for your consideration.

As the peak body for the health and safety profession, the AIHS looks forward to seeing the outcomes of this review's *Consultation Phase* and subsequent *Finalised Written Report* and are willing and able to contribute to any further consultation as part of this independent review.

Yours sincerely,

Andrew Heinrichs

Chair AIHS Policy and Advocacy Committee

Background and general feedback to the discussion paper

OHS practitioners and professionals play a vital role in working to minimise fatalities and serious incidents. They do this by advising duty holders, including employers and workers, on practical solutions to minimise health and safety risks to workers.

The Office of the Federal Safety Commissioner (OFSC) has developed extensive guidance for Australian and other government agencies to deliver infrastructure projects (<https://www.fsc.gov.au/useful-documents-downloads?s=Model%20Client#s>). Under the label of “model client”, this work was completed in 2007 through the assistance of construction OHS academics at RMIT University.

In Victoria, the “Big Build” infrastructure program has been an exemplar of this approach. Led by the Major Transport Infrastructure Authority (MTIA) (<https://bigbuild.vic.gov.au/about/mtia>), the MTIA advocates for an active client approach in delivering road and rail projects across Victoria. This approach has resulted in millions of work hours being completed to deliver billions of dollars worth of infrastructure with superior OHS outcomes. Whilst serious incidents have occurred, the rate of harm sustained by project workers is lower when compared to other parts of the construction industry. An example of this approach can be seen in their Major Infrastructure Safety Hub (<https://www.mish.vic.gov.au/>).

There are numerous benefits to the model, as per RMIT Distinguished Professor Helen Lingard: *“The model acknowledges the important role that clients can play in setting work health and safety performance expectations, selecting contractors with appropriate health and safety capability and working with them to ensure that work health and safety are well managed across the program of work. In particular, the model enables the sharing of lessons between contractors working on different parts of the transport infrastructure construction program. This is a departure from traditional client behaviour, in which workers’ health and safety was treated exclusively as a matter for contractors, with little involvement or input from the client.”* (<https://www.rmit.edu.au/news/all-news/2019/dec/delivering-major-infrastructure-projects-safely>).

The world of work, and our world more broadly, are becoming increasingly complex. For example:

- Workforces are becoming more demographically, culturally diverse.
- Psychological health and psychosocial risk factors are becoming more visible/diagnosed, varied, intersecting and compounding.
- Our natural environment, climate, and ecosystems are facing greater strain, with weather events becoming more intense, frequent, and extreme.
- Technology is amplifying the flow and speed of information.
- Supply chains are becoming more multi-faceted, dynamic, and brittle.

All of these megatrends mean the gap between documented work as imagined and work as performed are growing. Whilst the FSC does have internal scanning and review processes to maintain currency, we caution the agency that the rapid changes in workplaces may render the Scheme’s fundamental approach redundant in the near future.

Audits are one component of the management of work. They represent a snapshot in time of the arrangements in place to manage OHS risks associated with work activities. It is vital these audits remain representative of work practices and OHS risks as they evolve.

Our responses to the summary questions

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

The Discussion Paper cites lost time injury frequency rates (LTIFR) as one of the primary metrics used to demonstrate performance against broader (see Section 2.2.3). Accredited entities are presented as reporting a decreased LTIFR from 3.00 to <1.50 through 2012 to 2022.

For more than a decade the OHS profession has grappled with the value, veracity, and statistical validity of lost time injuries (LTIs) and their derivative LTIFRs. Australia’s national OHS policy body Safe Work Australia has commissioned work on this, including that from Dr Sharron O’Neill (see https://www.researchgate.net/publication/301283018_Issues_in_the_Measurement_and_Reporting_of_Work_Health_and_Safety_Performance/link/570eeeb508aee76b9dae02a6/download). Key issues with LTIs and LTIFRs are that 1) they do not reflect the impact or severity of injuries or illnesses on workers, 2) they can be “managed” by having injured workers return to work to ensure incidents are categorised favourable, and 3) they do not reflect the effectiveness of how OHS risks are managed in a workplace.

However LTIs remain stubbornly embedded across industry. Likely reasons for this are 1) there is little collective will to change, 2) LTIs and LTIFRs provide the illusion of comparative ‘benchmarking’ between entities, and 3) the profession has struggled to develop and promote consistent, practical alternatives. The AIHS is building its advocacy work in this space.

The other two key datasets presented are workers compensation (section 2.2.5) and fatalities (section 2.2.6). We acknowledge that, whilst categorisation and “definition management” are still possible for these two metrics, they are generally more objective and robust metrics than LTIFRs.

The Scheme is based on the premise that by developing and maintaining a documented system of work, and by robustly auditing those systems, participants will be better placed to manage OHS risks.

But OHS is more complex than this. This is because the mix of causal factors involved in health and safety incidents, and the conditions enabling illnesses and diseases to occur from exposure to hazards at work, are complex. We see health and safety outcomes as being emergent properties from complex socio-technical systems.

Further, correlation does not mean causation. Positive OHS outcomes among Scheme participants may be a result of complex interactions and combinations of many factors. These factors may be indirectly related to the Scheme itself, or not related at all. They include:

- Organisational leaders of accredited entities being open to investing in OHS supporting resources, and more likely to embrace effective OHS risk management strategies.
- Accredited entities are unlikely to be representative of the broader construction industry, in terms of internal capabilities, resources, and broader business management systems.
- Those organisations that self-select as ready and willing to work on federal government infrastructure projects may carry other factors and determinants that support them to achieve positive OHS outcomes.

Caveats with LTIs aside and noting the assumptions and limitations above, we believe the Scheme has had a net positive impact on participants' OHS outcomes. We support the Scheme continuing largely in its current form. With greater resources, we would support the Scheme being replicated and adapted in other jurisdictions across Australia.

We urge the FSC to continue to strive to identify and develop more meaningful and valid metrics to measure and report on Scheme performance and outcomes. The AIHS stands ready to partner with the FSC and associated stakeholders to advance this work.

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

Members involved with our submission noted that Scheme participants are compelled to develop and maintain a system to manage OHS aspects of work. We support managing work through a systems approach, with human relationships built through leadership, communication, and culture.

Submission members noted that generally it is apparent that Scheme accredited entities are more likely to have an updated system in place to manage works and their associated OHS risks. Worksite conditions are too variable/complex to make generalised comparisons between accredited and non-accredited entities.

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?

From a review of the FSC audit criteria, the requirements of the OHS, "Focus Point" and Hazard criteria do not appear to present an elevated or different set of obligations than that of jurisdictional OHS and workers compensation legislation. The criteria in many cases establish the expectation of an accredited entity to define and implement safe systems of work in accordance with legislative, code of practice/compliance code, and/or Australian Standards requirements. Further, the criteria (including supporting guidance information) are openly available to all companies.

Despite the above, the Scheme by virtue of its requirement for periodic performance reporting, requirements for ongoing scheduled audits, and audit follow-up liaison, does establish a different reporting and auditing expectation compared to non-accredited companies. If companies want to become/remain accredited, they are required to fulfil these reporting and auditing requirements.

Of note, the audits are seen to be specifically focused on companies having a documented process to fulfill the audit criteria and ultimately provide a defined safe system of work that is tangible, discoverable, and able to be tangibly verified/audited from an implementation perspective. While having a documented OHS management system is not a new or novel requirement, the FSC audits are seen to specifically focus on entities defining their approach, defining their deliverables, defining their internal role training and competency expectations, and subsequently implementing a system-driven set of outcomes and safe systems of work across its construction projects.

This systems-based approach is seen as a positive of the Scheme, especially when coupled with an independent auditing regime whereby the FSC:

- Manage the scheduling and organising of the audits,

- Arrange an auditor without a conflict of interest and without influence by the entity to be audited, and
- Select the specific criteria to be focused on at the audits.

While the audits do not appear to establish unique or higher standards than that of jurisdictional OHS obligations, the audits by virtue of their importance to an entity and their focus on a fully documented, traceable, and repeatable set of outcomes may be seen to establish a benchmark that could be considered a higher bar from a construction industry perspective.

Like any assurance activity or audit regime, if the FSC approach drives continual improvement at a company level and improvement across the industry, we see this as a positive.

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?

We interpret the term “performance standards” as meaning OHS outcomes, including injuries, illnesses, and the effective or otherwise control of OHS risks associated with the works.

Given the complexities of OHS outlined in Question 1, this is a difficult hypothetical to respond to. But our view is that without the Scheme, we believe the OHS performance standards of accredited entities would likely be variable; and it is difficult to see how they would improve overall.

Some entities would likely continue with their internally developed and documented safe systems of work, continue to audit internally, and continue to undertake most of their works in a safe and healthy manner. These types of companies value their safe system of work, value their OHS approach and value safe outcomes. Hence a lack of an FSC scheme would not alter these companies’ OHS outcomes substantially.

Some companies’ performance would slip or deteriorate. A lack of periodic independent audits and external influence would result in standards or consistency slipping over time. It is likely that the Scheme’s smaller accredited entities with a smaller internal resource pool would likely be negatively affected the most.

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?

The “OHS environment and operating context of the building and construction industry” has changed significantly in the past 20 years, including:

- Demographic, cultural, ethno- and gender workforce factors,
- Advancements in technology, via changes in information management through project software solutions, and changes to hardware used on building sites, and
- Environmental and sustainability challenges, pressures, and practices.

We don’t believe the FSC are well placed to lead the response to any of these changes.

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?

Currently three designated FSC audit criteria (FP 3.1, 3.2 and 3.3) are focused on whole of project consultation, including issue resolution, and that entities are periodically audited against these criteria.

To supplement the current approach, one option could be to amend or add to the current criteria requirements. The criteria could be amended to include a requirement for the FSC Auditors to meet with health and safety representatives (HSRs) (where elected) or worker representatives of WHS Committees (if established) so that formal discussions with these personnel occur as part of the audit. The criteria could be established so that these representatives have a place during the audit to formally raise/discuss any issues relating to 1) the effectiveness of on-site consultation arrangements, and/or 2) the adequacy of safe systems of work to address key project hazards.

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

We believe the data and information generated by Scheme participants (e.g. case studies, lessons learned, and the Scheme audit program) should be used to produce valuable insights for both Scheme participants and the broader construction industry.

We believe a health and safety promotion-focused agency would be well placed to lead the design, distribution, and communication of these insights. Whilst the FSC has and continues to improve their community education role, we believe, like OHS regulators, it can be difficult for agencies tasked with monitoring work activities to simultaneously educate and advise industry participants. Community education, promotion, influencing and changing behaviours, and digital engagement are dedicated skillsets and capabilities separate to those required to affect an auditing scheme. Professional communicators should be housed within a dedicated agency who can creatively engage with their audience free of perception, judgement, and through a more trusting relationship.

Whether these insights are developed and distributed by the FSC or another dedicated education-focused agency, the data should be maximised to generate improved industry practices.

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

The FSC and accredited companies could more actively promote the publicly available resources available from the FSC website. This includes hazard and innovation focused webinars.

Accredited companies could better promote the dates and times of publicised webinars internally, so that wider worker and HSR dial in/participation can occur.

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

Currently there are no audit criteria established relating to building material conformance to NCC requirements, and no established (or panel required) expertise in the panel of auditors to undertake such reviews.

If this was to be undertaken, it would be a specific scope expansion of the Scheme and would require careful/diligent development of criteria and guidance; upskilling of current auditors; or expansion of a new set of auditors.

Any such audit function is likely to be targeted at procurement protocols and verification of purchased materials from a quality control and chain of custody perspective. Although linked to safety outcomes, this focus varies somewhat from the traditionally applied OHS audit approach (system and on-project implementation and verification focused).

For these reasons we caution against expanding the Scheme into non-OHS-related functions.

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

The FSC should implement unannounced or spontaneous audits on Scheme participants. This eliminates the risk of audit sites being overly ‘prepared’ for Scheme audits ahead of auditors’ arrival on site.

Question 11 – What are the appropriate steps that should be taken by the FSC when a fatality occurs on an accredited entity’s worksite?

Regarding fatalities, it is understood that the FSC essentially fulfills a role of ‘critical examiner’ and intentionally does not attempt to ‘investigate’ the incident (as this is seen as the company and relevant regulator’s role).

It is understood that the FSC meets with the leader/s of the company involved (soon after the incident); requests details of the incident and the company’s response; attempts to collaborate and understand potential lessons learnt (that could benefit the wider industry). It is also understood that the FSC looks to undertake a targeted audit (relative to the hazard criteria and circumstances involved) at an appropriate time after the incident to validate that the company has embedded actions systemically and shared lessons learned (as a minimum throughout the company and its various personnel and projects).

From the above, it is understood that the company involved essentially must demonstrate its post-incident response steps taken and measures to prevent a recurrence (and that this is subject to a detailed and focused FSC follow-up audit).

Given that the local jurisdictional regulator undertakes their own investigation with outcomes that may extend to enforcement actions including prosecutions, the above appears appropriate.

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?

This would depend on the nature of the event and prosecution. Steps could range from targeted/more frequent audits of the company’s projects to validate that the company is implementing updated/improved safe systems of work, through to cancellation of accreditation.

The company involved could be required to summarise and present their findings in a webinar, potentially hosted by the FSC or a dedicated communications agency. Other companies and the broader industry can benefit from the lessons learned and actions being adopted. This may help raise awareness and improve outcomes.

If these events are made publicly available, they can be developed in a shorter timeframe compared to enforceable actions or other prosecution activity.

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

The FSC can:

- Revise and update the Model Client Framework toolset available on the FSC website, noting that this framework, toolkit, and model clauses have not been updated for more than 10 years.
- Communicate and promote this framework and toolset more proactively across the federal, state and territory government agencies, and other entities accountable for procurement and tendering construction works. Targets should also include those indirectly funding works via funding agreements, grants, or other programs.
- Review the effectiveness of the Australian Government Agency Reference Group (ARARG) to ensure adequate representation and the roles of members to subsequently promote and adopt the model client framework.

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

No response from AIHS.

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

No response from AIHS.

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

No response from AIHS.

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

It is recognised that once accredited, a company is not audited against all criteria and only certain hazards (typically two hazard areas per audit) are selected each time a company is audited.

To this end, the FSC could explore options to select a mix of hazard criteria (or to substitute certain hazard criteria in for others), especially if the implementation of that criteria at the project being audited is not applicable or limited. For example, if auditing the Excavation hazard set of criteria and no shoring systems are typically used by the company and not applicable at the project, the auditor could substitute with alternative criteria that are applicable at the project. This could be related to an alternative hazard such as mobile plant, work at heights or electrical.

Externally to the Scheme, noting the changing trends outlined in question 5, the construction industry will continue to face emerging and more complex challenges. Again, we don’t believe the FSC is the most appropriate lead agency to respond directly to these challenges through the process of audit.

The Scheme plays a foundational role in ensuring accredited entities develop and maintain systems of work to achieve positive OHS outcomes.

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

A set limit of how many FSO audits are available to achieve accreditation should not be prescribed. We provide this perspective with the knowledge of the FSC’s revised approach of doing System Validation Audits prior to a full on-site implementation audit. This provides a suitable means of reviewing a company’s system in desktop/remote form prior to investing in a full on-site audit.

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?

It is understood that the FSC does have a process of rotating through various criteria sets (once accredited), and to also match hazard criteria to the scope of projects relevant/underway by accredited companies.

Further to comments in Questions 17, it is suggested that the FSC consider a more flexible/broader approach to selecting criteria for an audit, to ensure the best possible cross section of issues are sampled from and reviewed when an auditor is on site.

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

It is understood that there are specific WHS reporting requirements established for accredited companies to report against for both Scheme and non-Scheme projects.

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

No response from AIHS.

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

We support any efforts to reduce bureaucracy and the reporting burden on industry stakeholders. But we caution there is likely significant categorisation, consistent terminology, and information challenges involved. Health agencies, OHS regulators, and other arms of government are potential candidates for the FSC to explore collaboration and information sharing.

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

Cultural surveys are one of the few forms of more valid leading indicators. Factors like leadership, communication, respect, and other psychological safety elements are strong determinants on OHS outcomes. Including survey results in reporting requirements would require extensive co-design, consultation, and cooperation between Scheme stakeholders, underpinned by evidence-based question and response design capabilities, likely from the tertiary education sector.

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

No response from AIHS.

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?

It is understood that an accredited company's risk rating is established taking into consideration a range of factors including 1) previous audit results, 2) open Corrective Action Report numbers and levels, and 3) the nature, scope and numbers of projects undertaken by the company.

Given the range of factors involved and given that it is not straightforward to compare varying companies via one risk level indicator, we do not believe it is necessary or productive to publicise these risk ratings. Furthermore, procurement activities could be unintentionally influenced by a risk rating that does not provide a full capability indicator of a contractor or set of contractors for a specific construction scope.

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?

We consider most of the criteria to be relevant and enable a detailed appraisal of a company's OHS system for eliminating and managing construction risks. They enable a detailed, systems-based review and in-depth sampling at a hazard and project implementation level.

Despite the above, the criteria could be reviewed and updated to provide a refreshed set of guidance notes and to update the criteria where analysis of audit results shows consistent deficiencies. There could be a refined Occupational Health and Hygiene set of criteria (currently WH 14.1 /2 /3)

We would caution against the FSC developing criteria in relation to psychosocial risks to be used in the Scheme in the current structure.

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?

We support the FSC continuously monitoring the external environment for new and emerging hazards. However we caution the FSC developing audit criteria for these hazards without ensuring that 1) the FSC auditor pool has the necessary subject matter knowledge and capabilities, 2) the proposed controls are supported by robust and evidence-based research, and 3) the audited entities clearly understand the expectations to manage the hazard. We think psychosocial risk are unlikely to be better managed through audits.

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?

Our view is that entities should not be charged. We encourage the review team and associated stakeholders to investigate and better quantify the health system benefits of the Scheme. We are confident it would demonstrate positive returns, in terms of the costs saved to various public health systems around the country.

We suspect this analysis would demonstrate that the current costs of the Scheme and audit costs are a modest investment of public resources when compared with the potentially much larger individual, financial and wider public health costs associated with increased fatalities and serious incidents.

If entities were to be charged, it should be through periodic (e.g. annual) administration fee. Fees for audits or audit services would risk compromising the strong independence of the Scheme in its current form. The current commercial model ensures complete independence from an audit organisation, auditor selections, and the FSC administration.

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

We don't support entities being charged for accreditation, given the financial figures presented. Without doing detailed economic analysis, our view is the annual expenditure of approximately \$8m (see *Section 1.6 The Office of the Federal Safety Commissioner* of Discussion Paper) likely represents positive value for money for the public, industry, and the broader state-federal health system. Introducing a charge may impact on Scheme take-up by potential participants.

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?

No response from AIHS.

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?

No response from AIHS.

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?

We view workforce gender makeup as being a component of complex psychosocial factors in risks to psychological health of workers. As auditors, we don't envisage FSC as playing an active role in monitoring Scheme participants' processes and systems in relation to gender.

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?

No response from AIHS.

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?

No response from AIHS.

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?

The OHS ecosystem, through Australian workplaces, has seen new hazards emerge and grow, for example respirable silica dust and psychosocial hazards such as occupational violence.

We believe the FSC should adopt a regulatory stewardship approach to physical construction health and safety hazards. We believe auditing psychosocial or more complex socio-technical hazards and controls would require either wholesale change to the organisation, or a new/other organisation to take stewardship/ownership of these risks.

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

We believe expanding the Scheme to cover sub-contractors would present some challenges. For example, typically audited entities are those acting as principal contractor on a construction site, meaning they are responsible for management and control of the site. Sub-contractors without being principal contractor may find it difficult to receive the desired autonomy to meet all aspects of an audit.

Expanding the Scheme to cover sub-contractors may require substantial additional resources. This may dilute the quality of the existing auditor pool and FSC staff.

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?

We support increased auditing for other high risk industries experiencing poor OHS outcomes. However we caution against copying the Scheme for use in other contexts. Other industries, such as agriculture, logistics, manufacturing, or retail (receiving federal funding) would require a Scheme that meets their needs and context.

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

We believe given the challenges, limitations, and constraints of the scheme and construction OHS auditing generally, that the FSC Scheme itself should not be expanded into other industries. We support other industries investigating replicating and adapting the FSC Scheme to meet their own needs and requirements.

Key points

We submit:

- The construction industry continues to experience poor OHS outcomes relative to other industries.
- Complexity is increasing in many aspects of construction work, as powerful mega-trends change the world of work. These trends will impact the ability of the Scheme to be expanded or increased, and may threaten its relevance and value in coming years.
- The FSC plays an important and valuable role in achieving positive OHS outcomes in Australian construction, we support the Scheme continuing in its current form (Question 1).
- We urge the FSC to continue to strive to identify and develop more meaningful and valid metrics to measure and report on Scheme performance and outcomes. The AIHS stands ready to partner with the FSC and associated stakeholders to advance this work (Question 1).
- We believe the industry would be poorer without the Scheme, both in relation to OHS outcomes and associated costs (Question 4).
- Capability building is best done by professional communicators and educators. The education role of the FSC, which itself is a small organisation, should be separated into a dedicated construction OHS education and advisory agency. Insights delivered must be driven and supported by the data generated by the Scheme (Question 7).
- We don't believe the Scheme should be expanded into non-OHS topics such as materials quality and building safety (Question 9).
- The FSC should implement unannounced or spontaneous audits on Scheme participants. This eliminates the risk of audit sites being overly 'prepared' for Scheme audits ahead of auditors' arrival on site (Question 10).
- The "model client" project delivery method is a proven, effective way of maximising positive OHS outcomes on infrastructure projects; the FSC, or a dedicated communications and advisory agency, should make greater efforts to improve the promotion, advocacy and monitoring of model client approaches by agency clients (Question 13). To this end:
 - The 'upstream' phases of planning, design, and procurement of infrastructure projects by state and private clients plays a critical role in 'downstream' construction OHS outcomes.
 - The healthy and safe delivery of infrastructure projects has the potential to positively impact workforce and community wellbeing outcomes.
 - Australian communities expect state- and privately-funded infrastructure projects to be delivered on time, on budget, to specification, with minimal impacts to the environment, and with minimal impacts to project workers' and other stakeholders' health and safety.
 - We encourage all delivery agencies, both public and private, and regardless of the commercial and contractual mechanisms in place, to support and implement an active client method in delivering infrastructure in Australia.
- We caution against the FSC developing criteria in relation to psychosocial risks to be used in the Scheme in the current structure (Question 26).
- The industry will not be able to audit its way to improved psychological health under the existing paradigm (Question 27).

- The Scheme's current commercial model is fair and sound; we think implementing fees would disrupt the independence balance (Question 28).
- We support the Scheme being replicated and adapted to suit other industries; but we think these Scheme/s should be overseen by separate, dedicated agencies (Question 37).
- As the Discussion Paper labels the federal safety officers (FSOs) as "WHS professionals", we recommend the FSC embraces the AIHS certification scheme (see <https://www.aihs.org.au/certification>), to support this label of FSOs as WHS professionals.

Should you wish to contact us to discuss any of the points raised above further, please do so via policy@aihs.org.au.

We thank you for the opportunity to provide this submission.

Yours sincerely,

Andrew Heinrichs

Chair AIHS Policy and Advocacy Committee