

Master Builders Australia

Submission to Department of Employment and Workplace Relations

Independent Review of the Federal Safety Commissioner

August 2023



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Introduction

1. This submission is made on behalf of Master Builders Australia Ltd. Master Builders Australia ('Master Builders') is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders' members are the Master Builder State and Territory Associations. Over 130 years the movement has grown to over 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.
2. The building and construction industry is an extremely important part of, and contributor to, the Australian economy and community. It directly accounts for 10 per cent of gross domestic product, and around 10 per cent of employment in Australia.
3. The building and construction industry:
 - Consists of about 440,000 business entities, of which 98.7 per cent are considered small businesses (fewer than 20 employees);
 - Employs over 1.3 million people (around 1 in every 10 workers) and is the second largest provider of full-time jobs in the Australian economy;
 - Represents about 10 per cent of GDP;
 - Trains more than one third of the total number of trades-based apprentices every year, with over 120,000 construction trades apprentices and trainees in training; and
 - Performs building and construction work each year to a value that exceeds \$245 billion.
4. This submission is made in response to the discussion paper published on the Department's website entitled '*Independent Review of the Federal Safety Commissioner*' ('the Discussion Paper').

Summary of Submission

Master Builders' overall position

Master Builders strongly supports the work of the Office of the Federal Safety Commissioner ('OFSC') and its role to ensure industry participants engaging in federally funded work prioritise improvements in safety practices and culture.

Master Builders submits that the Australian Government Building and Construction Work Health and Safety Accreditation Scheme ('the Scheme') administered by the OFSC both meets and exceeds its stated policy intent, and its operation has delivered real, tangible and ongoing improvements in safety outcomes for accredited participants and the building and construction industry more broadly.

While Master Builders' response to the individual questions posed within the Discussion Paper is outlined below, it is our broad view that (save for some minor alterations) the existing framework of the Scheme and powers of the FSC are largely appropriate and should be maintained. Additionally, the Scheme and OFSC exemplify the significant benefits that arise when Government and industry participants adopt a consultative and constructive approach to addressing defined industry-specific matters in a concerted manner.

Terms of Reference

5. According to the Terms of Reference, as expressed the Discussion Paper, 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.*
 - *Whether the safety performance of other industries which Government funds warrants expanding the FSC and the Scheme, taking into consideration factors such as cost, resources and existing regulation. If expansion to other industries is proposed, the review should outline how implementation should occur.*
6. Master Builders observes that although the Terms of Reference are relatively narrow, the Discussion Paper raises issues beyond its scope. While consideration of those additional issues has merit, we would caution against giving them disproportionate consideration as opposed to those that are the core subject of the Review.

Benefits of Accreditation

7. Master Builders has long supported the Scheme and the benefits it delivers to the building and construction industry as a whole.
8. The requirement for accredited companies to meet rigorous criteria via audits undertaken by Federal Safety Officers (‘FSOs’) is complemented by access to a raft of guidance materials, data, and training to assist them in managing hazards on construction sites.¹
9. The direct connectivity between the FSC and company CEOs is a very positive and unique feature of the Scheme. This ensures that safety matters can be addressed effectively and swiftly through an approach that also reinforces the importance of workplace safety and the shared responsibility to ensure work is safe. It represents a positive contrast to some WHS Regulators that have limited resources, competing priorities, and a broader general remit which often results in limited capacity to drive real WHS improvements and address unique and industry-specific issues associated with the performance of building work.
10. In recognition of the multiple benefits of accreditation, Master Builders actively encourages its members to become accredited under the Scheme. Accreditation is

¹ [Office of the Federal Safety Commissioner - Useful documents and downloads](#)

facilitated by FSC Audit Criteria² that is targeted, practicable and scalable – an approach that we submit should be preserved.

11. Master Builders would caution against making any substantive changes to the Scheme or FSC Audit Criteria as this may deliver the unintended outcome of precluding new companies (particularly those that are small or medium size businesses) from applying for or maintaining accreditation.
12. An overriding imperative is for the Scheme to continue its focus on encouraging and supporting practical and effective WHS systems, promoting the benefits around high standards of same, while avoiding ineffective red-tape and tick-a-box paperwork.

Issues for Consideration

13. Master Builders' responses (where applicable) to the questions posed in the Discussion paper are outlined below.

Improving Work Health and Safety Practices

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

14. Since its inception in 2005, data published by the OFSC shows that the number of companies within the Scheme has steadily risen, with 561 companies accredited across Australia as of December 2022. This data objectively evidences that the safety performance rates and outcomes for those accredited by the Scheme far exceed those who are not.³
15. For example, data published by the OFSC shows that the most recent Scheme lost time injury frequency rate ('LTIFR') was 1.14.⁴ The LTIFR measures the number of lost-time injuries per million hours worked during a single financial year. This figure contrasts with 9.6 (an average across all construction sub-sectors) for the industry as reported by Safe Work Australia ('SWA') for the same period.⁵
16. In addition, OFSC data shows that after six years of accreditation:
 - 62 per cent of companies have reduced Workers Compensation Premium Rates by an average of 38 per cent; and
 - 65 per cent of companies have reduced their LTIFR by an average of 88 per cent.⁶
17. Further, a 2022 Annual Census of accredited companies found that:
 - 97 per cent of companies agree that the OFSC has improved industry safety; and
 - 82 per cent of all respondents state that the Scheme has improved their safety practices and their safety culture.⁷
18. Data also demonstrates accredited companies have swifter return to work periods for workers, lowers workers' compensation costs, and better overall safety on site.

² [FSC Audit Criteria Guidelines](#)

³ See [Office of the Federal Safety Commissioner - Scheme Snapshot - 31 March 2023](#)

⁴ [Ibid](#)

⁵ [Safe Work Australia - Lost time injury frequency rate spreadsheet - 7 December 2022](#)

⁶ [Office of the Federal Safety Commissioner - Scheme Snapshot - 31 March 2023](#)

⁷ [Ibid](#)

19. Master Builders also notes that direct feedback from members about the Scheme is overwhelmingly positive and that it plays a significant role in continually driving improved safety practices and systems.

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

20. Master Builders understands that some accredited companies do use this status as part of their general company promotion (e.g. website, email signatures etc) however we are not aware of any specific circumstances where this is promoted on site.
21. Master Builders would not be opposed to companies having discretion to adopt on-site promotion of their accredited status. However, this should:
- not be mandatory and be an option for each company to determine based on their own considerations; and
 - any promotion or signage should be issued by and/or approved by OFSC before usage for consistency and preservation of scheme integrity.

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?

22. N/A

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?

23. Acknowledging that a response to this question necessitates some hypothetical subjectivity, Master Builders would submit that the absence of the Scheme would likely cause an adverse impact on the rate by which industry safety outcomes have improved and hinder the development of new or innovative ways to improve workplace safety more effectively.
24. Otherwise, Master Builders can report that feedback received from Members commonly notes as follows:
- Routine audits conducted by FSOs, the frequency of which are dependent upon a company's risk rating, provide not only an incentive for continual improvement, but create an additional layer of advice and support;
 - OFSC plays an important part in educating and providing practical assistance that goes to improving a company's safety management systems and outcomes;⁸ and
 - the OFSC's educative approach, when compared to that of State/Territory Regulators, is viewed very positively. In stark contrast, members regularly express frustration about State/Territory regulators who tend towards default punitive action while avoiding practical or effective assistance on site.
25. The above feedback supports the notion that the OFSC and Scheme play an important and unique role in educating companies on how to address hazards specific to the BCI and continually improve their WHS performance. It follows that the removal of the Scheme would mean this role would not be delivered thereby making improvements in industry safety outcomes harder to achieve.

⁸ See for example - [Office of the Federal Safety Commissioner - Useful documents and downloads](#)

Powers and functions

Question 5. Do the functions of the FSC remain appropriate given the changes that have occurred in the WHS environment and operating context of the building and construction industry since its establishment?

26. Aside from minor amendments, it is Master Builders' view that the functions of the FSC, under section 38 of the *Federal Safety Commissioner Act 2022* (Cth)⁹ are largely appropriate and should be maintained.
27. The functions of the FSC are broadly expressed and have remained (with one exception noted later herein) largely the same since they first appeared in the *Building and Construction Industry Improvement Act 2005* (Cth).¹⁰ This relatively unchanged period of continuity in function, combined with the clear improvement in safety outcomes for accredited companies, demonstrate that they are capable of being applied in a flexible and adaptable manner and operate effectively to ensure the stated legislative policy intent is met.
28. Master Builders would caution against any expansion or amendment to the functions of the FSC to the extent that it may dilute or detract from its existing primary focus and function; this being, to ensure high safety performance of accredited companies within the building and construction industry.
29. The industry-specific focus of the Scheme and FSC has been central to its success in improving safety outcomes for accredited companies. As we have noted variously elsewhere in this submission, the concerted focus on the building and construction industry underpinned by a collaborative and educative approach stands in stark contrast to non-industry specific regulators who necessarily adopt a more generic approach.
30. The specific focus on building and construction also enables the FSC to take a bespoke, relevant and practical focus on many of the unique nuances associated with the sector and the work it performs. This ensures the Scheme can focus on the things that are relevant and important to the performance of building work and avoids the need to inefficiently deploy resources to cover more generic issues.
31. It is Master Builders strong view that the industry-specific focus remains key to the success of the scheme and that it should not be broadened in the interests of ensuring ongoing improvements in building and construction safety outcomes.
32. That the OFSC is not a regulatory agency is, in Master Builders view, one of the most positive elements of the Scheme. This status enhances FSC's capacity to have meaningful and immediate influence on the WHS performance and associated systems of accredited companies.
33. The FSC's capacity to consult directly with CEOs and foster trusted relationships between company staff and FSOs, has much value and arguably significantly more impact than WHS Regulators who often don't have appropriate expertise in the BCI and are resource poor.
34. The ability of the FSC to recommend sanctions for Ministerial consideration remains a significant deterrent to non-compliance. Accredited companies are cognisant not only of the potential commercial ramifications of a sanction, but the reputational consequences amongst their company peers and competitors within the industry.

⁹ [Federal Safety Commissioner Act 2022 \(Cth\)](#)

¹⁰ At s.30

35. There would, however, be amenity in providing the FSC with broader powers to obtain relevant information from State/Territory WHS Regulators. Further detail is outlined in response to question 6 below.

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?

36. Master Builders submits that the existing audit functions already support this objective and do not require modification. The existing FSC Audit Criteria Guidelines ('the Audit Criteria') requires companies to have in place a documented process to ensure all health and safety legislation and codes of practice are identified, relevant to the company's operations and projects¹¹.
37. WHS laws, as well as industrial instruments¹², contain extensive obligations with respect to consultation. These are also replicated within various SWA Model Codes of Practice.¹³
38. Further, under the section FP3 of the Audit Criteria entitled "Whole of Project Consultation" companies must demonstrate that there is a documented process for the establishment of WHS consultation, cooperation and coordination arrangements, including:
- Agreement on the establishment of consultation arrangements with workers on site;
 - Consultation with workers or their representatives when WHS issues arise;
 - A program to ensure regular meetings with minutes of the meetings available to all workers; and
 - Training for health and safety representatives/WHS committee members where requested/required.
39. The exiting regime that operates with respect to consultation is therefore appropriate and should be maintained.

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

40. Master Builders would support the FSC having an increased education and information role.
41. This support is given noting that in recent years, the OFSC has increased the volume of educative materials produced by the Agency. As already observed, a diverse range of Fact Sheets, case studies, sample WHS policies and processes (either drafted by the OFSC or provided by accredited companies) are available on the OFSC's website.¹⁴ In addition, the OFSC has produced a number of videos highlighting exemplars in WHS Management, as well as via online webinars and training modules.
42. Master Builders strongly supports the OFSC playing an ongoing and enhanced educative role and continuing to partner with companies to model innovative Management Systems with a view to improving WHS outcomes across the entire building and construction industry.
43. Areas by which this could be improved include:

¹¹ See WH3 – Legal Requirement of the [FSC Audit Criteria Guidelines](#)

¹² Ref Part 7 – Consultation and Dispute Resolution of the [Building and Construction General On-site Award 2020](#)

¹³ See [Model Code of Practice: Work health and safety consultation, cooperation and coordination](#); [Model Code of Practice: Construction Work](#)

¹⁴ See [Office of the Federal Safety Commissioner - Useful documents and downloads](#)

- **Better sharing of innovative practices:** There would be significant merit in allowing the FSC greater capacity to share and promote new or innovative WHS management practices discovered during audits amongst other accredited companies. This would not only enhance industry safety outcomes, but represent a positive benefit for obtaining and continued accreditation, while encouraging more entities to consider accreditation.
- **Broader audit feedback:** Master Builders would ask the Review to consider providing accredited companies with information and feedback about all audit criteria assessed, as opposed to identifying just those areas where concerns have arisen. This would ensure that the focus is not just on areas where improvement has been identified, but also on those areas where criteria has been met and exceeded.
- **Benchmarking:** Related to the above point, there is also merit to providing accredited companies with some information or material that allows them to 'benchmark' or assess themselves against other accredited companies. We would recommend that this be done in such a way so as to be confidential to each participant (or only upon request of the accredited company) and utilise comparison information or data that is de-identified yet relevant to that cohort.
- **More online learning opportunities:** In a general sense, Master Builders would welcome FSC expanding its online learning and information presence. Member feedback about these forums is overwhelmingly positive and they are generally well attended. More specifically, there would be benefit in considering online information and education about particular audit criteria, changes thereto or general expectations arising as to best demonstrate compliance.

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

44. As noted earlier above, Master Builders has been an active Member of the FSC IRG since its original inception and during this time we have observed numerous and sustained attempts by respective Commissioners to engage workers and their representatives in the work of the FSC.
45. During consultation of the Scheme Review Advisory Board (of which Master Builders is a member) we have also been made aware that the FSC has on numerous occasions sought contact with construction unions, with little or no response.
46. Having regard to the above, Master Builders makes three general observations:
 - The existing framework does not exclude workers and their representatives, and we understand attempts to engage have been ongoing. This should not represent circumstances that require or justify amendment to the existing framework;
 - Any hangover association or link held by some organisations between the now-repealed *Building and Construction Industry (Improving Productivity) Act 2016*, the non-existent former *Office of the Australian Building and Construction Commissioner* - and the current Scheme or FSC - should simply be abandoned in favour of a different approach that embraces the Scheme and FSC as a safety entity which has a demonstrated track record in improving industry safety outcomes;
 - Notwithstanding the above observations, we would also note that one of the key reasons why the FSC IRG operates so effectively is that its conventional composition fosters an environment in which senior, experienced, sector-specific

safety professionals can discuss worksite WHS for building and construction in a frank, collaborative and positive environment. This is a rare and valued opportunity for all conventional participants.

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

47. Master Builders does not believe that the OFSC should hold the additional function imposed in respect of the National Construction Code ('NCC'). There are several important factors that cause Master Builders to reach this conclusion.
48. As the Review would be aware, the additional functions given to the FSC arose at a time where community debate about Non-conforming building products, or the use of building products in a non-compliant way (together 'NCPs') was extensive.
49. Master Builders cannot overstate the importance of addressing the issue of NCPs and have worked constructively with governments and regulators of varying jurisdictions to achieve this aim.
50. However, the Commonwealth has little or no jurisdiction over NCPs. Indeed, the issue is almost entirely regulated by state and territory laws of varying descriptions, that underpin industry focussed agencies and regulators with specific technical expertise. They also have varying and jurisdictionally specific powers, processes and approaches to enforcement.
51. The NCC is applicable to all jurisdictions and developed at a national level by the Australian Building Codes Board ('ABCB'). The requirements of the NCC are not the sole genesis of the NCP problem – rather, it is the various approaches to its enforcement and related approvals processes that play a larger part of this question (amongst other significant reasons).
52. To this end, Master Builders would prefer that attempts by Government to address NCPs be the domain of the state and territories with whom this responsibility is properly vested, with the Commonwealth playing an oversight or coordination role.
53. Indeed, the additional function held by OFSC has likely only caused confusion and results in a contrary outcome. As it stands, there is some confusion amongst regulators, policy makers, industry participants and the community as to whom is responsible for what when NCPs are concerned.
54. Most importantly, Master Builders is worried that this non-WHS core function will detract from the major role and purpose of the Scheme which is to work with industry and government stakeholders so the sector can achieve the highest possible occupational health and safety standards on Australian building and construction projects. Not only does the function confuse otherwise clear lines between what is a workplace health and safety matter and what is a building regulation matter, we hold the view that it brings no practical benefit on building sites in terms of industry OHS outcomes and, indeed, are concerned to ensure the contrary does not occur.
55. It is for reasons of this type that Master Builders does not believe that the OFSC should hold the additional function imposed on the OFSC in respect of the NCC.

Federal Safety Commissioner - Powers

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

56. Further to our comments outlined herein in response to question 5, Master Builders is of the view that the FSC's existing powers are largely appropriate.
57. We would, however, suggest that the functions under section 38(d) could also be enhanced by virtue of an amendment that not only allows for the referral of relevant matters to WHS Regulators, but to enable the FSC to compel the provision of certain types of information from those agencies as they relate to the Scheme.
58. State/Territory WHS Regulators collect a significant amount of data, as a consequence of incident notifications, the various workers compensation schemes and other jurisdictional-specific reporting regimes.
59. Better data sharing between State/Territory and Commonwealth agencies would allow the FSC to not only sharpen its focus on persistent WHS hazards, but to consolidate its research efforts and relevant resources.
60. In addition, better information sharing could also facilitate and streamline reporting requirements, minimising duplication, when an incident occurs on an accredited 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?

61. The OFSC's existing WHS Accreditation Scheme Company Compliance Policy ('the Policy')¹⁵ states that if a fatality is identified on any project where an accredited company is the head contractor, legislative compliance measures will be immediately imposed on the company's accreditation. These compliance measures include the application of further conditions of accreditation under section 16 of the Scheme Rules and increasing the company's risk level to high.¹⁶
62. The Policy also outlines that as a minimum, the further conditions on accreditation will require:
 - A meeting between the accredited company's CEO/Managing Director (or equivalent senior manager); and
 - The accredited company must provide the FSC with details of the incident and an overview of the actions it will take to prevent similar events in future; and
 - The company to undergo one or more conditional audits to confirm that acceptable actions in response to the fatality have been implemented.
63. The Policy also states that if a company does not comply with these further conditions, or the outcomes of the conditional audit(s) are not satisfactory, further legislative sanctions in the form of additional conditions, suspension or revocation of accreditation may be imposed.
64. Master Builders notes that if at any point, the FSC determines that the fatality occurred as a result of natural causes, did not occur on the designated site, or could not be controlled by the company's WHS management systems, any conditions will be lifted.
65. The requirements as expressed under the Policy are appropriate and should be maintained, as they do not interfere with relevant powers of the State/Territory WHS Regulators.

¹⁵ [OFSC - WHS Accreditation Scheme Company Compliance Policy](#)

¹⁶ [Building and Construction Industry \(Improving Productivity\) \(Accreditation Scheme\) Rules 2019](#)

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?

66. Section 18 of the Scheme Rules already sets out how demonstrable failures would give rise to a breach of WHS laws and therefore a breach of a condition of accreditation, including any associated consequences.¹⁷
67. The current arrangements are appropriate and therefore should be maintained.

Question 13. How can the FSC improve Commonwealth funding entities' compliance with the Act?

68. Master Builders makes no specific response to this question except to note a general policy for Government to ensure that it too shares and complies with whatever obligations it places on business and workplaces. The Commonwealth should at all times be a model client and act in accordance with the laws and policies it makes.

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

69. Refer to Master Builders response to question 13 above.

Federal Safety Officers - Powers

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

70. Master Builders is of the view that powers of FSOs remain appropriate.

Scheme Requirements

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

71. Master Builders does not recommend any change to these thresholds.
72. Master Builders is not aware of any issues with respect to the thresholds for directly funded or indirectly funded projects. The current thresholds are appropriate, however some consideration that they be indexed at intervals prescribed under the Act is warranted.

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

73. While the scope of the Review has not given rise to detailed consideration of the Audit Criteria and their application, as noted herein, Master Builders members have raised increasing concerns about the level of reliance the OFSC places on paper-based assessments to demonstrate and determine compliance with Scheme requirements.
74. Further, companies accredited under the Scheme have expressed concern about the level of prescription contained within the Audit Criteria and the need for it to be re-considered so as to reflect a more performance-based approach to compliance.
75. For example, it is important that FSOs, and WHS Regulators alike, focus on the purpose and practical content contained within a Safe Work Method Statement ('SWMS') (where they are required) rather than their technique, design and format.

¹⁷ *Ibid*

76. While noting the OFSC has produced some useful guidance¹⁸, in terms of SWMS compliance under the Scheme, a simplified solution would be for the OFSC to adopt the SWMS template published by Safe Work Australia ('SWA'), which provides a clear and simple framework for the preparation of a SWMS.¹⁹
77. While the point made herein with respect to paper-based compliance is not confined to SWMS, it provides one example of circumstances where the use of a template and focus on practical outcomes should remain squarely the priority of FSO when they conduct audits.
78. We also note feedback from members that audits, and the associated Audit Criteria, are too focussed on lag indicators and the implementation of lower order controls, as opposed to engineering and design.
79. Notwithstanding, and upon conclusion of the Review, Master Builders would support a comprehensive evaluation of the Audit Criteria to ensure its primary focus is on companies demonstrating practical systems that deliver tangible WHS improvements on the ground.

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

80. No. Master Builders would not support any such limitation as this would be contrary to the intent and purpose of the Scheme. Industry participants should be encouraged and supported to gain Scheme accreditation and allowed whatever scope is necessary to achieve this.
81. Imposing limitations would discourage accreditation and suggest that any attempt may result in being 'locked out' or somehow limit future accreditation endeavours. Master Builders believes that a greater proportion of companies in building and construction should be accredited as this will improve industry safety outcomes and any disincentive or barrier to this should be avoided or removed.

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?

82. Master Builders is aware that when a company first seeks accreditation, they are assessed across the total scope as outlined in the Audit Criteria. Once accreditation is achieved, however, audits are more focussed on surveillance of systems and documentation, the effectiveness of which remains in question.
83. Further, as accreditation is for a period of up to three years, at the end of this period companies ordinarily need to reapply for accreditation to remain accredited.
84. Noting this, Master Builders believes that there is merit to considering a broader range of factors as considerations in determining relevant assessment criteria for post-accreditation audits. These factors should include time spent accredited under the Scheme.

Reporting Requirements

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

¹⁸ See [OFSC Fact Sheet - Safe Work Method Statements \(SWMS\)](#)

¹⁹ See [Safe Work Australia's Safe Work Method Statement for high risk construction work - Information Sheet](#)

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

85. Master Builders strongly supports the notion that reporting once at a National level should satisfy the relevant related State or Territory reporting requirement.
86. However, Master Builders recognises that moving to implement this notion may not be a smooth and easy exercise and may result in unintended or perverse outcomes. It is also recognised that WHS laws and regulations as administered by State or Territory governments seem to be under almost perpetual review or change.
87. This aside, Master Builders would actively consider any recommendations the Review makes in this regard and would be happy to consider drafts or proposals for change.

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

88. Refer to Master Builders' response to question 10 above.

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

89. Master Builders notes the increasing importance industry is placing on WHS performance evaluation with respect to lead indicators. This is exemplified by Australia's leadership in the development of documents such as *ISO-45004 – Occupational Health and Safety Management – Guidelines on Performance Evaluation*.²⁰
90. While the ISO Standard is only in draft form, the document serves as a sound basis upon which further consideration of the Audit Criteria could be based.

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

91. In addition to our response to questions 10, 20 and 21 herein, Master Builders holds the strong view that qualification under the Scheme should be recognised as sufficient for automatic pre-qualification under the various State and Territory accreditation schemes.
92. The FSC should continue to press Governments to recognise Scheme accreditation as meeting the requirement of the various State and Territory procurement regimes. In addition to being a red-tape burden, the focus on the vast amounts of paperwork required for multiple audits (under the various State/Territory regimes) impacts on companies' capacity to prioritise on-site 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?

93. Master Builders would caution against any approach that could serve as a deterrent to accreditation. We submit there would be greater amenity in the FSC maintaining and enhancing its educative approach to compliance which enables them to address safety-related issues in real time.
94. This notwithstanding, Master Builders would not oppose the concept that *accredited entities* could undergo a *comparative* assessment of their safety record and capacity but only if:

²⁰ [ISO/DIS 45004 - Occupational health and safety management - Guidelines on performance evaluation](#)

- The assessment pertains to matters other than the conventional risk rating currently deployed, as this can vary significantly (or sometimes automatically) and swiftly, and is not a measure that represents the overall or ongoing level of safety compliance, attitude or overall company specific safety outcomes. We refer to our answers at Question 7 above (specifically the suggestions noted as “Benchmarking” and “Broader Audit Feedback”) as being indicative of a more representative measure; and
- The assessment measure used contains no subjective element, and is applied objectively and consistently; and
- Is applied by the FSC objectively, without any third-party oversight, influence or capacity to alter the measure application or outcome; and
- Is used only against other accredited entities who are part of the same tender or EOI; and
- Is used or considered only where the accredited entity expressly permits and where other relevant criteria have not otherwise determined a clear preference.

Current and Recently Acknowledged Hazards

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?

95. Master Builders would note that the Audit Criteria should be updated with respect to psychosocial hazards. There is significant amenity in accredited companies being required to demonstrate they have a WHS management system in place to manage psychosocial hazards, to the extent necessary to ensure consistency with existing WHS duties.
96. Separately, the FSC should continue using its reach and influence to promote the benefits of a positive mental health culture in the workplace, by way of case studies and other education initiatives.
97. Notwithstanding the above points, we would caution against consideration of any further changes to the Audit Criteria Guidelines at this time and suggest if this were to occur, it should be the subject of a separate and robust review process.

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?

98. Refer to Master Builders response to question 26 above.

Cost Recovery

Question 28. Given the costs associated with administering a growing Scheme, the substantial auditing service being provided to entities and the Charging Policy, is it reasonable and appropriate to charge entities seeking accreditation?

99. Master Builders submits it is not reasonable or appropriate to charge entities seeking accreditation.
100. The clear benefits of the Scheme (as underpinned by objective data) to accredited entities and overall safety outcomes both demonstrate and outweigh any cost incurred in delivering those outcomes. Master Builders does not support any measure that may disincentivise new and ongoing accreditation, particularly for small and mid-size companies.

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

101. As noted in our response to question 28 above, Master Builders would not support the implementation of any fees associated with accreditation. It is our strong view that the levying of any fee would also not foster greater voluntary compliance with the Scheme.

Government Priorities

Question 30. Are changes to the functions of the FSC or to the requirements of the Scheme necessary to support the dual policy objectives of improving building and construction industry safety through government procurement and supporting local industry to take advantage of government purchasing opportunities?

102. Master Builders would be opposed to making any substantive changes to the Scheme that would distract from its primary objective, being to work with industry and government stakeholders towards achieving the highest possible workplace health and safety standards on Australian building and construction projects.
103. The concerted industry specific safety focus of the scheme has been central to its level of success insofar as improved industry safety outcomes and Master Builders would not wish to see this effective approach be eroded or undermined by an additional role delivering other policy objectives that are not safety related.
104. Further, it is noted that (at time of writing) there has been no detail publicly released that provides information or guidance as to how or through what mechanism Government intends to deliver a range of other policy objectives, including the “Secure Australian Jobs Code” election promise amongst others. Until these are known, Master Builders is unable to comment on this question and reserves our related position.

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?

105. Refer to Master Builders’ response to question 30 above.

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?

106. Refer to Master Builders’ response to question 30 above.

Better Deal for Small Business

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?

107. Refer to Master Builders’ response to question 30 above.

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?

108. No. The National Construction Industry Forum and its function is set at Part 6-4D of the *Fair Work Act 2009* and broadly expressed such that it could not justify amendment to the functions of the FSC or Scheme.

109. Since its conception, Master Builders has consistently supported the need and purpose of the National Construction Industry Forum and viewed it as an important and collaborative pathway to making genuine, tangible and lasting steps in proactively tackling long-standing issues specific to building and construction. These include achieving improvements in WHS.
110. We maintain the view that the matters to be considered by the Forum are extremely important to the future of building and construction and attempts to address long-standing industry problems will only succeed if it has complete sector-wide support. Regrettably the Government chose to add to this challenge by excluding Master Builders from a role in developing much needed solutions.

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?

111. No.

Expansion

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

112. Master Builders notes that the above recommendation arose in context of a series which contemplated a proposed legislative regime which, while still specific and narrow to building and construction, had a wider intra-sector jurisdictional reach than that which applied under the terms of the more recent *Building and Construction Industry (Improving Productivity) Act 2016* as opposed to its predecessor *Building and Construction Industry Improvement Act 2005* (Cth).
113. Given the context in which the initial recommendation was made, and having regard to narrower application of the most recent legislative regime, Master Builders does not believe the Scheme requires expansion at this time.

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?

114. Master Builders holds the strong view that it would be inappropriate for the functions of the FSC to be broadened to other industries.
115. The OFSC had its genesis in the Cole Royal Commission which found that the OHS performance of the building and construction industry was unacceptable.²¹
116. At that time, the construction industry had the second highest incidence of compensated fatalities of all industries, as well as ranking in the top three for incidence of workplace injuries.
117. The OFSC was established to address the building and construction industry's poor WHS performance, to ensure that Commonwealth-funded building work was performed safely as well as on budget and on time.
118. While the government noted at the time of its establishment, the Scheme would impose additional administrative and regulatory burden on contractors and sub-contractors tendering for government-funded building work, it observed that most construction companies were already well-versed in meeting significant tendering obligations with respect to WHS.

²¹ Refer to the [Building and Construction Industry Improvement Bill 2005 - Explanatory Memorandum](#)

119. In nearly all respects the construction industry has continued to improve performance, with the incidence rate for:
- Serious claims per 1,000 employees down 42 per cent since 2003, consistently holding a steady downtrend; and
 - Fatalities within the construction sector down by 56 per cent since their peak in 2007.²²
120. While there have been strong signs of improvement, construction is still behind the all-industry fatality and serious injury rates, with claims incidence rates in construction still higher than the national average. Construction tradespersons also have higher fatality incidence rates than tradespersons working in all other industries.²³
121. It is still acknowledged by SWA that Construction work remains particularly dangerous and is noted in its Australian Work Health and Safety Strategy 2023-2033 as a high-risk industry.
122. Further, the Audit Criteria is very much designed to audit compliance with SWA's construction (and other industry-related) model codes of practice. If other industries were to be captured, the criteria, competencies for FSOs and entire OFSC educative framework would need to be completely overhauled as it is currently BCI-centric.
123. We would caution against any changes to the scope of the Scheme in the absence of any evidence which demonstrates its necessity.

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

124. Refer to Master Builders' response to question 37 above.

Conclusion

125. Master Builders is grateful for the opportunity to make this submission.
126. While we have noted herein a number of potential and minor changes, Master Builders maintains its strong support for the Scheme as a key part of our strong commitment to improving the industry's WHS performance.
127. We also commend the OFSC's collaborative approach and look forward to working with the agency to implement practical and real improvements across the entire BCI.

²² [Work-related traumatic injury fatalities Australia 2021 - Published 14th November 2022](#)

²³ See [Key work health and safety statistics Australia 2022](#)