



Australian Government

Department of Employment

**A REVIEW TO MODERNISE THE OFFICE OF THE FEDERAL
SAFETY COMMISSIONER AND THE AUSTRALIAN
GOVERNMENT BUILDING AND CONSTRUCTION OHS
ACCREDITATION SCHEME**

June 2014

CONTENTS

| | |
|--|----|
| Executive Summary ----- | 4 |
| Recommendations----- | 6 |
| How the Review was undertaken ----- | 9 |
| Costs and Benefits----- | 10 |
| Overview ----- | 10 |
| Benefits of the Scheme----- | 11 |
| Costs of the Scheme----- | 12 |
| Value for Money----- | 14 |
| Conclusion----- | 15 |
| Coverage of the Scheme----- | 16 |
| Thresholds----- | 16 |
| Definition of building work----- | 19 |
| Residential----- | 20 |
| Exemptions----- | 22 |
| Becoming accredited----- | 23 |
| Current Accreditation Process ----- | 23 |
| Accreditation Fees----- | 24 |
| Application Prerequisite - AS/NZS 4801:2001 ----- | 25 |
| Improvements to the Accreditation Process----- | 26 |
| Accessibility for small companies ----- | 27 |
| Joint Venture Accreditation Arrangements ----- | 28 |
| Simplifying Criteria----- | 29 |
| Maintaining Accreditation ----- | 31 |
| Reaccreditation Process ----- | 32 |
| Extending the Accreditation Period----- | 33 |
| Risk-based Audit Approach to Maintaining Accreditation ----- | 33 |
| Determining the Risk Profile----- | 35 |
| Reporting ----- | 36 |
| OFSC Performance ----- | 37 |
| OFSC Communication of best practice----- | 37 |
| The OFSC and Federal Safety Officers ----- | 38 |
| Conflict of Interest ----- | 39 |
| Regular reviews of the Scheme ----- | 40 |
| Australian Government Agencies ----- | 41 |
| Other Jurisdictions' Prequalification requirements ----- | 42 |
| Expanding recognition of the Scheme ----- | 43 |
| Whole of Government approach to construction work ----- | 44 |
| Subcontractors----- | 45 |
| International companies ----- | 46 |

CONTENTS

| | |
|---|----|
| Appendices ----- | 49 |
| Australian Government Building and Construction OHS Accreditation Scheme - how does the Scheme operate? ----- | 49 |
| Links Between Workforce Health and Safety and Productivity: Broader Research ----- | 51 |
| Safe Work Method Statements ----- | 54 |
| Federal Safety Officers ----- | 55 |
| Attachments ----- | 57 |
| Terms of Reference ----- | 57 |

Executive Summary

Background

The Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) was established by the Australian Government (the Government) in 2006 in response to the Cole Royal Commission's conclusion that the safety record in the building and construction industry was unacceptable. It recommended that the Government use its influence as a client and provider of capital to foster improved performance.

The Government established the Office of the Federal Safety Commissioner (OFSC) to develop, implement and administer the Scheme to apply to Government building and construction work. Only companies accredited under the Scheme are eligible to undertake Commonwealth Government funded building projects above certain financial thresholds (outlined in the section titled 'Current Thresholds'). The 321 currently accredited companies are estimated to account for 30 to 50 per cent of annual financial turnover in the building industry.

In October 2013, the Government, while strongly supporting the Scheme, asked the Department of Employment (the Department) to undertake a review to identify options for streamlining and modernising the Scheme, and to reduce any unnecessary regulatory or compliance burdens on building firms. Importantly, these factors have been considered with a view to at least maintaining the safety outcomes fostered by the Scheme. Terms of Reference of the Review are at Attachment A.

The Review, the most comprehensive undertaken since the Scheme commenced, was informed by an Advisory Panel comprising representatives of key industry associations, unions, government agencies and the Federal Safety Commissioner (FSC). Advisory Panel members consulted within their organisations and consolidated their members' views to provide feedback and advice on possible options for change.

Submissions were sought (with 47 received) in response to a Discussion Paper released on 28 February 2014. A survey of all accredited companies (the Survey) was also undertaken, with more than 40 per cent responding (126 companies), which provided the Department and the Advisory Panel with valuable insights into the experience of companies in gaining and maintaining accreditation.

Findings

There was general agreement that the Scheme sets the highest standards for safety in the industry in Australia, but concerns were raised about costs and value for money, particularly for small and medium-sized companies.

On the benefits side, more than 80 per cent of accredited companies that responded to the Survey stated that the Scheme has improved their safety standards beyond the level they would otherwise have been, with more than 94 per cent of small companies having that view. Fewer than 14 per cent of respondents thought that the Scheme had not improved safety across the industry more broadly.

However, the majority of industry associations and many companies consider that more can be done to address barriers and costs (both actual and perceived) of participating in the Scheme. Overall, 60 per cent of accredited companies thought the Scheme represented value for money, with this figure rising to 80 per cent for companies that have achieved accreditation since streamlined application processes were introduced in early 2013.

In order for the Scheme to remain relevant and effective in driving safety improvements in the industry, it is important that the administrative procedures and practices, and the coverage of

the Scheme, be re-assessed. This is particularly important in the context of the Government's deregulation agenda, the economic imperative of increased industry productivity and consideration of improved regulatory approaches such as those canvassed recently by the Productivity Commission¹.

A further fiscal imperative is to ensure resources for the administration of the Scheme by the OFSC are applied to maximum effect. The current "one size fits all" standard approach to compliance monitoring is neither sustainable (as more companies become accredited) nor effective in targeting the resources of the OFSC to areas of greatest need and potential benefit.

Regulatory burdens and compliance costs could be addressed in three main ways:

- The coverage of the Scheme could be changed.
- Some current paperwork and compliance requirements could be removed or streamlined, which could be done in conjunction with a more targeted, risk-based approach.
- Actual and perceived barriers to achieving accreditation could be reduced by ensuring the Scheme is more accessible and scalable for any building company (for example, regardless of size).

The coverage of the Scheme, while considered "about right" by most stakeholders, could be amended in two main ways:

- Changing the financial thresholds to which it applies
- Changing the definition of building work that it covers.

On balance, given that most industry associations and other stakeholders think the thresholds are "about right", it is recommended that they only be indexed to take account of price movements since they were established. In this way the coverage of the Scheme would not be expanded in real terms.

Some changes to the definition of building work covered by the Scheme are also recommended; specifically in relation to the construction of individual domestic houses (ie. not multi-unit or townhouse developments etc.). This balances the competing social and other objectives of Government programmes in the residential sector (such as in Indigenous communities) with the need to maintain the integrity of the Scheme and equity for accredited builders.

This report identifies a number of opportunities to reduce barriers to entry and unnecessary regulatory impacts on businesses in achieving accreditation, while maintaining or improving safety standards and outcomes across the industry. These include removing the duplicative, costly and time-consuming requirement for AS/NZS 4801:2001, which is seen by many as creating a significant barrier for small builders.

It is proposed that unaccredited companies be permitted to tender for Commonwealth Government funded work where they are in a joint venture with an accredited company, and work under the accredited company's safety systems.

The Review also responds to the strong feedback that a range of improvements in communication and guidance for companies (particularly smaller companies) seeking first time accreditation should be introduced.

The Review proposes that the reaccreditation process be removed entirely and a targeted risk-based approach be introduced to manage ongoing accredited company audits and compliance,

¹ Productivity Commission, Regulator Audit Framework, May 2014

all the while maintaining an appropriate balance between reducing red tape and not reducing safety outcomes. Resource constraints in recent years have meant that some companies go through a three year accreditation period without any periodic maintenance audit check but are then subjected to multiple audits within a short timeframe at the reaccreditation stage. A targeted risk-based approach will provide the certainty of regular, periodic maintenance audits for good performers and allow an increased focus (including more regular auditing) for those companies not meeting Scheme requirements. This will lead to an increased focus on those companies not performing well, while benefitting those companies with a good track record, by directing greater audit resources to higher-risk companies.

These proposals address all five key areas recommended by the Productivity Commission², namely

- clear and effective communication
- risk-based requirements and proportionate actions
- consistency in decision making, the application of rules, and engagement with clients or stakeholder
- accountability and transparency in actions
- a commitment to continuous improvement, including acting on findings in regard to the need for and effectiveness of the regulation.

Furthermore, they will improve safety outcomes by increasing the auditing resources that can be applied to those companies most needing support, while reducing the burden on companies with a strong record of safety and adherence to Scheme requirements. Importantly, the recommendations will not reduce the high level of safety standards required by the Scheme.

Recommendations

The Review makes the following recommendations:

Coverage of Scheme

1. The thresholds applying to the Scheme for directly and indirectly funded building work be increased from \$3 million and \$5 million to \$4 million and \$6 million respectively.
2. The thresholds applying to the Scheme be adjusted for price movements in the building industry every three years.
3. The Scheme not be applied to the pre-fabrication of made-to-order components carried out off site, nor to the transport and supply of goods directly to building sites for the purposes of building work.
4. For residential projects, the Scheme only be applied to those projects comprising the construction of 10 or more single dwellings, regardless of contract value.
5. The Scheme not be applied to the refurbishment of, nor extensions or alterations to, single dwellings regardless of the number of dwellings or the contract value (so long as they remain single dwellings).
6. The Scheme continues to apply consistently with no individual exemptions for particular agencies, industry sectors, projects or regions.

² Productivity Commission, Regulator Audit Framework, May 2014

Costs

7. The Government continues to meet OFSC costs, including for accreditation and compliance audits, with no charge to companies.

Becoming Accredited

8. Certification to AS/NZS 4801:2001 or OHSAS 18001:2007 ceases to be a prerequisite for companies applying for accreditation.
9. The OFSC streamlines the application process and improves ease of access for companies seeking accreditation, including the development of an online application and self-assessment tools.
10. The OFSC, in consultation with stakeholders, investigates and develops an approach that would allow unaccredited companies to tender for Scheme projects where they are in a joint venture with an accredited company and operate under the partner's accredited safety system.
11. The OFSC, in consultation with stakeholders, undertakes a review of the audit criteria and associated guidance, including the clarification of Safe Work Method Statements (SWMS) requirements.

Maintaining Accreditation

12. The current reaccreditation process be abolished, including all associated paperwork and other red tape requirements. Companies' accreditations to continue indefinitely, subject to satisfactory compliance with Scheme requirements.
13. The OFSC, in consultation with relevant stakeholders, develops a risk-based approach to maintaining accreditation that tailors ongoing frequency and scope of audits for accredited companies to ensure ongoing compliance with Scheme requirements.
14. The OFSC review its reporting requirements to identify ways in which data collected can be compared with wider industry data. That the data collected be published in a way that assists companies to benchmark their own performance with other accredited companies and the industry more broadly. The OFSC supplies data analysis directly to accredited companies.
15. The OFSC, in consultation with stakeholders, develops and publishes case studies that provide practical examples of best practice initiatives to assist companies to self-educate for WHS improvements.

OFSC Performance

16. The OFSC sets and publishes its performance against KPIs for its processes.
17. The OFSC, in consultation with stakeholders, identifies means by which companies' concerns can be raised through a third party mechanism, such as an industry association, so that the concerns can be addressed by the OFSC.
18. The OFSC implements and publishes an annual survey of accredited companies that gathers Scheme-related safety and cost-benefit data, and feedback on FSO/OFSC performance.
19. The OFSC, in conjunction with stakeholders, implements enhanced arrangements to further monitor and improve the quality and consistency of FSO auditing performance, including the way in which FSOs are engaged by the Department.
20. The Scheme be reviewed at least every five years.

Australian Government Agencies

21. The OFSC works with Government agencies to identify ways in which they are able to provide advice to the OFSC of (a) the nature and location of upcoming Scheme tender processes - at least 3 months in advance, (b) commencement of tender processes and (c) signing of contracts.
22. The Government identifies and progresses further opportunities that exist at Commonwealth, state and territory levels to recognise the Scheme in lieu of other prequalification requirements.
23. The Government considers ways in which there can be greater clarity across funding agencies around construction industry procurement requirements.

Subcontractors

24. The OFSC facilitates the development of information to assist Scheme-accredited principal contractors to provide consistent communication with subcontractors in relation to the subcontractor management elements of the Scheme.

International Companies

25. The OFSC discusses with Austrade and the Department of Infrastructure (and other relevant agencies) whether further changes should be made to the Scheme's arrangements for international companies, while ensuring competitive neutrality for local companies.

How the Review was undertaken

The Review was undertaken by the Department and informed by an Advisory Panel chaired by a senior executive of the Department and consisting of representatives from industry associations, the Australian Council of Trade Unions (ACTU), government funding entities and the FSC. See Terms of Reference at Attachment A.

Industry representatives included Master Builders Australia (MBA), Australian Constructors Association (ACA), Australian Industry Group (Ai Group), and the Civil Contractors Federation (CCF).

Funding agencies were represented on the Advisory Panel by the Department of Defence. The views of funding agencies were also captured through a series of meetings with the OFSC's Australian Government Agency Reference Group (AGARG).

Submissions to the Review

In early 2014 the Department produced a Discussion Paper in consultation with the Advisory Panel. The discussion paper introduced the Review of the Scheme and invited submissions, including the provision of a suggested template that responders could use (if they wished) to structure their submission.

The Discussion Paper also provided background information about the Scheme and safety in the construction industry generally. It set out a variety of issues and questions for comment that addressed the Terms of Reference of the Review.

Submissions were sought over a six-week period from 28 February 2014 to 4 April 2014.

Given the size and disparate nature of the industry, consultation was primarily managed through key stakeholder associations, which in turn sought feedback from their members. Emails inviting submissions were sent to all accredited companies, state and territory work health and safety (WHS) regulators, Safe Work Australia and an assortment of industry representatives, including the Air-conditioning & Mechanical Contractors Association (AMCA) and the National Electrical and Communications Association (NECA).

Any organisation or member of the public was invited to make a submission. A copy of the Discussion Paper was made available on the Department's website and a link to it was also included on the OFSC website (www.fsc.gov.au).

A total of 47 submissions were received in response to the Discussion Paper.

The views of funding agencies were also captured through a series of meetings with the OFSC's AGARG.

The Survey

Accredited companies were simultaneously afforded an opportunity to provide additional information relevant to obtaining and maintaining accreditation through the Survey open from 11 to 21 March 2014.

The OFSC emailed all 308 accredited companies inviting them to participate in an anonymous online Survey regarding the operations of the Scheme and the OFSC. Responses to the Survey were received from 126 companies, constituting a response rate of 41 per cent. Analysis was undertaken that confirmed that the response cohort was broadly representative of all accredited companies in terms of size, type of building work undertaken and duration of accreditation.

Costs and Benefits

Overview

The Terms of Reference of the Review (see Attachment A) required consideration of the “costs of complying with the Scheme, including the cost of seeking and maintaining accreditation, particularly for smaller businesses/projects”. An assessment was undertaken in the context of identifying options to streamline and modernise the Scheme, while maintaining or improving safety outcomes. In undertaking this assessment, the Review also considered the benefits resulting from accreditation, and the overall cost-benefit.

A key difficulty was to isolate the net additional costs attributable to the Scheme, as the Scheme’s requirements interact with, and augment, a range of other WHS obligations on building companies. Companies incur costs in complying with state and territory WHS legislation, insurance company obligations and internal corporate and safety requirements.

The Scheme criteria require system-based approaches and a safety culture which minimises the risks of safety incidents or legislative breaches occurring. Isolating the marginal cost of meeting the Scheme’s criteria compared, for example, to costs of other approaches to complying with legal obligations, is problematic.

The time taken and costs involved in achieving and maintaining accreditation also vary significantly from company to company, depending on the quality of existing safety approaches, and the openness and responsiveness to areas identified for improvement during audits. While some small companies have achieved accreditation with just two audits, others including large companies have required four or more audits before the criteria have been fully met. Accordingly, differing starting points, approaches and responsiveness of companies make it difficult to generalise about the costs of accreditation.

Notwithstanding these caveats, the Survey, submissions and the input of the Advisory Panel members gave some clear results. There was general agreement that the Scheme sets the highest standards for safety in the industry in Australia, and that it is seen as improving safety at the individual company level, and for the industry more broadly.

However, concerns were raised about costs and value for money, particularly for small and medium-sized companies, reinforcing the need to reduce compliance costs and barriers to entry.

The Review was informed through stakeholders that many unaccredited companies may have formed a view that accreditation is too great a challenge to consider. So as well as addressing actual barriers, stakeholders agreed that it is equally important to address perceived barriers through improved communication and marketing.

Benefits of the Scheme

Overall, around 80 per cent of accredited companies that responded to the Survey stated that the Scheme has improved safety standards in their organisation beyond the level they would have been had they not undertaken the accreditation process. More than 94 per cent of small companies (1-19 employees) held that view. Over 70 per cent of large companies (200+ employees), that could be assumed to have had existing safety systems in place, stated that the Scheme had improved workplace safety in their organisations. (See Table 1, below).

Table 1: Accreditation and Workplace Safety



There was relatively little variation between construction sectors (noting builders may work in more than one sector), although builders undertaking residential work were slightly more likely to consider that the Scheme had improved safety in their business.

Organisations achieving accreditation in the last year were most likely to consider that net improvements in safety benefits have resulted. Those accredited in the early years of the Scheme were the least likely to have that view. As below, this trend was also evident when companies assessed both costs and overall value for money. The streamlining improvements introduced to the Scheme over the last two years may be a contributing factor.

OFSC data was also examined to compare the safety performance of accredited companies with non-accredited companies. Several difficulties arose in trying to make comparisons as the way in which broader industry data is collected excludes key areas of data specific to building work, making comparisons with OFSC data difficult. As discussed in the section titled 'Reporting', other data may exclude subcontractors, may measure by employee numbers rather than hours worked, and/or does not disaggregate by subsectors of the building industry.

The data has identified improvements over time by accredited companies, and reduced workers compensation premium rates, though it is recognised there may be factors besides accreditation that contribute to these results. Results are outlined below:

- 71 per cent of third-time-accredited companies (i.e. after 6 years in the Scheme) have recorded an improvement to, or maintained, their Lost Time Injury Frequency Rate (LTIFR) – their average reduction was 69 per cent
- 60 per cent of third-time-accredited companies had recorded a decrease to their Workers Compensation Premium Rate – of those, the average reduction was 44.03 per cent.

Industry-wide Benefits

The 321 currently accredited companies are estimated to account for 30 to 50 per cent of annual financial turnover in the building industry. Given the large market share and associated influence of accredited companies, both the Survey and the Review's Discussion Paper sought views about whether the Scheme had improved safety across the industry more broadly.

Less than 14 per cent of respondents to the Survey considered that the Scheme had not improved industry safety, although 29 per cent were unsure. One particular comment, typical of those that responded 'yes', was:

"Over the 7 years we have been involved, we have observed that our subcontractors have also raised their standards in response to meeting our needs and the needs of other OFSC accredited contractors".

However, another said:

"We still see on a daily basis, other companies doing the wrong thing and a number of these companies are our competitors. We also get a lot of feedback from our subcontractors that say things like 'we don't have to worry about doing X activity on Y company's site (competitors site)'. I think for those involved in the scheme, there has been a considerable improvement."

Costs of the Scheme

There are costs for companies in becoming and remaining accredited under the Scheme, including those attributable to completing the application process, attending site audits, and improving safety systems to meet Scheme standards. However, there are currently no fees charged by the OFSC to companies applying to become accredited under the Scheme.

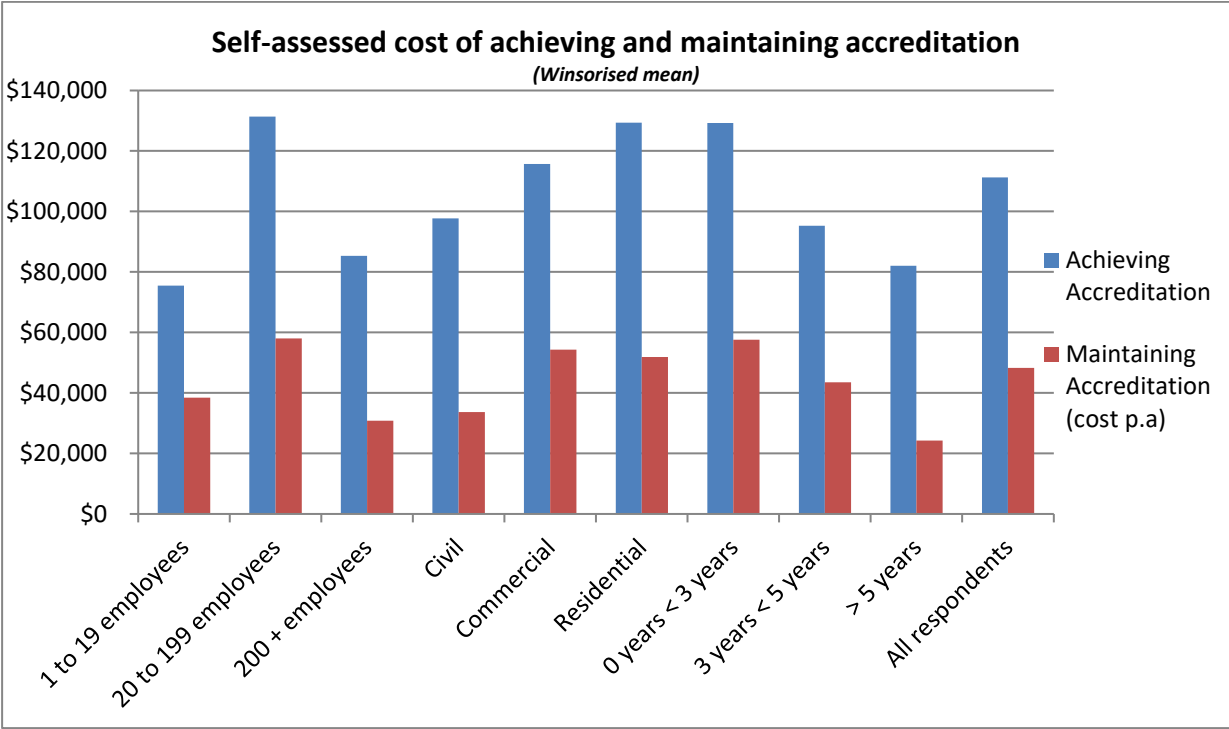
Virtually all companies need to modify some elements of their safety systems and practices in order to achieve accreditation, with an average of around 33 "corrective actions" being identified at first-time accreditation audits. A company takes, on average, 2.5 site audits to demonstrate compliance with Scheme criteria.

Feedback was sought through submissions and in discussions with Advisory Panel members about the nature and value of costs associated with obtaining and retaining accreditation.

Submissions indicated that companies incur costs in the initial application process, in developing safety systems and practices in order to meet the criteria, and in the reaccreditation and ongoing compliance requirements. Respondents cited costs associated with paperwork, time and resources to prepare and attend audits, engaging WHS personnel to assist with system development and implementation, reporting requirements and gaining certification to AS/NZS 4801:2001 as the main costs associated with achieving accreditation.

The costs of achieving and maintaining accreditation vary widely from company to company and depend on a range of factors including the size of the organisation, the safety culture and the quality of existing systems. Table 2 (below) shows the responses to the Survey question that asked accredited companies to estimate their “net additional costs”. Companies were asked not to include costs that would have been required to meet insurer, or state/territory legislative requirements, for pre-existing safety systems and other existing safety-related staffing.

Table 2: Costs of Accreditation



The extent and consistency with which Survey respondents isolated the net additional costs attributable to the Scheme cannot be verified and hence the results should not be construed as necessarily accurate in a financial sense.

However, companies’ self-assessments of the costs and, more particularly, of overall value-for-money underline a need for reducing costs and barriers, and for improving communication about the benefits.

Companies estimated the costs of participating in the Scheme as follows:

- Small companies (1-19 employees, 14.3 per cent of respondents) estimated their costs of gaining accreditation at around \$75,000 (Winsorised mean³ and \$60,000 median⁴) and annual costs of maintaining accreditation at around \$38,000 (Winsorised mean or \$40,000 median).

³ **Winsorised mean** - involves the calculation of the mean after replacing given parts (10 per cent in this instance) of a distribution at the high and low end with the most extreme remaining values. The Winsorised mean is a useful estimator because it is less sensitive to outliers than the mean while still giving a reasonable estimate of central tendency.

⁴ **Median** - The median is the middle of a distribution; half the scores are above the median and half are below the median. If the number of values in the data set is even, then the median is the average of the two middle values.

- Medium-sized companies (20-199 employees, 53.2 per cent of respondents) estimated accreditation as costing \$130,000 (Winsorised mean and \$100,000 median) and annual costs of maintaining accreditation at \$58,000 (Winsorised mean or \$35,000 median).
- Large companies (200+ employees, 32.5 percent of respondents) estimated the initial costs at \$85,000 (Winsorised mean and \$62,500 median) and annual costs of maintaining accreditation at \$30,000 (Winsorised mean and \$12,500 median).

Large companies assessed the costs at a lower level than the medium-sized companies, suggesting there was either (or both) less work involved in achieving Scheme standards, or greater capacity to manage the adjustments within existing staffing and resources.

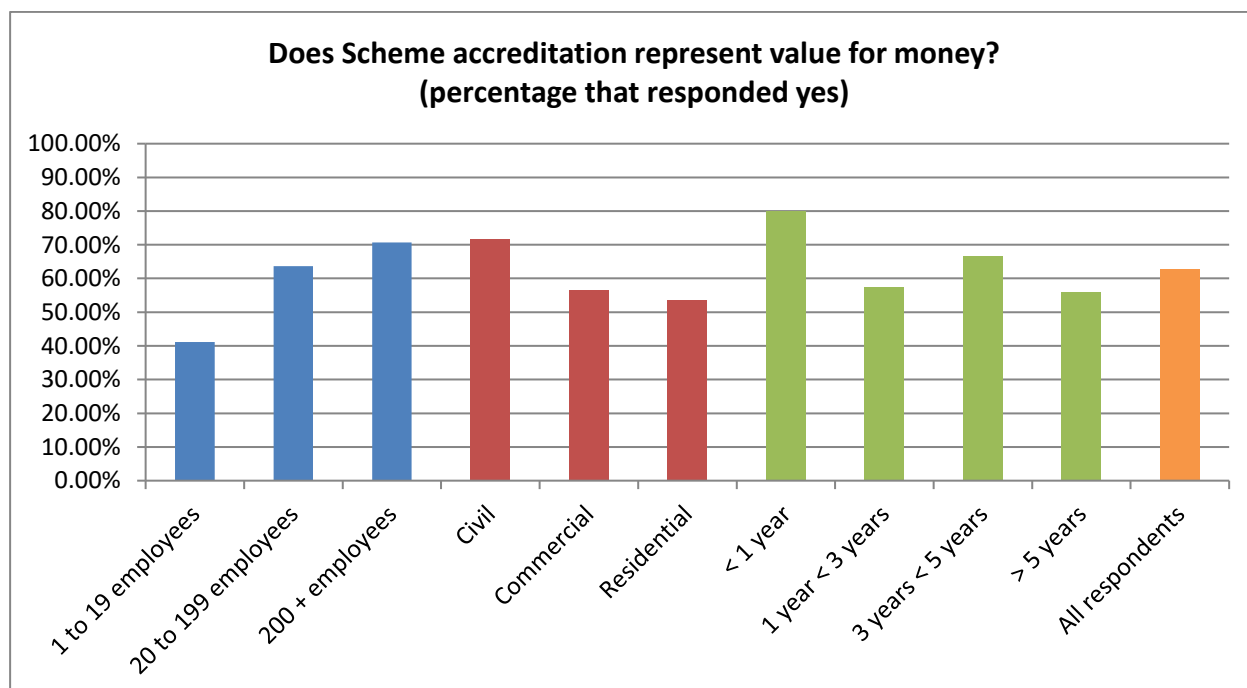
CCF's submission quoted costs, based on figures provided by three of its members, of \$164,000 to achieve accreditation and \$130,000 per annum to maintain it. These figures are in contrast to the much lower figures reported by the 68 accredited companies undertaking civil works that responded to the Survey (\$97,000 to achieve and \$34,000 per annum to maintain accreditation).

Builders undertaking residential work had the highest reported costs of gaining and maintaining accreditation, estimating the costs at around 30 per cent higher than civil constructors. It is possible that residential builders might have existing safety systems and approaches that require more work to meet Scheme criteria than other sectors. Another possible factor might be that those builders have leaner administrative structures and resources within which to absorb the workload of implementing safety systems compliant with the Scheme.

Value for Money

Perhaps more significant than costs, are companies' perceptions of the overall cost-benefit of accreditation, its value for money. Overall, 63 per cent of companies responding in the Survey consider Scheme accreditation represents value for money.

Table 3: Accreditation as Value-for-money



There are “point in time” and other factors evident in the above data. On 1 January 2013 the OFSC introduced a greatly streamlined accreditation process. Eighty per cent of companies that had become accredited in the last year (i.e., since the streamlining) believed that the Scheme represents value for money, compared with just 55.9 per cent of those accredited in the early days of the Scheme (5 or more years ago).

Twenty nine per cent of companies have become accredited but have not undertaken any projects requiring accreditation, thereby producing no direct financial benefit, which may influence perceived value for money.

Just 41.2 per cent of small companies considered accreditation to represent value for money, compared with 63.6 per cent of medium companies and 70 per cent of large companies, while nearly all small companies (94.5 per cent) said it had improved safety. The value perception of small companies responding to the survey may have been impacted by the fact that just 55.6 per cent of small company respondents had undertaken a Scheme project, compared with 68.7 per cent of medium companies and 82.9 per cent of large companies.

As well as the self-assessment by accredited companies, submissions and Advisory Panel members raised a range of other points related to the cost-benefit of the Scheme. It is important to balance individual views and experiences of companies against a broader industry perspective.

Industry representatives on the Advisory Panel agreed that many companies, particularly small to medium-sized firms that have not experienced a fatality or major safety incident, may have limited awareness of the true cost of such an incident. The view was expressed that many smaller businesses do not survive a major safety incident, and that further work should be undertaken to market the benefits of the Scheme’s systematic approach to minimising those risks.

ACA stated that the costs of gaining accreditation were not excessive or disproportionate to benefits gained, although welcomed streamlining improvements. ACA indicated that the lost productivity from reducing, or not further improving, safety across the industry would have a far greater cost to the economy.

MBA reported differing views among its members. However, reducing compliance costs and barriers to entry for small companies was seen as a critical issue.

It was also apparent that there is some misunderstanding in the industry about what is required to become accredited, particularly in companies that have not pursued accreditation. For example, feedback through the Review process suggests that many companies consider that engaging consultants, or full-time safety system personnel, is required to become accredited. It may be that consulting firms are contributing to this perception for commercial reasons. While for many larger companies this investment would be justified, there are many examples of smaller firms becoming accredited without incurring these additional costs.

The Advisory Panel and stakeholders agreed that the OFSC needs to devote more resources and effort to dispelling negative perceptions and misinformation, including through case studies and other communication material to show real examples of companies’ experiences.

Conclusion

There is strong support from industry associations and other key stakeholders for the benefits that the Scheme provides, both at the individual company and worker level, and for the industry more broadly.

Achieving accreditation does involve costs, as companies are required to implement higher quality safety systems and processes than they might otherwise have had. There is strong agreement that the process of becoming and remaining accredited can and should be streamlined to reduce costs and barriers to entry, particularly for small and medium-sized builders.

The following sections of the report make a range of recommendations to address costs and barriers, both actual and perceived, while preserving and improving the safety outcomes.

Coverage of the Scheme

Adjusting the coverage of the Scheme is one way in which red tape reductions can be made. Coverage of the Scheme is established primarily through:

- the financial thresholds at which Commonwealth Government funded projects trigger the accreditation requirements and
- the definition of building work to which the Scheme applies.

A further consideration, canvassed in the Discussion Paper, is whether there is a case for any individual exemptions, for example, for specific projects, circumstances or regions.

Thresholds

The Scheme operates so that, subject to certain thresholds, only principal contractors who are accredited under the Scheme can enter into contracts for building work that is funded directly or indirectly by the Commonwealth Government.

The current thresholds applying to the Scheme were introduced in 2007, when the thresholds for direct funding were lowered from their original level of \$6 million and thresholds were introduced for indirect funding.

Directly-funded building work

The Scheme applies currently to all directly funded head contracts for building work with a value of \$3 million and above (including GST).

Projects are considered to be directly funded where an Australian Government agency is the client. This includes pre-commitment leases and similar arrangements. Typical examples of directly funded projects are the Department of Defence constructing a new military facility or an agency arranging for the construction of a new office or a fit-out of an existing building.

Indirectly-funded building work

The Scheme applies currently where the Government contribution to the project is:

- at least \$5 million and represents at least 50 per cent of the total project value; or
- \$10 million, irrespective of the overall proportion and
- the value of the head contract for building work is \$3 million and above.

Projects are considered indirectly-funded where the Government contributes funding through a third party, such as a state government. Some typical examples of indirectly-funded building work are where the Government provides funding for a state government to construct a road, or where the Government provides funding to a university to construct a research facility.

Change the thresholds?

The Discussion Paper canvassed options to lower or remove the thresholds, leave the thresholds at the current level or raise the thresholds.

Some of the discussion around thresholds, particularly from a number of members of the AGARG, unions and a number of accredited companies, agreed that it would be appropriate philosophically for any building work undertaken by the Government to be subject to the highest safety standards.

Some submissions, including from unions and many accredited companies, considered the thresholds should be reduced or lowered in order to increase coverage of the Scheme by capturing a greater number of projects. According to the ACTU

“The scheme should be able to be applied to all projects funded either directly or indirectly by the Commonwealth Government. This would likely affect further improvements in health and safety outcomes.”

In line with its general submission that civil construction is inherently less risky than other types of construction, CCF proposed that thresholds be raised to \$20 million and \$25 million respectively for civil projects and \$9 million for building projects. This would effectively provide an exemption for a significant proportion of civil projects. In fact, almost 90 per cent of directly funded and almost half of indirectly funded civil Scheme projects would not have been captured by the Scheme if the thresholds were at these levels. A number of other civil constructors also supported an increase in the thresholds but to a lesser dollar amount.

The majority of submissions, including MBA's, suggested that the thresholds are “about right”, reflecting an appropriate balance between capturing suitable projects without overburdening those contractors only interested in small projects. Some accredited companies opposed the increase or removal of thresholds, as it would undermine their investment in WHS accreditation and would create an uneven playing field in tendering for Government contracts. An accredited company noted that:

“There has been considerable investment by our company to comply with the scheme and to increase the threshold would diminish that investment considerably. To remove the threshold will also allow competitors who do not have the same OHS [WHS] commitment to provide a cheaper price and a quicker build, thus making us uncompetitive”.

Another submission noted:

“It is important that the funding thresholds for scheme projects supports a level playing field for tendering for government funded construction projects. If the scheme does not capture a substantial proportion of available projects, then companies that achieve accreditation will be disadvantaged by carrying the additional scheme compliance costs when competing with non-accredited contractors when tendering for projects that are below the threshold.”

In summary, some submissions, and some Government agencies, argued that lowering the threshold is philosophically right because it means the Government is applying the highest safety standard to every Commonwealth Government funded project. It also ensures a level playing field for companies in competition for Government contracts. Most stakeholders recognise that this would create significant practical and resourcing difficulties. In addition, it is important to note that the Scheme is not intended to replace the primary role of state and territory regulators in ensuring all builders adhere to minimum legislative standards.

Removing the thresholds would result in an additional 3000 or more projects being captured annually, with significant impacts on funding agency budgets and the introduction of a new level of complexity and red tape for all builders wishing to undertake any Commonwealth Government funded work, including works of a very minor nature.

While lowering the threshold would capture more projects, more small builders would need to be accredited which would act as a barrier to small businesses competing for Government contracts and would most likely lead to increased costs and an increased regulatory burden for more companies.

Conversely, a significant increase in the thresholds, such as that proposed by CCF, Defence Housing Authority (DHA), Housing Industry Association (HIA) and others, would result in a significant number of Commonwealth Government-funded projects not being captured by the Scheme. This might create inequity for accredited builders, threaten the integrity of the Scheme, and potentially reduce safety outcomes in the industry.

On balance, the Review concluded that the current thresholds are about right, although the lack of price adjustment of the original thresholds has effectively increased the coverage of the Scheme since they were set in 2007.

Adjusting the thresholds

A number of submissions noted the increasing costs associated with construction and raised the possibility of indexation of the thresholds on a regular basis to better reflect price movements in the building industry over time. Many stakeholders agreed that the thresholds should change to reflect these increases. ACA proposed an indexation-based adjustment as did a number of accredited companies. AMCA and MBA, although stating in their submissions that thresholds should stay the same, indicated they would support this level of change.

While there is no single index that covers all areas of construction relevant to the Scheme, there are a number of indices that can provide an indication of the change in costs over time in the construction sector. One such index is the Building Construction Index (BCI) which covers residential and non-residential (commercial) construction. In the period from 2006 to 2013 this index showed an increase in the order of 20 per cent. Another relevant index is the Roads and Bridges Index which showed an increase in the order of 35 per cent for the same period.

While not directly relevant to construction, the Consumer Price Index (CPI) over the same period showed an increase of almost 22 per cent. Raising the funding thresholds to keep pace with changes in either the BCI or the CPI would result in thresholds as follows:

| | Current | New |
|-----------------------------------|----------------|------------------------|
| Direct threshold | \$3 million | \$4 million (rounded) |
| Indirect threshold (Lower) | \$5 million | \$6 million (rounded) |
| Indirect threshold (Upper) | \$10 million | \$12 million (rounded) |

The most appropriate tool for indexation is considered to be the BCI. Using this index in conjunction with the Treasury's forward parameters would provide definitive advice to stakeholders on the new thresholds well before they take effect. An adjustment of the thresholds every three years would avoid potentially very minor adjustments in the intervening years. Advice on the revised thresholds would be publicised around 12 months in advance to enable companies and agencies alike to ensure contracts into the future reflect the revised thresholds.

Given the conclusion that on balance the thresholds are about right, if changes in construction costs over time are factored in, the following recommendations are made:

Recommendation 1: The thresholds applying to the Scheme for directly and indirectly funded building work be increased from \$3 million and \$5 million to \$4 million and \$6 million respectively.

Recommendation 2: The thresholds applying to the Scheme be adjusted for price movements in the building industry every three years.

Definition of building work

The current definition of 'building work' for the purposes of the Scheme is established under the *Fair Work (Building Industry) Act 2012* (the FWBI Act). The FWBI Act is the single piece of legislation that enacts two separate bodies, Fair Work Building and Construction (FWBC) and the OFSC. While FWBC is focussed more on regulatory and workplace relations issues, the OFSC is tasked solely with improving building and construction related safety. The definition of 'building work' in the FWBI Act is therefore broad, capturing a wide range of construction-related work to serve the purposes of both FWBC and the OFSC.

The Building and Construction Industry (Improving Productivity) Bill 2013, currently before the Australian Parliament, seeks to further extend the definition of 'building work'. The new definition would capture, for example, any head contracts above the thresholds for prefabrication work (off site and on site), the transport or supply of goods for building work, and building work that is performed on land used for the mining of oil, gas or minerals. This expansion of the definition of building work is focussed more on FWBC workplace relations issues than on the safety aspects associated with the OFSC. However, MBA's submission supported the expanded definition for consistency.

In contrast, most submissions supported the existing definition of 'building work', and many specifically stated that the proposed expanded definition should not be adopted. An exception was CCF's submission, which suggested that the current definition of 'building work' be expanded to differentiate between typical building work, or vertical construction, and civil infrastructure work, or horizontal construction. The new definitions suggested by CCF are not in accordance with any current definition within the FWBI Act. As such, if CCF's suggested definitions were adopted for the Scheme, companies in the building industry may be confused about which definition applies. For this reason, a change to this definition is not supported.

Noting the general consensus supporting the current definition of 'building work', the Review is recommending that the Scheme's requirements not apply to those new elements of the expanded definition of 'building work' that relate to pre-fabrication off site and the transport and supply of goods to the building site. Not only are these requirements being captured for reasons not associated with the Scheme's purpose of improved safety, but also there would be significant difficulties in applying an auditable Work Health and Safety Management System (WHSMS) under the Scheme's requirements to these tasks.

Recommendation 3: The Scheme not be applied to the pre-fabrication of made-to-order components carried out off site, nor to the transport and supply of goods directly to building sites, for the purposes of building work.

Residential

In 2005, the explanatory memorandum for the *Building and Construction Industry Improvement Bill 2005* made it clear that as far as possible the domestic housing sector would be excluded from coverage of the Bill, but did not exempt the residential sector in total. Section 5(2) of the FWBI Act currently includes “*multi-dwelling development that consists of, or includes, the construction of at least five single-dwelling houses*” as building work.

Some stakeholders have suggested that there should be exemptions from the Scheme for residential work. In terms of safety performance, there appears to be no strong evidence to suggest that the residential sector warrants exclusion, however this needs to be balanced against competing financial and policy objectives.

Three key areas that have been identified as particularly relevant to the residential sector are Indigenous business, regional location and commercial imperatives.

Indigenous business

It has been claimed that the Scheme’s requirements make it difficult for Indigenous companies to participate as head contractors in Commonwealth Government-funded residential building programmes in some regional and remote areas.

This issue was highlighted in a submission from the WA Department of Housing, and the Department of Prime Minister and Cabinet (PM&C) in its capacity as a member of AGARG.

The majority of residential construction and infrastructure development in remote Aboriginal communities in WA is funded by the Commonwealth Government under the National Partnership Agreement on Remote Indigenous Housing (NPARIH). Both the WA Department of Housing and PM&C have indicated there is a lack of accredited small and medium-sized residential construction companies operating in remote Aboriginal communities in Western Australia.

The WA Department of Housing has observed that the lack of a large pool of suitably accredited residential construction companies available to tender for NPARIH funded projects has reduced competition, put upward pressure on contract prices and is resulting in a sub-optimal value-for-money outcome. The submission also indicated current thresholds are impacting the WA State Government’s ability to incubate new Aboriginal enterprises and represent a wasted opportunity to stimulate economic development and self-sufficiency in remote and regional communities.

The WA Department of Housing has not sought an exemption from the Scheme for building work – rather they have recommended an increase in thresholds from \$3 million to \$6 million.

Likewise, PM&C has not proposed an exemption for residential building work. PM&C has proposed that the number of single level residences captured by the Scheme be increased from five or more to 10 or more to help address competing policy objectives, particularly in relation to participation of local Indigenous building companies in housing projects in regional and remote Australia.

The DHA submission supported an increase in the number of dwellings, as defined in section 5(2) of the FWBI Act, in the event that housing is not exempted entirely from Scheme requirements.

Regional and remote factors

A further argument has been made that the higher costs in regional and remote areas mean that projects are being captured that would be below the thresholds if located in metropolitan areas.

A significant proportion (approximately 60 per cent) of Scheme residential projects are undertaken in regional and remote areas and some submissions have noted that where a number of houses can be constructed in a metropolitan area under the existing Scheme threshold, that number is considerably less in remote or regional areas, for example, Darwin. This situation has been amplified as construction costs have increased.

The submission made by the WA Department of Housing notes that

“the construction of six new single residential homes in Kalumburu in regional Western Australia is estimated to cost about \$3 million and therefore require an accredited contractor to undertake the work. The same project undertaken in Perth would attract a contract cost of approximately \$1.2 million”.

Increasing the threshold from five or more to 10 or more dwellings would help address these concerns in that up to nine residences would be able to be constructed before the Scheme applies, regardless of the cost.

Commercial imperatives

A number of submissions raised the impact of the Scheme on the ability of companies to remain commercially competitive, citing the view that the Scheme increases costs and reduces the pool of suppliers for certain Government agencies funding residential projects.

“Government business enterprises, like DHA, which undertake large scale residential construction activities, must compete with private and public developers which are able to use those builders who provide the best ‘value-for-money’. DHA’s ‘value-for-money’ consideration includes a strong focus on the requirements of the Work Health and Safety Act 2011, however, for projects with a building component of over \$3 million, DHA must only employ builders who have been accredited under the FSC accreditation scheme, irrespective of the result of DHA’s WHS assessments.”

A number of submissions noted that maintaining accreditation can lead to being less competitive in non-Commonwealth Government funded building work.

Improving safety systems, especially where little or no system has previously been in place, can come with increased costs. However, being unsafe can lead to considerably greater costs in the event that a serious accident or even a fatality occurs. Despite acknowledging the costs associated with becoming accredited and as previously stated, 80 per cent of accredited companies responding to the Survey say that being accredited has improved safety in their organisation; this figure rises to 94 per cent amongst small builders.

Noting the general consensus among the majority of submissions that exemptions weaken the Scheme, and consistent with earlier recommendations that specific sectors not be excluded (e.g. vertical construction), this report does not recommend that the residential sector be excluded from Scheme requirements.

In conjunction with previous recommendations regarding raising and indexing the Scheme thresholds, the following recommendation amends the definition of building work to increase the number of single dwelling houses not subject to Scheme requirements. This provides an opportunity to recognise the specific social policy issues associated with Indigenous and public housing while continuing to recognise the need to capture significant building work. (This would be the case in a project constructing 10 or more residential dwellings).

Recommendation 4: For residential projects, the Scheme only be applied to projects comprising the construction of 10 or more single dwellings, regardless of contract value.

Refurbishment of residential houses

Scheme coverage of the refurbishment of existing dwellings is related to the residential issue. A number of AGARG agencies have taken the opportunity offered by the Review to query the inclusion of refurbishment of residential dwellings in the definition of building work, noting that in most projects of this nature, there is very little building or construction underway. Rather, quite minor activities, such as painting and tiling, are more typical. These projects often fall under the Scheme as the contracts are awarded for a large number of individual dwellings or over an extended time period. These types of projects are usually undertaken by companies offering maintenance rather than building services. The experience of the OFSC has been that they can be extremely difficult to audit when working on smaller projects.

However, there are a number of larger refurbishment projects, such as office fit-outs and demolition of buildings that do not present the same difficulties and it was the view of AGARG that projects of this substance should be subject to Scheme requirements.

Overall, it was the view of stakeholders that sufficient distinction can be made between refurbishment of single level residential dwellings and other refurbishment activities so as to be able to make the following recommendation.

Recommendation 5: The Scheme not be applied to the refurbishment of, nor extensions or alterations to, single dwellings regardless of the number of dwellings or the contract value (so long as they remain single dwellings).

Exemptions

As discussed above, there is little support for any exemptions to the Scheme, with almost all submissions supporting the current arrangements. The majority view of accredited companies, MBA and other industry associations is to avoid downgrading Scheme requirements to the disadvantage of builders that have higher standards. They advocate instead that the focus be on increasing communications and guidance to assist companies to become accredited.

Two clear exceptions to the support for the current arrangements are DHA and CCF. DHA's submission focused on its claims that it is unable to provide value for money to the Government by using accredited builders and is seeking an exemption for residential work – this view is supported by HIA. CCF is seeking exemptions for emergency rehabilitation works and low risk, remote location projects.

There is no evidence that residential construction is inherently safer than other forms of construction and therefore less in need of the Scheme. Indeed, some states and territories, for example NSW and the ACT, have identified safety concerns in the residential sector as a priority, with WorkCover NSW suggesting in February 2014, that

“WorkCover data shows that the industry, which is involved in the construction of one and two story residential housing, has more than doubled the amount of workers compensation claims for permanent disability than any other industry.”

It could therefore send potentially the wrong signals were the residential sector to be exempted. It would also be inequitable for currently accredited residential builders.

An alternative view is that while there are safety issues in the residential building sector, the Scheme is arguably not the best tool to address those problems. The Government has little involvement and therefore limited influence as a funder of residential works. As such, it may be that minimum legislative standards need to be pursued more actively by state and territory regulators, rather than expecting domestic house builders to implement the best practice systems required under the Scheme.

On balance, it is suggested that varying both the financial and residential dwelling thresholds, rather than exempting any particular sectors, regions, projects or agencies, is the more prudent approach and maintains both the integrity of the Scheme and equity for accredited residential builders, while going some way to addressing competing policy objectives in this area.

Recommendation 6: The Scheme continues to apply consistently with no individual exemptions for particular agencies, projects, regions or other circumstances.

Becoming accredited

Current Accreditation Process

The level of resourcing and WHS expertise of companies seeking accreditation varies dramatically according to size, experience, management culture, location, sector of operation and other factors. Coverage of the Scheme ranges from small, locally-focussed “husband-and-wife” companies to nearly all of the major national and a number of international construction firms. Accordingly, the complexity and resources associated with safety systems vary significantly.

A key challenge is to ensure the Scheme’s requirements are applied consistently, but in a way that does not create unnecessary barriers to companies considering accreditation. Equally important is further ensuring and communicating that the Scheme is scalable, so that the criteria can be met in ways that are appropriate to the smallest builders through to multi-national firms.

Under the current accreditation process, there is no limit or cap on the number of audits companies may take to achieve accreditation. Companies are audited until they have addressed all major corrective actions and are in a position to be recommended to the FSC for accreditation. Companies take, on average, 2.3 audits to achieve accreditation for the first time. Where a company continues to make progress and demonstrates commitment to achieving accreditation, audits continue to be conducted and the OFSC continues to assist companies through the process.

Where a company notifies the OFSC that it is in a tender process, the application for accreditation can be prioritised ahead of other applications. Also, the OFSC will, with the permission of the company, provide an update of the company's status to the relevant funding agency.

The time taken to achieve accreditation varies significantly between companies. There are two elements that contribute to the time taken from application to accreditation:

- OFSC administrative processes; and
- company processes, including audit timing and time taken to address non-conformances identified at audit.

Streamlined application processes were introduced in January 2013. These processes included removing the requirement for companies to provide significant volumes of documentary evidence. This evidence was subject to assessment by the OFSC and this process of consultation with companies to ensure a complete application took several weeks on average. The requirements for documentary evidence and a desktop assessment have been replaced by a simplified gap analysis. This is a form of self-assessment whereby companies identify relevant procedures and documentation that will be provided as evidence at the audit.

Applications received under the streamlined arrangements are being processed in a significantly reduced timeframe. Prior to December 2012, the average OFSC processing time from receiving an application until referral to audit organisation was 42 days. That figure currently stands at 6.75 days. This is significantly impacting on the time taken to achieve accreditation. Some companies have become accredited within three to six weeks of their first audit under the new arrangements, including smaller companies.

Accreditation Fees

The Discussion Paper canvassed whether a fee might be applied for Scheme accreditation. There was almost unanimous response that there should not be an annual fee for accreditation, although the ACTU 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 audits.

There are significant cost pressures associated with managing an escalating number of accredited companies within the OFSC's funding base that is not demand-driven. One response is to better target resources in the post-accreditation compliance monitoring processes by adopting a risk-based approach. This is discussed further under the section 'Maintaining Accreditation'.

Another possibility raised by some Australian Government agencies is that, in the future, consideration could be given to incorporating an OFSC accreditation and compliance cost element in new policy proposals for building and infrastructure initiatives being considered by Government. Agencies would then provide funding to the OFSC as part of their project management responsibilities and costs. This may assist in providing some degree of demand-driven funding that reflects the increase in demand from builders to become and remain accredited.

The following recommendation reflects the majority of feedback and desirability of minimising disincentives for companies to improve safety through the accreditation process. The Advisory Panel supported this view.

Recommendation 7: The Government continues to meet OFSC costs, including for accreditation and compliance audits, with no charge to companies.

Application Prerequisite - AS/NZS 4801:2001

The Scheme Regulations currently require that a company's WHSMS has been certified to AS/NZS 4801:2001 (or the equivalent international standard OHSAS 18001:2007) before the FSC can consider an application for accreditation. The OFSC requires evidence of this certification as part of the initial application process.

This certification was required initially as a prerequisite to ensure that any company applying for accreditation had, as a minimum, an existing WHSMS. The WHSMS criteria applicable under the Scheme were based initially on the criteria for an AS/NZS 4801:2001 certification.

However, the Scheme's criteria are far more extensive than those required under AS/NZS 4801:2001, and unlike that standard, relate specifically to the building and construction industry. In its experience, the OFSC has found that OFSC audits are more extensive and thorough than those undertaken as part of the AS/NZS 4801:2001 audit process. This view has also been expressed by many in the industry.

In addition, there are direct costs to a company to achieve certification under AS/NZS 4801:2001. These costs are dependent upon a number of factors including the extent to which a WHSMS is already in place within the company, the size of the company, the complexity of the business, the number of permanent and temporary locations the company operates in, and the number of audit days required to achieve the certification.

Costs as advised by an accredited third party certification body would suggest that certification for WHS ranges from approximately \$8,000 (for the smallest of companies) up to \$80,000 or more. Companies that engage consultants to deliver certification could spend between \$10,000, for a small three to four person business, and up to \$200,000 or more for a large organisation. Surveillance audits and recertification audits are required over a three year period to maintain certification.

An option raised in the Discussion Paper is to remove the requirement of AS/NZS 4801:2001 certification as a prerequisite for applying for accreditation, as Scheme requirements currently subsume AS/NZS 4801:2001 requirements. MBA and the FSC indicated that this prerequisite creates a barrier to entry for small builders in that it creates delays, is costly, involves unnecessary red tape, and adds no value to the OFSC audit process.

Other stakeholders submitted that AS/NZS 4801:2001 represents a good minimum standard or starting point for companies seeking Scheme accreditation, but many noted the opportunity for savings by removing this requirement. The OFSC's discussions with JAS-ANZ⁵ confirmed the shortcomings in endeavouring to use AS/NZS 4801:2001 criteria and assessment (which cover a variety of industries) in relation to the specific risks of the building and construction industry.

⁵ JAS-ANZ is the government-appointed accreditation body for Australia and New Zealand responsible for providing accreditation of conformity assessment bodies in the fields of certification and inspection. Accreditation by JAS-ANZ demonstrates the competence and independence of these bodies.

CCF proposed that the OFSC work with JAS-ANZ to set in place strategies to improve the consistency of AS/NZS 4801:2001 auditing and certification across industry. The OFSC has agreed to work with JAS-ANZ to provide advice about its approaches to assist with improvements and alignment of AS/NZS 4801:2001 with Scheme auditing standards.

A key argument for retention of AS/NZS 4801:2001 is that it gives companies some insight into what to expect at OFSC audits. The OFSC audit experience indicates that more commonly it may give some companies a false sense that they will meet all the OFSC requirements by having received certification against a small subset of criteria audited by the OFSC. This leads to a level of confusion and frustration.

A number of review recommendations deal specifically with improved communication of the audit process and guidance for companies to improve the accreditation process. It is appropriate, therefore, to replace the requirement for AS/NZS 4801:2001 with these measures, increasing clarity of requirements and offering companies an immediate reduction in red tape and costs.

Recommendation 8: Certification to AS/NZS 4801:2001 or OHSAS 18001:2007 ceases to be a prerequisite when applying for accreditation.

Improvements to the Accreditation Process

Views were sought through the Discussion Paper and from Advisory Panel members as to other measures that may be implemented to further reduce the time taken to gain accreditation. Submissions noted improvements to date with streamlined processes but suggested improved plain-English guidance and clearer criteria would further assist companies – including small businesses - in the accreditation process.

There were a broad range of suggestions from submissions about ways to improve the understanding of Scheme requirements and the accreditation process. Increased communication was a consistent message from stakeholders with the majority of submissions focussed on ways to clarify and communicate requirements. Specific examples of communication included dedicated forums on the application process, online tutorials and webinars, online lodgement of applications, expanded mentoring arrangements and utilising industry associations to distribute information.

There was significant focus on the benefits to be gained by helping companies become more prepared for a first accreditation audit. For example, offering information sessions for first time applicants, reinforced by simplified, tailored material aimed specifically for those with little-to-no knowledge of the Scheme; and an initial phone call from an OFSC representative to talk through the accreditation process, building relationships from the start and making applicants feel more at ease.

A number of submissions noted that the OFSC website can be confusing, that more practical implementation examples and the level of detail required to meet audit criteria would assist, as would more detailed feedback should an initial audit identify a large number of issues.

Most stakeholders agree that, to maintain the standards and integrity of the Scheme, the safety standards and thoroughness of the assessment required to achieve initial accreditation should not be compromised. To do so would also reduce the equity of accredited builders in their meeting the Scheme's standards.

There was general agreement that more can be done to improve the understanding of the requirements and reduce the actual and perceived barriers in meeting Scheme standards.

Accessibility for small companies

Improved information and guidance material (as discussed above) are particularly important to small companies.

While a range of information and fact sheets about various aspects of the Scheme are available on the OFSC's website (www.fsc.gov.au), and information is communicated to applicants through correspondence during the accreditation process, there are several common questions asked consistently by potential applicants and those going through the accreditation process.

Timeframes and outcomes may be improved for companies by better preparing them for the accreditation process: by providing them with detailed information on what to expect during the accreditation process, on the typical next steps and timeframes at each stage of the process, and on when a company needs to contact the OFSC throughout the process.

In the early years of the Scheme, information sessions on the Scheme and its requirements were held around the country on a regular basis and provided the opportunity for companies, particularly those small companies without resources to travel, to raise questions and have their concerns addressed. Although these were well-received, resources no longer permit information sessions in the same way (due to the audit costs associated with increasing numbers of accredited companies). While other recommendations in this Report may free up some resources, it is timely to fully explore other options for communicating Scheme requirements.

Submissions to the review noted the potential for greater use of technology such as interactive webinars, online information sessions, teleconferencing or sessions conducted on a cost recovery basis.

Support and Mentoring

In addition to the support offered by the OFSC, a mentoring programme is currently available to applicants whereby they can be paired with an accredited company that can provide insight into the accreditation process and their experience in gaining accreditation.

The uptake on this programme is limited, and the understanding of the scope of the programme is poor. The programme is not designed for the accredited company to give system advice, but advice on its own experience of going through the accreditation process and tips on what worked for it in preparing for the application and audit stages.

Noting the issues associated with the mentoring initiative, the Discussion Paper called for submissions on how to improve the programme, and what other support measures would benefit companies seeking accreditation.

Responses to these issues ranged from a single set of requirements that apply to all companies seeking accreditation, with scalable criteria for smaller builders, to consideration of tiered or staged accreditation as a way to make the Scheme more accessible to smaller companies. Some submissions suggested a move towards outcomes, with less focus on paperwork, and improved support material.

As discussed previously, there is little support for a lowering of the standards required to achieve accreditation, including through the introduction of a staged or tiered approach to accreditation. The majority view from stakeholders including MBA and other industry associations is to avoid downgrading Scheme requirements to the disadvantage of builders that have higher standards and not maintaining a level playing field for all builders seeking to undertake Commonwealth funded building work.

The accreditation requirements under the Scheme are already scalable in that smaller companies meet the same criteria but with far simpler systems and documentation than large companies undertaking more complex and varied work. The feedback highlights the importance of addressing perceived barriers to accreditation, and focussing on better communications and guidance to assist companies to become accredited, which the Advisory Panel agreed was the preferred approach.

The overall focus from submissions, therefore, was on increased information and education rather than alternative methods of entry for small business.

Recommendation 9: The OFSC streamlines the application process and improves ease of access for companies seeking accreditation, including the development of an online application and self-assessment tools.

Joint Venture Accreditation Arrangements

Another way to foster greater Scheme accessibility is to expand to any builder the current joint venture and alliance provisions that apply solely to international builders.

During discussions with AGARG, it was suggested that accessibility of the Scheme for builders may be increased through the possibility of joint ventures between an accredited company and a non-accredited company similar to the provisions available currently for international companies under regulation 24(1)(h) of the *Fair Work (Building Industry) Regulations 2012*.

A key objective of this would be for an accredited company to assist in familiarising the non-accredited partner with the Scheme requirements through the use of their own accredited WHSMS. This would lift the safety standards of the non-accredited partner to a level that may result in it being able to achieve accreditation in its own right in the future.

A similar provision exists currently under regulation 24(1)(h) for international companies which, subject to a number of limitations, are able to enter into a joint venture arrangement with an accredited builder. Those limitations require that an application for accreditation has been submitted and extend to only using the WHSMS of the accredited builder, evidence of which is provided to the FSC. This approach has been adopted by a number of joint ventures and has given companies not already operating in Australia the opportunity to work to an accredited Australian system while they undergo the accreditation process themselves.

This approach lends itself particularly well to social policy initiatives such as Indigenous construction projects that seek to align experienced builders with inexperienced or emerging Indigenous businesses. This arrangement continues to focus on safety while developing relevant expertise under the auspice of an accredited WHSMS, while still allowing the Indigenous business to operate as a full partner in a joint arrangement.

Any introduction of a similar joint venture arrangement to unaccredited builders would include consideration of parameters or other limitations, similar to regulation 24(1)(h), to ensure that safety is maintained at the highest level and that it is not seen as a means by which a company can undertake Commonwealth Government funded building work without demonstrating appropriate safety standards.

Recommendation 10: The OFSC, in consultation with stakeholders, investigates and develops an approach that would allow unaccredited companies to tender for Scheme projects where they are in a joint venture with an accredited company and operate under the partner's accredited safety systems.

Simplifying Criteria

The Scheme was initially established to raise the bar and challenge companies to not only achieve legislative compliance but also to strive beyond basic legislative compliance in WHS to improve the safety culture across the building and construction industry.

At the two-day first accreditation audit, all companies' documented systems and their implementation in practice are assessed against the criteria, including two hazard-specific sets of criteria based on the works occurring on site. The reaccreditation phase uses a similar model with either all, or a subset of the same criteria being reviewed, and ongoing maintenance audits also examine a subset of the same criteria.

This recurring emphasis on systems assessment against the criteria, even for high performing companies with a strong track record of compliance, may mitigate against companies striving for continual improvement and best practice beyond their current systems and approaches. Several submissions indicated strong support for identifying ways in which continual improvement in safety can be fostered and monitored beyond accreditation, focussing on aspects of leadership and cultural change, and identifying criteria focussing on leadership and other lead indicators⁶.

A review of the criteria could consider establishing a better balance between adherence to system requirements (which will continue to underpin the Scheme) and incentives to strive for ongoing improvements, particularly in safety leadership and culture. This may be particularly appropriate for companies with a strong record of Scheme compliance in conjunction with the recommended risk-based post-accreditation compliance model (see the section titled 'Maintaining Accreditation').

Similarly, there is strong support for a review of criteria and auditing arrangements to reconsider the balance between assessment of 'paperwork' (documented systems) and on site practices and outcomes. MBA, for example, suggested:

"they (the criteria) should be re-framed to take away the emphasis on a paper driven system ... and focus on agreed outcomes and these should be settled via industry workshops post the review."

⁶ **Lead indicators** - predict a possible future event which drives activities that may prevent and control the occurrence of injuries and incidents. Examples include safety training and audits, implementation of new safety programs etc

While the Scheme will continue to require documented systems, a more risk-based approach to compliance after initial accreditation provides an opportunity to consider a change in focus – perhaps a high level review of systems with more attention to on-site assessment and outcomes. Ensuring the intent of criteria is being met on site, rather than a detailed word by word paper-work review, would be strongly supported by stakeholders. One submission noted that too much time is spent “*locked in a room looking at the paperwork*”, and this was a common view amongst stakeholders.

At a more detailed level, the Review sought feedback on existing criteria that could be modified or removed, including those that do not add value, are duplicative, or could be assumed to be met as a result of other requirements or other compliance processes. Suggestions were also sought about specific aspects of the criteria that are confusing, or where further guidance is needed.

Some submissions gave specific examples of criteria that are duplicative and redundant, and a number identified WHSMS-related criteria that were considered suitable for streamlining.

In the Survey, 75 percent of companies believed the audit criteria and guidelines are easily accessible and understood. However, almost all submissions including industry associations, unions and accredited companies, sought plain-English explanation of the audit criteria, and more information on the intent and scope of the criteria.

There was strong support for a review of the audit criteria to address all these matters, within a framework that ensures the safety standards and thoroughness of the assessment required to achieve initial accreditation are not compromised.

As part of the criteria review, an opportunity also exists to clarify the OFSC’s requirements around SWMS (a specific area of the audit criteria frequently queried by companies) discussed below.

Safe Work Method Statements

There was general consensus in submissions that the use of SWMS has become impractical and requires change. See Appendix B for an outline of what SWMS are and how they relate to Scheme criteria.

Most submissions recognised that the OFSC does not have overall responsibility for SWMS, but see a key role for the OFSC in facilitating discussions with state and territory regulators to move toward an agreed template for SWMS. This was proposed by HIA, CCF, AMCA and NECA, among others. Safe Work Australia would be the agency most suited to carriage of this proposal, as it has responsibility for broader industry issues (noting that OFSC accredited companies comprise only a small proportion of the total number of companies in the building industry). Safe Work Australia has already undertaken some work in relation to SWMS, however, the OFSC could assist with further facilitation through Safe Work Australia processes, which include consultations with state, territory, industry and union organisations.

A number of submissions highlighted the need for improved communication of requirements by the OFSC. Two specific examples of SWMS-related issues raised consistently by submissions were the lack of clarity around when the OFSC requires a SWMS to be in place and the extent to which legislation is required to be referenced within SWMS.

All respondents to the discussion paper believed SWMS should only be required where already required by legislation (that is, for high risk work). This view is supported by ACA, MBA, unions and is the current audit position of the OFSC. Further, legal referencing within SWMS has not been an OFSC audit requirement for several years.

The fact that these issues were highlighted during the review is further evidence of the need for the OFSC to better articulate its position on SWMS, to provide guidance as to how SWMS fit into the Scheme's requirements and what is acceptable in developing them. This was unanimously called for by submissions. Building upon this, many submissions requested the OFSC to provide examples of good practice SWMS as a way to foster greater industry knowledge in this area.

Recommendation 11: The OFSC, in consultation with stakeholders, undertakes a review of the audit criteria and associated guidance, including the clarification of SWMS requirements.

Maintaining Accreditation

Once accredited, all companies are currently subject to ongoing compliance requirements, including periodic maintenance audits, WHS data reporting and seeking reaccreditation prior to expiry. The current process takes a single, standard approach to these post-accreditation arrangements for all accredited companies. This creates two key difficulties.

Firstly, it creates an equal compliance burden on all companies, regardless of their record of safety and track record in adhering to Scheme requirements. This unnecessarily increases the burden on high-performing companies.

Secondly, the current approach is not an efficient way for the OFSC to optimise the Scheme's effectiveness across a growing number of accredited companies. It diverts OFSC resources from companies requiring its additional attention and support. This is inconsistent with recent recommended approaches to audit models such as those outlined by the Productivity Commission⁷, and does not optimise safety outcomes.

In fact, the current single, standard approach for all accredited companies has had a significant impact on how efficiently and effectively the OFSC is able to accredit companies and support their continuing adherence to the required safety standards.

As the number of companies seeking and gaining accreditation has increased, it has been necessary for the OFSC to focus more on accreditation and reaccreditation audits than on monitoring (through maintenance audits) and compliance. The emphasis of audits has been necessarily to ensure requirements associated with accreditation and reaccreditation are met – but at the expense of periodic mid-term maintenance audits. As a result, the average number of audits per accredited company per annum has halved since 2007-08.

In the three year period to the end of February 2014, the OFSC received a total of 227 new applications for accreditation. A total of 456 initial accreditation audits totalling 787 audits days were undertaken in the same period. There were 454 days allocated to reaccreditation audits, bringing the total number of accreditation and reaccreditation audit days over the three year period to 1241 days. In the same period, only 341 days were allocated to ongoing maintenance audits.

⁷ Productivity Commission, Regulator Audit Framework, May 2014

Table 4: Audit Types

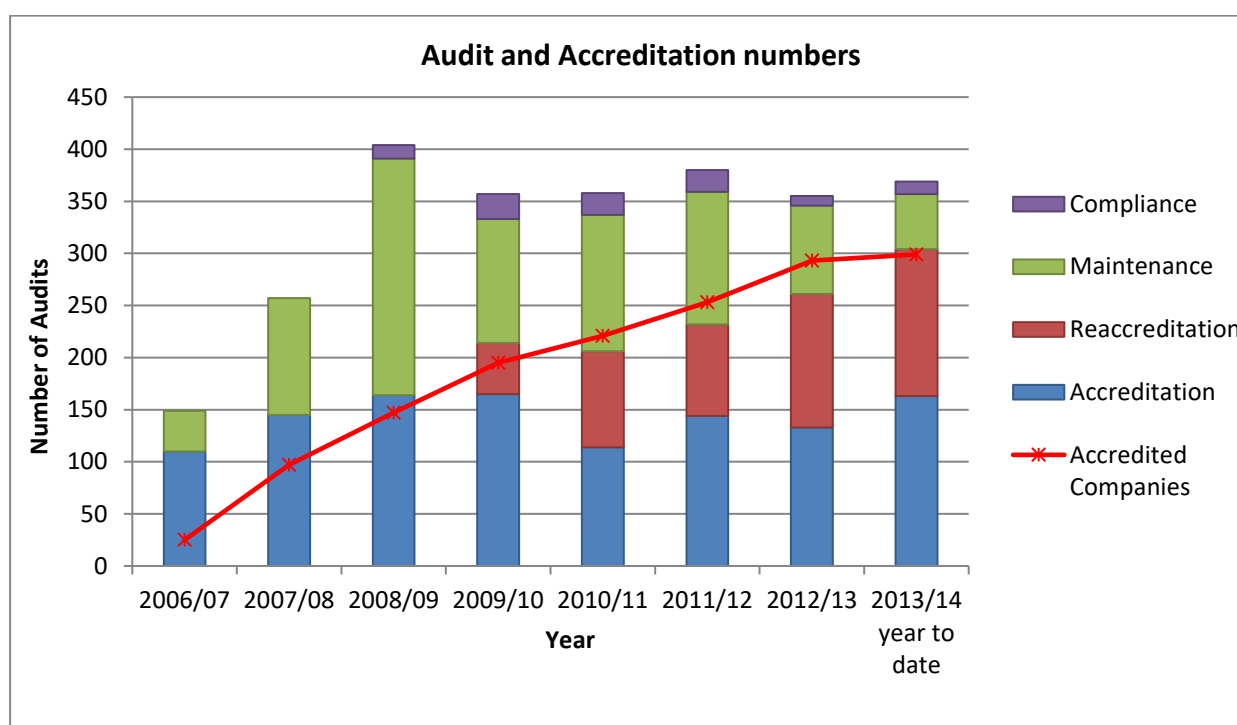


Table 4, above, shows the reduction in maintenance audits as a result of the increasing applications for reaccreditation. The declining ability to conduct periodic maintenance audits and the current concentration of resources at reaccreditation were posed as areas for comment in the discussion paper. The following sections explore options for restructuring the approach for companies beyond achieving initial accreditation.

Reaccreditation Process

Under current legislation, accreditation can only be awarded for a period of up to three years, with the majority of companies accredited for the full term. At the end of this period a company must submit a new application and the FSC must have regard to an on-site audit in making a determination on a subsequent period of accreditation.

Under existing arrangements, a company's good performance during the accreditation period will result in reduced audit requirements at reaccreditation (for example, resulting in a single day audit). However, a company must still have no identified major non-conformances to achieve reaccreditation, and multiple audits may still occur to allow the company to achieve reaccreditation. OFSC data demonstrates that companies undergoing reaccreditation for the first or second time typically require two or more audits within a relatively tight timeframe.

As Table 4, above, demonstrates, the concentration of audits for reaccreditation has necessitated a lesser number of periodic maintenance and compliance checks of companies, with some companies in recent years not being subject to a maintenance audit in the whole three years of accreditation.

A common suggestion from submissions to address this issue was to remove the reaccreditation process entirely, and extend the accreditation period, discussed below.

Extending the Accreditation Period

MBA, ACA, HIA, Ai Group and a majority of accredited companies making submissions supported extending the current 3-year accreditation period, subject to satisfactory ongoing performance determined by surveillance audits. MBA and HIA suggested an indefinite-period of accreditation, while ACA and Ai Group proposed a 5-year accreditation period. CCF and ACTU wanted to retain a 3-year accreditation period.

Those who supported retaining a 3-year accreditation period largely expressed concerns that any introduction of an indefinite period of accreditation would create a perception that a company is no longer subject to monitoring and compliance; and a perception that the current maintenance audits would no longer be in place.

The majority of submissions supported some form of ongoing surveillance audits. Suggestions from accredited companies included: using the same Federal Safety Officer (FSO) to detect 'sanitised' sites and provide greater insight over multiple projects; use of an audit scoring system; auditing Scheme and non-scheme projects (as is the current process); smaller audits over several sites rather than concentrated audits at one site and changing the focus of audits for more site compliance checks.

MBA, ACA, CCF, and Ai Group recommended periodic audits, but suggested additional options of targeting regions at certain times with less specific notice (ACA) and a set number of audits for companies in a timeframe (CCF and MBA), while unions supported un-notified audits.

Other than from the unions, there was little support in submissions for un-notified audits, noting in particular the difficulties for companies in having the right personnel and information on site. Some submissions pointed out the current collaborative, non-combative approach to safety adopted by the OFSC. However, a number of submissions saw merit in introducing an element of the unknown, including less notice prior to the audit date and withholding details of the specific criteria to be audited.

Finally, some associations and accredited companies suggested utilisation of other company performance information and audit results provided by companies as part of ongoing compliance monitoring; though no-one advocated the sole reliance on this information for ongoing accreditation compliance.

If the current reaccreditation process were abolished and accreditation continued indefinitely, subject to ongoing and periodic audits, accredited companies would have an incentive to maintain the higher standards of accreditation all the time. The following section discusses a possible risk-based approach to these periodic surveillance audits.

Risk-based Audit Approach to Maintaining Accreditation

Submissions indicated general consensus for a risk-based approach to post-accreditation audits although stakeholders agreed it is important to ensure all companies continue to have FSO site audits. A schedule of audits and compliance load commensurate with a risk assessment of the company's performance was supported by MBA, ACA, CCF and Ai Group. The details of a risk-based post accreditation model would be further developed in consultation with stakeholders, and it is proposed that the guiding principles would be to:

- reduce the audit and compliance burden for "low risk" companies;
- redirect more audit resources and support towards the other companies; and
- increase the overall frequency and regularity of site audits for all companies.

The current standardised reaccreditation process generally results in multiple days of audits for all companies every three years. This has resulted in a high concentration of audit resources at

the reaccreditation phase. As shown in Table 4, as the number of accredited companies has increased over time, this has resulted in a significant decrease in resources available for audits in the three years between accreditation and reaccreditation.

By removing this standardised approach to reaccreditation, the concentration of audit effort at the three-yearly phase could be re-directed to achieve the twin benefits of targeting extra resources to companies most needing it, while increasing the frequency and regularity of site audits for all companies. High-performing companies (i.e. those assessed as 'low risk') would have a net reduction in total audit days over time, as a result of not having multiple audit days every three years. The resources available to be re-directed from this approach should ensure that all companies are visited by an FSO for a single day site audit at least every 12 to 18 months (some currently have no audits for three years), with more frequent and longer audits for companies that require it.

This model would improve safety outcomes and increase the integrity of the Scheme by increasing the frequency of audits for all companies and providing an increased focus on companies having difficulty maintaining satisfactory standards.

It would reduce the regulatory burden for all companies by eliminating the considerable paper work currently required at the reaccreditation phase, and reduce the audit and compliance monitoring burden for 'low risk' companies.

A risk-based assessment and audit schedule would provide a better picture of a company's performance over the life of its accreditation and would address more efficiently any concern that companies do not maintain the high standards required to achieve accreditation during the accreditation period.

Such an approach would need to be well-defined and transparent, to avoid any perception that checks and balances have been removed and companies demonstrating poor safety standards would not be identified and monitored appropriately.

Any new approach would carry with it the risk to accredited companies that they could lose their accreditation and therefore the capacity to bid for Commonwealth Government funded building work at any time after their initial accreditation. The risk of this occurring would be part of the incentive for companies to comply rigorously with the Scheme at all times.

Therefore any introduction of a risk-based approach to maintaining accreditation would need to include a comprehensive review of the compliance framework and associated actions in the event that an accredited company fails to meet the required standards.

While this report outlines below some broad parameters of a new risk-based approach, significant work is required to articulate the detail of a new system of processes and mechanisms for maintaining accreditation. As such, subsequent to the Review, a working group including key stakeholders with appropriate expertise would be established to consider the development and implementation of the new risk-based approach.

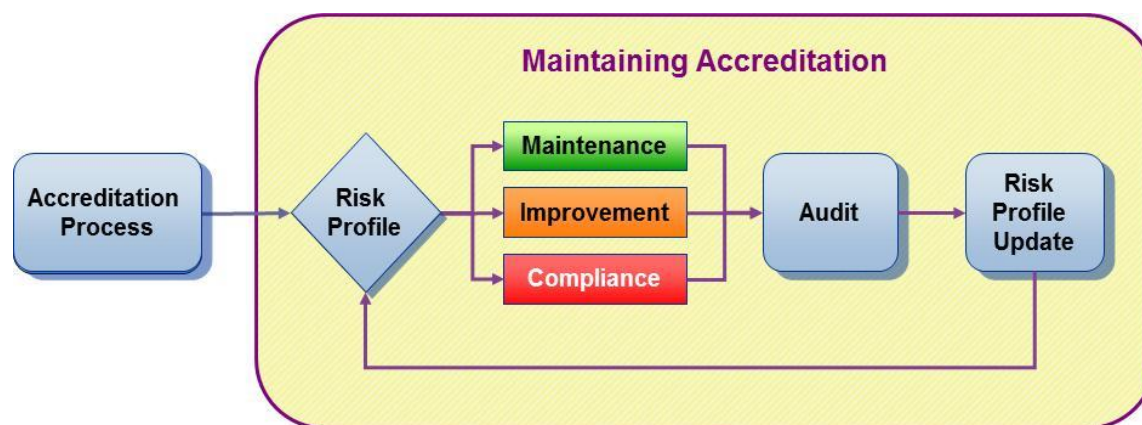
Determining the Risk Profile

Submissions suggested an extensive and varied list of factors and indicators that might be considered in a risk-based approach. These suggestions ranged from statistical and data indicators of both a lag and lead nature, to indicators around company structure, management and project risk elements.

The overall concept would be to determine the risk profile of an accredited company in order to determine the scope and frequency of subsequent audits.

Importantly, even with a move to a risk-based approach, when compared to audit frequency in the past two to three years, the frequency of ongoing audits would increase for some companies, as the current concentration of audits at reaccreditation is re-directed to more regular periodic maintenance and compliance checks for companies.

Diagram 1: A possible risk-based approach to maintaining accreditation



The possible risk-based approach to maintaining accreditation outlined in Diagram 1, above, shows the initial risk profile of a company being developed once it has been accredited.

Any risk profile would entail the evaluation of a range of identified performance and risk indicators. These could include company specific factors such as size, revenue, typical works, location etc., as well as key company performance factors such as previous audit results, corrective actions, conditions, incident history etc.

In the example above, a company's risk profile would determine its placement in one of three groups: Maintenance, Improvement or Compliance, according to whether the risk is low, medium or high, respectively.

In which of the three groups a company was placed would then determine the timing and scope of its maintenance audits. Ongoing requirements beyond auditing would also be tailored, according to which group a company was placed in through its risk profile.

Subsequent to a maintenance audit, a company's risk profile would be updated, based on the results of the audit and on other company WHS performance information, and the company would either remain in or move between the three groups. Audits would continue to be scheduled in this way based on the updated risk profile for each company.

The combination of removing the reaccreditation process and all associated paperwork and audit requirements, with the introduction of ongoing accreditation subject to risk-based maintenance requirements, is seen as the best way to reduce red tape for accredited companies, and allocating resources more efficiently and effectively while enhancing the monitoring of ongoing compliance with the Scheme' requirements for all accredited companies. On this basis, the following recommendations are made:

Recommendation 12: The current reaccreditation process be abolished, including all associated paperwork and other red tape requirements. Companies' accreditations to continue indefinitely, subject to satisfactory compliance with Scheme requirements.

Recommendation 13: The OFSC, in consultation with relevant stakeholders, develops a risk-based approach to maintaining accreditation that tailors ongoing frequency and scope of audits for accredited companies to ensure ongoing compliance with Scheme requirements.

Reporting

Accredited companies are required to provide WHS data through periodic reports to the OFSC. Requirements include providing:

- incident reports for lost time and medically treated injuries on Scheme projects,
- notifiable dangerous occurrences on Scheme projects,
- lost time injuries that occur on non-Scheme projects valued at greater than \$3 million;
- incident reports for all fatalities, regardless of project value;
- information regarding projects undertaken through bi-annual and Scheme project reports, including:
 - which high risk activities were undertaken on site,
 - hours worked by employees and subcontractors, and
 - any notices issued by local jurisdictional authorities

The information collected is used both at an individual company level to assess the performance of an accredited company, and Scheme-wide to identify trends within the bi-annual data analysis report published on the OFSC's website (www.fsc.gov.au).

While 80 per cent of accredited companies responding to the Survey believed the OFSC's reporting requirements were "about right", just 27 per cent of submissions believed the data analysis produced by the OFSC was beneficial. A common suggestion was that the OFSC's data should be comparable or benchmarked against the broader building and construction industry, a suggestion supported by both MBA and ACA.

The 'doubling up' of reporting requirements across the OFSC and state and territory governments, in addition to any client and internal company reporting, was also raised numerous times, with requests to bring some harmonisation to the reporting requirements of the Australian, state and territory governments.

It was further suggested by many industry associations that the OFSC move away from incident lag data, towards more positive performance indicators and lead data.

One of the key points to note when discussing the data collected by the OFSC is that it focuses specifically on the building industry sector, whereas data collected by other agencies is

captured as applicable to all industries. Other agencies' data is therefore more general, whereas OFSC data is more specific to its functions. For example, OFSC collects data in respect of lost time due to injury regardless of whether a compensation claim is made, and principal contractors provide information for all workers on a project site, not just their own employees, neither of which is collected by other agencies.

The data collected by the OFSC is also more current, in that in most instances, it is less than 12 months old, as compared to data from other sources that can be up to two years old. The challenge is how to find ways to compare the performance of accredited companies with the industry more broadly without reducing reporting requirements and thereby losing the opportunity to highlight a wider range of injury trends through a more focused data set.

Currently industry associations are taking the lead in a considerable body of work that is considering indicators other than lag indicators. The OFSC has been involved in initial discussions with stakeholders on the role it can play in developing, disseminating and encouraging the use of lead indicators. This work will continue to progress beyond the Review.

The current reporting required by the OFSC has been established in consultation with industry associations and accredited companies through the OFSC's Industry Reference Group (IRG). Noting the above suggestions, the post review period will provide an opportunity for the OFSC to further consider its reporting requirements.

Recommendation 14: The OFSC review its reporting requirements to identify ways in which data collected can be compared with wider industry data. That the data collected be published in a way that assists companies to benchmark their own performance with other accredited companies and the industry more broadly. The OFSC supplies data analysis directly to accredited companies.

OFSC Performance

OFSC Communication of best practice

The functions of the OFSC include promoting WHS in relation to building work, accrediting companies to the Scheme and promoting the benefits of the Scheme.

As part of its commitment to promote sustainable WHS cultural change in the building and construction industry, the OFSC has attempted to regularly undertake education activities as well as formal and informal stakeholder consultation. For example, the FSC has attended safety-related conferences, forums and meetings of safety managers, industry representatives and undertakes site visits.

The FSC also chairs two consultative reference groups, the IRG and the AGARG. Generally these groups meet two to three times a year.

In recent times however, such educational and support activities have reduced as more resources have been applied by the OFSC to the core accreditation programme requirements. This was highlighted by all respondents to the Discussion Paper, with stakeholders agreeing that the OFSC needs to be more engaged with industry, regularly travelling and being “visible”, and meeting with key association and building industry participants as it used to in the early days of the Scheme. Other suggestions included communicating best practice, an increased educational function, industry forums, annual conferences, and better interaction with Safe Work Australia and WHS regulators.

In line with the above suggestions, the OFSC’s website (www.fsc.gov.au) currently provides a communication vehicle to highlight examples of best practice from companies. It is recognised that more can be done in this area to better target communication between the OFSC and the industry as noted previously and discussed below.

In relation to sharing best practice information with industry, the general consensus was that the OFSC should source and disseminate best practice initiatives and case studies. This was a general theme across responses to the Discussion Paper with strong comments around improved communication, clearer criteria and plain-English guidance material, online information including webinars, “how to” information session and expanded mentoring arrangements.

Ninety-three per cent (93%) of respondents to the Survey said they preferred to receive fact sheets, case studies and news articles by email, with 39 and 38 per cent preferring the OFSC website and newsletters, respectively. Less than three per cent of respondents selected social media as a preference.

Recommendation 15: The OFSC, in consultation with stakeholders, develops and publishes case studies that provide practical examples of best practice initiatives to assist companies to self-educate for WHS improvements.

The OFSC and Federal Safety Officers

The Discussion Paper invited suggestions on ways in which the current process for engagement and management of FSOs could be improved, and how the OFSC itself could improve performance.

FSOs are external consultants engaged to the OFSC through periodic open tender processes. They are the auditing and WHS professionals who are tasked with conducting all OFSC on-site audits, and are subject to an extensive performance management framework during tender evaluation, engagement and initial induction, through to ongoing review (refer to Appendix C for information on the current framework).

The OFSC also has a range of internal key performance indicators (KPIs) that focus on achieving accreditation for companies in as timely a manner as possible. For example, FSOs are required to submit their audit reports to the OFSC within five working days and the OFSC benchmark is then to issue the report to the company within another five working days.

Stakeholders have frequently expressed concern about the consistency of the application of the audit criteria requirements and the approach to audits. Through the submissions, a common suggestion was made as to how to address these issues. There was almost unanimous support for some sort of independent or anonymous mechanism for feedback to the OFSC on inconsistent interpretation of criteria by FSOs, or on FSOs' behaviour. In contrast to the submissions, less than five per cent of accredited companies that completed the Survey raised concerns about the conduct and professionalism of FSOs.

There were also suggestions to improve FSO consistency which included more training for FSOs, clearer and more objective criteria, forums, and professional development opportunities for FSOs. MBA called for FSOs to disseminate best practice examples and ACA recommended the establishment of KPIs for FSOs.

The call for an independent mechanism for anonymous feedback supports the view held by many stakeholders and the OFSC that companies are reluctant to provide negative feedback on their experience with the application and audit process. For example, the return rate for the evaluation form sent to companies at the conclusion of each audit is low with approximately 15 per cent of forms returned. Most of the feedback is positive. The low response rate and the mostly positive comments are potential indicators that companies may not feel free to provide negative comment on the audit process, including in relation to the particular FSO conducting the audit.

An alternative mechanism for feedback to the OFSC could involve industry associations, which would be able to effectively bring specific issues of concern to the attention of the OFSC on behalf of a company who may not feel comfortable raising their concerns directly with the OFSC. The OFSC should also consider ways in which it can correct the perception that negative feedback will in some way impact on a company's efforts to achieve and maintain accreditation.

In a similar fashion, the OFSC can consider ways to make programme KPIs more transparent, including reporting against them periodically. This can be achieved in part by means of an annual survey of accredited companies as recommended below.

Conflict of Interest

MBA, ACA, CCF and HIA raised concerns about potential conflict of interest for FSOs as consultants contracted to the OFSC, who may also provide WHS consultancy services to companies. It was suggested that FSOs be employees of the OFSC to remove this possibility. However, implementing this suggestion would likely not result in value for money for the Government. FSOs are specialists in their fields and, even if a smaller number of FSOs were employed, their workload is such that they would not be fully utilised as full-time public servants.

Beyond this, there is a rigorous FSO management framework in place (as noted above) to manage the performance and conduct of FSOs. It is designed, in part, to avoid instances of perceived or actual conflicts of interest. As part of this framework, FSOs are bound by a Code of Conduct and are required to notify the OFSC of any potential or actual conflict of interest.

The OFSC maintains a register of these conflicts of interest, which remain valid for a minimum period of two years, at which point they can be reassessed, in line with RABQSA International⁸ conflict of interest timeframes. Further to these requirements, the OFSC is selective about which FSOs are requested to do each audit, taking into account, in part, areas of expertise, previous company issues, location and style when scheduling audits.

An option to further address stakeholders' concerns in this area is to afford them the opportunity to comment on tender requirements for the next FSO standing panel selection process prior to its finalisation. This would give relevant stakeholders an opportunity to provide input on the selection process to ensure that perceptions of conflict of interest can be minimised from the outset of engaging FSOs.

Recommendation 16: The OFSC sets and publishes its performance against KPIs for its processes.

Recommendation 17: The OFSC, in consultation with stakeholders, identifies means by which companies' concerns can be raised through a third party mechanism, such as an industry association, so that the concerns can be addressed by the OFSC.

Recommendation 18: The OFSC implements and publishes an annual survey of accredited companies that gathers Scheme-related safety and cost-benefit data, and feedback on FSO/OFSC performance.

Recommendation 19: The OFSC, in conjunction with stakeholders, implements enhanced arrangements to further monitor and improve the quality and consistency of FSO auditing performance, including the way in which FSOs are engaged by the Department.

Regular reviews of the Scheme

This Review has offered an opportunity for key stakeholders to provide suggestions and feedback to the FSC and the Government generally on how to improve the Scheme.

While not widely highlighted as an issue, a regular review of the Scheme on an ongoing basis was advocated by MBA in its submission.

As new approaches to implementing the Scheme are developed out of this Review's recommendations, there is benefit to be gained in regularly evaluating its effectiveness and utility, regularly re-visiting the Scheme's administration, and ensuring its relevance.

Recommendation 20: The Scheme be reviewed at least every five years.

⁸ **RABQSA** is an Australian personnel and training certification body. RABQSA was created in 2004 from the acquisition of the personnel certification activities of United States of America-based Registrar Accreditation Board (RAB) by Australia-based Quality Society of Australasia (QSA). Its activities are to design, develop, and deliver personnel and training certification services for various industries.

Australian Government Agencies

The biggest incentive of the Scheme is the benefit to be gained by becoming accredited and being able to secure Commonwealth Government funded building work. Funding agencies play a vital role in ensuring that their procurement processes reflect the requirements of the Scheme and therefore meet the Government's agenda to use its purchasing power to improve safety in the building and construction industry.

The OFSC established the AGARG early in the implementation of the Scheme to help relevant agencies to understand the Scheme and to better deliver projects, safely, on time and on budget. The AGARG also provides a forum where issues, for example any resource implications of the Scheme, improvement strategies and possible synergies across agencies, can be discussed.

The OFSC has also initiated a range of activities to encourage agencies to adopt optimal practices in terms of WHS, that is, to encourage them to act as 'model clients' relative to WHS. To enable agencies to achieve this best practice, a set of resources has been developed, including instruction, tools and guidance for how agencies could adopt optimal WHS practices in different stages of their construction procurement and delivery of projects.

The OFSC works actively with agencies on projects that adopt these practices to highlight different aspects of good WHS management as exemplars for other agencies. Agencies are also able to access expert advice on projects associated with the model client initiative, which may lead to further increases in agencies' understanding and management of WHS.

Despite the active work of the OFSC to educate agencies, some have experienced difficulties in adhering to the requirements of the Scheme. Most commonly, agency representatives involved in procurement processes are unaware of the Scheme requirements due to high staff turnover or confusion about Government procurement requirements. To assist Government agencies to comply with Scheme requirements, the OFSC has developed a series of model clauses that may be included in tender, contract and funding agreement or grant documentation. The OFSC also meets with different agencies on a regular basis to promote use of the clauses and foster understanding of the Scheme's requirements.

There have been instances where agencies have entered into a contract for building work with an unaccredited builder. Where there has been non-compliance with Scheme requirements, an explanation was sought from the funding agency. If a satisfactory response was not forthcoming, the issue was raised to departmental head and Ministerial levels.

Funding recipients or agencies have occasionally split a single head contract for building work into two or more head contracts below the \$3 million threshold. In a number of cases, the same builder has been engaged to undertake all of the resulting contracts.

Where there is a perception of contract-splitting to avoid Scheme requirements, the OFSC works to clarify the situation by working with the agency to ensure Scheme requirements are understood, and with companies to encourage and assist them in the accreditation process.

ACA and Ai Group advocated a proactive approach from the OFSC to educate agencies on their obligations. Other stakeholders, including MBA and ACTU, noted the need to better manage compliance with Scheme requirements, specifically citing contract-splitting as a main concern. Ai Group suggested that the OFSC should seek industry feedback on Government agency performance. Most stakeholders expressed significant concerns about splitting contracts where the intent is to avoid Scheme requirements.

Agencies have noted similar concerns during discussions with the OFSC. The OFSC is conducting discussions with the AGARG on ways in which agencies can provide advance notice

of Scheme projects to enable the OFSC to ensure agencies are made aware of their obligations, and to allow the OFSC to better leverage tender processes to increase the number of accredited companies.

There are no existing sources for this information currently available to the OFSC, greatly hampering efforts to leverage tender processes to increase the number of accredited builders, and hampering awareness and compliance monitoring efforts. In this context, the following recommendation is made.

Recommendation 21: The OFSC works with Government agencies to identify ways in which they are able to provide advice to the OFSC of (a) the nature and location of upcoming Scheme tender processes - at least 3 months in advance, (b) commencement of tender processes and (c) signing of contracts.

Other Jurisdictions' Prequalification requirements

There are a multitude of prequalification schemes that operate within each state and territory jurisdiction, many of which contain WHS requirements. Work has been actively undertaken by the OFSC since the Scheme's inception, to foster recognition of the Scheme as meeting these state and territory WHS prequalification requirements in an effort to reduce the duplicative administrative burden for builders.

Duplication of requirements was a theme through many submissions and several of them, including MBA's, supported more alignment with existing prequalification schemes. CCF felt that aligning the Scheme's requirements with those of state and territory prequalification schemes would reduce the audit burden for companies, and the Australian Chamber of Commerce and Industry (ACCI) suggested stakeholder consultation on this point following the Review. MBA proposed that the issue of mutual recognition be placed on the Council of Australian Governments (COAG) Infrastructure Working Group's agenda to increase the number of state and territory prequalification arrangements that recognise the Scheme as automatically meeting their WHS requirements.

Noting that the Scheme's requirements and processes go beyond any existing prequalification arrangements, mutual recognition has not been pursued to this point. However, as noted above, work has been undertaken to ensure the Scheme is recognised as meeting state and territory WHS prequalification requirements.

The issue of duplicative requirements has also been identified at a national level. In September 2009, as part of the Government's micro-economic reform agenda, the Coalition of Australian Governments Infrastructure Working Group (COAG IWG) engaged with relevant stakeholder groups to progress harmonisation of in a National Prequalification Systems (NPS) in the construction industry, with a view to reducing barriers to entry and additional costs caused by the lack of mutual recognition of prequalification obtained in different jurisdictions. Austroads and the Australasian Procurement Construction Council (APCC) were commissioned to facilitate the work to develop an NPS for major non-residential building projects above a threshold value of \$50M (administered by the APCC) and a separate NPS for civil construction relating to road and bridge projects at all financial levels (administered by Austroads).

The OFSC, in seeking to reduce the administrative burden for builders, worked with the COAG IWG in conjunction with the APCC and Austroads to develop nationally consistent prequalification systems for civil and commercial construction. A resulting agreement was reached which meant that harmonised prequalification arrangements took effect from 1 January 2011 allowing any builder accredited under the Scheme to be automatically deemed to comply with the relevant state/territory WHS prequalification requirements in place for each jurisdiction.

In 2012, the COAG IWG Review Report found that the NPS had made good progress to date and was generally well supported by industry, but concluded that the APCC NPS should be extended to also include prequalification for non-residential projects below \$50 million, and recommended that the APCC be commissioned to prepare a plan for achieving this, in consultation with industry and agencies.

As such, the APCC is currently developing its Road Map plan which will harmonise state and territory prequalification arrangements for non-residential projects with a value of below \$50 million with a view to commencing any new arrangement by 1 January 2015. This would further reduce duplication and costs for business, and is a process that the OFSC has again been involved in.

Expanding recognition of the Scheme

Discussions were held with the APCC and its members during the review process about (a) expanding the number of prequalification schemes in other jurisdictions that would recognise the Scheme as meeting those WHS requirements and (b) whether the removal of AS/NZS 4801:2001 certification as a Scheme prerequisite would have any impact on current recognition arrangements.

It was agreed that the existing prequalification recognition for non-residential commercial building projects above \$50 million would remain in place if the requirement to be certified to AS/NZS 4801:2001 was removed.

It was also agreed by members that on commencement of the harmonised prequalification arrangements for non-residential projects below \$50 million, the Scheme would also be recognised nationally, again irrespective of the possible removal of the AS/NZS 4801:2001 certification requirement.

This means that as of 1 January 2015, the Scheme will be recognised by all prequalification schemes nationally for non-residential commercial building work – greatly expanding the automatic recognition of the Scheme as meeting WHS requirements for procurement in jurisdictions across Australia, and for Scheme accredited companies, removing the requirement to meet different arrangements in different jurisdictions. This should also provide an increased incentive for companies to achieve the high safety standards required under the Scheme, potentially increasing safety standards across more of the industry.

With regards the civil construction sector, the nationally harmonised prequalification schemes have recognised the Scheme, irrespective of funding value, since the original harmonisation process took effect on 1 January 2011. The OFSC is in ongoing consultation with AustRoads, who administer the national civil prequalification system, to confirm this recognition will stand even if the requirement to be certified to AS/NZS 4801:2001 is removed.

In seeking to further reduce the red tape burden, other state and territory prequalification schemes and requirements could be considered for Scheme recognition. Further to this, the impact of the possible removal (noted above) of AS/NZS 4801:2001 as a requirement for Scheme application continues to be scoped relative to current jurisdiction prequalification requirements to ensure there is no adverse impact.

Recommendation 22: The Government identifies and progresses further opportunities that exist at Federal, state and territory levels to recognise the Scheme in lieu of other pre-qualification requirements.

Whole of Government approach to construction work

The Scheme operates in an environment of numerous procurement requirements, often creating duplication and red tape barriers for companies seeking to do Government funded building work at all levels.

There is a range of Government requirements related to procurement which are often difficult for companies to navigate. The procurement of construction services by Australian Government departments and agencies is governed by the:

- *Financial Management and Accountability Act 1997* (FMA Act)
- *Commonwealth Authorities and Companies Act 1997* (CAC Act)

The FMA Act and the CAC Act will be replaced by the *Public Governance, Performance and Accountability Act 2013* which commences on 1 July 2014.

All agencies covered by the FMA Act must comply (and where applicable, ensure suppliers comply) with the Commonwealth Procurement Rules (CPRs) and any other relevant Procurement Connected Policies (PCPs) issued by agencies

The CPRs apply to the procurement of construction services, where the procurement is valued over \$9 million. Similarly, some PCPs only apply to specific procurements and where the procurement value is above certain thresholds.

In relation to the procurement of construction services by Australian Government agencies, tenderers are required to demonstrate compliance with the *Building Code 2013* and the Scheme, subject to relevant financial thresholds. Australian Government agencies are also encouraged to consider favourably those tenderers that demonstrate commitment to supporting apprenticeships and education and training in the workplace.

Feedback was sought about areas where the Scheme overlaps or duplicates procurement requirements generally. The submissions included some general themes such as calls to align the Scheme's requirements with those of the state and territory prequalification schemes (discussed in the previous section) and for the OFSC to improve its education of Australian Government agencies on the Scheme's requirements so that agencies are better placed to provide early advice to tenderers of their obligation to attain accreditation in order to be eligible to contract for building work.

MBA suggested that this question be posed to Government agencies in the context of the Government's priority of reducing red tape. ACCI suggested stakeholder consultation should be undertaken with regard to this area to further reduce costs related to procurement.

A number of submissions noted the amount and variation of documentation required by funding agencies as part of the tender process, with suggestions that the provision of large amounts of documents be delayed until the company becomes one of those who have progressed beyond the initial stage.

AGARG members agreed that it can be confusing for builders to work out what the requirements are to undertake Commonwealth Government funded building work. Several

members acknowledged the efforts in recent years to clarify requirements with mixed results. One suggestion was that agencies articulate clearly who in their agency is specifically responsible for a building project or projects.

In its submission, Safe Work Australia noted that procurement-related costs and administration need to be carefully weighed against the costs of non-compliance with work health and safety requirements and that 'whole of government' prequalification and accreditation arrangements remove the incentive or need for individual departments or agencies to set up their own equivalent schemes.

Safe Work Australia's submission suggested that streamlined 'whole of government' approaches to procurement would promote certainty about the procurement process (i.e., what will be required, how tenders will be assessed and how contracts will be administered and audited) and reduce unnecessary red tape.

All AGARG members as well as a broad range of submissions agreed that the issue of procurement requirements would require further consultation after the Review and should involve a wide range of agencies and jurisdictions in the process. Noting the limited scope and role of the OFSC in procurement generally, a recommendation on this has been made for whole of government consideration.

Recommendation 23: The Government considers ways in which there can be greater clarity across funding agencies around construction industry procurement requirements.

Subcontractors

The Scheme focuses on a whole-of-project approach to safety and imposes requirements on principal contractors in relation to communication, consultation and management of their subcontractors' WHS. Principal contractors have a legislated responsibility to ensure compliance by their sub-contractors with the requirements of the principal contractor in complying with the Scheme's criteria.

Accreditation is not a requirement for subcontractors and they are specifically excluded by the Scheme regulations. However, a key element of the Scheme is improved safety through stakeholder management. Accordingly, a number of the criteria which apply to accredited companies create requirements relating to their interaction with subcontractors. This flow-on to subcontractors has resulted in feedback from subcontractors about confusion or inconsistency in the expectations and requirements of different accredited contractors with whom they work. Some stakeholders have indicated that consideration should be given to ways to reduce the costs to subcontractors working to accredited head contractors on Scheme projects.

A number of specific concerns for subcontractors were raised by organisations representing specialist subcontractors, including AMCA and NECA. A number of submissions noted that while the head contractor manages the contract and the project, 80 to 90 per cent of the work is carried out by specialist subcontractors. Therefore, many specialist subcontractors employ more people than the "builder" and have their own WHS systems. According to AMCA, this can result in increased cost to the specialist subcontractor, confusion between systems, and to disharmony on site.

A number of submissions acknowledged the difficulties faced by principal contractors in bringing subcontractors up to speed with their approach to meeting Scheme requirements. Submissions also noted communication issues between various building parties and many suggested improved communication and information as a means by which understanding of the Scheme would assist principal contractors explaining their obligations under the Scheme. Criteria clearly addressing compliance required from subcontractors would also assist. Most submissions spoke to the minimisation of a focus on paperwork in the accreditation process that would have a positive effect downstream on subcontractors.

The issue of subcontractors being required to provide different documentation for different sites was raised consistently. Some submissions noted the frustration of companies accredited under the Scheme in their own right having to work to multiple systems across multiple sites where they are not the principal contractor.

Accreditation for subcontractors was suggested by a small number of accredited companies, and this was countered by a similar number who indicated subcontractors should not be the domain of the OFSC or the Scheme, or that accreditation in its current format is not desirable for subcontractors (ACA, MBA and accredited companies).

While the interaction between principal contractors and subcontractors is a contractual issue and not regarded as a matter in which the OFSC should be involved, there is scope for the OFSC to facilitate development of materials to assist principal contractors and their subcontractors meet Scheme requirements in ways that minimise confusion and seek to add a level of consistency.

Recommendation 24: The OFSC facilitates the development of information to assist Scheme-accredited principal contractors to provide consistent communication with subcontractors in relation to the subcontractor management elements of the Scheme.

International companies

Accreditation under the Scheme is open to international companies in the same way as it is for domestic companies. International companies can sometimes perceive that they face additional barriers in becoming accredited under the Scheme, most notably in their ability to provide a site either in Australia or overseas where their WHSMS is in place and whether that system will meet Australian legislative requirements.

The recent Productivity Commission Draft Report into Public Infrastructure Volume 2, March 2014 raised concerns that the

"FSC requirements may deter foreign construction firms from entering the Australian market, in turn reducing the level of competition".

The report further noted that

“A large proportion of international firms who apply for accreditation ultimately obtain it. However little is known about how many foreign firms, faced with the prospect of accreditation, have declined to apply”.

Recommendation 15.1 of the Commission’s draft report⁹ recommends that this Review examine options such as ‘recognition’ and ‘provisional accreditation’, with a view to the implementation of measures to improve access to Commonwealth Government funded projects for firms not presently operating in Australia.

As with the previous discussion on mutual recognition with state and territory prequalification schemes, the issue of mutual recognition with international schemes is equally problematic, as there is no scheme that has been sourced that contains the same breadth of requirements audited to the same standard. This view has been reinforced by two recently accredited international companies who have indicated that they have adopted their accredited system globally, such was the benefit they have gained by meeting Scheme requirements.

While it is desirable for foreign companies to establish and invest in Australia, this Review recommends that this not be achieved to the detriment of safety standards currently required for all companies doing Commonwealth Government funded work or at the expense of competitive neutrality. Thus, in lieu of mutual recognition or provisional accreditation, the accreditation process itself as it relates to international companies has been examined below to see if there are barriers within the current system that can be addressed.

Fifteen international companies have applied for accreditation under the Scheme. Eight companies have been accredited with a further four actively working through the process. One firm which applied for accreditation has not continued with the accreditation process. The remaining two companies have entered into joint venture arrangements under regulation 24(1)(h) (discussed below).

The OFSC has conducted five audits on international projects where companies have not had a project available in Australia for audit.

The average timeframe for all companies to get accredited is six months. However this timeframe is largely dependent on the maturity of a company’s WHS management system, their preparation for audit, and their project availability. For all applicants, early contact with the OFSC is advised, and this is particularly the case for international companies.

For international firms, one of two things will happen once their application for accreditation has been assessed for completeness. If the company has provided project site(s) for audit in Australia, an on-site audit is scheduled. Depending on project activity and FSO availability, this can be organised to occur within only a few weeks.

For international firms without an Australian-based project site for audit, a desktop audit is conducted at the company’s Australian head office. This can also be organised within a matter of a few weeks, and is conducted to identify system gaps prior to the consideration of conducting an on-site audit on an overseas project. Once the company’s system is at a point where an international audit has a good chance of being successful, an international audit is organised. Once again, timeframes are largely dependent on the company and FSO availability.

⁹ Full content of the Productivity Commission Draft Report into Public Infrastructure Volume 2, March 2014 can be viewed at http://www.pc.gov.au/__data/assets/pdf_file/0009/134676/infrastructure-draft-volume2.pdf

The time taken to gain accreditation is due mostly to the preparedness of the company applying, the nature of its WHS management system and how readily it can be demonstrated on a project, project availability, the expertise of company personnel and the timeframes within which they wish to work. For international firms, some have taken less than the six month average and some have taken more.

In 2012, an amendment was made to the Scheme regulations that provide an exemption for international companies to work in joint venture arrangements with an accredited builder.

Under Regulation 24(1)(h) an unaccredited builder, as part of a joint venture or alliance arrangement with an accredited builder, may enter into contracts for Scheme projects on a limited basis, subject to specific requirements being satisfied. This regulation applies only to international companies.

All of the requirements under regulation 24(1)(h) must be met in order for an exemption to be an option, including

- the company is not currently operating in Australia as a principal contractor,
- the company has to have applied for accreditation to the Scheme and
- an application for exemption is made to the OFSC prior to any contracts being awarded.

The arrangements under regulation 24(1)(h) have been successful in enabling skilled and innovative international companies to participate in Australia's infrastructure market, with the requirement that they must operate under the accredited company's WHSMS as a means of maintaining safety standards.

The experience of the OFSC is that international companies have no more difficulties meeting Scheme requirements than local companies. On average, international companies require the same number of audit days to achieve accreditation as first time local applicants, and most have completed the process in comparable timeframes for new applicants to achieve accreditation.

A number of Advisory Panel members also noted the need for competitive neutrality for all companies – both domestic and international - and were not supportive of any move that could be seen as advantaging one group of companies over another in the competition for Commonwealth Government funded building work.

The OFSC has prepared fact sheets in consultation with Austrade and the Department of Infrastructure to address some of the concerns raised by international companies.

Recommendation 25: The OFSC discusses with Austrade and the Department of Infrastructure (and other relevant agencies) whether further changes should be made to the Scheme's arrangements for international companies, while ensuring competitive neutrality for local companies.

Appendices

Australian Government Building and Construction OHS Accreditation Scheme - how does the Scheme operate?

Legislative basis

The FSC and the Scheme are established under section 35 of the *Fair Work (Building Industry) Act 2012* (the FWBI Act). The Scheme is supported by the *Fair Work (Building Industry – Accreditation Scheme) Regulations 2005* (Scheme Regulations). The Scheme is maintained in the *Building and Construction Industry (Improving Productivity) Bill 2013* which is currently before the Australian Parliament.

Rationale

The objective of the FSC is to use the influence of the Government as a client and provider of capital to improve the safety culture of the building and construction industry. Only companies that are accredited under the Scheme can enter into head contracts for building work (above specified thresholds) funded (directly or indirectly) by the Government.

The FSC is not a regulator of the building industry – that role falls to the jurisdictional regulator set out in the relevant Federal, state and territory work health and safety (WHS) legislation. WHS regulators may issue penalties or stop work on building sites where specific breaches occur. The Scheme aims to complement the role of regulators by assessing and auditing how well builders systematically manage work health and safety (including risks and the cause of problems) to minimise the likelihood of incidents occurring.

Scheme statistics

In 2010-11, the Australian building and construction industry employed 1.03 million people, representing 9.1 per cent of the Australian workforce.

In 2000-01—just prior to the Cole Royal Commission recommendation to establish the Scheme—the industry recorded a serious claims frequency rate (serious claims per million hours worked) of 15.1; the second worst of all industries. By 2009-10 this figure had dropped 36 per cent to 9.6, representing the third biggest decrease across all industries.

The fatality rate for the building and construction industry in 2003 was 5.84 deaths per 100 000 workers; the fourth worst of all industries. By 2012 that figure had dropped 49 per cent to 3.0 deaths per 100 000 workers. While construction still remains the fourth worst industry (data from Safe Work Australia for the three year period 2009 to 2011 shows that deaths in the construction industry from work-related injuries occurred at nearly twice the national fatalities rate), this 49 per cent decrease in fatality rate was the sixth biggest decrease recorded across all industries.

As at 15 May 2014, there were 321 accredited companies with another 118 applications for initial accreditation under consideration.

While the ability to tender for Scheme projects is a key motivator in applying for accreditation (95 per cent of accredited survey respondents listed 'being eligible to tender for Government work' as something they were hoping to achieve through accreditation), 40 per cent of companies that have gained accreditation have not undertaken a Scheme project.

It is estimated that more than 30 per cent of building and construction industry turnover may be undertaken by Scheme accredited companies. Since the inception of the Scheme, there have been more than 1000 Scheme projects worth almost \$53 billion. Of these, 324 projects are currently active and there are a further 342 potential Scheme projects at the tender or concept stage worth an additional \$49 billion.

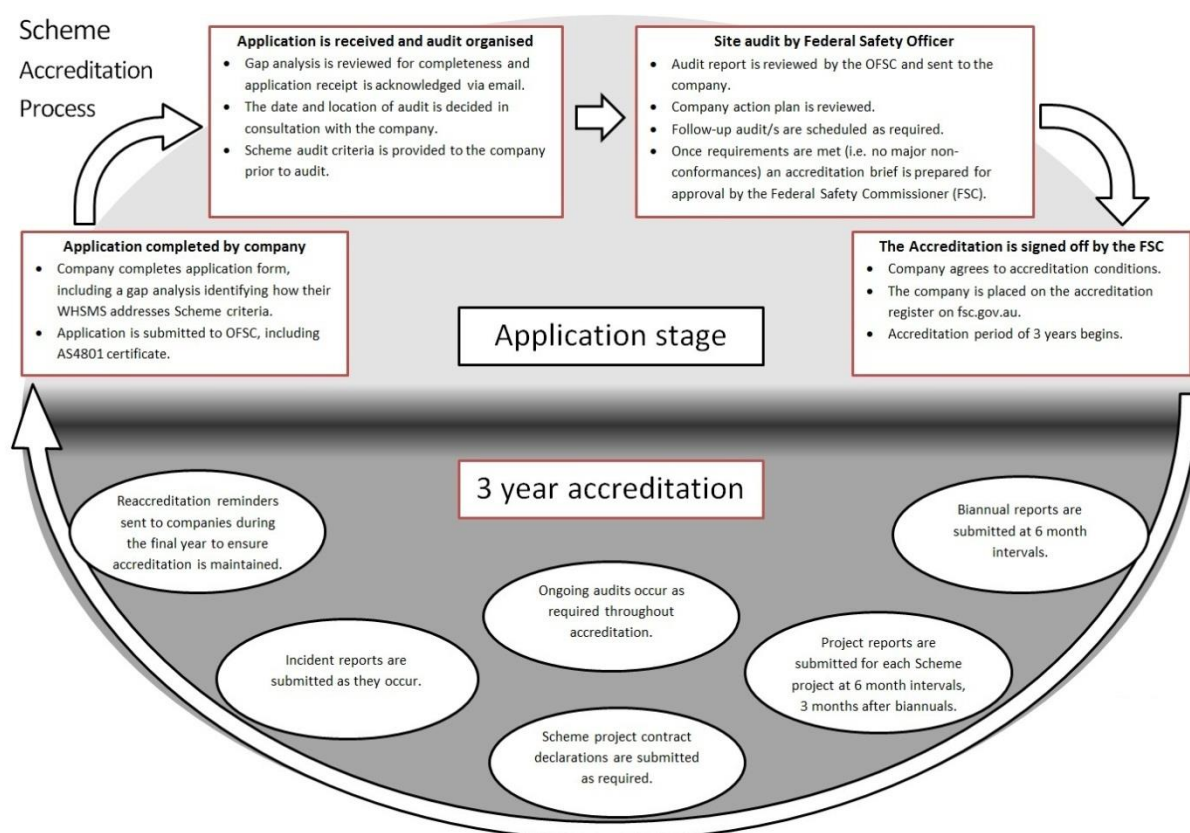
What is assessed?

The accreditation process evaluates both a company's documented WHSMS and its observed application on site. Assessment is against the criteria which are available at the OFSC's website, www.fsc.gov.au

In addition to system-based and on-site risk-based criteria, the Scheme pays attention to six broader categories. On establishment of the Scheme, these were considered to be central to developing and improving the safety culture of companies and the industry:

1. Senior Management Commitment
2. Integration of Design Issues
3. Whole of Project Consultation
4. Management of Subcontractor WHS
5. Project Performance Measurement
6. Training Arrangements.

How is accreditation achieved and maintained?



Applicants are required to submit a 'gap analysis' document to the OFSC which is a self-assessment of where in their WHSMS they address the criteria to be evaluated during the accreditation process¹⁰.

A two-day on-site audit is conducted by an FSO at a mutually agreed date and site. FSOs assess the documentation identified in the gap analysis and its implementation on site. The FSO also examines two pre-agreed, 'high risk hazards' relevant to the work on site to evaluate how effectively the company has managed them. Most companies require one or two subsequent audits to close out any shortcomings identified. Feedback and audits continue until a company achieves accreditation.

A company is normally accredited for three years. During that time, maintenance or monitoring audits are undertaken (on a mutually agreed date and site) to verify the company's continued adherence to Scheme requirements. At present, monitoring audits are undertaken as resources permit. Most companies are currently subject to a single monitoring audit during each three year accreditation period, although in earlier years, all Scheme projects were subject to quarterly audits and all accredited companies were subjected to biannual or annual audits.

Additional audits are undertaken during accreditation periods for companies that have compliance action underway (for example, as a result of trends in areas of non-compliance, inability to satisfactorily address non-conformances etc.).

Accredited companies have ongoing quarterly safety performance reporting obligations, and must provide other notifications of significant incidents as they occur (lost time and medically-treated injuries, fatalities and dangerous occurrences).

After three years, the reaccreditation process is largely identical to the initial accreditation process, with similar gap analysis paperwork, but with the possibility of a single day on-site audit for companies that have demonstrated a solid safety record during the period of their accreditation.

Some stakeholders emphasise that red tape impacts need to be balanced against the major productivity benefits to be gained by further improving safety performance across the industry. The benefits to becoming accredited can include the ability to tender for Commonwealth Government funded work, improved WHS outcomes and systems, industry recognition and improved business productivity. These benefits have been supported by a number of studies, some of which are described below.

Links Between Workforce Health and Safety and Productivity: Broader Research

Academic research suggests there are links between a well-developed work health and safety system (WHS) and increased productivity for companies. Some of the key studies are summarised below.

The New Zealand Department of Labour commissioned a literature review in 2007 to address the question

*"If businesses invest in health and safety, how does this contribute to their performance and productivity?"*¹¹

¹⁰ Prior to January 2013 applicants submitted full system documentation for review by the OFSC prior to audit

¹¹ New Zealand Department of Labour, 'How Health and Safety Makes Good Business Sense: A Summary of Research Findings', Department of Labour, Wellington, 2007, p.3.

The study reviewed available international literature on the topic of the productivity benefits of WHS and found compelling evidence of links between well-developed WHS programmes and:

- fewer injuries that stop people working
- increased innovation
- improved quality
- enhanced corporate reputation
- lower costs to compensate workers
- improved staff recruitment and retention.¹²

After considering examples of programmes across various industries, the study suggested that that health and safety prevention and intervention programmes create a “virtuous circle” by:

- improving the physical and psychological well-being of the workforce, which
- reduces absenteeism, improves the organisational climate, and enhances employees’ desire to work, which
- directly raises human performance, which leads to higher profits.¹³

A more comprehensive study was completed by Braunig and Koshtall and detailed in a 2012 report published by the International Social Security Association. The report summarised the findings of a survey of 300 companies in 16 countries and used prevention accounting (similar to a cost-benefit analysis) to establish that the average potential return on prevention for companies investing in WHS was \$2.20 for every \$1 spent.¹⁴ It was also found that 75% of companies agreed that additional investment in WHS will lead to company costs remaining the same or decreasing over the long term.¹⁵ The report concluded that “the results of this project show that expenditure on occupational safety and health is an investment that pays off in micro-economic terms and can benefit the company itself.”¹⁶

Another link between WHS and economic benefits was tested by a 2013 study published in the *Journal of Occupational and Environmental Medicine*. A team set out to “test the hypothesis that comprehensive efforts to reduce a workforce’s health and safety risks can be associated with a company’s stock market performance”.¹⁷ The study tracked the stock performance of publicly traded recipients of the American College of Occupational Medicine’s Corporate Health Achievement Award. All four hypothetical investment portfolios created in the study outperformed the Standard and Poor’s 500 (S&P 500) average significantly, leading the authors to conclude that “focusing on the health and safety of a workforce is good business”.¹⁸ The authors acknowledge that correlation is not the same as causation, however at the very least this study shows that investing in WHS is something which financially successful and productive companies tend to do, and arguably plays some part in the edge they have over the rest of the market.

Finally, there have been a number of studies into the actual dollar return on investment from WHS prevention programmes. While this is arguably the most compelling measure of the

12 New Zealand Department of Labour, ‘How Health and Safety Makes Good Business Sense: A Summary of Research Findings’, Department of Labour, Wellington, 2007, p.4.

13 New Zealand Department of Labour, ‘How Health and Safety Makes Good Business Sense: A Summary of Research Findings’, Department of Labour, Wellington, 2007, p.23.

14 D. Braunig and T. Koshtall, ‘Calculating the International Return on Prevention for Companies: Costs and Benefits of Investments in Occupational Safety and Health’, International Social Security Association, Geneva, 2012, p.17.

15 D. Braunig and T. Koshtall, ‘Calculating the International Return on Prevention for Companies: Costs and Benefits of Investments in Occupational Safety and Health’, International Social Security Association, Geneva, 2012, p.1.

16 D. Braunig and T. Koshtall, ‘Calculating the International Return on Prevention for Companies: Costs and Benefits of Investments in Occupational Safety and Health’, International Social Security Association, Geneva, 2012, p.19.

17 R. Fabius et al., ‘The Link Between Workforce Health and Safety and the Health of the Bottom Line’. *Journal of Occupational and Environmental Medicine*, vol. 55(9), September 2013, p.993.

18 R. Fabius et al., ‘The Link Between Workforce Health and Safety and the Health of the Bottom Line’. *Journal of Occupational and Environmental Medicine*, vol. 55(9), September 2013, p.998.

productivity value of WHS investment, it is the most difficult to capture as it is challenging to isolate both the costs and the savings which flow from investment in a WHS system. One study from 2009 into financial decision makers' (CFOs and their equivalents) views on safety, published in the *Journal of Professional Safety*, found that the surveyed decision makers perceived that for every dollar spent improving workplace safety about \$4.41 would be returned.¹⁹ Surveyed decision makers also believed that the top benefits of an effective workplace safety programme were 1) increased productivity, 2) reduced costs and 3) greater retention of employees.²⁰

19 Y. Huang et al., 'Financial Decision Makers' Views on Safety: What SH&E professionals should know'. *Journal of Professional Safety*, vol. 54(4), April 2009, p.39.

20 Y. Huang et al., 'Financial Decision Makers' Views on Safety: What SH&E professionals should know'. *Journal of Professional Safety*, vol. 54(4), April 2009, p.38.

Safe Work Method Statements

Safe Work Method Statements (SWMS) are a requirement of the jurisdictional WHS legislation. State and territory regulators introduced SWMS to entrench the requirement for a documented description of how work is to be done safely, formalise hazard identification and risk assessment processes within a systematic approach to managing and controlling health and safety in the workplace.

In the early days of the Scheme there was a significant push by the OFSC to improve the quality of SWMS offered up at audit. However, this approach has changed in the last couple of years following consultation with industry and FSOs.

The Scheme generally does not prescribe through which documents companies should address safety system criteria, although adherence to local legislation is required. So long as the criteria are met, the documentation of systems should be of maximum utility and relevance to the company's individual circumstances. Accordingly, FSOs review SWMS where they are presented by a company as evidence of documentation against Scheme criteria. FSOs do not dictate content but rather ensure that a SWMS reflects the work activity being undertaken and that the controls are being implemented. FSOs are directed to consider alternative methods (that is, other than SWMS) presented by companies that deliver the outcomes of a risk assessment process.

A small number of Scheme criteria directly reference SWMS and they require local laws to be met, and focus on ensuring the involvement of workers, management, and subcontractors in key safety systems. Specifically, the criteria require:

- subcontractor involvement in the development of SWMS
- control measures within SWMS reflect any relevant requirements of WHS acts, regulations, codes of practice and Australian Standards
- SWMS have been reviewed and accepted by the principal contractor prior to work
- workers are familiar with SWMS relevant to the work activities they are undertaking, and
- assessment and control of risks as identified for high risk construction activity.

Federal Safety Officers

Appointment process

Federal Safety Officers (FSOs) are selected through competitive open tender processes (conducted every four to five years) with successful service providers engaged under a Deed of Standing Offer (the Deed) and specified personnel appointed as FSOs. FSOs are required to hold or demonstrate:

- Current WHS lead or principal auditor, or equivalent, certification to:
 - RABQSA International²¹; or
 - International Register of Certified Auditors (IRCA) WHS Certification
- WHS and auditing experience in the construction industry
- familiarity with and the ability to apply the scope and general content of AS/NZS 4801:2001 and/or OHSAS 18001:1999
- a sound knowledge and understanding of WHS and Australian WHS laws, including relevant WHS codes of practice and standards
- the ability to assess the application of Australian WHS laws in the building and construction industry across all Commonwealth, state and territory jurisdictions
- a sound understanding and knowledge of risk management processes
- tertiary or other qualifications in WHS
- relevant licences and certificates of competency in relation to specific activities or hazards common in the construction industry (e.g. construction induction card such as a green card, dogman/riggers/scaffolders licence, plant operators licence etc.)
- demonstrated ability to meet deadlines, and
- evidence of liaison and interpersonal skills that demonstrate a capacity to work collaboratively with companies.

Applicants who only hold quality and environmental qualifications are not considered for appointment as FSOs.

Once engaged, an induction and quality assurance process is undertaken to ensure the suitability of FSOs. Further, the deed provides no guarantee of work, meaning those FSOs who are observed to not meet the required standards are either not utilised, or are terminated (also provided for under the Deed). Feedback from companies assists in this regard.

As a condition of the Deed, FSOs are required to notify the OFSC of any actual or perceived conflicts of interest when they are approached to do audits on the OFSC's behalf. The most common scenario for a potential conflict of interest is where an FSO has been or is working for a company. The OFSC applies a policy where audits are not offered to an FSO, for a two year period, in relation to a company where the FSC has been working for that company. The process for selecting FSOs aims to engage experienced and qualified personnel and those likely to foster consistency and minimise any actual or potential conflicts of interest.

FSO Quality Performance

- New FSOs are required to undergo induction training covering all criteria and auditing requirements as well as code of conduct requirements.

²¹ **RABQSA** is an Australian personnel and training certification body. RABQSA was created in 2004 from the acquisition of the personnel certification activities of United States of America-based Registrar Accreditation Board (RAB) by Australia-based Quality Society of Australasia (QSA). Its activities are to design, develop, and deliver personnel and training certification services for various industries.

- All FSOs are observed and evaluated at audits in a quality assurance process, with particular emphasis on new FSOs.
- FSOs are provided with detailed training and instruction material - documents include General Directions to Federal Safety Officers 2005, the FSO Code of Conduct and the FSO Guidelines.
- FSO Forums are conducted on average every six to 12 months to discuss issues of importance and help ensure consistency of approach amongst auditors.
- FSO selection for audit considers the skills and expertise of the FSOs, not just their location (that is, someone with relevant background in telecommunications would be matched where possible for a telecommunications audit).
- At the conclusion of each audit, companies are provided with an evaluation form seeking feedback on FSO performance, providing an opportunity for the review of any issues.
- All audit reports are reviewed by the OFSC prior to being issued to companies. This is to check for consistency of criteria interpretation and level of any findings made.
- Within accreditation and reaccreditation processes, the OFSC generally utilises the same FSO for follow up of findings to ensure a level of consistency for the company.

Attachments

Terms of Reference

Background

The Office of the Federal Safety Commissioner and the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) has been operating for seven years and while it is broadly operating as intended, the Government will undertake a review to ensure it reflects current best practice.

Stakeholder feedback indicates concern with red tape, consistency, some operational arrangements and ensuring the Scheme reflects current best practice.

Conduct of the Review

The review will address:

- the costs of complying with the Scheme, including the cost of seeking and maintaining accreditation, particularly for smaller businesses/projects
- the suitability of current funding threshold limits applying to building work covered by the Scheme
- scope for improvements in the accreditation process to reduce red tape, including but not limited to:
 - application and other paperwork requirements at the accreditation and reaccreditation stages
 - scope to better target compliance effort (in particular, on-site audits) according to risk, and to increase voluntary compliance by companies
 - extending the period of accreditation for businesses with a good audit history
 - capacity of smaller businesses to achieve accreditation
 - the suitability of AS/NZS 4801 as a prerequisite for the Scheme
 - options to charge for audits.
- changes to the Scheme criteria and/or associated guidance material which would streamline or clarify requirements (including any updates necessary to reflect current best practice)
- consistency, transparency and accountability in the application of Scheme criteria by Federal Safety Officers and the Office of the Federal Safety Commissioner
- the process for selecting and appointing Federal Safety Officers to ensure any potential for conflict of interest is appropriately managed
- awareness of, and adherence by, funding entities to the Scheme requirements
- interaction of the Scheme with state and territory prequalification arrangements for their building and construction procurements
- the interaction of the Scheme with other Commonwealth procurement processes.

A report on the outcome of the review will be provided to the Minister for Employment by 30 June 2014.