

Independent Review of the Federal Safety Commissioner

Discussion Paper 30 June 2023



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Foreword

Building and construction work continues to be high risk, ranking in the top four industries for workplace fatalities and serious injuries.¹ The Federal Safety Commissioner (FSC) is one of a range of statutory roles, agencies and regulators which play a role in ensuring building and construction workplaces are safe and workers get home safely.

I have been asked to review the FSC within the parameters of the Terms of Reference which can be found at [Appendix A](#) of this paper.

My approach is to examine the results of previous reviews of the FSC and analyse relevant data. I will also consider the *Final Report of the Royal Commission into the Building and Construction Industry* (Royal Commission), which initially recommended the creation of the FSC.² I will undertake extensive consultation so that I can draw on the experience of accredited businesses, workers, relevant industry and employer associations and organisations, unions, FSC staff, Federal Safety Officers (FSO)³ and Commonwealth Government entities which procure building and construction work.

This Discussion Paper poses questions that you may wish to answer in a written submission. I have chosen these questions following a period of preliminary consultation which took place in May and June 2023. This preliminary consultation allowed me to gauge views on the FSC and to identify common issues and concerns.

Topics covered in the Discussion Paper are not exhaustive. You are welcome to raise other issues in your submission. Equally, you are not required to answer all of the questions posed in the Discussion Paper; you may address only those which are of relevance to you. There are also other ways you can be involved in the review throughout the public consultation process.⁴ I am very keen to hear your views in whatever way you want to contribute them.

In considering the merits of any calls for change, I will be guided by the Terms of Reference, the objectives of the *Federal Safety Commissioner Act 2022* (Cth) (the Act) and whether proposals would optimise WHS outcomes in the building and construction industry (and other industries where relevant), strengthen safety culture across it and reflect the collective wisdom and knowledge of those who are operating businesses, working in and procuring work for the building and construction industry on a day to day basis.

I am very grateful to those who participated in preliminary conversations with me and to the Department of Employment and Workplace Relations (DEWR) staff for their work in assisting me with the production of this Discussion Paper.

Marie Boland

¹ Safe Work Australia, [Key work health and safety statistics](#), Australia 2022.

² Initially known as the Office of the Commissioner for Occupational Health and Safety in the building and construction industry.

³ Federal Safety Officers are appointed under section 68 of the *Federal Safety Commissioner Act 2022* (Cth) and conduct audits for the FSC.

⁴ See [page 5](#) for more details on the review process.

The Review Process

This Discussion Paper has been developed to inform a public consultation process which will take place between July and August 2023. Comments received during public consultation will be used to inform a written report which will, if supported by relevant evidence, make recommendations to improve the operations and functions of the FSC, and provide answers to questions raised in the Terms of Reference.

A consultation summary will be collated by 31 August 2023 identifying common themes and issues raised in submissions and conversations with the reviewer and it will be released publicly in September 2023. There will be an opportunity to respond to the consultation summary prior to the completion of the final report of the review.

The review will be finalised by the end of 2023 with a written report being provided to the Minister for Workplace Relations.

A Review Advisory Panel has been established to provide input and guide the reviewer throughout the process. Membership of the panel includes equal representation of employer representatives, unions and Commonwealth Government representatives including the FSC.

How to Contribute Your Views

If you would like to submit a written submission, this Discussion Paper presents issues for your consideration which are within the Terms of Reference and scope of the review.

A complete list of the questions asked throughout the Discussion Paper is at [page 37](#).

Written submissions addressing these questions should be submitted to WRSubmissions@dewr.gov.au. A brief survey relevant to the review is also available on the [Review webpage](#), if you wish to contribute your views in that format.

All submissions and comments must be provided by 31 July 2023.

The preference is for all submissions to be published on the DEWR website. However, if you would like to provide comments in a different format, or make a confidential submission, please contact WRConsultations@dewr.gov.au or 0437 818 247 for further advice.

It is important to note that all comments about the review are welcome in any format. If you would prefer to have a discussion with the reviewer please email WRConsultations@dewr.gov.au to arrange a time or if you want to send your comments by email directly to her, you can contact Marie at marie.boland@bigpond.com.au.

1. Setting the Scene

1.1 The Work Health and Safety Accreditation Scheme

The FSC was established in 2005 to improve the safety culture of the building and construction industry. It does this by administering the Work Health and Safety (WHS) Accreditation Scheme (the Scheme) and promoting safety across the industry. The Scheme is established under the Act and the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (the Rules).⁵

The policy objective of the Scheme is to leverage Commonwealth (CW) funding to increase safety standards across the building and construction industry. This objective is achieved by ensuring that, subject to financial thresholds, only builders who are accredited under the Scheme can enter into head contracts for building and construction work that is funded directly or indirectly by the CW. The current financial thresholds are:

- \$4 million or more for building and construction work funded directly by the CW
- \$6 million or more for building and construction work funded indirectly by the CW⁶.

1.2 Gaining Accreditation

To be granted accreditation, an entity must have undergone a pre-accreditation audit and satisfied the FSC that it has appropriate WHS policies and procedures and safe work practices in place and is complying/will comply with the National Construction Code (NCC).⁷

Audits are undertaken by FSOs against a sample of the audit criteria from the FSC Audit Criteria Guidelines.⁸ The audit criteria set out system and implementation outcomes that must be met to gain and maintain accreditation, but does not prescribe the method by which entities must achieve those outcomes. This is designed to give all entities scope to achieve the Scheme criteria compliance in a manner that fits their businesses. An applicant entity will undergo a desktop review of its WHS systems with an FSO to determine the extent of compliance with the audit criteria ahead of an on-site inspection where both the on-paper and in-practice compliance with the audit criteria is determined.

All new accreditations are for up to three years with entities which are considered low risk at post-accreditation audits able to be accredited for up to six years. There is no fee charged to apply for accreditation.

⁵ See the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019*.

⁶ For projects that are indirectly funded by the CW, the CW funding must represent 50% of the total or be over \$10 million regardless of what proportion it represents.

⁷ For a more detailed discussion of the FSC's role in relation to the NCC see [page 20](#).

⁸ See the [FSC Audit Criteria Guidelines](#).

I have been informed that accreditation is rarely granted to an applicant entity after a single pre-accreditation audit. On average, entities require 2 to 3 pre-accreditation audits to achieve the level of compliance with the FSC Audit Criteria necessary to satisfy the FSC that the entity meets the requirements for accreditation under Rule 8 of the Rules. If an applicant entity does not achieve accreditation after three pre-accreditation audits, rejection of the application is considered by the FSC.

1.3 Maintaining Accreditation

All accredited entities have conditions that apply to their accreditation which must be met at all times. These 'standard' conditions are listed in Rule 15 and generally require:

- WHS policies and implemented practices that meet FSC Audit Criteria
- Compliance with the performance requirements of the National Construction Code
- Facilitation and participation in post-accreditation audits
- Compliance with incident reporting requirements notified by the FSC from time to time.

After each post-accreditation audit the FSC assesses the entity to determine their risk rating going forward. This assessment includes a consideration of reported safety incidents (for example, a notice issued by a state or territory WHS regulator), incident rate trends reported through an entity's biannual reporting to the FSC and any information available from State and Territory WHS regulators.

At an onsite audit (whether pre or post-accreditation), a corrective action report (CAR) can be raised by an FSO. A CAR is a formal finding of non-compliance with FSC Audit Criteria made by an FSO. The number of CARs issued also forms part of the entity's risk rating assessment. CARs are reviewed and expected to be closed by entities at the next onsite audit. To reinforce this requirement, entities must send action plans to the FSC outlining the steps and timeframes in which corrective actions to address the CAR will be taken.

There is no fee charged for maintaining accreditation.

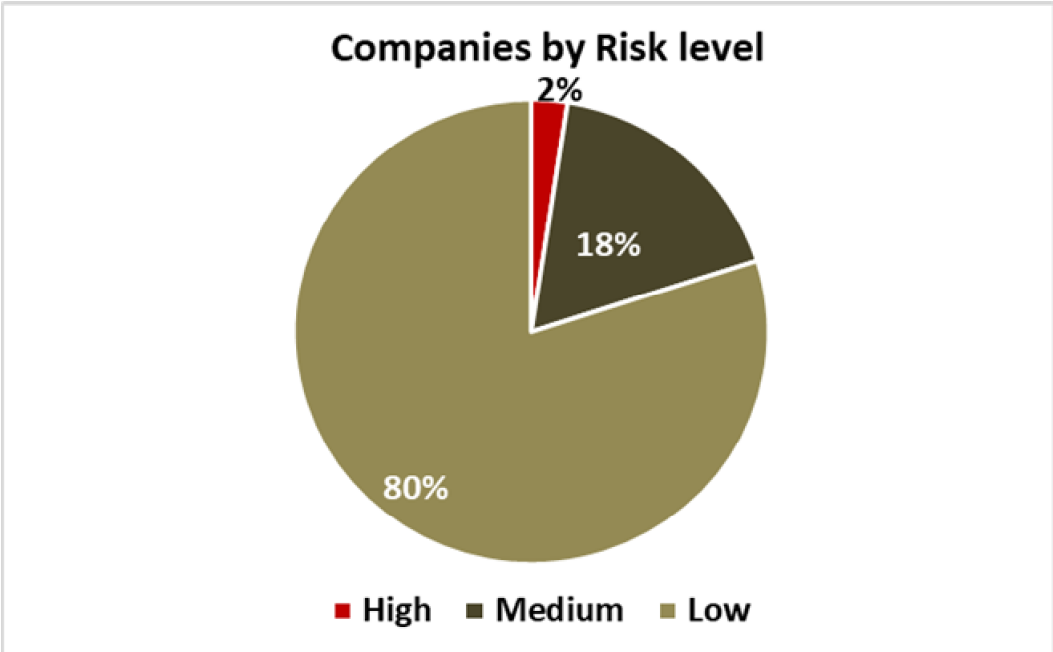
1.4 Risk Ratings and Compliance

The FSC uses a risk-based framework (Framework) to manage accredited entity compliance with the conditions of accreditation. The Framework categorises accredited entities according to the likelihood of non-compliance with the conditions of accreditation. There are three levels of compliance risk under the Framework - low, medium or high. While a broad range of information about entities is used to determine the risk level applied, some of the characteristics of entities at each level are summarised in the table below.

Risk rating	Example characteristics (non-exhaustive)	Audit frequency	Period of Accreditation
Low	<ul style="list-style-type: none"> Consistently strong audit results Timely and accurate biannual reporting Low incident rates 	Annual	Six years
Medium ⁹	<ul style="list-style-type: none"> A higher number of CARS following an audit An incident rate that is above average for accredited entities Delay in meeting the reporting obligations 	Bi-annual	Three years
High	<ul style="list-style-type: none"> Consistent poor performance at audits, for example through a poor CAR closure rate Immediate risks identified at audits Serious non-compliance with the conditions of accreditation (e.g. repeated delays in meeting the reporting obligations required of an accredited entity) A fatality or serious incident occurs on site that indicates significant shortfalls in WHS systems 	Per the conditions of accreditation	Per the conditions of accreditation

⁹ Newly accredited entities are allocated a medium risk rating until a post accreditation audit indicates they are eligible to move to low risk.

The graph below summarises the proportion of entities at each risk rating of the Framework as at 21 June 2023. There is no public disclosure of the risk ratings of entities. The rating is used internally by the FSC primarily to determine the frequency of audits.



Rule 18 allows the FSC to take the following compliance action against an accredited entity:

1.4.1 Administrative

- Require the provision of an action plan outlining how non-conformance with audit criteria will be addressed;
- Require evidence that non-conformance with audit criteria have been addressed, for review by an FSO;
- Undertake a follow-up audit to confirm that non-conformances with audit criteria have been addressed or to examine particular FSC Audit Criteria; and/or
- Require information on how an entity has responded to a particular WHS incident or unsafe practice.

1.4.2 Legislative

- Impose further conditions of accreditation;
- Suspend accreditation; and/or
- Revoke accreditation.

The following table outlines the FSC’s compliance actions taken over recent years.

Financial Year	Administrative compliance actions	Legislative compliance actions	Legislative sanction actions	Total
2022-2023	44	22	2	68
2021-2022	32	15	1	48
2020-2021	23	26	0	49
2019-2020	30	28	4	62
2018-2019	34	45	6	85

The Framework complements the FSC’s Company Compliance Policy which outlines the action the FSC will take where an entity breaches, or is suspected of breaching, its conditions of accreditation. The Company Compliance Policy also outlines the FSC’s general approach to resolving non-compliance matters. Specifically, the Policy says:

The OFSC’s preference is to work collaboratively with companies to ensure compliance with Scheme requirements and conditions of accreditation. Where there are concerns a company is not meeting Scheme requirements or its conditions of accreditation, those concerns will be discussed openly with the company, the company’s views will be considered and proportionate corrective actions required.¹⁰

1.5 Reporting

Accredited entities are required to submit certain information to the FSC as a condition of accreditation. Required reporting includes:

- A contract declaration when a contract is signed for a building project which meets the Scheme funding threshold (Scheme project).
- Notification within a specified timeframe of any onsite work-related fatality; lost time injury, medically treated injury (for Scheme-covered projects only) or dangerous occurrence (for Scheme-covered projects only).¹¹
- Biannual reports which include a range of data including workers compensation claims data, improvement notices and prohibition notices issued by WHS regulators and confirmation of the numbers of fatalities for all activities.

¹⁰ Office of the Federal Safety Commissioner, *WHS Accreditation Scheme Company Compliance Policy*, p8

¹¹ See the Reporting Requirements section of this Discussion Paper at [page 25](#) for more details on the data required to be reported to the FSC by accredited entities.

1.6 The Office of the Federal Safety Commissioner

The Office of the Federal Safety Commissioner (OFSC) has 34 direct employees and 25 contracted FSOs. Its 2022-23 financial year budget includes \$4.238m for employee expenses and \$4.025m for supplier expenses (approximately 90% of the latter is spent engaging WHS professionals as FSOs to undertake audits).

1.7 Procurement

The CW has overarching responsibility for ensuring compliance with the Act. This includes ensuring building work is not CW funded unless contracts are entered into with accredited builders and that at the time of the funding, the CW entity takes appropriate steps to ensure that builders will be accredited when they carry out the contracted building work.

If the CW is providing indirect funding to third parties (for example State and Territory governments), it is the CW's responsibility to ensure that funding recipients are made aware of and adhere to the Scheme's requirements. In the case of indirect funding, the CW needs to make sure the funding agreement includes a requirement for Scheme accreditation.

Currently, where a breach is identified, the FSC will consider the following:

- The funding entity's historical compliance with the Scheme
- Due diligence processes
- Any contributory circumstances
- The funding entity's responsiveness to identifying and addressing issues
- The value of the procurement where the breach occurs
- Any evidence of deliberate avoidance of requirements (e.g., contract splitting).

The FSC has the following compliance options in the event of a breach:

- Seek a formal response from the relevant funding entity on proposed remedies to the breach and prevention of future breaches
- Escalate the request to the funding entity's Minister and senior Executive
- Request that the Minister for Workplace Relations write to the funding entity's Minister.

2. Statistics

2.1 Whole of Industry Statistics

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.¹²

Worker fatalities by industry, 2021



Agriculture, forestry and fishing

10.4

fatalities per
100,000 workers



Transport, postal and warehousing

7.9

fatalities per
100,000 workers



Mining

2.3

fatalities per
100,000 workers

Industry of employer	Number of fatalities	Fatality rate (fatalities per 100,000 workers)
Agriculture, forestry & fishing	33	10.4
Transport, postal & warehousing	52	7.9
Mining	6	2.3
Construction	24	2.1
Arts & recreation services	5	2.1
Electricity, gas, water & waste services	3	2.1
Manufacturing	16	1.8
Administrative & support services	5	1.2
Wholesale trade	4	1.1
Rental, hiring & real estate services	2	0.9
Public administration & safety	6	0.6
Other services	3	0.6
Education & training	4	0.4
Accommodation & food services	2	0.2
Health care & social assistance	2	0.1
Professional, scientific & technical services	1	0.1
Retail trade	1	0.1
Financial & insurance services	0	0.0
Information media & telecommunications	0	0.0
Total	169	1.3

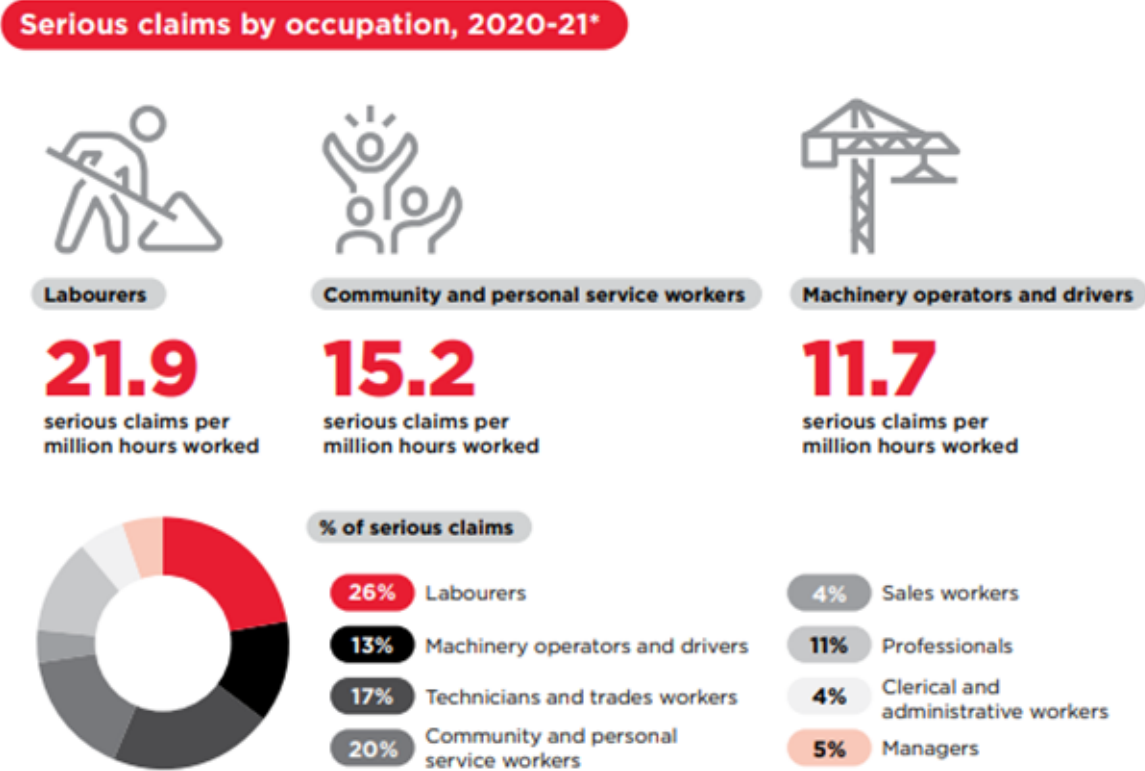
¹² Safe Work Australia, *Work-related injury fatalities*, 17 January 2023

The following table presents the number of worker fatalities per 100,000 workers in the construction industry for the past 10+ years.¹³

Industry of employer (ANZSIC '06)	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Construction	3.6	4.8	4.8	3.9	3.7	4.1	4.0	3.1	2.1	3.1	3.3	3.4	2.6	2.0	2.4	3.1	2.1

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.¹⁴



¹³ Safe Work Australia, *Work-related Traumatic Injury Fatalities Database*.

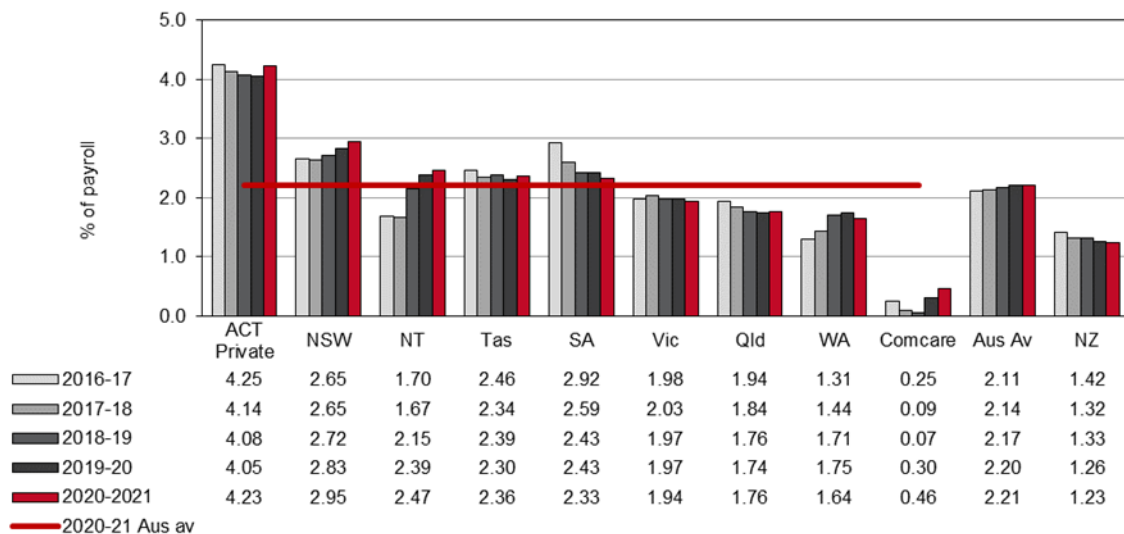
¹⁴ Safe Work Australia, *Work-related injury fatalities*, 17 January 2023.

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

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

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

The following graph shows a comparison of standardised average premium rates across the Australian jurisdictions for the construction industry. The Australian average premium rate in the construction industry has risen steadily from 2.11% of payroll in 2016-17 to 2.21% in 2020-21.¹⁵



Standardised premium rates for Construction by jurisdiction, 2016-17 to 2020-21

¹⁵ For more information, please refer to the latest edition of the [Comparative Performance Monitoring report](#).

2.1.3 Lost-time injury frequency rates in the construction industry

The following table presents lost time injury frequency rates (LTIFR) figures for the entire construction industry compared with Scheme accredited entities' LTIFR.¹⁶

	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021p	2021-2022YTD
Scheme accredited entity LTIFR	4.0	2.8	2.7	2.4	2.1	2.1	1.9	1.7	1.5	1.6	1.5
SWA Industry-wide LTIFR	11.6	11.0	10.3	9.8	9.7	9.7	9.5	9.2	9.3	9.7	n/a

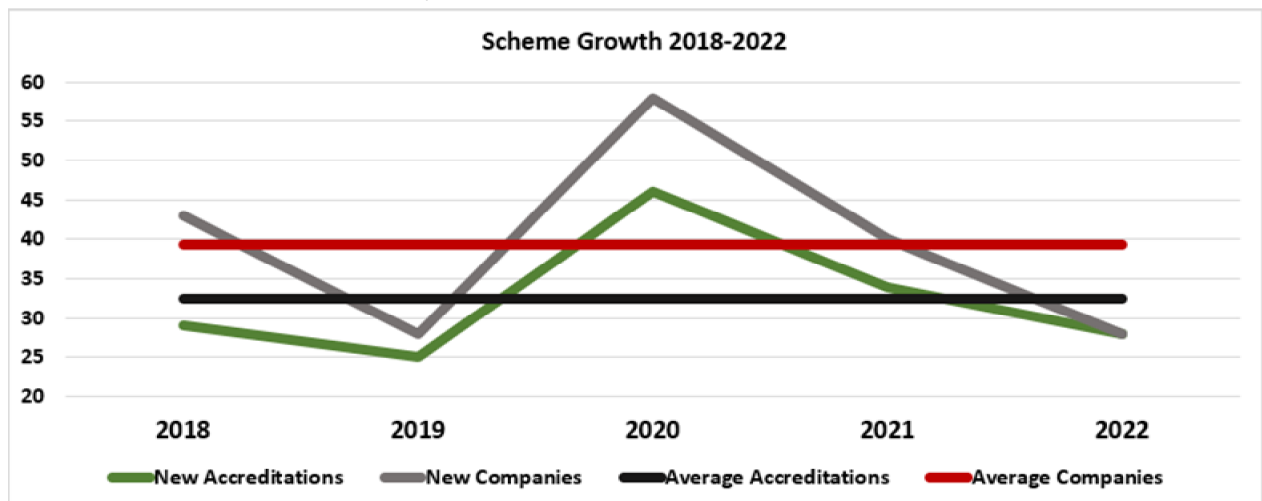
The 2020-21 data are preliminary (denoted by 'p'). The number of workers' compensation claims is likely to rise as revisions occur in future years. These benchmarks are based on lost time injuries from workers compensation claims and are likely to be an underestimate of all lost time injuries due to claims not being made for minor injuries.

2.2 Scheme Statistics¹⁷

2.2.1 Scheme operations

As at 30 April 2023, the Scheme featured:

- 569 accredited entities, representing approximately one third of industry turnover;
- Of the 569 entities, 68 (12%) are small, 313 (55%) are medium and 188 (33%) large;¹⁸
- 474 active Scheme projects worth approximately \$78.6 billion;
- 550 audits conducted in the 22/23 FY to 28 June.



¹⁶ Scheme accredited companies are included in the entire industry figures. An LTI is a work-related occurrence that results in a permanent disability or injury resulting in time lost from work of one day/shift or more. Permanent disability is as defined in the legislation of the jurisdiction in which the project is being undertaken. Source and more information about how LTIFRs are calculated can be found at [Lost time injury frequency rates interactive data](#).

¹⁷ Data supplied by the FSC and correct as at 9 June 2023. Data collected under the Scheme is different to the data collected and reported by SWA. For example, the FSC does not capture data about vehicle incidents where the incident does not occur on a building or construction site covered by the Scheme. The FSC does not capture data from certain incidents which occur on an accredited entity's non-Scheme projects.

¹⁸ Accredited entities report on number of employees: 0-19 is small, 20-199 is medium, 200+ is large.

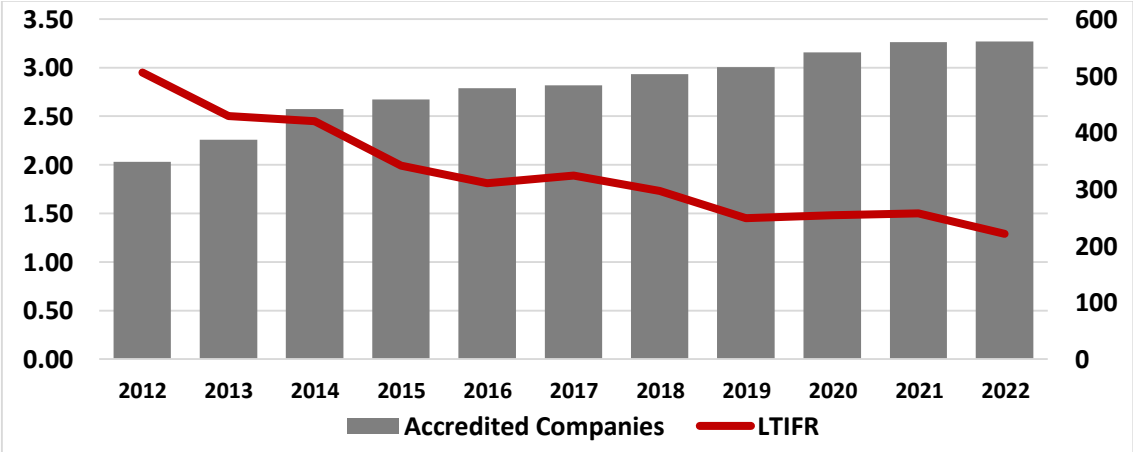
2.2.2 Accredited Entities – Years Holding Accreditation

The following table shows a breakdown of entities by the length of time they have been accredited with nine years being the average.

Years Accredited	Number of Entities
0 < 5	165
5 < 10	151
10 < 15	158
15+	92
Total	566

2.2.3 Scheme Lost Time Injury Frequency Rates 2012 - 2022

Accredited entities are required to report Lost Time Injuries (LTIs) on all work-related incidents on a Scheme or Non-Scheme Project where the accredited contractor is the head contractor and where the project value is \$4 million or more. The following graph shows a downward trend in the LTIFR reported by Scheme accredited builders.¹⁹



¹⁹The number of accredited entities is from 31 December in each year.

2.2.4 Lost Time Injury Frequency Rates – Performance Over Time²⁰

The following table shows accreditations grouped by number of years holding Scheme accreditation with available LTIFR data. The data suggests that the percentage of accredited entities with improved LTIFR compared with their LTIFR in their first year of accreditation and the degree of improvement has increased over time.

Years accredited	Accreditations	% with improved LTIFR	Average improvement of improved entities
3	264	52%	77%
6	209	65%	88%
9	143	74%	92%
12	81	74%	87%

2.2.5 Workers' Compensation Premium Rate – Performance Over Time²¹

Accredited entities are required to report Workers' Compensation Premium Rates (WCPR) in biannual reports provided to the FSC. The following table shows accreditations grouped by number of years holding Scheme accreditation with available WCPR data. The data suggests that the percentage of accredited entities with improved WCPR when compared with their WCPR in their first year of accreditation and the degree of improvement has increased over time.

Years accredited	Accreditations	% with improved WCPR	Average improvement of entities that improved
3	298	59%	34%
6	234	62%	38%
9	152	71%	45%
12	81	73%	51%

2.2.6 Fatalities

Accredited entities are required to report all work-related fatalities immediately to the FSC. An Incident Report form must be submitted within 48 hours.

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).²²

²⁰ As at 30 June 2022.

²¹ As at 30 June 2022.

²² Note this is preliminary data only.

3. Issues for Consideration

3.1 Improving Work Health and Safety Practices

Scheme data suggests that it is improving WHS outcomes in accredited entities. However, correlation does not necessarily mean causation and it remains difficult to prove whether it is the Scheme or other factors that is producing improvements. Workplace injury and incident data across all industries suggests progress is slowing, including in the building and construction industry.

Safe Work Australia collects different data to the Scheme data making direct comparisons problematic. What is clear, however, is that fatalities are still occurring on both Scheme and non- Scheme building and construction sites.

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?

Anecdotally I was told by most of those consulted during the preliminary consultation for this review that the Scheme does make a positive difference and *'you can tell an accredited site from a non-accredited site'*.

Question 2

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

If the Scheme is improving WHS practices across the building and construction industry, it begs the question – how?

At various points in the preliminary consultation, I was advised that the Scheme requires an entity to do *'extra'* or implement WHS policies and procedures *'better'* or *'to the highest possible standards'* or to *'go beyond legal requirements'*.

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?

In identifying where the keys to improvements across the industry might lie, participants in the preliminary consultation spoke about 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'*.

The promotion across the industry, in partnership with building and construction entities, of best practice approaches to managing specific hazards, was also highlighted as key to the Scheme's success.

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?

3.2 Powers and functions

3.2.1 Federal Safety Commissioner - Functions

The functions of the FSC are:

- Promoting the object of the Act²³
- Promoting WHS in relation to building work undertaken by a constitutional corporation, the Commonwealth or a Commonwealth entity
- Performing functions as the accreditation authority for the purposes of the Scheme
- Promoting the benefits of the Scheme and disseminating information about it
- Auditing compliance with NCC performance requirements in relation to building materials
- Referring matters to other relevant agencies and bodies
- Any other functions conferred on the FSC by the Act or another Act²⁴.

The FSC's functions (apart from the NCC compliance function) remain consistent with the recommendations made in 2003 by the Royal Commission and have remained relatively unchanged since its establishment in 2005.

Since the FSC's establishment the WHS legislative environment within which it operates has changed dramatically. All jurisdictions except Victoria have implemented their versions of the model WHS laws with the objective of providing '*for a balanced and nationally consistent framework to secure the health and safety of workplaces*'.²⁵

The model WHS laws recognise the value of worker participation and representation in improving health and safety at the workplace. Processes and procedures in the laws aim to support genuine and effective consultation with workers.

To date, the FSC has directed its resources primarily to the functions of auditing accredited entities and those seeking accreditation. More recently it has implemented an education program and delivered seminars on key hazards and trends emerging from audits (open to all accredited entities).

²³ The object of the Act is to promote health and safety in relation to building work by a constitutional corporation, the CW or a CW corporate entity (section 3).

²⁴ No other functions are currently conferred on the FSC.

²⁵ Section 3(1) of the *Work Health and Safety Act 2011* (CW), *Work Health and Safety Act 2011* (NSW), *Work Health and Safety Act 2011* (QLD), *Work Health and Safety Act 2011* (ACT), *Work Health and Safety Act 2012* (SA), *Work Health and Safety Act 2012* (TAS), *Work Health and Safety Act 2020* (WA), *Work Health and Safety Act 2011* (NT).

It also facilitates a regular industry forum (comprising of accredited entity representatives). This review provides the opportunity to assess whether the FSC has the balance right in terms of putting its resources into auditing, compliance and education. It also provides opportunities to revisit the functions in the context of enhancing the tripartite approach to improving WHS enshrined in the model laws.

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?

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?

Question 7

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

It is usual for any organisation, agency or statutory role operating in the workplace relations, industrial relations and work health and safety space to ensure that there is a tripartite approach and that the representatives of both employers and workers play an active role and at the minimum are consulted. This approach is consistent with ILO treaties of which the CW is a signatory. It is also consistent with the principles underpinning WHS legislation in Australia, which operate on the basis that anyone who can play a role in ensuring workplace safety should be encouraged and facilitated to play that role.

Question 8

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

Section 38(ca) of the Act prescribes the following function on the FSC:

(ca) auditing compliance with National Construction Code performance requirements in relation to building materials.

The NCC details the minimum standards that building materials must meet, including the relevant testing standards that must be complied with where applicable. Building regulation, including enforcement and compliance, is primarily the responsibility of State and Territory governments. Each State and Territory government has its own building legislation to regulate building construction.

The NCC compliance function was conferred on the FSC at a time when there was significant public concern around the compliance of building materials following fires spread by combustible cladding in Lacrosse, Victoria (2014), and Grenfell, London (2017).

As the states and territories are responsible for regulation of Australia’s built environment, the CW has limited constitutional authority to regulate this area and the FSC has no experience in auditing building material compliance.

The Scheme currently requires entities to declare that all building materials used on their building projects will comply with the NCC’s Performance Requirements. This is considered to go some way to meeting the requirements of section 38(ca).

The FSC has not been allocated any additional funding to meet the requirements of section 38(ca) and its FSOs have minimal (if any) experience in ensuring compliance with the NCC.

Question 9

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

3.2.2 Federal Safety Commissioner - Powers

The FSC has the power to impose further conditions on an accredited entity beyond those required by all accredited entities (Rule 15). The FSC can also suspend or revoke an accreditation if there is a breach of accreditation conditions (Rule 18).

Question 10

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

In 2018, a Senate inquiry into workplace deaths recommended that corporations that repeatedly breach WHS obligations and cause death or serious injury should not be awarded CW, State or Territory government contracts. The CW Government’s response to this recommendation was to highlight the work of the FSC and the Scheme.

When there is a fatality on an accredited entity’s worksite, irrespective of whether it is on a Scheme project site or a non-Scheme project site it must be reported to the FSC. The FSC will immediately change the accredited entity’s risk rating to high. The CEO of the accredited entity will be required to meet with the FSC. The primary focus of the FSC following a fatality is to ensure that the entity is investigating the causes of the fatality through its own investigative processes. The FSC will also consider whether it is appropriate for the entity to retain its accreditation.

Question 11

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

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?

Whilst the CW is responsible for ensuring compliance with the Act the legislation does not provide avenues to sanction procurement agencies should contracts for building and construction work be entered into which do not include the requirement for an entity to be accredited under the Scheme. I have been informed that compliance issues include both failures to include the Scheme requirement in the funding agreement, as well as a funding recipient's failure to uphold the agreed obligation.

Current practice is for entities to be assisted to reach compliance as soon as possible should this scenario occur and for stern letters to be written to departmental officers and/or secretaries.

A significant area of concern in this context is the capacity of the FSC to monitor whether the projects supported by indirect CW funding are meeting the requirements of the Scheme.

Question 13

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

Question 14

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

3.2.3 Federal Safety Officers – Powers

FSOs are external consultants engaged by the FSC to conduct pre-accreditation audits of entities entering the Scheme and post accreditation audits of entities remaining in the Scheme.

FSOs have the power to:

- Enter premises to inspect any work, process or object
- Interview any person
- Require a person to tell the FSO who has custody or access to a document or record
- Require a person to produce a document or record
- Inspect and make copies of records and documents
- Take samples of any goods or substances
- Ask for a person's name and address
- Keep records and documents.²⁶

Question 15

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

²⁶ *Federal Safety Commissioner Act 2022*, sections 70-79.

3.3 Scheme Requirements

Following the 2014 review of the FSC, the Scheme’s financial thresholds were increased. The thresholds have not been increased since that time. If the threshold increases, fewer projects will be in scope potentially resulting in fewer smaller entities requiring accreditation.

The following table outlines how a change to the financial thresholds for Scheme coverage would impact existing Scheme projects and accreditations. Most notably:

- 14% of current accredited entities are completing 88% of the current value of Scheme projects, demonstrating the dominance of relatively few accredited entities.
- The 101 active Scheme projects under \$10m represent 21% of the number of Scheme projects, yet account for less than 1 per cent of the value of Scheme projects. This demonstrates the large number of low value projects currently captured by the Scheme.

Threshold	Number of active Scheme projects at or above threshold	Value of active Scheme projects at or above threshold	% of current total active Scheme project value	Number of accreditations with projects in past 3 years at or above threshold	% of current accreditations with projects in past 3 years at or above threshold	Safety incidents reported on active Scheme projects	% of incidents reported at or above threshold
Current	478	\$78,896,532,673	100%	233	53%	965	100.0%
\$10m+	377	\$78,194,961,024	99.1%	190	43%	943	97.7%
\$20m+	292	\$77,010,662,299	97.6%	148	34%	914	94.7%
\$30m+	246	\$75,877,071,135	96.2%	119	27%	895	92.7%
\$40m+	220	\$74,981,131,087	95.0%	98	22%	867	89.8%
\$50m+	201	\$74,136,986,059	94%	90	21%	829	85.9%
\$100m+	134	\$69,424,784,425	88%	62	14%	738	76.5%

Question 16

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

Preliminary consultation suggests that there are situations where the Scheme's requirements are not fit for purpose, for example, where entities become principal contractors for the first time and where head contractors on CW funded projects are overseas entities.

Question 17

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

Rule 15 provides that all accredited entities must:

- Maintain safe work practices, policies and procedures at all times.
- Comply with the performance requirements of the NCC that relate to building materials.
- Undergo post-accreditation audits.
- Comply with the Scheme's reporting requirements.

The FSC assesses whether an entity should be accredited and monitors its continued compliance with the Scheme's requirements through the pre and post-accreditation audit. Significant time and resources are invested in these audits by the FSC including repeated auditing to bring an entity up to standard to ensure it can be accredited.

Currently, post-accreditation audits are planned with the FSO arranging a time with the entity to be audited. The Royal Commission reported there should be '*a significant element of random physical inspections of the existence, application and effectiveness of controls in place to guard against the range of identifiable hazards*'.²⁷

Question 18

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

Question 19

Does the approach to post-accreditation audits remain appropriate? For example, should the nature of the audits or the criteria chosen for assessment change depending on factors such as time spent accredited under the Scheme?

²⁷ *Final Report of the Royal Commission into the Building and Construction Industry*, page 79.

3.3.1 Reporting Requirements

Scheme

There are four categories of FSC incidents which accredited entities must report to the FSC. These are fatalities (all projects), lost time injuries (LTI) (for all projects valued at more than \$4 million), medically treated injury (MTI) (Scheme projects only) and Dangerous Occurrences (Scheme projects only).²⁸

Accredited entities must also submit the following information to the FSC:

- Contract declarations whenever an agreement is reached on a tender, or a contract is signed for a project that meets the Scheme's threshold.
- Confirmation of whether workers' compensation premiums are paid on a state/territory basis, whether the accredited entity is self-insured, or has other workers' compensation arrangements.
- The total number of individuals, who are directly employed by the accredited entity that have worked on building or civil construction projects (irrelevant of project value) for the accredited entity for any length of time during the reporting period.
- the number of workers' compensation claims that were actioned that originated from building or civil construction work performed during the reporting period.
- Average cost per workers' compensation claims for all projects during the reporting period.
- The number of pending or completed prosecution action(s) taken against the accredited entity by a State or Territory.
- Information on any peer or industry recognition for WHS performance.
- Information on any key WHS initiatives implemented by the accredited entity during the period.

Accredited entities are also required to report WHS incidents and injuries to regulators and other agencies.

WHS Regulators

The model WHS Act requires an accredited entity (which will meet the definition of person conducting a business or enterprise (PCBU)) to notify the relevant WHS regulator immediately after becoming aware that a notifiable incident has taken place. A notifiable incident means:

- (a) the death of a person;
- (b) a serious injury or illness of a person; or
- (c) a dangerous incident.²⁹

Failing to report a notifiable incident is an offence and penalties apply.

²⁸ A dangerous occurrence is an incident where no person is injured, but could have been injured, resulting in Serious Personal Injury (which requires a week or more away from work), Incapacity or Death. Also commonly called a "near miss". Only Dangerous Occurrences that are required to be reported under the relevant WHS legislation in the jurisdiction the project is being undertaken are required to be reported to the OFSC. See the [FSC Online WHS Report Guide](#).

²⁹ The terms 'serious injury or illness' and 'dangerous incident' are defined at sections 36 and 37 of the model Act. See [Model-WHS-Bill-21March2016 \(safeworkaustralia.gov.au\)](#).

Under Victoria's *Occupational Health and Safety Act 2004*, accredited entities (which will meet the definition of an employer) must notify WorkSafe Victoria immediately after becoming aware a notifiable incident has occurred. Failure to report an incident to WorkSafe is an offence and may result in prosecution. A notifiable incident should be reported immediately, followed up with a written notification within 48 hours.³⁰

Procurement Agencies

Some procurement agencies have their own WHS incident reporting requirements. For example, the Department of Defence requires contractors to report WHS incidents to it. The Department of Defence also audits worksites and issues its own contractual notices where there is non-compliance with WHS obligations.

Accredited entities are reporting WHS incidents, injuries and fatalities to multiple parties under multiple pieces of legislation. They are reporting different things to different agencies and sometimes they appear to be reporting the same things but under different names (dangerous occurrences and dangerous incidents). However, they are not reporting all WHS incidents across all of their activities to the FSC.

Question 20

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

Question 21

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

Question 22

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

Question 23

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

The issue of reporting across multiple parties also raises the question about greater collaboration between those agencies and regulators currently working to improve WHS in the building and construction industry. Safe Work Australia, the FSC, WHS Regulators and Workers Compensation agencies are all collecting data, and using it to develop education and compliance strategies with the objective of reducing workplace fatalities and injuries. Often confidentiality provisions in various pieces of legislation prevent these agencies from sharing that information with each other.

³⁰ WorkSafe Victoria, *Guide to Incident Notification*, [ISBN-Guide-to-incident-notification-2022-03.pdf](https://www.worksafe.vic.gov.au/ISBN-Guide-to-incident-notification-2022-03.pdf) ([worksafe.vic.gov.au](https://www.worksafe.vic.gov.au))

Question 24

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

WHS incident, injury and fatality data is used to track improvements in safety across accredited entities operating in the building and construction industry and to assess whether an accredited entity's risk rating should be set at low, medium or high within the FSC's risk framework. The purpose of the risk framework is to enable the management of audit frequency.

The Royal Commission reported that there should be the ability for transparent comparative assessments of an accredited entity's safety record and capacity, noting that:

the qualification held by each contractor 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.

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?

3.4 Current and Recently Acknowledged Hazards

The two main levers used by the FSC to improve safety standards in the building and construction industry are:

1. The auditing processes
2. Education and promotion of good WHS practices.

To support accredited entities in understanding the audit process, the FSC has developed Audit Criteria Guidelines (Guidelines).

The Guidelines outline the scope of each criterion and provide examples of possible evidence that will and will not meet the criteria. The criteria, last reviewed in 2015, were selected following an analysis of the key hazards within the industry, derived from Scheme incident data, audit outcomes, information from State and Territory WHS regulators and Safe Work Australia data highlighting national trends and statistics.

The current criteria are divided into the following subject matter areas:

WHS Audit Criteria

- Legal requirements
- Hazard identification, Risk Assessment and Control
- Emergency preparedness and response
- Health surveillance and exposure monitoring
- Incident investigation and corrective action
- Health and safety management system

Focus Point Audit Criteria

- Senior management commitment
- Integration of design issues into the risk management process
- Whole of project consultation
- Management of subcontractor WHS
- Project performance measurement
- Training arrangements

Hazard Audit Criteria

- Working at heights
- Telecommunication towers
- Demolition
- Asbestos
- Structural alterations/temporary support structures
- Confined space
- Excavation (at a depth of 1.5m or greater)
- Tunnels
- Explosives
- Pressurised gas
- Chemical, fuel or refrigerant lines
- Electrical
- Contaminated/flammable atmosphere
- Tilt up/precast concrete
- Traffic
- Mobile plant
- Artificial extremes of temperature
- Diving
- Construction work in, over or adjacent to water/liquids where risk of drowning

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?

The traditional emphasis of work health and safety has been on the management of the risks to a worker's **safety** in high-risk industries such as building and construction. This emphasis is reflected in the FSC Audit Criteria.

Preliminary consultation for this review suggests there is support for a renewed focus in the audit criteria on the management of the risks to a worker's **health**, particularly in the context of mental health. Relevantly, Mates in Construction recently reported that:

Every year 190 Australians working in the construction industry take their own lives; this means we lose a construction worker every second day to suicide. Construction workers are six times more likely to die from suicide than an accident at work. For our young workers, the facts are that they are well over two times more likely to take their own lives than other young Australian men.³¹

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?

3.5 Cost Recovery

The Charging Policy statement in the Australian Government Cost Recovery Policy (Charging Policy) is:

Where specific demand for a government activity is created by identifiable individuals or groups, they should be charged for it unless the Government has decided to fund that activity. Where it is appropriate for the Australian Government to participate in an activity, it should fully utilise and maintain public resources, through appropriate charging. The application of charging should not, however, adversely impact disadvantaged Australians.³²

The Royal Commission reported that:

the costs associated with an application for pre tender occupational health and safety qualification should be borne by the applicant with post accreditation audits borne by the Commonwealth.³³

Section 43(3) of the Act provides that the Rules may prescribe fees for Scheme applications. To date, no fees have been prescribed.³⁴

³¹ Mates in Construction, *Why Mates Exist: The Problem*, <https://mates.org.au/construction/the-problem>

³² Australian Government Department of Finance, [Australian Government Cost Recovery Policy \(RMG 302\)](#)

³³ *Final Report of the Royal Commission into the Building and Construction Industry, Reform – Occupational Health and Safety*, Volume 6, page 79.

³⁴ The FSC cost the CW Government approximately \$8.5 million in the 2022/2023 financial year.

In the Discussion Paper for the 2014 review of the Office of the FSC, it was suggested that:

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.

However, it was noted that:

Charging may detract from the current collaborative approach and may lead to increased debate and tension where a company requires multiple audits to achieve the same standards.

And:

Consideration would need to be given to whether the different rates were applied to different companies (e.g. on the basis of their size), whether it was based on the actual cost recovery (which may be inequitable for companies outside metropolitan areas) and other factors.³⁵

Perhaps not surprisingly, the 2014 review reported a unanimous response that there should not be an annual fee for accreditation, although the Australian Council of Trade Unions raised the possibility of a charge for lodging an application and that consideration should be given to charging an additional fee where it is necessary to conduct more than two pre-accreditation audits.

The 2014 review also noted that some Australian Government agencies raised the possibility of incorporating an FSC accreditation and compliance cost element in new policy proposals for building and infrastructure initiatives being considered by Government. Under this option, agencies would then provide funding to the FSC as part of their project management responsibilities and costs.³⁶

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?

In determining the appropriateness of charging entities for accreditation, the Charging Policy need to be considered.

³⁵ Australian Government 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*, page 21.

³⁶ Australian Government Department of Employment, *A Review to Modernise the Office of the Federal Safety Commissioner and the Australian Building and Construction OHS Scheme*, June 2014, page 24.

The Charging Policy outlines two types of cost recovery charges:

1. Cost recovery fees – fees charged when a good, service or regulation (in certain circumstances) is provided directly to a specific individual or organisation.
2. Cost recovery levies – charges imposed when a good, service or regulation is provided to a group of individuals or organisations (e.g., an industry sector) rather than to a specific individual or organisation.

Relevant examples are:

- The National Heavy Vehicle Accreditation Scheme (NHVAS) which charges fees to companies depending on the relevant stream of accreditation and the number of vehicles registered.³⁷
- The Cleaning Accountability Framework (CAF) Building Certification Scheme which charges fees to property owners, dependent on building type and size with an initial first-year application fee and then subsequent certification fee of approximately 40-70 per cent of the initial fee.³⁸
- Ireland’s Safe-T-Cert Certification Scheme which charges registration and audit/certification fees based on a company’s annual turnover.³⁹
- Western Australia’s Mines Safety Inspection Levy which divides the total forecast cost to be recovered to fund regulatory activities by the forecast industry hours worked. The levy is imposed on mining operations depending on hours worked.⁴⁰
- South Australia’s Construction and Industry Training Fund (CITF) Levy is 0.25 per cent of the contract price on all building and construction activity over \$40,000 and is payable by the project owner.⁴¹
- The UK’s Building Safety Levy (expected implementation in late-2023) will be charged on all new residential buildings requiring building control approval in England. The levy will be calculated on a ‘per residential unit’ basis or ‘per square metre’ basis and be payable by the Principal Designer and/or Principal Contractor.⁴²

Question 29

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

³⁷ National Heavy Vehicle Regulator, [National Heavy Vehicle Accreditation Scheme](#)

³⁸ Cleaning Accountability Framework, [What is CAF Building Certification?](#)

³⁹ Safe-T-Cert, [Overview of Safe-T-Cert](#)

⁴⁰ Western Australia Department of Mines, Industry Regulation and Safety, [Mines Safety Inspection Levy](#)

⁴¹ South Australia Construction and Industry Training Board, [About the \(CITF\) Levy](#)

⁴² UK Government Department for Levelling Up, Housing and Communities, [Consultation Outcome – The Building and Safety Levy](#)

3.6 Government Priorities

With the election of a new CW Government in May 2022, a number of national policy objectives are being implemented which are relevant to the work of the FSC.

3.6.1 Buy Australian Plan

The *Buy Australian Plan* (Plan) aims to improve ‘*the way government contracts work and build domestic industry capability through the Australian Government’s purchasing power*’.

It is intended that the Plan will:

- Maximise opportunities for Australian businesses in major infrastructure projects
- Open the door to more government work for more small and medium businesses by decoding and simplifying procurement processes
- Establish a Secure Australian Jobs Code to prioritise secure work in government contracts and ensure that government purchasing power is being used to support businesses that engage in fair, equitable, ethical and sustainable practices
- Provide more opportunities for First Nations businesses with a view to maximise skills transfer so that we can get more First Nations workers into long-term skilled work
- Level the playing field by bringing in a Fair Go Procurement Framework requiring those that gain government contracts to pay their fair share of tax
- Support industry sectors through the government’s purchasing power
- Use government spending power to take action on climate change and support energy projects
- Strengthen Defence industries and capability
- Make National Partnerships work to maximise the use of local workers and businesses.⁴³

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?

3.6.2 Secure Australian Jobs Plan

The *Secure Australian Jobs Plan* is part of the Buy Australian Plan. It is a set of actions identified by the CW Government to support the objective of creating secure work, with better pay and a fairer system for Australian workers.⁴⁴ As part of this plan the Government intends to introduce a Secure Jobs Code to ensure that taxpayers’ money being spent through government contracts is being used to support secure employment for Australian workers.

⁴³ More details can be found at <https://www.finance.gov.au/business/buyaustralianplan>

⁴⁴ It is noted that significant consultation is occurring around the Secure Jobs Code outside of this review.

The Secure Australian Jobs Code will establish guidelines with respect to:

- The fair treatment of workers, including job security
- Fair and reasonable wages and conditions
- Ethical and sustainable practices such as ensuring environmentally sustainable outcomes
- Compliance with the *Workplace Gender Equality Act 2012*
- The consideration of local industry workforce capability and capacity, particularly in regional Australia.⁴⁵

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?

Arguably, the objective of the Secure Australian Jobs Code which is most relevant to the work of the FSC is 'compliance with the *Workplace Gender Equality Act 2012*'. The objectives of this Act include:

- a) to support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters.
- b) to promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities).⁴⁶

A 2020 report into the barriers for women participating in the construction industry found:

Three inter-related themes emerged from the study capturing the critical challenges experienced by a substantial proportion of women in trades and semi-skilled roles in the construction industry:

*(i) **Women are outsiders:** our results highlight how the culture of masculinity drives inappropriate behaviour; career pathway challenges and difficulty in accessing work aligned with skills and aptitude; being treated differently on-site due to gender; and the barriers faced around having family responsibilities and caring for children.*

*(ii) **Consequence-free behaviour:** our results identify how the masculine culture can be an enabler of inappropriate behaviour; the mistreatment of female apprentices; and the lack of workplace support for managing inappropriate behaviour.*

*(iii) **Culture of silence:** our results highlight the lack of transparent processes for reporting inappropriate behaviour; little to no consequences for co-workers who act inappropriately; and fear of punishment for reporting inappropriate behaviour.⁴⁷*

⁴⁵ <https://anthonyalbanese.com.au/media-centre/secure-australian-jobs-plan>

⁴⁶ *Workplace Gender Equality Act 2012*, section 2A

⁴⁷ <https://www.rmit.edu.au/content/dam/rmit/documents/about/academic-schools/property-construction-project-management/report-women-in-construction-exploring-the-barriers-and-supportive-enablers-of-wellbeing-in-the-workplace.pdf>, page 7.

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?

3.6.3 Better Deal for Small Business

As part of the Buy Australian Plan, a key objective of the *Better Deal for Small Business* policy is to:

*Maximise small business participation in Commonwealth procurement, providing greater opportunities for business and Australian jobs. The Commonwealth intends to use its \$190 billion purchasing power to support small businesses, delivering better value for money and growing the local economy.*⁴⁸

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?

3.6.4 National Construction Industry Forum

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amends the *Fair Work Act 2009* to establish an ongoing National Construction Industry Forum (the Forum) as a statutory advisory body.

The Forum will be established after 1 July 2023 to provide advice to Government on a broad range of issues relating to work in the building and construction industry including workplace relations, industry culture, skills and training, **safety**, gender equity, and productivity.

The Forum will be tripartite featuring members from government and those with experience representing employers and employees. It will be chaired by the Minister for Employment and Workplace Relations and Forum members will include the Minister for Infrastructure, Transport, Regional Development and Local Government, and the Minister for Industry and Science.

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?

⁴⁸More details can be found at:

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fparty%2F8697618%22;src1=sm1>

3.6.5 Regulatory Stewardship

The CW Government intends to enshrine the concept of regulatory stewardship into the Public Sector Act.

Regulatory stewardship means adopting a whole-of-system, practice, collaborative, and long-term approach to regulation, that can anticipate, and respond to change over time. Its goal is to ensure that regulatory systems remain fit for purpose over the long term. The intention is to improve regulator performance, capability and culture through regulatory stewardship.

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?

3.7 Expansion

Any consideration of the expansion of the Scheme inevitably leads to a consideration of whether there should be an expansion within the building and construction industry itself.⁴⁹

The Royal Commission contemplated that over time the Scheme might expand to sub-contractors:

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 ... will identify. Thus, the scheme might be extended at an early time to subcontractors whose work exposes them to those particular hazards.⁵⁰

Question 36

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

Expanding the Scheme to other industries raises questions about how they might be identified, what special requirements might be relevant to meet the particular WHS challenges of the industry and what impact expansion would have on the ability of the FSC to continue its work in the building and construction industry.

Industries which receive significant CW funding include Defence, Health and IT noting that health care and social assistance and public administration and safety are currently considered high risk industries from a WHS perspective.⁵¹

⁴⁹ The 2014 review led to a contraction of the Scheme through the removal of CW funded projects involving the construction of single-dwelling houses.

⁵⁰ *Final Report of the Royal Commission into the Building and Construction Industry*, page 88.

⁵¹ Australian Work Health and Safety (WHS) Strategy 2023-2033 page 10.

It is important to note that no other industry representatives have been consulted to inform this discussion paper beyond the building and construction industry. I have therefore not suggested any specific expansion in this Discussion Paper but welcome views and responses to questions 37 and 38.

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?

Question 38

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

4. List of 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?

Question 2

As a building industry participant observing a worksite, what are the signs, if any, that it 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?

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?

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?

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?

Question 7

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

Question 8

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

Question 9

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

Question 10

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

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

Question 21

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

Question 22

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

Question 23

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

Question 24

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

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?

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?

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?

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?

Question 29

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

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?

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?

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?

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?

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?

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?

Question 36

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

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?

Question 38

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

Appendix A

Federal Safety Commissioner Review Terms of Reference

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

The Scheme uses the Australian Government's position as a major funder of building and construction work to insist on higher safety standards within the industry. To be a head contractor on a government-funded project, a building and construction entity must be accredited under the Scheme. The Scheme obliges builders to meet work health and safety requirements in addition to those required under State and Territory laws.

The development and implementation of the Australian Government's Buy Australian Plan presents a timely opportunity to review the FSC and the Scheme in light of 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. Noting that building construction and maintenance services was the 4th largest area of government procurement from 2018-19 to 2021-22,⁵² the review would consider the appropriateness of expanding the remit of the FSC and the Scheme, with particular regard to whether this could improve safety in other significant procurement areas.

Given the importance of continuing to support safety in the building and construction industry, this review will consider the impact of the FSC and the Scheme on building industry safety by adopting a tripartite approach to stakeholder consultations. This includes consultation through an advisory panel made up of stakeholders from key industry associations, unions and other Government agencies, as well as through consultation with the National Construction Industry Forum (NCIF) which is expected to be established from 1 July 2023.

The review would 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 entities 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 entities.
- 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.

⁵² Source: AusTender

- Whether the safety performance of other industries which Government funds⁵³ 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.

The review should report to the Minister for Workplace Relations in late 2023.

⁵³ Other significant areas of government procurement include the purchase of management and business professional services; commercial, military and private vehicles; engineering, research and technology-based services; information technology, broadcasting and telecommunications hardware; defence and law enforcement equipment; and healthcare services.

Appendix B

Key Terms

Term	Definition
Act	<i>Federal Safety Commissioner Act 2022 (Cth)</i>
CAR	Corrective Action Report
CW	Commonwealth
FSC	Federal Safety Commissioner
FSO	Federal Safety Officer
LTI	Lost Time Injury
LTIFR	Lost Time Injury Frequency Rate
MTI	Medically Treated Injury
NCC	National Construction Code
Royal Commission	Final Report of the Royal Commission into the Building and Construction Industry
Rules	<i>Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019</i>
Scheme	Work Health and Safety Accreditation Scheme
SWA	Safe Work Australia
WHS	Work Health and Safety