Government Response to the Modernisation Review of the Office of the Federal Safety Commissioner and the Australian Government Building and Construction WHS Accreditation Scheme

REGULATION IMPACT STATEMENT

This Regulation Impact Statement has been prepared by the Commonwealth Department of Employment (the Department). It relates to the Australian Government's response to the recommendations of a Review to modernise and streamline the Office of the Federal Safety Commissioner (the OFSC) and the Australian Government Building and Construction WHS Accreditation Scheme (the Scheme).

This Regulation Impact Statement has been prepared in accordance with the Australian Government's Guide to Regulation issued in March 2014.

The first key decision point for the Government was to consider and determine its response to the Review report and the recommendations. An Early Assessment version of this Regulation Impact Statement was prepared in advance of that Government consideration and subsequent announcement of the changes to the Scheme on 22 October 2014. This version of the Regulation Impact Statement has been refined in advance of the next and final key decision point, lodgement of the regulatory amendments that support the announced improvements to the Scheme.

The Government supports continuation of the Scheme and the scope of the Review was therefore limited to the identification of streamlining and modernising improvements to reduce any unnecessary regulatory or compliance burdens on building companies. The Government's commitment to the Scheme is reflected in the Building and Construction Industry (Improving Productivity) Bill 2013, currently before the Senate, which provides for the Scheme while also re-establishing the Australian Building and Construction Commission (ABCC). The Building and Construction Industry (Consequential and Transitional provisions) Bill 2013 preserves the regulations that establish the Scheme (Item 9 of Schedule 2).

The Government agreed the Terms of Reference (Attachment A) in October 2013 and asked the Department to undertake the Review.

The Review 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, including through surveys and focus groups, and consolidated their members' views to provide feedback and advice on possible options for change. This included consultation with their members which are not currently accredited under the Scheme and may be seeking to apply for accreditation in the future.

A Discussion Paper identifying a range of key issues as identified by various stakeholders was released in February 2014 and 47 submissions were received. The Review was completed and the Scheme Review Report was provided to the Government on 23 June 2014. The Report made 25 recommendations that address the Review's Terms of Reference (summarised at Attachment B).

The Scheme leverages Commonwealth funding to promote system and culture-based approaches to minimise safety risks in the building and construction industry. Only Scheme accredited builders can undertake Commonwealth funded building work that is subject to the scope of the Scheme.

There was general agreement that the Scheme improves safety at the individual business level and across the industry as a whole and that it represents the highest standards for safety in the industry in Australia. However, there was also agreement that improvements could be made to further address concerns about costs and value for money, particularly for small and medium-sized companies. The need for increased productivity in the industry through reduced fatalities and serious injuries was also a key driver for stakeholder calls to modernise and streamline the Scheme.

The Review, and the options for the Government's response, involved balancing the productivity and other economic and social benefits of improved safety outcomes against the economic benefits of improving competitiveness in the market for Commonwealth funded building projects, and enhanced business efficiency through red tape reductions. It should be noted that these factors are not necessarily mutually exclusive. There is a convergence of objectives insofar as reduced barriers to entry increases the number of accredited builders - which has supply side benefits in the market for Government funded work as well as broadening the safety benefits across the industry. Similarly, reduced supply side costs, such as through streamlined compliance requirements for industry, should reduce Government outlays while also increasing demand for Scheme accreditation.

The proposed measures as discussed under Options 2 and 3 below, will:

- maintain the high safety standards and integrity of the Scheme;
- make some changes to the Scheme's coverage of projects by price adjusting the financial thresholds and limiting the coverage of the domestic housing sector;
- reduce barriers to accreditation particularly for smaller builders;
- introduce a targeted, risk-based compliance model, that will provide for a more focussed approach to utilising Scheme resources to ensure the Scheme effectiveness and long term sustainability; and
- allow for non-accredited companies to undertake Commonwealth-funded building work as a head contractor, so long as they are in a joint venture with an accredited company and operate under the partner's Scheme accredited systems.

The Review also highlighted a significant reduction in the regulatory burden for accredited companies due to the imminent recognition of Scheme accreditation as meeting Work Health and Safety (WHS) requirements of all state and territory 'prequalification' schemes for building work. Creating additional economic and regulatory benefits for accredited companies through broader recognition under other regulatory regimes will also contribute to increased competitiveness and safety outcomes.

BACKGROUND

Legislative authority for the Scheme

The Scheme was established by the Howard Government in 2006 in response to the Cole Royal Commission's (the Commission) conclusion that the safety record in the building and construction industry was unacceptable. The Commission recommended that the Government use its influence as a client and provider of capital to separately address workplace relations issues (ABCC) and foster improved safety performance in the building and construction industry (OFSC).

The OFSC and the Scheme are established under section 35 of the *Fair Work (Building Industry) Act 2012*. The Scheme is prescribed by the *Fair Work (Building Industry – Accreditation Scheme) Regulations 2005* (the Scheme Regulations).

The indefinite continuation of the Scheme is provided for in the Building and Construction Industry (Improving Productivity) Bill 2013 which is currently before Parliament. The Building and Construction Industry (Consequential and Transitional provisions) Bill 2013 preserves the Scheme Regulations. (Item 9 of Schedule 2). Subject to the passage of these Bills, the Scheme Regulations will be preserved under the new Act as a Rule on commencement.

Objective of the Scheme

The objective of the Scheme 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 may enter into head contracts for building work, above specified thresholds (discussed in detail below under Option 2), and funded directly or indirectly by the Government.

Unlike state and territory regulatory arrangements, the Scheme is a 'before the event' model that requires companies to develop and implement system-based approaches to safety that reduce the chance of incidents occurring. The criteria cover not only systematic risk identification and avoidance, but also require a strong organisational culture, senior management commitment, safety in initial project design and active management of subcontractor risks. The OFSC, which administers the Scheme (and operates as part of the Department of Employment), is not a regulator but works co-operatively with companies to achieve the required standards.

Key Industry and Scheme statistics

As at August 2014, the building and construction industry employed 1,046,500 people, representing 9 per cent of the Australian workforce.

In 2000-01—just prior to the Royal Commission's recommendation to establish the Scheme—the industry recorded a serious claims frequency rate (serious claims per million hours worked) of 13.7; the third worst of all industries. By 2010-11 this figure had dropped 37 per cent to 8.7, 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 2013 that figure had dropped 63 per cent to 2.14 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 still occur at a rate higher than the national fatalities rate.

As at 30 October 2014, there were 355 companies accredited under the Scheme, 17 lapsed accreditations proceeding through the reaccreditation process, with another 123 new applications under consideration.

While the ability to tender for Scheme projects is a key motivator in applying for accreditation (95 per cent of accredited companies indicate that 'being eligible to tender for Government work' is something they were hoping to achieve through accreditation), 42 per cent of companies that have gained accreditation have not undertaken a Scheme project.

It is estimated that 30 - 50 per cent of building and construction industry turnover is undertaken by Scheme accredited companies. Since the inception of the Scheme, there have been more than 1000 Scheme projects worth almost $59 billion. Of these, 318 projects are currently active and there are a further 296 potential Scheme projects at the tender or concept stage worth an additional $49 billion.

Accreditation process

In assessing and auditing the safety profile of building and construction companies, the OFSC accreditation process involves an evaluation of both a company's documented WHS Management System (WHSMS) and its observed application on site. Assessment is undertaken against specified audit criteria which are available on the OFSC's website at: www.fsc.gov.au.

In addition to the system-based and on-site risk-based audit criteria, the Scheme focuses on six broader categories considered central to improving the safety culture of companies in the building and construction industry. The categories include senior management commitment to WHS, integration of design issues, project consultation, subcontractor management, project performance measurement and training.

Companies seeking accreditation under the Scheme are required to submit an application which includes a self-assessment by the company of their WHSMS against the audit criteria.

An initial two-day on-site audit is conducted by a Federal Safety Officer (FSO) on a mutually agreed date and site. FSOs assess the documentation identified in the gap analysis completed as part of the application and its implementation on site. The FSO also examines two '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 resolve any shortcomings identified in prior audits. The OFSC continues to provide feedback and undertake on-site audits until a company achieves accreditation. It takes on average 2.3 audits (4-5 days) to achieve accreditation.

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

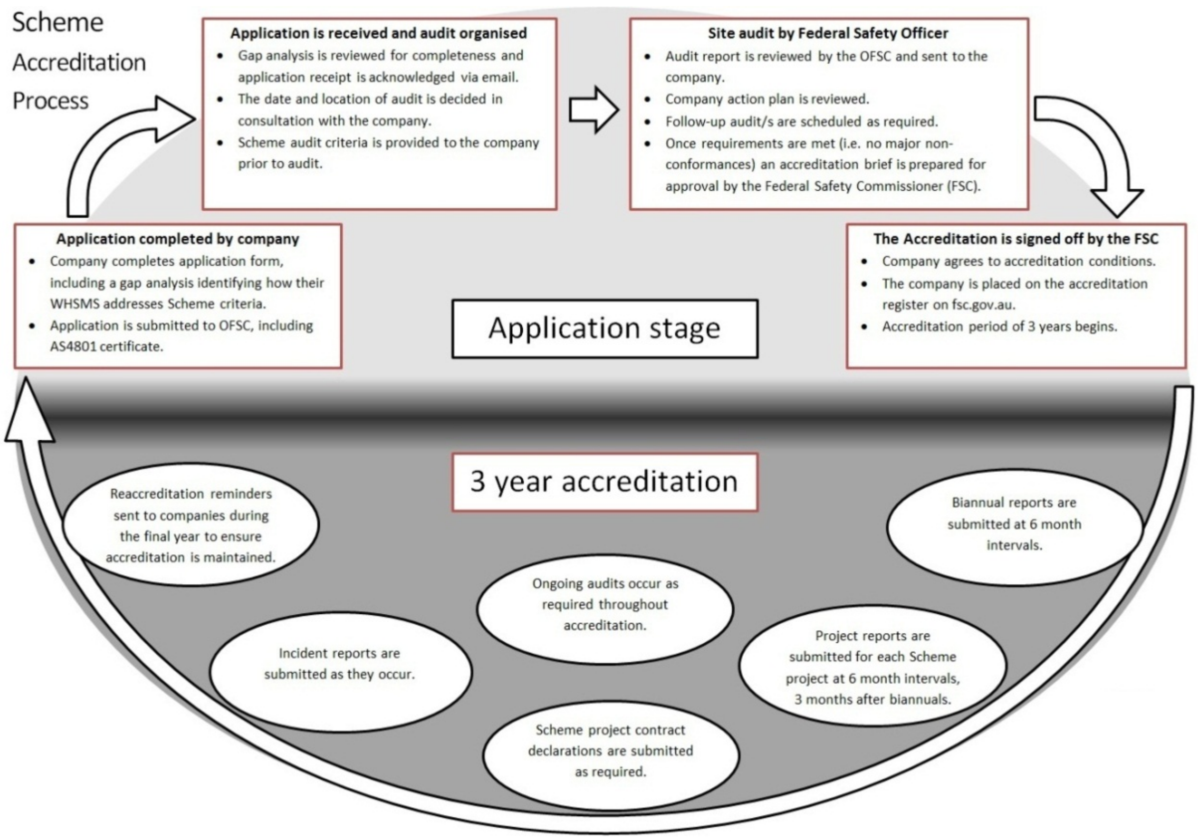
Additional audits are undertaken during accreditation periods for companies that have compliance action underway (for example, as a result of trends in areas of non-compliance, inability to satisfactorily address non-conformances with Scheme requirements, etc.).

Accredited companies also have, as a condition of accreditation, 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 the initial three year accreditation period, the process of applying for reaccreditation is largely identical to the initial accreditation process. It requires 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 their prior period of accreditation.

The following diagram demonstrates the current OFSC accreditation and reaccreditation process, in addition to showing the ongoing reporting obligations of accredited companies:

SCHEME ACCREDITATION PROCESS



Scheme performance

As part of the Review, the Department undertook an on-line survey of accredited companies (the Survey) to obtain information about their experience of the Scheme and OFSC accreditation. Almost 80 per cent of accredited companies that responded to the survey stated that the Scheme has improved safety standards of their organisation beyond the level they would have been had they not undertaken the OFSC 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 safety systems in place, also stated that the Scheme had improved workplace safety in their organisation.

All key industry associations and almost 60 per cent of accredited companies consider that the Scheme has had a positive impact not just on individual companies, but on safety in the industry as a whole. Less than 14 per cent of accredited companies indicated that the Scheme had made no positive impact on the industry as a whole, while the remainder had no view.

Many accredited international companies, such as First Solar (Australia) Pty Ltd and Bouygues Construction Australia Pty Ltd, have praised the approach and adopted their Scheme accredited systems globally.

However, concerns were raised about costs and value for money, particularly for small and medium-sized companies. Overall, 63 per cent of companies responding to the survey considered that the Scheme represented value for money (noting that 42 per cent of currently accredited companies have never undertaken Commonwealth-funded work requiring accreditation). However, 80 per cent of companies that have become accredited since new streamlining arrangements were introduced in January 2013 considered it good value (i.e. companies that have been accredited for less than one year).

OFSC data indicate improvement 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. Some key results include:

- 71 per cent of third-time-accredited companies (i.e. after 6 year 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 have recorded a decrease to their Workers Compensation Premium Rate – of those, the average reduction was 44.04 per cent.

- Between July 2011 and July 2013, the Workers' Compensation Premium Rates for accredited companies fell 26.17 per cent more than the industry average.

DESCRIPTION OF THE POLICY PROBLEM

The building and construction industry is critical to the Australian economy, representing about 8 per cent of Gross Domestic Product and employing around 1 million workers.[1] A range of research[2] in Australia and overseas shows the exponential productivity improvements that result from investing in improved safety performance, both at the individual business and the whole of industry level. In addition there are direct social and economic costs to the industry and society from not further improving safety standards. For example, a literature review commissioned by the New Zealand Department of Labour found compelling evidence of links between well-developed WHS programmes and fewer injuries that stop people working, lower costs to compensate workers and improved staff recruitment and retention.

The key problem to be addressed in reviewing this regulation is to find the appropriate balance between the safety benefits of the Scheme, and the associated economic and social outcomes, against other policy objectives that intersect with the building and construction industry.

[1] ABS data, 2011-12.
[2] Eg 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.

For example, industry productivity is being addressed by the Government through the Building and Construction Industry (Improving Productivity) Bill 2013, currently before the Senate. That legislation reflects the Government's two pronged approach of (a) addressing industrial lawlessness on building sites (eg. through re-establishing the Australian Building and Construction Commission) and (b) promoting best practice approaches to safety in the industry (through the Scheme and the Federal Safety Commissioner. Both are central to further improvements in productivity.

A further key Government objective is to reduce 'red tape' by eliminating unnecessary regulatory burdens that create barriers to entry or business inefficiency. Barriers to entry also work against safety outcomes by not maximising the number of builders lifting standards to achieve Scheme accreditation. It also reduces competitiveness in the market. As a purchaser of building services, the Government wishes to maximise value for public money and increase competitiveness in the market (as discussed in the *Productivity Commission Inquiry Report – Public Infrastructure,* May 2014, for example).

The Review recommendations and possible Government responses aim to find the appropriate balance between these various objectives. For example, the rationale of the Scheme is to leverage Commonwealth funding to achieve industry wide improvements in safety systems and practices. However, there is limited effectiveness in leveraging Commonwealth funding in the domestic housing sector - Commonwealth funding represents less than 0.5 per cent of the annual industry turnover in the residential sector as a whole. Accordingly, options are presented to either reduce or remove the requirement for domestic house builders to be Scheme accredited. This will also allow Scheme resources to be better directed to sectors where Commonwealth funding is a significant driver of change – particularly the commercial and civil construction sectors.

The Review also found that there are significant cost and time barriers to entry which do not add sufficient value to the administrative process or safety objectives to warrant the impact on businesses. One example is the requirement that companies first obtain certification to AS/NZS 4801:2001.

A range of other proposed responses as described in detail below also allow the safety, and associated economic and social benefits, to be maintained and extended while reducing compliance burdens for companies wishing to undertake Government work.

The Australian Constructors' Association (ACA), for example, highlighted in its submission to the Review, that the regulatory costs of safety compliance are far exceeded by the productivity costs of not lifting safety standards further in the industry. The Advisory Panel noted during the Review that a single safety incident can result in, not just human tragedy, but financial disaster for the business and, potentially, serious legal consequences for the company, its directors and personnel.

As well as productivity losses, the cost of safety shortcomings in the building industry is estimated to exceed \$6 billion[3] per annum, one of the four worst performing industries. The costs are borne by families, health care systems, society and companies (through, for example, paid absences and higher workers' compensation premiums). Suboptimal safety standards involve untold human cost for individual, families, friends and work colleagues of the 30 to 40 fatalities per annum (or around 250 per annum including exposure to work related diseases), and the thousands of serious workplace injuries each year.[4]

As above, the Review found that the Scheme is effective in improving safety at the individual business and whole of industry level. Up to 50 percent of the annual industry turnover is undertaken by Scheme accredited companies, and industry fatality and injury rates have trended down since the Scheme commenced. Even with these improvements in safety outcomes, the building and construction industry remains the fourth most dangerous industry in Australia, with around 30 fatalities and 12,485 serious injuries each year. The options presented below reflect possible responses to the policy problem of how to

[3] The Cost of Work-Related Injury and Illness for Australian Employers, Workers and the Community: 2008-09, Safe Work Australia.
[4] Safe Work Australia, Work related Traumatic Injuries Fatalities, Australia 2013 (Published July 2014).

best balance the safety, productivity, regulatory and competitiveness elements to best maximise overall industry and policy outcomes to the benefit of companies, workers and the community.

WHY IS GOVERNMENT ACTION NEEDED?

The Review confirmed that there is wide-spread industry support for the Scheme, however, concerns were raised by some stakeholders about costs and value for money, particularly for small and medium-sized companies that may not have the resources of the large industry members. Similarly, concerns were raised about the multiplicity of paperwork for recognition of WHS requirements across state and territory borders, including through the large number of state and territory 'prequalification' schemes for building work. Opportunities were also identified to streamline and simplify the criteria and guidance material, and to address misconceptions as well as real barriers.

The Government's response to the Review's recommendations therefore needs to strike the right balance between meeting the deregulation and competitiveness agendas and maintaining the strong commitment to industry safety.

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

This Regulation Impact Statement seeks to inform the Government about the options that achieve this balance by reducing the regulatory burden while maintaining the current high standards needed to achieve accreditation, by scheduling regular audits for all companies and better targeting OFSC resources to companies most needing assistance. Government action is further required to boost lagging productivity in the economy with around $6.1 billion per year in lost productivity attributable to fatalities and serious injuries in the building and construction industry alone.

WHAT ARE THE POLICY OPTIONS UNDER CONSIDERATION?

This Regulation Impact Statement canvasses four options, two of which (Options 2 and 3) are aimed at modernising and streamlining the OFSC and the Scheme:

- *Option 1* – Maintain the Status Quo – All existing OFSC and Scheme settings continue.
- *Option 2* – Implement all measures as recommended in the Review to modernise the OFSC and the Scheme.
- *Option 3* – Implement measures as recommended in the Review to modernise the OFSC and the Scheme, but in addition:
    - (i) Amend the scope of the Scheme to exclude coverage of domestic housing building projects and
    - (ii) Increase the current maximum accreditation interval from three up to six years.
- *Option 4* – Abolish the Scheme.

Option 1 involves no change to the current Scheme settings and therefore would not assist in improving accessibility and competitiveness, or in reducing the regulatory requirements of the Scheme. It would also not permit the better targeting of resources according to safety risk and to meet future demand for Scheme accreditation.

Option 2 proposes that the Government agree to implement all 25 measures as recommended in the Review to modernise the OFSC and the Scheme. A decision to implement all 25 recommendations presented in the Review would be broadly supported by key industry stakeholders and consistent with the recommendations supported by the Advisory Panel.

Option 3 implements 23 of the Review recommendations, but addresses possible changes to two recommendations where the Review noted a divergence of views amongst stakeholders. Recognising the Australian Government's limited involvement and influence in the domestic housing sector, and the fact that the Scheme was always never intended to focus on smaller domestic house builders, an option would be to exclude this type of construction altogether. The recommendation for indefinite accreditation, albeit in association with a more regular auditing programme, may lead to criticism that safety standards will decline and an alternative approach (say a six year accreditation period) may be preferable.

Option 4 entails abolishing the Scheme. This option proposes that the Government agree to eliminate the need for companies to obtain Scheme accreditation in order to tender for, and undertake Commonwealth-funded building and construction projects. This option, if implemented, would be inconsistent with findings of the Scheme Review and the Government's public announcement of 22 October 2014, to implement measures aimed at modernising and streamlining the Scheme, consistent with Option 3.

WHAT IS THE LIKELY NET BENEFIT OF EACH OPTION?

OPTION 1 *– Maintain the Status Quo*

Implementation of Option 1 is not supported as it would not provide any regulatory savings for building and construction businesses. The net benefit of Option 1 is that building and construction companies currently covered by the Scheme would not be subject to any changes to how they currently interact with the OFSC and the Scheme.

There would also be no change to the financial thresholds, nor any price adjustment, meaning that the Scheme would apply to an increasing number of smaller projects over time. There would also be no change to the coverage of projects involving builders of single dwelling houses. While this may arguably increase safety outcomes for a few individual building companies, it would divert resources towards a sector where the Australian Government has very limited capacity to leverage broader improvements in safety behaviour and performance. Maintaining the current 'one size fits all' approach would also create resource constraints that would prevent the OFSC from better targeting resources to companies most needing attention to meet the high safety standards of the Scheme, reducing the integrity, compliance monitoring and safety outcomes of the Scheme.

This design of the Scheme was never intended to capture all industry members or Commonwealth-funded building projects, or to replace the primary responsibility of state and territory regulators to ensure compliance with safety laws. It is estimated that there are more than 3,000 low value Commonwealth funded building projects each year. The Scheme was always designed with parameters to ensure it leveraged higher value projects to influence improvements in the industry. For many smaller builders, including domestic house builders, it may be that greater compliance monitoring by state and territory regulators, to ensure compliance with minimum legislative requirements, is more appropriate than requiring those builders to achieve the best practice approaches required under the Scheme.

Not reducing barriers to entry will also discourage more builders from pursuing Scheme accreditation, reducing the safety benefits in the industry as well as reducing competitiveness in the market for Commonwealth-funded building work.

Not changing the reaccreditation arrangements would see the continuation of multiple audits on a single site over a compressed period of time, rather than providing companies with the opportunity for the same number of audits scheduled regularly, over the full accreditation period.

There is broad agreement from stakeholders that it is timely to introduce streamlining improvements as proposed by the Review, which will also ensure the viability and effectiveness of the Scheme into the future. Recognising that the continuation of the Scheme is supported by the Government as well as industry, and given demand for the scheme is expected to increase over time, adopting the 'no action at this time' option, would jeopardise the future viability and effectiveness of the Scheme. Option 1 would also be inconsistent with the Government's rationale for undertaking the recent Review to modernise and streamline the OFSC and the Scheme.

Accordingly, Option 1 would have a negative net regulatory and safety benefit.

OPTION 2 *- Implement all measures as recommended in the Review to modernise the OFSC and the Scheme*

Implementation of Option 2 is estimated to provide for a regulatory savings for building and construction businesses of **$8.9 million per year**, over 10 years. Please refer to the Regulatory Burden Measurement Tool at Attachment C.

The net benefit of Option 2 is that building and construction companies would be provided with improved access and reduced barriers to entry to perform Commonwealth-funded building work. In addition, the regulatory costs associated with becoming and maintaining accreditation would be greatly reduced without diminishing the standards required to achieve and maintain accreditation.

Further, the anticipated agreement with the Australian Procurement and Construction Council and Austroads that Scheme accreditation will automatically meet the WHS requirements of all state and territory prequalification Schemes for civil and commercial construction projects will result in significant red tape savings for businesses operating across borders.

The Scheme Review Report to the Government offered a number of recommendations that are administrative in nature, however, the key recommendations if implemented, would re-calibrate some of the Scheme’s key policy parameters.

These key policy parameters can be broken into three broad categories, including:

- Coverage of the Scheme
- Becoming accredited
- Maintaining accreditation

1. Coverage of the Scheme

The coverage of the Scheme is determined by two main factors: financial thresholds relating to the value of directly or indirectly Commonwealth-funded building work, and the exclusion of certain types of building work from the definition of ‘building work’ as established in the *Fair Work (Building Industry) Act 2012* . The Scheme thresholds are currently set at $3 million and $5 million respectively – these thresholds were set in 2006 and 2007 respectively.

Option 2 would see these thresholds increased to $4 million and $6 million respectively as recommended by the Review, broadly reflecting price movements in the industry since they were first set. There would be further adjustments for price movements in the industry every three years. This Option would ensure the coverage of projects under the Scheme would remain the same as originally intended in real terms.

Option 2 also proposes a number of alterations that would exclude certain types of building work from the scope of the Scheme.

Financial Thresholds

Most stakeholders (including Master Builders Australia (MBA) and ACA) considered that the current coverage of the Scheme, in terms of the value of contracts captured, was about right. Even so, this Regulation Impact Statement considers the likely economic impact of adjusting the Scheme thresholds, with a particular focus on the impact of changes on safety outcomes and the impact on competition and barriers to entry for Government funded building work. The likely impact of changes to thresholds on Government as a significant purchaser of building and construction services is also considered below. These factors are considered in the context of both reducing and increasing the Scheme’s thresholds:

Net impact of reducing the thresholds

While the notion that all Commonwealth-funded building work should be subject to the highest standards was raised during the Scheme review, stakeholders generally agreed that the impact of removing or lowering the thresholds would be to create significant and practical resourcing difficulties and introduce a new level of complexity and increased red tape for all builders seeking to undertake Commonwealth-funded building work regardless of its value.

As indicated above under Option 1, up to 3,000 lower value additional projects annually would be captured if the Scheme's thresholds were completely removed. Many of these projects would arguably be undertaken by small and medium sized enterprises who following a complete removal of the Scheme thresholds, would be required to obtain and maintain accreditation. This could potentially act as an increased barrier to entry and deter these companies from tendering for Government funded building work. This would likely result in reduced opportunities for smaller and medium sized businesses to be competitive in the market.

In this respect, a survey of accredited companies undertaken as part of the Scheme review suggested that small (1-19 employees) and medium sized business (20-199 employees) spend about $75,000 and $130,000 dollars respectively to obtain accreditation. The same categories of business also reported that they spend about $38,000 and $58,000 dollars respectively per year to maintain their accreditation.

Large companies (200+ employees) reported that they spent $85,000 to obtain accreditation and $30,000 per year to maintain accreditation. 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.

It is important to note that figures quoted above are a self-assessment by survey respondents, do not itemise the costs and have not been tested for accuracy. It is likely that this self-assessment by companies overstates the marginal additional cost attributable to the Scheme (ie over and above costs incurred to meet state and territory legislative requirements, corporate safety policies and approaches, and other factors). There are examples where respondents, for example, indicated that their estimates included equipment maintenance costs, software expenses or consultants' fees, some of which were clearly required irrespective of their Scheme accreditation.

It is also important to recognise that the significant benefits of improved safety through Scheme accreditation, as described earlier, have not been taken into account in calculating the regulatory costs. Another offsetting factor, not able to be accurately quantified or included in the calculation, is the reduced regulatory burden resulting from the recognition of accredited companies by states and territories as automatically meeting the WHS requirements of their building 'pre-qualification' schemes.

If the thresholds were lowered or completely removed, this would result in up to 3000 more companies (small and medium sized enterprises) becoming subject to these costs ie. the cost of obtaining and maintaining accreditation. Although this might increase safety standards in parts of the industry not presently covered by the Scheme, this may also lead to a monopoly of larger business (who can afford to maintain the cost of accreditation) and a reduction in overall competition in the industry, as smaller companies who cannot afford accreditation, are pushed out of the industry.

The Government, accordingly, as the client and provider of significant amounts of investment capital into building infrastructure, may likely experience significant cost increases due to an overall reduced pool of available building companies (with smaller and medium sized businesses being driven away from the Government funded construction market due to prohibitive cost barriers).

This net impact of a reduction or removal of Scheme thresholds would be accentuated in regional and remote areas, where opportunities for local and smaller sized businesses would likely overcome by larger businesses with Scheme accreditation. In return, this may run counterproductive to the Government's agenda to increase skills and employment opportunities, particularly in Indigenous communities.

Net impact of increasing thresholds

A significant increase in the Scheme's thresholds, as proposed by some stakeholders (e.g. Civil Contractors Federation (CCF) in particular), would result in a significant number of Commonwealth-funded projects not being captured by the Scheme. For example, an increase in the Schemes threshold from $3 million to $20 million would have exempted 290 awarded contracts with a total value of $2.4 billion over the three previous calendar years (60 per cent of contracts awarded in that period). This would significantly reduce the Scheme's capacity and effectiveness as fewer projects and the companies performing these projects, are covered by the Scheme, potentially reducing safety standards on affected worksites.

Importantly, an increase in the Scheme's thresholds to this level or similar would also impact on the Scheme's ability to meet the Government's agenda in relation to promoting safety in the building industry. As indicated above, the Government's response to the Review's recommendations need to strike the right balance between meeting the deregulation and competitiveness agendas and maintaining the strong commitment to industry safety.

As also discussed above, safety performance significantly impacts on business and industry productivity, and suboptimal safety outcomes creates significant economic and social costs.

Increasing thresholds too far may also result in a significant impact on the Scheme's safety and productivity outcomes, by covering fewer companies and projects. As above, the relatively small financial and regulatory cost of Scheme accreditation needs to be balanced against the economic and social benefits.

As the Australian Constructors Association pointed out, the regulatory costs of maintaining high safety standards needs to be balanced against the business productivity and financial benefits that result. The Review found that many companies fail to consider the potentially devastating impact on their business of a single major safety incident. Scheme accreditation, and the robust safety systems, culture and practices it requires, creates financial benefits and efficiencies.

This is evidenced, for example, by the fact that Scheme accredited companies have workers compensation premium rates some 20 per cent lower than the industry average. The Review also found, for example, that after 6 years, 71 per cent of companies improve Lost Time Injury rates (by an average of 69 per cent). This creates a corresponding decrease in business costs - after 6 years of accreditation, 60 per cent of companies have reduced their workers' compensation premium rates (with an average reduction of 44 per cent).

On balance, the Review found that the current thresholds broadly find the right balance between achieving the safety and economic benefits of the Scheme, while not unduly reducing competitiveness or increasing industry regulation by capturing very small builders and projects.

Future indexation of Scheme thresholds

In agreeing that the current threshold levels are 'about right', some submissions to the Scheme review also raised the possibility of indexing the thresholds into the future. The adjustment of the thresholds to $4 million (direct) and $6 million (indirect) reflects movements in the Building and Construction Index over the period 2006 to 2013 (around 20 per cent) and, while not directly relevant to building and construction, the Consumer Price Index showed a similar increase over time of almost 22 per cent. The recommendation to price adjust the thresholds avoids any increase in coverage in real terms in the future.

What is the benefit of excluding certain types of building work from the scope of the Scheme?

Option 2 proposes a change that would exclude certain types of building work from the scope of the Scheme (through the Regulations) to ensure:

1. the Scheme only be applied to those projects comprising the construction of 10 or more 'single dwelling houses', regardless of contract value; and

2. the Scheme not be applied to the refurbishment of, nor extension or alteration to, single dwellings regardless of the number of dwellings or the contract value (so long as they remain single dwellings).

The Scheme was originally intended to apply to more significant residential developments. It currently applies to those projects comprising the construction of a ‘development’ of five or more dwellings, where the project value is also above the financial thresholds. In practice, this has been applied as meaning the construction of five or more individual houses, even where they are on separate lots (such as when Defence Housing Australia (DHA) constructs several separate houses through a single tender process).

It is debatable whether the current legislation ever intended to cover small domestic house builders constructing individual houses on separate lots, although clearly it was intended to apply to multi-unit developments on single lots, such as aged care facilities and townhouse developments.

The Government has very little involvement or influence as a funder of residential works and hence the rationale of leveraging Commonwealth funding to improve safety is arguably less valid for the domestic sector. Commonwealth funding constitutes a tiny proportion of demand in the domestic housing sector – less than 0.5 per cent of annual turnover in the residential sector as a whole.

The Government’s involvement in this sector is largely limited to DHA and certain housing programs in regional and remote areas administered by the Department of the Prime Minister and Cabinet. DHA raised concerns through the Review that Scheme accreditation puts it at a commercial disadvantage relative to its competitors in the investment housing market. The Department of the Prime Minister and the Cabinet was concerned that the accreditation requirement could conflict with other social policy objectives such as the engagement of local Indigenous building companies.

While there is evidence of safety problems in the domestic house building sector, the Scheme may not be the best tool to address these problems – 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.

To date, less than 4 per cent of accredited builders undertake this work exclusively.

The Review recommended increasing the threshold to ten or more houses to balance these competing priorities and stakeholder views, but noted a divergence of opinion. An alternative approach (see Option 3) is to exclude domestic house building projects altogether.

A number of Government agencies during the Scheme Review also queried the inclusion of refurbishment of residential dwellings in the definition of building work. They noted that in most projects of this nature, there is very little building or construction work actually undertaken.

Rather, quite minor activities, such as painting and tiling, are more typical. These types of projects often fall under the Scheme as the contracts are awarded for a large number of individual dwellings or over an extended time period and are usually undertaken by companies offering maintenance rather than building services. The experience of the OFSC shows that these companies can be extremely difficult to audit due to the limited applicability of Scheme criteria to minor projects of this sort.

The combined benefit of increasing the number of dwellings required under the definition of `building work’, in addition to excluding small scale refurbishment work, would be to reduce the applicability of the Scheme to residential construction and refurbishments from coverage, without implementing a complete exemption from the Scheme.

Smaller residential builders, in particular, would benefit by no longer being required to seek and maintain accreditation where any Commonwealth-funded work consisted of the construction of less than 10 dwellings, regardless of contract value, or where they are undertaking residential refurbishment work only. This will increase accessibility to these types of projects by builders, previously excluded by virtue of the Scheme and increase competitiveness in the market for DHA work.

Extending joint venture arrangements to domestic firms

The Review report supports changes to the Scheme to allow unaccredited companies to contract for Scheme projects where they are in a genuine joint venture with an accredited company (and operate under the partner's accredited safety system). This approach reflects the current arrangements that exist only for international companies.

Extending this opportunity to domestic companies is consistent with the Senate Finance and Public Administration References Committee inquiry into Commonwealth procurement procedures, which stated that effective procurement policy must ensure that Australian firms have at least an equal opportunity to compete, tender and win contracts.

It will create significant new opportunities for smaller companies to tender for, and become head contractors, prior to achieving accreditation. The approach will facilitate a 'soft entry' for firms to the Scheme, whereby they can win tenders and gain experience in operating under best practice accredited systems. It is expected that many companies would then more easily achieve accreditation in their own right by adapting or developing their own compliant safety systems.

This approach may also be beneficial for small to medium-sized builders in regional areas where there may only be occasional, or one-off, Commonwealth-funded projects. It also responds to suggestions that opportunities be created for Indigenous building companies to team up with accredited companies so that they may access Commonwealth-funded projects as a head contractor, rather than a subcontractor, as is usually the case.

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. Specifically, since commencement of regulation 24(1)(h), there have been seven international companies that have availed themselves of the opportunity to operate in Australia through joint venture arrangements with a Scheme accredited company.

This measure would lend 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 would continue to focus on safety while developing relevant expertise under the auspice of an accredited WHSMS, yet still allowing the Indigenous business to operate as a full partner in a joint venture arrangement.

2. Becoming accredited

What is the benefit of removing the AS/NZS 4801:2001 prerequisite?

This Option 2 measure involves ceasing certification to the AS/NZS 4801:2001 or OHSAS 18001:2007 standard as a prerequisite for companies applying for OFSC accreditation.

During the Scheme Review, stakeholders such as the OFSC and MBA considered that AS/NZS 4801:2001 is a costly and time-consuming barrier for small companies tendering for Commonwealth-funded building work, noting that Scheme criteria and auditing already cover and exceed the AS 4801 standard. Accordingly, the net benefit of revoking AS/NZS 4801:2001 would include no decline in safety standards, but would provide for substantial business regulatory cost savings.

Businesses report that the cost of obtaining AS 4801 accreditation ranges from around $8,000 to $80,000 and companies that engage consultants to deliver certification could spend between $10,000 and $200,000 or more for a large organisation. These costs are separate to any others associated with achieving accreditation. Under Option 2, these costs would no longer be required to be expended by companies in order to achieve Scheme accreditation.

The Department estimates that this measure alone will provide for a regulatory savings for building and construction companies of approximately $2.2 million per year over 10 years.

3. Maintaining Accreditation

<u>*What is the benefit of abolishing the reaccreditation process?*</u>

Option 2 proposes that the existing Scheme reaccreditation process be abolished, including all paperwork and other current regulatory requirements. Accreditation would continue indefinitely, subject to satisfactory compliance with Scheme requirements, based on an ongoing risk-based compliance model. This approach was strongly supported by the majority of key stakeholders but some (including the Australian Council of Trade Unions (ACTU)) expressed concern that this may lead to a perception of reduced safety standards if there is no point at which a company must seek reaccreditation.

Under the current Regulations, 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 results in reduced audit requirements at reaccreditation (for example, resulting in a single day audit, instead of the two-day audit required at initial accreditation). Multiple audits may still occur before a company achieves 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.

This reaccreditation model concentrates resources at three yearly intervals and applies equally to companies with good and poor compliance records.

This proposed change would allow resources to be spread more evenly across the accreditation period, rather than the current focus at the three year point when reaccreditation currently falls due. This measure will not result in an increase in the total audit volume under the Scheme. Rather, it will (a) better spread the audits across a more regular Schedule throughout the accreditation period and (b) over the accreditation period, reduce the overall number of audits for companies with a strong compliance record while increasing the audits and support for those that most require it.

All companies, on average, would have a one day on-site audit every 12-18 months, rather than the current focus at the reaccreditation point every three years. The results of audits would be a key factor in the risk model. The risk model is to be developed further in conjunction with key stakeholders, however, it is anticipated that it may include the following types of WHS performance indicators:

- A company's compliance record with the Scheme criteria over time as evidenced through site audits undertaken by Federal Safety Officers (the primary indicator)
- Number of Corrective Action Reports issued by the OFSC in order to achieve accreditation
- Number of onsite WHS incidents occurring over time
- Number of WHS notices (eg prohibition notices) issued by the relevant state regulator
- Significant changes in safety systems or key personnel
- Prevalence of positive performance indicators eg onsite WHS awareness training and guidance

Summary of Administrative measures

<u>*Enhanced communication activity*</u>

In addition to the key measures outlined above, a number of administrative measures are also proposed under the Option 2, including enhanced communication activities.

A common theme throughout the Scheme Review was that the OFSC could do more in the way of education and support activities, noting that these have reduced over recent years, as more resources have been applied by the OFSC to the core accreditation programme requirements.

In particular, submissions to the Scheme Review suggested that the OFSC needs to be more engaged with industry, regularly travelling and being "visible", and meeting with key associations and building industry participants as it used to in the early days of the Scheme.

Other communication-based activities, as suggested by stakeholders, include better communication of best practice WHS examples, an increased educational focus, industry forums, annual conferences, and better interaction with Safe Work Australia and the jurisdictional WHS regulators.

Other administrative measures

Option 2 also includes the following administrative measures, aimed at improving the efficiency and effectiveness of the OFSC and the Scheme:

- Streamlined application processes, including the development of an online application and self-assessment tools
- Reviewing the Scheme's audit criteria
- Reviewing the Scheme's reporting requirements
- Enhanced arrangements to improve the quality and consistency of FSOs
- Development of case studies that provide practical examples of best practice WHS initiatives
- Improved liaison activities with Government agencies on Scheme requirements

Consideration and implementation of these measures will be undertaken in consultation with stakeholders.

Annual survey of accredited companies

Option 2 [and Option 3] proposes that the OFSC would complete an annual survey of accredited companies to seek their feedback on Scheme performance. This would include collecting data to show, for example, the level of perceived value for money and safety impacts of the Scheme, as well as feedback on the OFSC and administrative procedures. This measure represents the only recommendation from the Scheme Review Report that would impose an extra, albeit minor, regulatory burden on accredited companies, noting that completion of the survey would be optional.

The Department estimates that asking companies to voluntarily undertake an annual survey would impose a total additional regulatory burden of approximately $30,000 per annum over 10 years. The Department considers that this burden would be insignificant when weighed against the savings measures presented under Options 2 and 3 and the benefits to ongoing improvements in Scheme administration.

OPTION 3 - *Implement measures as recommended in the Review, as outlined in Option 2 to modernise the OFSC and the Scheme, but make additional changes to the definition of building work (through the Regulations) that would exclude certain types of building work from the scope of the Scheme and increase the current accreditation interval from three to up to six years.*

Implementation of Option 3 is estimated to provide regulatory savings for building and construction businesses of **$9.7 million per year**. Please refer to the Regulatory Burden Measurement Tool at Attachment D.

The net benefit of this option would be a moderate increase in regulatory savings for businesses interacting with the Scheme, in addition to the benefits and regulatory savings of Option 2.

The key differences between Options 2 and Option 3 are:

a. All work on single dwelling houses will be excluded from the scope of the Scheme. The Scheme will still apply to projects comprising the construction of multi-dwelling developments, such as apartments, aged care facilities etc.
b. Retaining the reaccreditation process but increasing the maximum accreditation period from three years to six years.

What is the benefit of excluding construction of single dwelling houses from the scope of the Scheme?

This Option responds to the same discussion about the boundaries for the Scheme's coverage of the residential sector as discussed under Option 2, but excludes single dwelling houses (individual detached houses) altogether. As above, the rationale of applying the Scheme to safety problems in this sector is debatable given the Government's limited financial influence and the likelihood that minimum legislative standards need to be better applied by state and territory regulators.

Nevertheless, there may be negative perceptions associated with exempting elements of the domestic sector. It would be important to emphasise that implementation of Option 3 does not signal that the residential sector is safer than others, but rather, the Scheme is not the means by which to address all safety issues in all sectors of the industry. It is encouraging to note, for example, that some jurisdictions such as the ACT and NSW, have been increasing their regulatory compliance efforts in the domestic house building sector.

A decision to exclude parts of the residential sector from the Scheme's coverage may also be considered inequitable for the small number of currently accredited residential builders who have already participated in the accreditation process and incurred a range of costs associated with completing paper work and attending to OFSC on-site audits. There are less than 4 per cent (around 10) of accredited companies that may be impacted in this way.

As discussed under Option 2, a reduction in Scheme coverage of the residential sector would be supported by the Department of the Prime Minister and Cabinet to assist with regional/remote housing programmes, particularly in terms of their objective to ensuring access to building projects by Indigenous companies. Changing the coverage of the Scheme to no longer apply to single dwelling housing would equally assist this social policy objective. Likewise, an exemption of single dwelling housing from Scheme coverage would also be supported by DHA as it would eliminate the need to use Scheme accredited builders on many of their residential construction projects. DHA has claimed that this would lead to more competitive pricing for their projects by increasing the pool of builders able to undertake these projects.

What is the benefit of reaccreditation up to every 6 years?

The current reaccreditation arrangements are discussed in Option 2. By increasing the current maximum period of accreditation from three years up to six years, Option 3 provides an alternative to indefinite accreditation while still achieving most of the regulatory savings.

As with Option 2, this option would continue to allow a redirection of audit resources away from the current concentration at the three year point, and permit the OFSC to better target resources to companies most needing assistance to meet the high safety standards of the Scheme, therefore improving compliance monitoring and safety outcomes. It would also be undertaken in conjunction with the recommended risk-based compliance model, ensuring greater attention on companies with a poorer record and a lessened burden for high performing companies.

This option would provide currently accredited companies an additional three year period before going through the reaccreditation process which, in conjunction with a streamlined reaccreditation process and a risk-based compliance model, will significantly reduce the regulatory burden.

This option responds to the concerns of some stakeholders, raised during the Review, that an indefinite period of accreditation may send the message that accreditation can never be revoked or suspended as a result of poor performance, leading to perceived reduction in safety standards. A defined accreditation period sends the message that standards must be maintained so that a subsequent period of accreditation will be approved.

OPTION 4 *– Abolish the Scheme.*

Implementation of Option 4 is estimated to provide for a regulatory savings for building and construction businesses of **$28.4 million per year**. Please refer to the Regulatory Burden Measurement Tool at Attachment E. This calculation does not take into account any financial, productivity or safety benefits resulting from the Scheme as described earlier. It also does not take into account the regulatory benefits accruing to Scheme accredited companies in only needing the one certification to meet all regulatory requirements of states and territories under their building 'prequalification' schemes.

Implementation of this option would be inconsistent with findings of the Scheme review and the Government's public announcement of 22 October 2014, to implement measures aimed at modernising and streamlining the Scheme, consistent with Option 3.

The Government's intention to retain the Scheme is also demonstrated by the Building and Construction Industry (Improving Productivity) Bill 2013 currently before the Senate, which will both re-establish the ABCC, to ensure the 'rule of law' on building sites, while preserving and enhancing the Scheme. .

While this option was out of scope, and not supported by any key industry associations, the Review nevertheless found there was a strong likelihood that the Scheme has achieved safety improvements both at the individual company level and for the broader industry. This was the view of key industry associations and the vast majority of companies that have been through the accreditation process, and is supported by evidence of lower injury rates and workers compensation premiums.

Significantly, abolishing the Scheme would also have a significant detrimental regulatory impact on companies that operate in more than one state or territory. It is anticipated that from 2015, the Scheme will be recognised as meeting all work health and safety requirements under state and territory prequalification schemes for civil and construction building work. There are presently more than twenty different schemes across Australia. Scheme accreditation, particularly with the streamlining changes proposed, will be an effective means for companies to minimise safety risks and avoid the requirement to meet the myriad different requirements of other jurisdictions' prequalification schemes. This is expected to increase demand for Scheme accreditation from building companies.

While additional regulatory savings would be achieved by abolishing the Scheme, compared to the other options, the department does not support this option for the reasons stated above.

CONSULTATION

Extensive consultation was undertaken through the Review leading to the proposed changes to modernise the OFSC and Scheme.

The Scheme Review was informed by an Advisory Panel which included representatives from MBA, ACA, CCF, ACTU, Ai Group and the FSC. Funding agencies were represented by the Department of Defence, a significant funding agency and procurer of building and construction services throughout Australia. Advisory Panel members consulted within their organisations and consolidated their members' views to provide feedback and advice on possible options for change. This consultation process ensured that broad views from the industry as a whole were obtained.

The views of other funding agencies were also captured through a series of meetings and workshops undertaken with the OFSC's Australian Government Agency Reference Group (AGARG).

The changes to the Scheme were discussed by stakeholders, including the ACTU, with the Minister for Employment at the National Workplace Relations Consultative Committee (NWRCC) meeting of 31 October 2014.

Submissions to the Scheme Review

The Department produced a Discussion Paper and sought submissions 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, including members who are not presently accredited under the Scheme and who may being seeking accreditation in the near future.

Emails inviting submissions were also sent to all accredited companies, state and territory WHS regulators, Safe Work Australia and an assortment of industry representatives including for example, the Air-conditioning & Mechanical Contractors Association and the National Electrical and Communications Association.

The Review was open to any organisation or member of the public, including companies not presently accredited under the Scheme 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's website.

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

Survey of Accredited companies

To better inform the Review of the OFSC and the Scheme, the Department also undertook an online survey of accredited companies to afford them an opportunity to provide additional information relevant to obtaining and maintaining accreditation. This survey was distributed to accredited companies, in addition to them being asked to make a submission to the Review.

The survey was open from 11 to 21 March 2014.

The OFSC emailed 308 accredited companies. Responses to the Survey were received from 126 companies, constituting a response rate of 41 per cent.

Summary of Stakeholder views on the recommendations to modernise the OFSC and the Scheme

MBA, ACA and Ai Group generally supported the recommendations of the Review. CCF proposed in its original submission that there should be different thresholds applying to civil building and construction work which it considers less risky than 'vertical construction'.

This view was not supported either by data or other stakeholders (nearly all of which opposed any sector specific or other exemption from the Scheme). CCF did not raise any concerns with the final Scheme report or its recommendations. The ACTU suggested in an Advisory Panel meeting that some of proposed changes to the Scheme could be construed as reducing safety standards-such as moving to a targeted risk-based compliance model, reducing coverage of the domestic housing sector, and removing the prerequisite of certification to AS/NZS 4801:2001.

There were also differing views about the Scheme's coverage of the domestic residential sector (it currently applies to the construction of five or more individual dwellings). DHA, in particular, argued that it, as an agency, should be exempted from the Scheme, or the Scheme coverage of residential sector should be reduced or ceased. The Department of the Prime Minister and Cabinet, which administers housing programmes in Indigenous communities, also proposed changing the Scheme's thresholds to reduce the accreditation requirement on smaller Indigenous building companies. Most stakeholders argued against individual agency or sector based exemptions.

As discussed below (Implementation and Evaluation), a number of working groups, involving industry and government stakeholders will be established to refine a number of measures prior to implementation. For example, working groups will be established to determine the appropriate criteria for the risk-based approach to replacing or amending the existing Scheme reaccreditation process and to re-assess the Scheme's audit criteria.

WHAT IS THE BEST OPTION?

The Department recommends that the Government pursue Option 3.

While Option 2 precisely reflects the recommendations of the recent Scheme Review, the Department considers that Option 3 strikes a better balance between meeting the deregulation and competitiveness agendas and maintaining the strong commitment to industry safety.

Option 3 is a legitimate response to stakeholder views and predominately relies on the majority of recommendations in the Scheme Review report. This was developed through a robust Review process under which interested parties have already been afforded various opportunities to debate the merits of each measure.

Where Option 3 has built upon the measures contained in Option 2, stakeholders, including the ACTU (which has raised concerns about changes to the Scheme's coverage of residential construction sector, the removal of the AS4801 pre-requisite and the proposed new reaccreditation process) will be afforded the opportunity to comment on these changes further, before the measures are implemented (consultation plan is as outlined above).

The major stakeholders are broadly supportive of the measures presented in Option 3, particularly those aimed at addressing key industry concerns about value for money and accessibility of the Scheme for smaller firms. The measures will also address a number of widespread misconceptions about the Scheme, which have given rise to perceived barriers to entry to tender for Commonwealth-funded building work.

Option 3 further reduces red tape and compliance costs for affected building and construction businesses, improves access to Government work, particularly for smaller and medium sized firms and will introduce a risk-based compliance model that ensures a more targeted approach to utilising OFSC resources.

IMPLEMENTATION AND EVALUATION

Implementation

The Review was completed in June 2014 and contains 25 Recommendations, supported by all industry stakeholders, and which form the basis for the options outlined in this Regulation Impact Statement. Many of the recommendations entail administrative changes to, for example, improve the application process, simplify criteria, improve guidance and support for companies. Others are more significant and will entail changes to the Rules underpinning the Scheme, such as the reductions in projects covered by the Scheme, moving to a risk-based compliance model, extending the duration of accreditation, and removing the requirement for accreditation to AS/NZS 4801:2001.

The Department will establish a number of focus and working groups to work through the micro-policy details of a number of the key measures proposed under Option 3. These groups will involve industry and Government as appropriate.

Amendments to the head legislation (or its successor, currently before Parliament), will not be required. A number of the measures will require amendments to the Scheme Regulations, such as those described in detail above; for example, to amend the Scheme thresholds and to exclude certain types of building work from the scope of the Scheme, and the removal of AS 4801 as a prerequisite to Scheme accreditation.

The Department is preparing amendments to the Scheme Regulations (or Rules if under the successor legislation), in consultation with the Office of Parliamentary Council.

Evaluation

The Department proposes to evaluate the effectiveness of the measures proposed under Option 3 in a number of ways:

a. Recommendation 20 of the Scheme Review Report requires that the Scheme be reviewed at least every five years.

b. As discussed above, Recommendation 18 of the Scheme Review Report discusses that the OFSC will conduct an annual survey of accredited companies to seek their feedback on Scheme performance which will assess, for example, the effectiveness of the measures in reducing compliance costs, increasing value for money, and safety outcomes.

c. The OFSC will maintain or enhance its existing regular engagement with industry and government agency stakeholder reference groups (AGARG and Industry Reference Group). These groups will continue to be the key bodies responsible for assessing implementation effectiveness and identifying further opportunities for improvement. These groups meet three to four times per year and in the intervening period, are often called upon for input on a range of issues as they arise during Scheme operations. These groups, and continued bilateral engagement with key industry and other stakeholders, will provide feedback on the effectiveness of the implementation of the proposed measures.

d. The OFSC will establish and publish key performance indicator data (Recommendation 16 of the Scheme Review Report) in relation to Scheme activity and OFSC performance. The OFSC will also continue to publish injury data for use by industry, including the maintenance of the OFSC's Performance Comparison Tool which allows companies to compare its injury performance against Scheme averages. It is proposed that the OFSC will also better disseminate its data and best practice approaches to safety for the broader benefit of the industry.

e. It is also proposed that the OFSC investigate the establishment of a third party complaints and support mechanism (such as through an industry association - Recommendation 17 of the Review Report) that will provide an additional avenue for accredited companies or other stakeholders to raise issues for consideration about the effectiveness of the Scheme and its administration by the OFSC.

The Department considers that these elements represent a comprehensive evaluation strategy that will ensure effective engagement with stakeholders in monitoring implementation progress and effectiveness.

Attachment A

TERMS OF REFERENCE FOR THE REVIEW TO MODERNISE THE OFFICE OF THE FEDERAL SAFETY COMMISSIONER AND THE AUSTRALIAN GOVERNMENT BUILDING AND CONSTRUCTION OHS ACCREDITATION SCHEME

TERMS OF REFERENCE

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 pre-qualification 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.

Attachment B

SUMMARY OF RECOMMENDATIONS FROM THE REVIEW TO MODERNISE THE OFFICE OF THE FEDERAL SAFETY COMMISSIONER AND THE AUSTRALIAN GOVERNMENT BUILDING AND CONSTRUCTION OHS ACCREDITATION SCHEME

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.

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.

Regulatory Burden and Cost Offset (RBCO) Estimate Table – Option 2

(Not recommended option)

Average annual regulatory costs (from business as usual)

Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	$ (8.9)	$	$	$ (8.9)
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$	$	$	$

Are all new costs offset? **☐Yes, costs are offset ☐No, costs are not offset ✓ Deregulatory—no offsets required**
Total (Change in costs – Cost offset) ($ million) = $ (8.9)

Regulatory Burden and Cost Offset (RBCO) Estimate Table – Option 3 (Recommended Option)

Average annual regulatory costs (from business as usual)

Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	$ (9.7)	$	$	$ (9.7)
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$	$	$	$

Are all new costs offset? **☐Yes, costs are offset ☐No, costs are not offset ✓ Deregulatory—no offsets required**
Total (Change in costs – Cost offset) ($ million) = $ (9.7)

Regulatory Burden and Cost Offset (RBCO) Estimate Table – Option 4*

(Not recommended option)

Average annual regulatory costs (from business as usual)

Change in costs ($ million)	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total, by sector	$ (28.4)	$	$	$ (28.4)
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$	$	$	$

Are all new costs offset? ☐**Yes, costs are offset** ☐**No, costs are not offset** ✓ **Deregulatory—no offsets required**
Total (Change in costs – Cost offset) ($ million) = $ (28.4)

* A significant detrimental regulatory impact of this option on companies would be where they operate in more than one state or territory. It is anticipated that from 2015, the Scheme will be recognised as meeting all work health and safety requirements under state and territory prequalification schemes for civil and construction building work. Accordingly, companies would only be required to maintain Scheme accreditation, rather than participate in multiple jurisdictional schemes.