MASTER BUILDERS
AUSTRALIA

Submission to Department of Employment and Workplace Relations

20 February 2026

Table of Contents

Introduction

In December 2025, the Department of Employment and Workplace Relations (DEWR) released the Secure Australian Jobs Code Consultation Paper (Consultation Paper). The development of a Secure Australian Jobs Code, connected with the Buy Australia Plan, should be approached with a high degree of caution given the significant ramifications such a Code may have in the workplace relations context.

Master Builders Australia Ltd (Master Builders) provides the following response in relation to the Consultation Paper and the development of the Secure Australian Jobs Code (the Code).

Master Builders is the nation's peak building and construction industry association, which was federated on a national basis in 1890. Master Builders' Members are the Master Builder State and Territory Associations. Over 130 years, the Master Builders network has grown to more than 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association representing all three sectors: residential, commercial, and civil construction. For noting, the membership contingent is made up predominantly of small and medium-sized enterprises.

Master Builders' vision is for a profitable and sustainable building and construction industry. Master Builders appreciates the opportunity to provide feedback on matters that are relevant to our industry for the purposes of ensuring suitability and sustainability of practices but to also hold fast to our vision for the industry.

Master Builders acknowledges the role of the Government's purchasing power to influence behaviour and to ensure that it only contracts with entities exhibiting high ethical and labour standards. The utilisation of the Government's procurement power to achieve beneficial outcomes across the industry is not new and has certainly received broad support from employer associations in the past. However, the implementation of these objectives must be balanced with what are reasonable requirements to impose on industry when tendering for Federal Government work.

Notably, and as outlined in the Consultation Paper, there are a raft of regulatory arrangements that apply to entities generally, and those specifically tendering for Federal Government work. These arrangements already overlap, often creating confusion and complexity.

Further the Consultation Paper highlights a key objective of the development of the Secure Jobs Code is to

> *'avoid unnecessary duplication or overlap with existing or emerging government measures that address priority issues through public expenditure. Many of these measures already align with, and partially meet, the intended requirements of the Code'.*

The Code **cannot** and **should not** be considered or developed in isolation.

Master Builders suggest that on this basis a fundamental question must be asked – **is a Secure Australian Jobs Code necessary?** This prompts further questions such as - What regulatory gap is the Code trying to fill? What concerns or issues have arisen over the last 2-3 years in the Government procurement process that would have been better dealt with or addressed by a Code?

The Consultation Paper fails to deal with any of these fundamental questions. This is problematic and, on this basis, Master Builders is of the view that an evidence-based case has not been made that would justify the introduction of a Secure Jobs Code.

However, if the Government remains minded to pursue a Code, Master Builders response is based on the *Building and Construction Industry (Improving Productivity) Act* (BCIIP Act) and the *Code for the Tendering and Performance of Building Work 2016* (2016 Building Code). Master Builders is of the strong view that elements of the 2016 Building Code were crucial to improvements on building sites, supported productivity and had an overall positive impact on industry culture and any future Code should incorporate requirements in furtherance of these objectives.

This approach reflects what the Consultation Paper essentially concedes to and what Master Builders and a litany of Royal Commissions, inquiries, industry participants and media reports have been saying for decades; ***the building and construction industry needs a dedicated regulatory approach***.

While the steps taken to date including putting the CFMEU into administration and the establishment of the National Construction Industry Forum (NCIF) that has developed a Blueprint for the Building and Construction industry are welcomed and have started the process of holding bad actors to account, including reflecting on and agreeing to the need for cultural change, the need to secure long term, lasting change across the industry requires more. The regulatory landscape must be part of the change.

Master Builders have called for a comprehensive and coordinated approach involving a range of immediate actions and future permanent law reform to improve building and construction industry culture. The Master Builders Breaking Building Bad submission offers a roadmap to a more viable, sustainable and productive industry.

The current circumstances and culture facing the industry show that comprehensive action is necessary and essential. The attempts of previous Governments, at all levels, have tried and failed to drive cultural change demonstrates the need for a 'whole of government' approach which must be lasting and tangible. A permanent solution is fundamental and necessary to avoid a repeat of history and drive lasting and tangible change.

The building and construction industry collectively deserves better. This includes ensuring that unions, who play an integral part in the representation of workers, is considered as part of this process. There is, however, emphasis on ensuring that the role of the union is confined to those representational interests rather than being expanded to have a hand in government procurement, and/or to impact on productivity.

Summary of submission

Firstly, this submission sets out the complexity of the Government procurement regulatory framework. As indicated at the outset the need for a Code, its role and content cannot be considered in a vacuum.

Secondly, Master Builders sets the scene regarding the building and construction industry and what we say is needed to support productivity in the industry, including to ensure a productive, efficient and effective Commonwealth procurement framework.

Thirdly, the often-cited phrase 'those who don't know history are doomed to repeat it' makes reflecting on the work and impact of the various iterations of industry specific regulatory frameworks critical. Key considerations also include the reported impacts of the Queensland procurement Best Practice Industry Conditions and feedback on the operation of the ACT Secure Local Jobs Code as a 'worked example' of how elements of the ACT Code are adversely impacting the industry.

Finally, Master Builders provides responses to the questions outlined in the Consultation Paper.

These responses are made based on the following assumptions and are not to be taken as supporting the Secure Australian Jobs Code:

- That the use of the Government purchasing power can be an effective tool to drive and cultivate model behaviours.
- That the building and construction industry requires a tailored approach.
- That while the proposed Secure Jobs Code may apply to all Federal government procurement the principles embedded in the building and construction industry through the 2016 Building Code provide an apt framework for the proposed Secure Australian Jobs Code, particularly when considering the needs of the building and construction industry.

The Government procurement regulatory framework

The challenges of carrying out Government-funded building work are long standing and well know across the building and construction industry. The idea that governments are 'model clients' is most often a myth, but Master Builders acknowledges the work through the NCIF and recommendations are targeted at improving government procurement practices.

A key factor in utilising Government procurement as a 'best practice' model is the productivity benefits of effective and efficient government tendering practices. These have often been called out by the various Productivity Commissions.

For example, in its recent interim report National Competition Policy Analysis 2025 (NCP Analysis) the Productivity Commission (PC) commented that:

> *"The next set of reforms the PC would highlight for inclusion in forward NCP reforms are public procurement reform, where governments could save up to $4.7bn based on the 2024 study."*[1]

The NCP Analysis also referenced a 2024 study carried out by the PC which noted the following:

> *"Two reforms were about changing the way government conducts business, including how it procures and charges for goods and services. In broad terms, the first reform is about adopting better practices in relation to public procurement, with a view to achieving better value for money (B3). Much has been written about how public procurement practices can be improved (in particular, avoiding or minimising the use of panels). Based on the literature, we estimate that governments could potentially aim to achieve savings of 2% on current expenditure levels by implementing better procurement practices. Given Australia's high rate of public procurement this reform could deliver significant savings to governments ($1.7 billion to the Australian Government and $3.0 billion to the state and territory governments combined)"*[2].

Further the Queensland Productivity Commission inquiry 'Opportunities to improve productivity in the Construction Industry'[3] Final Report (Queensland PC Final Report) signals opportunities for reform across Queensland procurement that can be instructive within the Federal context, for example the Final Report highlights that:

[1] Pg.17
[2] National Competition Policy: modelling proposed reforms Study report; pg.20; 29 August 2024
[3] https://www.qpc.qld.gov.au/docs/construction-productivity/QPC_Final%20Report_24%20Oct%202025.pdf

- *'Government procurement is likely to affect construction productivity through three key mechanisms:*

    - *directly, by imposing conditions on how site works are conducted and tendered for*
    - *indirectly, by influencing standards and expectations in the broader industry*
    - *by inflating demand for construction-related activities when the sector is at capacity.*

- *…the Queensland Government's procurement system can be simplified and made more transparent by:*
    - *refocusing procurement policies on fundamental value for money principles*
    - *establishing better governance arrangements to improve project selection and sequencing*
    - *adopting suites of standard contracts that are fit for purpose for all agencies.'*

Attachment A attempts to paint the complex regulatory environment associated with Government procurement. The overlapping, inconsistent, duplicative and burdensome compliance requirements make tendering for federal government work unappealing at the least, and impossible for most, particularly for Small and Medium Enterprises (SMEs).

On this basis, there is really no case for the addition of a Secure Jobs Code to the already crowded regulatory environment associated with Federal government procurement.

Further, as highlighted in the Consultation Paper (and our **Attachment A**), the work of the NCIF on a Joint Industry Charter for the building and construction industry is currently underway. Both have the potential to impose significant impacts on the building and construction industry with respect to productivity. Given that, it would seem premature to introduce a Code, in fact such a move may undermine that tripartite work to the detriment of the industry. Master Builders strongly recommends allowing the NCIF the time and opportunity to develop the Joint Industry Charter without a Secure Jobs Code for Federal Government procurement casting a shadow over that work. In any event, both must be subject to full public consultation.

The Building and Construction Industry

This time last year, we had just entered an era of falling interest rates and were looking forward to more. How things change. Interest rates are on the way up again as the RBA grapples with renewed inflationary pressures and tight labour market conditions. At the time of writing, the cash rate stood at 3.85 per cent – with financial markets' collective pricing behaviour suggesting we're in for two more hikes by this time next year.

Australia's poor productivity performance is the main reason why stronger demand results in worse inflation – rather than growth in economic activity. Few industries are as exposed to the productivity crisis as construction. New figures show that construction productivity dropped by 2.8 per cent during 2024-25, its seventh consecutive year of decline. Productivity in our industry is now 21.5 per cent lower than it was in 2013-14, a bigger reduction than every other industry.

Commentators and observers often draw a line between the industrial relations environment and productivity, and it is generally acknowledged that industrial relations can play an important role in contributing to the strength of the Australian economy. This is why getting these settings right is so important and ensuring any further regulation does not work at odds with the Federal Governments housing and infrastructure goals.

It is Master Builders view that there is a clear link between the two; workplace relations arrangements that set appropriate minimum terms and conditions of employment while minimising administrative burden and allowing businesses the certainty to grow and prosper must logically have a positive impact on productivity.

Deteriorating construction productivity doesn't just make it harder to deliver more new homes. The speed of delivering new homes has slowed considerably over recent years – one of the most tangible effects of our industry's productivity crisis.

Conditions are being made even more difficult by the escalation of building material costs – which are now 38.2 per cent more expensive than in 2019. The combination of productivity losses, labour shortages and building material cost escalations means that building and construction output is 37.8 per cent more costly than in 2019. New houses are 47.0 per more expensive than just before the pandemic.

There are positive signs in some places. Despite suffering a reverse in December, new home building approvals strengthened during 2025. There were 12.8 per cent more new homes approved during 2025 compared with 2024. Encouragingly, higher density home building approvals drove the increase in activity. The performance of higher density home building will be crucial in determining whether we hit the Housing Accord target.

Even though the new home building pipeline is moving firmly in the right direction, we are still far behind our National Housing Accord targets. The first 15 months of the Accord saw less than 230,000 new homes started across Australia. If we were on track to deliver the Accord, 300,000 new homes would have been delivered by now. This represents a shortfall of over 71,000 homes and means that about 65,000 new homes need to be built per quarter on average over the remainder of the Accord. This compares with the 45,600 new homes that were started since the Accord kicked off in July 2024. Over the remainder of the Accord's term, new home building starts need to be 42 per cent higher than they have been so far.

Outside of residential building, conditions are mixed. Engineering construction activity continues to expand as a result of the strong transport infrastructure pipeline and the portfolio of large energy transition-related projects. Over the year to September 2025, $147.4 billion worth of engineering construction work was carried out – an expansion of 3.3 per cent on a year earlier.

Non-residential building activity is stuck in reverse gear. The year to September 2025, saw $64.1 billion worth of work carried out in this part of the market. This represents a reduction of 3.0 per cent on a year earlier. This marks a change from recent years when non-residential building had been performing quite strongly. Over the last year or so, industrial building has struggled the most while project work related to retail/commercial building also slipped. Projects in the social, cultural and recreational building part of the market have held up the best.

Inflation jumped to 3.8 per cent in December - well above the RBA's target, with housing costs continuing to drive price pressures. Rents are 3.9 per cent higher than a year ago, while the cost of new dwelling construction rose 3.0 per cent over the year. Industry wide capacity constraints—particularly labour shortages and weak productivity—remain barriers to expanding supply and reducing housing related inflation.

Tight labour market conditions are fuelling inflation. During December 2025, Australia's unemployment rate declined to 4.1 per cent, the lowest in seven months. The same month saw 65,000 new jobs generated across the economy – the vast majority of which were full time rather than part time. This is further proof of how strong demand is for labour.

Construction insolvencies rose to a record 3,561 in 2025, though late year data suggests that some states are seeing fewer insolvencies. Despite the pressures, construction business numbers reached near record levels in June 2025, with 462,863 firms operating across Australia. This is more than any other industry.

Construction was the strongest contributor to GDP growth in the latest quarter, with value added rising 1.8 per cent. Building work done grew strongly, particularly in residential construction, which reached its highest volumes in several years. Wage pressures are re-emerging, with construction wages up 3.2 per cent over the year—reflecting skills shortages and declining productivity.

Home lending showed modest overall growth, but investor activity accelerated sharply across several categories, especially for newly built homes. First home buyer loans also increased, including a growing share for investment purposes.

Greater oversight

The Consultation Paper specifically highlights the need for consideration of a specific approach to the building and construction industry. This admission all but confirms what Master Builders has been arguing for decades.

Master Builders has long called out the unique nature of the building and construction industry and the need for a tailored and appropriate regulatory response. This has broadly been acknowledged by the establishment of the NCIF and the acceptance of a Blueprint for the future of the building and construction industry. As a member of the NCIF, Master Builders has been contributing to the work of this tripartite forum as part of its efforts to secure cultural change across the industry.

However more must done.

Putting the CFMEU into administration was a first step to tackling the systemic cultural and criminal issues within the industry. It is noted that the Administration's remit is limited to the operation of the CFMEU and more needs to be done to target and remove bad actors from the industry.

History shows that unless permanent and lasting changes are made, there is a very real risk that the sector will just return to the behaviours called out over the last decades. Further, without a strong Regulator, bad behaviour will continue to exist to the detriment of industry participants alike.

The sources of evidence that describe the conduct and history of building unions in, and impact on the culture of, the building and construction industry is vast. The Final Report of the Heydon Royal Commission into Trade Union Governance and Corruption (Heydon Royal Commission)[4] which devoted some 1160 pages to the building and construction sector alone.

Of the five volumes, almost one and a half volumes were specific to the building and construction sector and the conduct of the CFMEU. In respect of this conduct, the Royal Commissioner summarised:

> *"The conduct that has emerged discloses systemic corruption and unlawful conduct, including corrupt payments, physical and verbal violence, threats, intimidation, abuse of right of entry permits, secondary boycotts, breaches of fiduciary duty and contempt of court."*[5]

[4] Royal Commission into Trade Union Governance and Corruption Final Report, December 2015,
[5] Royal Commission into Trade Union Governance and Corruption Final Report, December 2015, Volume 5, Chapter 8, para 1

Then further observed:

> *"The issues identified are not new. The same issues have been identified in reports of three separate Royal Commissions conducted over the past 40 years: the Winneke Royal Commission in 1982, the Gyles Royal Commission in 1992 and the Cole Royal Commission in 2003."* [6]

And later:

> *"The continuing corruption and lawlessness that has been revealed during the Commission suggests a need to revisit, once again, the regulation of the building and construction industry."*[7]

Insofar as the need for an industry specific regulator, the Heydon Royal Commission observed:

> *"One consideration which supports the need for an industry specific regulator is the high level of unlawful conduct in the industry. This is demonstrated by Appendix A to this Chapter. The sustained and entrenched disregard for both industrial and criminal laws shown by the country's largest construction union further supports the need. Given the high level of unlawful activity within the building and construction sector, it is desirable to have a regulator tasked solely with enforcing the law within that sector."*[8]

And later:

> *"Having regard to all of the available material, the argument that there is no need for an industry specific regulator cannot be sustained".*[9]

It was also observed:

> *"Specialised treatment of a particular industry is not a novel concept: different areas of the financial services industry, for example, are subject to specialised laws and the supervision of a specialised regulator. Many professions are, likewise, subject to specialised laws that govern the manner in which their work is undertaken. It is not necessary to demonstrate in detail the public interest in that state of affairs. In the case of the building and construction industry, the justifications for special treatment have already been advanced".*[10]

The Heydon Royal Commission recommended as follows:

> *"There should continue to be a building and construction industry regulator, separate from the Office of the Fair Work Ombudsman, with the role of investigating and enforcing the Fair Work Act 2009 (Cth) and other relevant industrial laws in connection with building industry participants."*[11]

[6] Ibid at para 2
[7] Ibid at para 3
[8] Royal Commission into Trade Union Governance and Corruption Final Report, December 2015, Volume 5, Chapter 8, para 83
[9] Ibid at para 97
[10] Ibid at para 108
[11] Ibid refer to recommendation 61

The above findings were made following broader commentary about the building industry, and particularly the CFMEU. They complimented observations from earlier commentary in the Interim Report[12] which made the following observations about the CFMEU:

> *"The evidence in relation to the CFMEU case studies indicates that a number of CFMEU officials seek to conduct their affairs with a deliberate disregard for the rule of law. That evidence is suggestive of the existence of a pervasive and unhealthy culture within the CFMEU, under which:*
>
> *(a) the law is to be deliberately evaded, or crashed through as an irrelevance, where it stands in the way of achieving the objectives of particular officials;*
>
> *(b) officials prefer to lie rather than reveal the truth and betray the union;*
>
> *(c) the reputations of those who speak out about union wrongdoing become the subjects of baseless slurs and vilification."*

Noting that additional case studies were undertaken by the Commission subsequent to the Interim Report, it was found that:

> *"The case studies considered in this Report only reinforce those conclusions"*[13]

And:

> *"The evidence has revealed possible criminal offences by the CFMEU or its officers against numerous provisions of numerous statutes including the Criminal Code (Cth), the Crimes Act 1900 (NSW), the Crimes Act 1958 (Vic), the Criminal Code 1899 (Qld), the Criminal Law Consolidation Act 1935 (SA), the Corporations Act 2001 (Cth), the Charitable Fundraising Act 1991 (NSW) and the Competition Policy Reform (Victoria) Act 1995 (Vic)"*[14]

Further:

> *"The conduct identified in the Commission is not an isolated occurrence. As the list in the previous paragraph reveals, it involves potential criminal offences against numerous laws. It involves senior officials of different branches across Australia."*[15]

And:

> *"Nor is the conduct revealed in the Commission's hearing unrepresentative"*[16]

Of the seventy-nine recommendations made for law reform, seven were specific to the building and construction sector. These recommendations largely went to addressing the conduct displayed by building unions.

With respect to the CFMEU, the Heydon Royal Commission found that it is home to *"longstanding malignancy or disease"*[17] within the CFMEU and that lawlessness within the union was commonplace,

---

[12] Royal Commission into Trade Union Governance and Corruption, Interim Report (2014), Vol 2, ch 8.1, p 1008.
[13] Heydon Report, Chapter 5, page 396
[14] Ibid
[15] Ibid
[16] Ibid
[17] Heydon Royal Commission, Volume 5, p401

with over 100 adverse court finding against the union since 2000. The report considered this history and found[18] that:

> *"It points to both repeated unlawful conduct in the building and construction industry, and by the CFMEU in particular."*

Views akin to the above finding are regularly canvassed during court proceedings and have been the subject of much judicial commentary. A selection of this commentary follows:

> *"The union has not displayed any contrition or remorse for its conduct. The contravention is serious… Substantial penalties for misconduct, prior to that presently under consideration, have not caused the CFMEU to desist from similar unlawful conduct."*

(Tracey J, 21 November 2013, Cozadinos v Construction, Forestry, Mining and Energy Union [2013] FCA 1243)

> *"The circumstances of these cases … nonetheless, bespeak a deplorable attitude, on the part of the CFMEU, to its legal obligations and the statutory processes which govern relations between unions and employers in this country. This ongoing willingness to engage in contravening conduct must weigh heavily when the need for both specific and general deterrence is brought to account."*

(Tracey J, 1 May 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (No 2) [2015] FCA 407)

> *"There is clearly, as other judges have recorded, a strong record of noncompliance on the part of the Union through its officers with provisions of industrial relations legislation, although that does not mean that a disproportionate penalty can or should be imposed. I note that significant past penalties have not caused the Union to alter its apparent attitude to compliance with the entry provisions and restrictions under the FW Act."*

(Mansfield J, 14 August 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (No 3) [2015] FCA 845)

> *"The conduct has in common features of abuse of industrial power and the use of whatever means the individuals involved considered likely to achieve outcomes favourable to the interests of the CFMEU. The conduct occurs so regularly, in situations with the same kinds of features, that the only available inference is that there is a conscious and deliberate strategy employed by the CFMEU and its officers to engage in disruptive, threatening and abusive behaviour towards employers without regard to the lawfulness of that action, and impervious to the prospect of prosecution and penalties."*

(Mortimer J, 13 May 2016, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (No 2) [2016] FCA 436)

> *"In the period between 1 January 1999 and 31 March 2014, the CFMEU itself or through it officials had been dealt with for 17 contraventions of s 500 or its counterparts in earlier legislation, and for 194 contraventions of s 348 of the FW Act or other provisions proscribing forms of coercive conduct."*

(White J, 22 April 2016, Director of the Fair Work Building Industry Inspectorate v O'Connor [2016] FCA 415)

[18] Heydon Report Chapter 5, p397

"The schedule paints, one would have to say, a depressing picture. But it is more than that. I am bound to say that the conduct referred to in the schedule bespeaks an organisational culture in which contraventions of the law have become normalised."

(Jessup J, 4 November 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (The Mitcham Rail Case) [2015] FCA 1173)

"…the litany of contraventions…[and] the many prior contraventions of relevant statutory proscriptions by the Union…indicating a propensity, on the part of the Union, to engage in proscribed conduct."

(Goldberg, Jacobson and Tracey JJ, 10 September 2009, Draffin v CFMEU & Ors [2009] FCAFC 120; (2009) 189 IR 145)

"...the history tends to suggest that the Union has, with respect to anti-coercion and similar provisions of industrial laws, what the High Court in Veen described as 'a continuing attitude of disobedience of the law'..."

(Jessup J, 29 May 2009, Williams v Construction, Forestry, Mining and Energy Union (No 2) [2009] FCA 548; (2009) 182 IR 327)

"There is ample evidence of significant contravention by the CFMEU and its ideological fellow travellers. The CFMEU, as a holistic organisation, has an extensive history of contraventions dating back to at least 1999. The only reasonable conclusion to be drawn is that the organisation either does not understand or does not care for the legal restrictions on industrial activity imposed by the legislature and the courts."

(Burnett J, 28 February 2014, Director, Fair Work Building Industry Inspectorate v Myles & Ors [2014] FCCA 1429)

"The union has not displayed any contrition or remorse for its conduct. The contravention is serious… Substantial penalties for misconduct, prior to that presently under consideration, have not caused the CFMEU to desist from similar unlawful conduct."

(Tracey J, 21 November 2013, Cozadinos v Construction, Forestry, Mining and Energy Union [2013] FCA 1243)

"The overwhelming inference is that the CFMEU, not for the first time, decided that its wishes should prevail over the interests of the companies and that this end justified the means."

(Tracey J, 17 March 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union [2015] FCA 226)

"The CFMEU is to be regarded as a recidivist rather than as a first offender."

(Tracey J, 17 March 2015, Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union [2015] FCA 226)

"The record indicates an attitude of indifference by the CFMEU to compliance with the requirements of the legislation regarding the exercise of rights of entry."

(White J, 23 December 2014, Director of the Fair Work Building Industry Inspectorate v Stephenson [2014] FCA 1432)

"…the pattern of repeated defiance of court orders by the CFMEU revealed by those four cases is very troubling."

(Cavanough J, 31 March 2014, Grocon & Ors v Construction, Forestry, Mining and Energy Union & Ors (No 2) [2014] VSC 134)

More recently the Watson Report 'Violence in the Queensland CFMEU' (Qld Watson Report) identified the systemic and entrenched patterns of bad behaviour of Queensland CFMEU Officials.

The Qld Watson Report identified patterns of behaviour including threats, coercion, bulling and violence that were embedded into the culture of the Queensland CFMEU Construction Division, and it was noted that these were not 'isolated or one-off events'. This has since prompted the Queensland Government to launch the Commission of Inquiry which seeks to fully expose the union's practices and the impact on the Queensland building and construction industry, including impacts on productivity and the delivery of projects. The evidence in this Inquiry, so far, has been damning.

In yet another stark reminding of just how little things have changed since Heydon, Watsons report into the Victorian CFMEU[19] (Victorian Watson Report) has also been released, Watson's personal observations are telling:

> *"Conducting this investigation has been a challenging experience for me. As a lifelong believer in trade unions, it was shocking to see so much crime, so much corruption, such a perversion of values. The CFMEU was no longer on the right side of civil society, it was proudly on the wrong side. The Union was no longer the champion of the working class – the Setka era CFMEU turned to looking after gangsters, standover men, bikies, heroin traffickers, and even killers.*
>
> *By the end of this investigation I have been left with the empty feeling that the Setka-led Victorian branch of the CFMEU was no longer a trade union, it was a crime syndicate."*[20]

While the Victorian Watson Report is an important historical account and some of those responsible have been removed due to the activity of the Administration, there is a genuine fear amongst industry participants that once Administration is lifted, past behaviours will reemerge, as has been the case in the past. Further, and of concern to industry, is the Administrator's decision to appoint or to elevate officials of the CFMEU into senior roles despite a history of unlawful and questionable behaviours which may be contrary to appointment to those positions under law. This then raises the questions about whether the Administrator is fulfilling its foundational tasks, but has also caused concern to industry participants and, in turn, undermining confidence in the Administration.

It is without doubt that Master Builders has supported the Administration of the CFMEU and continues to do so, however, more must be done to ensure that this process is meaningful and has lasting positive outcomes for the industry. That is why Master Builders has consistently called for a comprehensive response to permanently prevent corruption, criminality and improve culture in the building and construction industry.

The establishment of a Construction Industry Compliance and Corruption Agency (CICCA) as an independent statutory agency dedicated to the building and construction industry must be the next step to securing long term change across the industry.

The CICCA would be a 'one stop shop' regulator for the building and corruption industry to improve compliance, prevent corruption and criminality, and drive lasting improvements to industry culture. Should there be a Code applying to Commonwealth funded building work, the CICCA would enforce the requirements under the Code.

[19] Rotting from the Top, The CFMEU in Victoria during the Setka Era
[20] Ibid pg.2

This must be coupled with other regulatory changes outlined in Master Builders Breaking Building Bad submission.

The need for a strong industry specific regulatory framework

It would be naïve to address the Consultation Paper without addressing the role of the Australian Building and Construction Commission (ABCC) and 2016 Building Code. While much has happened since their operation, their role must be examined within the context of this Consultation Paper.

While Master Builders most recent Breaking Building Bad submission points to the need for a broader corruption agency with remit beyond that of the ABCC, it has been Master Builders long held view that a strong and effective building and construction industry regulator would prove invaluable to productivity across the building and construction industry.

It is very clear that no other sector has the level of disputation, history of unlawfulness or a toxic culture that is ingrained and where disregard for the law is institutionalised. This is now why the CMFEU has been placed into administration.

It is also reported that industrial disputes in the building and construction industry are at their highest in over a decade which has impacted on productivity and project delivery, cost increases and resourcing/staffing pressures in an already stressed sector with the current workforce shortages. The ABS data for the September quarter shows that the leading cause of industrial disputes comes about as a result of enterprise bargaining.

Further to this, encouraging new entrants to the industry and retaining existing workers is becoming increasingly difficult without a clear and sensible regulatory framework that aids in stamping out those preventable actions of industry participants who choose to deviate from or challenge the stability of the current regulatory frameworks.

The importance of labour market reform, in particular the return of the rule of law into key sectors of the building and construction industry, is highlighted in a report by Independent Economics (IE 2013 Report), commissioned by Master Builders Australia. The report examined and modelled the impact of key changes to labour laws impacting the building and construction industry on productivity in the industry, and in key macroeconomic indicators.

The labour laws considered were the:

- creation and operation of the Australian Building and Construction Commission (ABCC; between 2002 and the middle of 2012 - the 'ABCC era'); and,
- termination of the ABCC, and its replacement by the Fair Work Building Inspectorate (also known as Fair Work Building and Construction; FWBC), (the 'FWBC era').

The econometric modelling identifies four sectors within the building and construction industry, namely residential building, non-residential construction, engineering construction (which can broadly be taken as a proxy for 'infrastructure') and construction trade services.

The IE 2013 Report made a number of observations about the productivity performance of the building and construction industry during the ABCC period:

- labour productivity in the building and construction industry outperformed that of other industries by 21.1 per cent during the ABCC period;
- multifactor productivity in the building and construction industry surged by 16.8 per cent in the decade to 2011/12;

- total factor productivity in the building and construction industry grew by 13.2 per cent between 2003 and 2007, well ahead of the 1.4 per cent recorded between 1998 and 2002;
- the ABCC likely added 9.4 per cent to productivity in the building and construction during its years of operation; and,
- three-quarters (75 per cent) of this gain is likely to be lost because of the labour law changes associated with the abolition of the ABCC its replacement with the FWBC.

The introduction and the operation of the ABCC was found to have generally delivered higher labour productivity and lower construction costs

In macro-economic terms, the ABCC:

- increased real consumption by 0.9 per cent;
- increased real consumer wages by 0.3 per cent;
- increased gross domestic product by 0.9 per cent; and,
- lifted household welfare by $7.5 billion (in 2012/13 dollar terms).

For the building and construction industry, the ABCC:

- lowered the costs of construction by 3.6 per cent for engineering building construction;
- lifted investment in buildings and structures by 2.7 per cent;
- reduced the costs of buildings and structures by 3.4 per cent; and,
- increased real value added in the engineering building construction sector by 3.6 per cent.

By contrast, the abolition of the ABCC and its replacement with the FWBC resulted in a loss of productivity and higher construction costs.

With no industry regulator in place, it is reasonable to assume that a greater deterioration in productivity has occurred.

Powers of the ABCC

On several occasions, the Victorian Watson Report lamented the limits on the powers to further investigate certain maters due to his lack of coercive powers.[21]

Of note, such powers were key to the influence of the ABCC.

The functions of the Australian Building and Construction (ABC)Commissioner were defined in Section 16 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (BCIIP Act) and included:

- The promotion of the main objective of the Act – being to provide an improved workplace relations framework for building work to ensure that building work is carried out fairly, efficiently and productively, without distinction between interests of building industry participants, and for the benefit of all building industry participants and for the benefit of the Australian economy as a whole;[22]
- The monitoring and promotion of appropriate standards of conduct by building industry participants;
- The investigation of suspected contraventions of the Code and instituting or intervening in proceedings for compliance and enforcement purposes;

[21] See para 271, 335 387, 396, 495, 579
[22] *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), s3(1).

- Ensuring employers and contractors were meeting their obligations, and could institute or intervene in proceedings to enforce the relevant laws.
- The role also includes providing assistance, advice, and representation to building industry participants where doing so supported the enforcement activities, as well as disseminating information and facilitating ongoing engagement across the industry.

A key aspect of the powers of the ABCC was that the Regulator possessed coercive powers permitted compulsory examination, production of documents and imposed significant penalties including imprisonment for a failure to comply. We note that in his report, 'Rotting from the Top', Geoffrey Watson SC calls for "an investigation supported with coercive powers". Master Builders believes that this demonstrates the clear need for a powerful industry-specific regulator with coercive powers as a priority.

Equally critical was the role of the ABCC reviewing enterprise agreements to ensure compliance with the requirements of the Building Code (set out below).

The 2016 Building Code

The 2016 Building Code applied to building contractors and building industry participants from the first time they submitted an expression of interest or tendered for Commonwealth funded building work. Code covered entities were then required to comply with the Building Code not only on Commonwealth-funded projects but on all privately funded projects. In this way, the Code could influence behaviour across the construction industry.

To that end, the 2016 Building Code imposed a wide range of restrictions and conditions on building contractors and building industry participants which applied once they became code covered entities.

There were five key components of the 2016 Building Code.

Comply with the law and report breaches

Along with requirements to comply with the 2016 Building Code, the BCIIP Act and a range of designate building laws, the 2016 Building Code imposed extensive reporting requirements including for example that code covered entities were required to:

- report actual or threatened industrial action to the ABCC within 24 hours of becoming aware of it,
- take reasonable steps to prevent or end any unprotected industrial action (such as seeking an order from a court or tribunal, and
- report any unlawful secondary boycott activity to the ABCC within 24 hours.

This approach while well-meaning in its intent in some ways undermined relationships on site. Requiring entities to both work together and 'police' each other further embeds an adversarial culture; one we are looking to move away from.

Instead of imposing reporting requirements on entities, the as per Master Builders earlier comments the CICCA should be resourced appropriately and have the requisite powers to enforce the law and hold bad actors in the industry to account for their actions.

Limits on agreement content

Section 11 on the 2016 Building Code established a range of limits on the types of clauses that could be included in Enterprise Agreements. These prohibitions were bolstered by a range of anti-avoidance provisions that imposed consequences for the inclusion of such prohibited terms.

Feedback from members indicates that these prohibitions had a significant positive impact on productivity. Since the abolition of the ABCC and the 2016 Building Code members have seen the reemergence of these provisions to the further detriment of building industry productivity.

Key prohibitions included:

- imposing or attempting to impose limits on the right of industry to manage its business or to improve productivity;
- discriminating, or have the effect of discriminating against certain persons, classes of employees, or subcontractors; or
- limiting the number of employees or subcontractors that may be employed or engaged on a particular site, in a particular work area, or at a particular time except in relation to apprentices.
- restricting the employment or engagement of persons by reference to the type of contractual arrangement that is, or may be, offered by the employer; *Example*: an agreement or practice that prohibits or limits the employment of casual or daily hire employees.
- requiring a business to consult with, or seek the approval of, the union in relation to the engagement of subcontractors;
- prescribing the terms and conditions on which subcontractors are engaged (including the terms and conditions of employees of a subcontractor);
- prescribing the scope of work or tasks that may be performed by employees or subcontractors;
- limiting or having the effect of limiting the right of an employer to make decisions about redundancy, demobilisation or redeployment of employees based on operational requirements; *Example*: an arrangement or practice whereby employees are selected for redundancy based on length of service alone.
- providing for the monitoring of agreements by persons other than the employer and employees to whom the agreement applies;
- limiting the ability of an employer to determine with its employees when and where work can be performed to meet operational requirements or limit an employer's ability to determine by whom such work is to be performed;
- providing for the rights of a union to enter premises other than in compliance with Part 3-4 of the FW Act;

Strong freedom of association requirements

The 2016 Building Code took a strong stance to ensure that union (or non-union) membership was a matter of individual choice and looked to ensure that there was no implication that membership of a union was a mandatory requirement of employment.

Right of entry requirements

As will be outlined below, the use of WHS matters as a guise to pursue industrial issues has been endemic across the industry. The requirement under the 2016 Building Code that a code covered entity, as far as reasonably practicable, ensure that entry by a union official is for only a permitted purpose and that that union official comply with all relevant requirements provided industry participants with recourse to question and examine entry to ensure it was for a legitimate purpose.

Prohibition on unregistered written agreements and project agreements

The recent investigations into the CFMEU have uncovered extensive "side deals" and agreements between union officials, major construction companies, and in some cases, organised crime figures.

For example, major contractor John Holland voluntarily terminated agreements with the CFMEU in November 2025 following an ACCC investigation. These agreements required the use of specific labour hire firms on NSW projects, such as the M1 Pacific Motorway Extension and the M7–M12 integration project, which restricted competition.

This prohibition was also linked to the prohibition on project agreements, these types of agreements are negotiated with relevant unions by head contractors for a specific site or project, which Is then applied to all contractors/subcontractors engaged on the site.

As recommended by the Cole Royal Commission, and implemented by ss59(1)(a)-(b) of the BCIIP Act agreements 'entered into with the intention of securing standard employment conditions for building employees in respect of building work that they carry out at a particular building site or sites' where 'not all employees are employed in a single enterprise' were unenforceable.

Enterprise Bargaining

There is a suggestion in the Consultation Paper that a Code could require that contracting entities demonstrate they 'ensure that enterprise agreements used on government-funded projects are genuinely agreed'.

In principle Master Builders agrees that any enterprise bargaining agreement must be genuinely agreed to, however, history shows not only that 'genuine agreement' is open to interpretation and misuse, but that a truly genuine enterprise agreement must be voluntary, there must be no express or implied requirement to have an enterprise agreement on Commonwealth-funded jobs. Such an approach would not only breach existing laws but would undermine the essential tenants of freedom of association.

The insertion of such a requirement also gives rise to a perception that the use of an enterprise agreement might be the preferred method to show compliance with the relevant industrial relations laws, such as minimum pay and conditions. It is important to note that the use of an enterprise agreement is not a mandatory requirement to demonstrate compliance with these obligations, but it an agreement reached within the workplace to develop those conditions and entitlements specific to that workplace. On this basis, it is completely unnecessary, not to mention unreasonable, to mandate that a company have an enterprise agreement for the sake of satisfying government procurement processes.

Further pattern bargaining is the antithesis to genuine agreement. It is our members experience that the adoption of a code to apply to Commonwealth funded building work can foster a culture of pattern bargaining.

The Cole Royal Commission recommended that pattern bargaining in the construction industry, where unions seek to obtain a mirror agreement throughout the industry or at particular commercial projects, be prohibited.[23]

[23] Royal Commission into the Building and Construction Industry, Final Report (2003), Recommendation 2, Vol 1, p 28.

The Cole Royal Commission summarised the deleterious effects that pattern bargaining has on productivity outcomes:

> *One form of centralised wage and condition fixation has been replaced by another. Initiative is stifled; the scope for creativity is denied. The reforms introduced by successive Governments, to make agreements struck at enterprise level the principal instruments whereby terms and conditions of employment are established, are circumvented and negated. The results have been detrimental to both workers and employers, to the industry and to the national economy.*
>
> *The unions and the major contractors which negotiate pattern agreements perceive it to be in their best interests to adopt this method of determining wages and conditions in the industry. They have the economic and industrial strength to enforce their wishes on workers and their employers. Unless pattern bargaining is prohibited by legislation it will continue to be the principal means by which many important terms and conditions of employment are determined in the commercial sector of the industry.*[24]

Further, in 2014 the Productivity Commission noted in its Draft Report on the Workplace Relations Framework that pattern bargaining was 'rife' in Australia's construction industry.[25]

The Heydon Royal Commission also noted the adverse impacts of pattern bargaining yet resisted law reform in this area, however the observations and evidence presented in past royal commissions and inquiries and prior is now echoed in the Victorian and Qld Watson Reports.

The potential for an inappropriate and detrimental use of enterprise agreements on government funded work has been outlined by the Victorian Watson Report:

> *"There are many flaws in the enterprise bargaining system. The system plainly requires an overhaul. One problem is that the system reposes too much trust in the participants: the assumption underpinning enterprise bargaining is that the negotiations are fair and honest. The assumption is wrong."*[26]

Since the ABCC and 2016 Building Code were abolished, the industry has seen the re-emergence of a range of clauses that would not only have breached the 2016 Building Code but that have reduced productivity, restricted efficient management and embed coercive or discriminatory practices.

These clauses are a handbrake on the capacity of the industry to drive productivity, create jobs and deliver value for money building works and mechanisms in the *Fair Work Act 2009* (Cth) to address this conduct and encourage cooperative and productive enterprise agreement making have proven to be wholly inadequate.

Master Builders' position in relation to enterprise bargaining is simply to promote lawful, efficient, and collaborative bargaining that supports productivity, sustainability, and a modern, inclusive workforce which ultimately strengthens the industry's reputation and culture. It is completely unnecessary, not to mention unreasonable, to mandate the use of enterprise agreements for the sake of satisfying government procurement processes. Enterprise bargaining should not be misused to establish any suite of industry-based conditions – but are used to allow each enterprise to negotiate terms that suit the needs of both the employer and employees.

---

[24] Royal Commission into the Building and Construction Industry, Final Report (2003), Vol 1, p 28.
[25] Commonwealth of Australia, Productivity Commission Inquiry into the Workplace Relations Framework, Draft Report, August 2015, p 561.
[26] Pg.30

Where a construction participant freely chooses to engage in enterprise bargaining, the following key principles must be followed:

- Engagement in the bargaining process **must** be voluntary.
- Enterprise agreement bargaining and negotiations must be workplace-focused and with the intent of establishing lawful and relative arrangements that are suitable to the parties involved, rather than take a blanket or pattern bargaining approach.
- Genuine negotiations between the parties promote active, constructive and efficient negotiations that are done in good faith and not undertaken for the sake of pursuing other alternate agendas.
- Industrial action is a 'last resort' and proper dispute resolution processes should be utilised to resolve disputes between the parties in a considerate and meaningful manner.
- One-size fits all approach should not be the 'norm' due to the intricacies of individual workplaces, and there should be emphasis on the freedom to elect to engage in the bargaining process.
- Clear, concise and relevant agreements as a result of good faith bargaining, consultation and utilisation of representation and dispute resolution mechanisms, where necessary. The employer should also be free to enter into an enterprise agreement, and these agreements should not impose or interfere on an employer's right to conduct and manage their business in accordance with the relevant laws.
- A party engaging in this process should respect the rights of freedom of association and should avoid any discrimination against a party for its choice to be or not be a member of a Registered Organisation.
- The bargaining processes should also focus on practical measures to improve administrative and workplace efficiency, delivering tangible productivity gains, rather than having a negative impact.

The mandating of the inclusion of specific clauses can be 'productivity-hampering' and should not be used to inappropriately control industry participants. Below is a list of these clauses that are having an adverse impact on industry. Although the following list is by no means exhaustive, it provides an indication of provisions that could be used to inappropriately control the industry:

- Subcontractor 'Jump Up' clauses that require that all subcontractors are engaged on terms no less favourable than the terms of the Head Contractor;
- Provisions thar give Unions the right of veto of the selection of the use of subcontractors;
- Provisions that mandate specific worker entitlement funds and/or minimum contributions;
- Provisions that limit flexibility with respect to the taking of RDOs;
- Clauses that provide additional avenues to union representatives to exercise a 'right of entry', beyond that available under workplace and WHS laws;
- Clauses that prescribe the allocation of particular work or workers;
- Clauses that encourage or discourage union membership;
- Clauses that mandate attendance of union delegates/officials at project inductions;
- Clauses that mandate consultation and/or agreement with union on matters, including:
  - Engagement of subcontractor or labour hire;
  - When work is performed, including on RDOs, public holidays and industry closedown periods;
  - Types of engagement, including part-time and casual employment;
  - Redundancy or termination;
- Clauses that provide union the ability to call meetings during working hours with no, or limited, notice to allow employees to engage in union activities.

Work Health and Safety

One of the most crucial concerns for Master Builders, and industry participants, is the need to ensure that all regulatory frameworks, particularly work, health and safety (WHS) laws contain **no** capacity for exploitation, abuse or misuse. Master Builders has called on numerous occasions for Government to consider the practical implications of laws enabling trojan horse-like behaviour which are counterintuitive to productivity, worker safety and to industry viability and longevity.

Master Builders would therefore recommend the exercise of caution when considering the inclusion of safety related obligations in a Code; compliance with existing WHS laws, including the requirement to have Federal WHS Accreditation through the Office of the Federal Safety Commission on many Federally funded construction projects provides ample comfort that any government construction work is carried out safely and in compliance with the law. Further, Master Builders says that the Government should have no tolerance for parties who act in a manner contrary to the law.

As noted in various Master Builders' submissions and the findings of the abovementioned Royal Commissions and inquiries, the extent to which WHS is abused, exploited or misused for purposes that are unrelated to safety is significant and a common (yet entirely unfortunate) feature of the building and construction industry.

The Cole Royal Commission[27] examined this issue in detail and found the following types of conduct to be frequent and common:

- the use by a union of occupational, health and safety (WHS) issues as an industrial tool, intermingled with legitimate WHS issues;
- the raising of alleged WHS issues by a union in pursuit of industrial ends;
- unions making unqualified and incorrect assertions about WHS processes;
- unions refusing to accept the results of repeated independent and expert safety inspections of a site;
- union officials failing to refer asserted WHS breaches to the relevant authorities; and
- union officials preventing persons from working on site to rectify asserted safety hazards.

The Cole Royal Commission reached these conclusions after forensic examination of a series of actual cases and a special conference on WHS attended by building industry participants. One participant provided the following evidence[28]:

> *"In my experience, unions in the building industry readily, and all too often, pick up the safety football during an industrial dispute and kick it around for purposes that have nothing to do with safety. In fact, I have formed the view over many years of working on safety in the building industry that building industry unions throughout Australia habitually treat safety as an expedient device to assist in the pursuit of industrial objectives.*
>
> *Safety can be a highly effective device in this respect – even the most obviously superficial claim requires investigation, and that takes time; workers can be paid for stoppages on safety grounds; safety is a compelling rallying cry; and claims that a Site is unsafe readily engages the support of governments and the public. Hence, in my experience, it is common for building industry unions to raise safety questions in industrial disputes. When they do, they are unfortunately more often than not – as in the case of the Nambour Hospital dispute – trivial and unwarranted. I have observed the ease with which trivial or unwarranted safety issues can be (and, as I have said, often are) exploited as a device in the pursuit of industrial objectives.*

[27] *Final Report of the Royal Commission into the Building and Construction Industry, Vol 1 – Summary – p 5-6*
[28] Ibid – Vol 6 – p.102

This means that the building industry unions have often been distracted or deflected from detecting or effectively addressing real risks to the health and safety of their members. The dispute at the Nambour Hospital provides an illustration of this – as I have said, so far as I can see, the unions had done nothing about what I consider to have been the real safety issues on the site (and, in the case of [the] formwork, seemed to actively resist any attempt to raise those concerns in the Commission), but instead devoted themselves to trivial issues that manifestly raised no real serious safety risks."

The Commission then summarised[29] the problems for WHS flowing from this misuse:

"Misuse of safety for industrial purposes compromises safety in important respects:

a) *it trivialises safety, and deflects attention away from the real resolution of safety problems on sites;*
b) *the view that unions manipulate safety concerns inhibits the unions' capacity to effect constructive change;*
c) *the widespread anticipation that safety issues may be misused may distort the approach that is taken to safety;*
d) *time taken by health and safety regulators to attend and deal with less important issues detracts from their capacity to deal with more substantial issues elsewhere; and*
e) *at an industry level, there is a tendency for issues to be dealt with at the lowest common denominator*

Each of these is, in itself, of importance. The cumulative effect on the safety culture of the building and construction industry is significant.

It was a common point of frustration among both head contractors and subcontractors who met with me that safety disputes arising on major building projects usually result in the whole site being closed down notwithstanding that only the immediate area within which the safety issue is identified can be isolated. I was told, and I accept, that a 'one out, all out' mentality is prevalent throughout the industry. Site closures, especially on large projects, are very costly for head contractors and subcontractors.

The following evidence was given in Victoria, but it describes a problem that I found on many occasions throughout Australia:

> *'..it is not uncommon for a builder or subcontractor who is in dispute with a union over an unrelated industrial issue to receive visits from union officials investigating and finding alleged safety breaches. The union official asserts that an immediate risk exists, work ceases while employees sit in the sheds or worse, leave site.'*

More recent cases continue to echo these experiences.

In 2024, the Federal Court fined the CFMEU the near maximum penalty of $60,000 for breaking right of entry laws after finding that its organiser Dean Rielly acted in "open defiance" of safety requirements at Queensland's biggest infrastructure project, the Cross River Rail[30].

The conduct occurred in July 2021 at a worksite in Brisbane that was part of the Queensland Cross River Rail project.

[29] Ibid p103
[30] *Construction, Forestry and Maritime Employees Union v Fair Work Ombudsman (Cross River Rail Appeal) (No 2)* [2024] FCAFC 55

The conduct involved Mr Rielly failing to comply with occupational health and safety requirements and acting in an improper manner, when he:

- failed to sign the visitor register and to complete a visitor induction;
- entered areas of the worksite to which access was restricted and refused to leave when requested to do so; and
- failed to read and obey all safety signs at the worksite.

Justices John Halley, Scott Goodman and Shaun McElwaine found that:

> *"Objectively, Mr Rielly's behaviour leads us to conclude that he did not consider that he was bound to comply with those requirements for undisclosed reasons at best or, at worst, was fully cognisant of the requirement to comply and chose to ignore them in an act of open defiance."*

The Justices found that there was a need to impose penalties to deter the CFMEU, Mr Rielly and others from similar contraventions in future.

> *"For permit holders generally, it is obvious that an appropriate pecuniary penalty must be imposed to deter others from engaging in conduct in defiance of reasonable Occupational Health & Safety requirements that apply to worksites,"* the Justices said.

In a 2023 matter, the Federal Court also ruled against the CFMEU and two of its officials, finding that they organised employees to take industrial action on a building site and coerced the principal contractor not to allocate particular duties or responsibilities to one of their employees.[31]

During July and August 2020, a number of subcontractor employees ceased working on the project. The first stoppages on 21 and 22 July were linked to concerns about the operation of a fire hydrant, and the subsequent stoppages commencing on 27 July for seven days were linked to concerns the project manager 'PM', might bully or intimidate workers.

The initial stoppage arose after claims the available fire equipment was insufficient to deal with any fire on-site. In evidence before Justice Darryl Rangiah, various reasons were suggested as to why there were concerns with the fire hydrant, including access being blocked, low water pressure, and the absence of hose reels.

Nevertheless, it was accepted that Mr Mattas, as site delegate, and the Health and Safety Representatives (HSRs) directed the workers to cease work. Several of the subcontractors had EBAs with identical clauses that allow HSRs to direct that employees cease work without consultation in some circumstances where there was an immediate threat to the health and safety of workers, with similar provisions contained within s85 of the Queensland Work, Health and Safety Act (WHSQ Act).

They also informed Broad Construction over the ensuing days that PM was a bully and needed to be removed from the site as he posed a 'psycho-social hazard' to the workers, the majority of whom refused to work on days he attended the site.

Justice Rangiah determined that there was a low probability of a fire occurring, that restrictions on access did not make the situation any worse, and therefore concluded that exposure to the hazard did not create a 'serious risk' to workers' health or safety.

[31] Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (No 2) [2023] FCA 1302 (fedcourt.gov.au)

He also determined that while PM's conduct was *"aggressive, abusive and intimidating"*, he did not believe that it posed a 'serious risk' of injury to the psychological health of the employees on-site, particularly as the bullying behaviour was very substantially directed towards the HSRs and not the employees themselves.

With regard to Mr Mattas, Justice Rangiah determined that he was not validly appointed to represent a number of the contractors and, therefore, was not qualified to issue directions to cease work pursuant to s 85(1) of the WHSQ Act.

In determining the employees engaged in 'industrial action', Judge Rangiah noted that the supposed risks to health did not meet the EBA requirements of being 'immediate', nor was there sufficient consultation, as required, with relevant employers before directions to cease work were given.

Most relevant of course are the recent (and damming) findings of the Queensland Productivity Commission (Queensland PC Interim Report) [32] which made a number of observations with respect to the impact of BPIC on workplace health and safety,

> *"While a primary rationale of BPICs is the improvement in safety outcomes for construction workers, the Commission has not been provided with evidence of safety benefits. However, the analysis finds that even if it is assumed that BPICs do improve safety outcomes, the potential benefits accruing from increased safety would make up less than 0.2 per cent of the total benefits accruing to construction workers, with most of the benefits arising from higher wages for construction workers'"*

And further on suggests:

> *"…most of the workplace health and safety obligations in BPICs are either covered already in existing legislation and codes of practice or in relevant awards. For example, the Work Health and Safety Act 2011 requires that any person conducting a business or undertaking (including construction businesses) have a duty to ensure the health and safety of workers. Under the Act, workers also have a say on health and safety matters in the workplace through formal mechanisms — these were recently significantly strengthened under the Work Health and Safety and Other Legislation Amendment Act 2024. There are also other provisions in the Work Health and Safety Act 2011 that should provide incentives for worker safety, including industrial manslaughter provisions.*
>
> *Similarly, the Building and Construction General Award provides provisions for work during inclement weather, including that workers are not required to commence or continue work when it is unsafe to do so.*
>
> *Where the BPICs are more prescriptive than in the award or relevant legislation, it is not clear that these prescriptive elements have provided any additional safety benefits. For example, the Construction BPICs specify that where temperatures exceed 35 degrees or 29 degrees and 75 per cent humidity, there should be an orderly cessation of work. However, less prescriptive awards and legislation also make it clear that work should not be undertaken during hot weather, where it is unsafe to do so.*

[32] The Interim Report - Opportunities to improve productivity of the construction industry

Those additional conditions in BPICs appear to provide few safety benefits but impose large costs on project proponents. As such, BPICs appear to be an inefficient mechanism to achieve health and safety outcomes."[33]

This feature is of serious and grave concern to Master Builders and its members, as it:

- Creates a barrier to improving building and construction industry safety outcomes;
- Undermines genuine WHS matters when they arise;
- Reduces productivity and increases construction costs for consumers and taxpayers; and
- Blurs the line between safety law and non-safety related laws, reducing compliance levels and increasing confusion amongst BCI participants.

To be clear, Master Builders does not oppose the purpose of officials of registered organisations carrying out their lawful duties, nor does it oppose industry participants in electing to join or not join a registered organisation. Master Builders recognises the role, purpose and importance that these organisations play in Australian workplaces when being done so in a lawful and genuine manner.

However, the experience of the building and construction industry is, and has been for almost six continuous decades, one that is not reflective of the otherwise ordinary conduct of such organisations and their officials in other sectors and industries.

Master Builders urges that, so far as possible, avenues for exploitation of the WHS framework are closed and further avenues for such conduct are avoided.

[33] Pg.117

The impact of State and Territory Building Codes

Queensland: Best Practice Industry Conditions (BPIC)

As has been widely reported, until recently, Queensland Government procurement required major projects above $100 million in contract value to comply with the Best Practice Industry Conditions. In November 2025, the Queensland government permanently repealed these requirements[34] after '*the Queensland Productivity Commission found BPIC was costing the community billions of dollars each year*'.

The Interim Report - Opportunities to improve productivity of the construction industry from the Queensland Productivity Commission (Queensland PC Interim Report) provides a useful summary of the history of BPIC[35]:

> *"BPIC were first introduced in 2018 and initially only applied to parts of the Townsville Stadium project. Over time, the scope expanded to include Queensland Government construction projects valued at $100 million or more and on 'declared' projects.*
>
> *According to stakeholders, the ability for projects to be 'declared' resulted in the policy being extended down to smaller projects including the delivery of schools valued at $20 million.*
>
> *BPICs apply through a threshold/mandatory criterion as part of the tender process and apply to all subcontractors as well as the main tenderer. Key conditions include:*
>
> - *Wage rates, including specified penalty rates and allowances for different tasks, projects and building types*
> - *26 rostered days off (RDOs), requiring full site closure*
> - *Explicit stop work conditions relating to inclement weather conditions*
> - *Requirements for any changes to rosters, hours of work including overtime, and the selection of subcontractors, to be agreed in accordance with the relevant union.*
>
> *In addition to these provisions, BPICs provide union delegates significant powers on building sites, including powers to call site meetings, cease work due to safety concerns and review building material and employment records to ensure compliance with the policy.*
>
> *Contractors engaged on applicable Queensland Government projects are required to have in place legally binding and enforceable workplace arrangements with conditions of employment that meet or exceed the minimum conditions of employment set out in BPICs policies.*
>
> *Head contractors and subcontractors have as a result entered into enterprise bargaining agreements (EBAs) with the same conditions as outlined in the BPICs policies.*
>
> *According to stakeholders, BPICs-like conditions have become the industry standard for infrastructure projects in Queensland, because:*

[34] Media Release: Biggest procurement shake-up in decades backs Queensland businesses in $35 billion spend https://statements.qld.gov.au/statements/103905
[35] See pg. 112

- *As discussed above, Tier 1 contractors and subcontractors tendering for BPICs projects have needed to have EBAs with BPICs-compliant provisions embedded in order to be eligible for government work. By default, these contractors are also required to provide these provisions to their workers across all projects, regardless of whether they are government projects or not.*

- *Secondly, the EBAs for Tier 1 firms contain provisions which effectively mean that any subcontractors used by them must also sign agreements with BPICs-like conditions, regardless of whether the project is for government.*

Stakeholders have told us that most of these EBAs are in place until mid-2027."

The adverse impact of the BPIC on productivity in the construction industry has clearly been demonstrated.

For example, while the BPICs were in place analysis conducted by Queensland Economic Advocacy Solutions showed the up to 96 working days were lost in a calendar year because of a lack of flexibility in the use of rostered days off and working hours generally. If BPICs were exercised to their full extent, the cost to build a two-bedroom apartment blows out by 33 per cent – from $870,000 to $1.16m.[36]

These findings were echoed in the Queensland PC Interim Report, the Government reporting that BPIC added to the cost of major projects and held back the construction of thousands of new homes. If BPICs remained in place until 2029-30, the resulting impact would be a net cost to the community of up to $20.6 billion, with project costs increasing by up to 25 per cent, up to 26,500 fewer homes built and rents 8.3 per higher.[37]

The analysis estimates that BPICs are likely to increase project costs by between 10 and 25 per cent and impose a net economic cost of between $ 5.7 billion and $ 20.6 billion (in NPV terms) on the community and set out below:[38]

Table 6.1 Estimated net impacts, Queensland, $ million, NPV

	Low scenario	High scenario
Construction workers	5,506	11,104
Taxpayers	-8,177	-19,856
Community	-725	-2,901
Landlords	1,416	4,863
Existing homeowners	476	2,069
Renters and first home buyers	-2,760	-10,727
Businesses	-1,435	-5,140
Total	**-5,698**	**-20,588**

Source: QPC

[36] QEAS, Economic Analysis of the Impact of the CFMEU Queensland EBA on Queensland apartment construction prices 2024
[37] Interim report reveals BPIC blowouts and drop in construction productivity 31 July 2025, https://statements.qld.gov.au/statements/103232
[38] Table 6.1 pg 116

Relevantly, the Queensland PC Interim Report states that:

> *"The analysis suggests that BPICs are likely to have material unintended consequences, with implications for housing affordability as BPICs are likely to draw some workers away from housing construction and encourage the roll-out of BPICs- like conditions on multi-unit dwellings. The analysis estimates that BPICs may cause up to 26,500 fewer homes to be constructed between 2024-25 to 2029-30 and result in rents being up to 8.3 per cent higher than they otherwise would be."*[39]

These preliminary findings were confirmed in the Queensland PC Final Report the modelled impacts of BPIC's are replicated below:

> *"The Commission undertook modelling to assess the economic impact of BPICs. This modelling was presented in detail in the Interim Report for comment.*
>
> *Key outcomes from consultation include:*
>
> - *Project cost escalations provided by stakeholders were consistent with the modelled results, and consistent with previously benchmarked project cost escalations.*
> - *Some evidence was provided to suggest impacts were mitigated where parties engaged constructively on achieving the BPICs provisions, with some benefits achieved from fewer industrial stoppages.*
> - *Some evidence was presented suggesting tier 1 firm wage rates have been unaffected by BPICs, however, no new evidence was provided on subcontractor wage rates and conditions, with stakeholders confirming subcontractors have been subject to 'jump up' provisions.*
> - *There was some contention on the impact of BPICs on work stoppages, including weather-related stoppages and rostered days off (RDOs) however there was no consensus on this.*
> - *No evidence of improved safety outcomes was provided to the Commission.*
>
> *Overall, while there was some debate about the results, the Commission did not receive robust evidence that non-BPICs factors are responsible for observed project cost escalations. For this reason, the Commission has not changed its key findings. That is, BPICs established conditions that allowed significant declines in construction site productivity.*
>
> *While there is some uncertainty on the magnitude of the results, the Commission's modelling remains unchanged from the Interim Report, suggesting that, if BPICs were to remain in place until 2029-30, it is likely to:*
>
> - *have increased project costs by around 10 to 25 per cent*
> - *have a significant impact on the housing market, with up to 26,500 fewer homes being constructed over the period 2024-25 to 2029-30*

[39] Pg. 116

- *deliver significant financial benefits to construction workers but impose net costs on the community of between $5.7 billion and $20.6 billion.*

As noted in the Interim Report, following initial stakeholder feedback, a scenario was considered where wages were assumed to be unaffected by BPICs. Under this scenario, the net costs are still significant, reflecting the costs are predominantly driven by productivity losses. The modelling shows, under this scenario, the net economic costs would be between $4.4 billion and $18.4 billion over the modelled period.

While there are significant uncertainties in the modelling, the key results hold under a wide range of plausible assumptions"[40]

These findings ***cannot, and should not***, be ignored. Any attempts by the Federal Government to introduce a Secure Australian Jobs Code that is similar in any way to the BPIC would be strongly opposed.

ACT: Secure Local Jobs Code

The Secure Local Jobs Code (ACT SLJC) applies to construction businesses tendering for ACT Government work, where the services or works procurements regardless of the value of the works, being carried out. The ACT SLJC coverage has also been extended to also capture cleaning, security and traffic management.

The ACT SLJC also applies to procurements equal to or greater than $200,000 for services or works (other than those listed as excluded services or works), where labour is the highest cost to the ACT Government. Excluded services or works can be found in the Government Procurement Regulation 2007, part 4, section 12AB.

Key elements of the ACT SLJC include:

- Details of all proposed subcontracts must be provided to the Territory, and the Head Contractors must also ensure that ALL subcontractors and sub-subcontractors (performing works covered by the code) hold a valid SLJC certificate before they are permitted on site.
- A Code Covered Entity (CCE) must provide the Territory with contact details for a person/s, workforce location and working hours. This must be provided prior to the commencement of work and must be updated if any changes are made.
- A CCE must comply with all applicable Industrial Law including the Prescribed Legislation. A CCE must also comply with all applicable orders, directions, decisions of any court, tribunal, board, commission or other entity. A CCE must notify the Registrar in writing within five days of such a ruling being made
- A CCE must, subject to law, comply with any reasonable request for information, access to records and directions given by the Registrar or an Approved Auditor for the purpose of investigating non-compliance with the ACT SLJC. A CCE must also respond to a written request from the Registrar within 5 days.
- A CCE must, if requested by two or more employees, facilitate the conduct of an election to elect a Union workplace delegate or an employee representative
- A CCE must respect their employees rights to join or not to join a Union and be represented at work.
- A CCE must ensure that employees receive induction training from an appropriately skilled and experienced person and the training is tailored to their specific duties and workplaces.

[40] Pg. 14

- A CCE must make their employees aware of the employment rights including the right to collectively bargain. A CCE must provide a Fair Work Information Statement in accordance with S125 of the *Fair Work Act 2009* (Cth).
- A CCE must respect their employees rights to freedom of association. Employees are free to join eligible unions, to be represented, participate in lawful industrial action. Employees should not be discriminated against because they choose to join or not to join a union. A CCE should not prevent or deter an employee for joining a union, should allow payroll deductions for union fees, not encourage, advise, incite or coerce an employee to resign their membership of a union.
- Ethical Treatment of Workers Evaluation. This evaluation is conducted through the Government Procurement (Ethical Treatment of Workers Evaluation) Direction 2023 (No 2). Tenders are assessed based on the Fair and Safe Employment Criteria, which includes:
  - compliance with the ACT SLJC,
  - prescribed legislation, and
  - potential negative effects on the Territory's reputation.

- Labour Relations, Training and Workplace Equity Plans (LRTWE Plan)

  All businesses tendering for construction work over $200,000, must develop and maintain a LRTWE Plan.

  The following are the categories that the LRTWE plan will include:

  - How the business will comply with the ACT SLJC
  - Support for employment security, health, and wellbeing
  - Support for diversity and career development for workers

  The plan must be developed in consultation with employees and include a statement about how this was done. The successful tenderer will need to operate in alignment with the plan for the duration of the project.

Costs

The ACT SLJC has added significant cost to the delivery of Government work across the Territory. This is based on three factors:

- The increase in red tape and ultimately an increase in the cost base and expenses for contractors undertaking work on an ACT Government contract,
- The involvement of third parties in procurement, and
- A reduction in the number of businesses tendering for ACT Government work caused by a reduction in the number of businesses electing to hold a Code Certificate.

The ACT SLJC requires, as a minimum, the cost of audits, administrative fees and time taken to obtain a Code Certificate, as well as the costs of preparing the LRTWEP. As the LRTWEP requires consultation with employees, the loss of working hours in carrying out that consultation as intended is an additional cost attributable to the implementation of the Code and ultimately on the project for the end user.

Over the longer term, the cost of ACT Government infrastructure will likely increase due to a reduction of competition in the local market. Except for mega projects (e.g. Light Rail and the Canberra Hospital extension), most ACT Government work is tendered for by contractors with a Canberra base which was the original intention of the Code, also noted in its namesake.

The impact on small and medium local business has been primarily due to the way in which unions continue to use procurement to influence companies to enter into an enterprise agreement, which is entirely inappropriate.

Other costs, such as administrative costs and the impact of industrial relations matters being brought in to the spotlight as a part of procurement processes has also led to an increase in costs for the industry participant, especially if they have been required to provide additional information to satisfy the procurement process or to deal with disputes that have an underlying industrial relations agenda which may have led to the delay in the commencement and/or or completion of a Territory-funded project at the tax payers expense.

Third party involvement

Master Builders understands that historically, a memorandum of Understanding between the ACT Government and Unions ACT (MoU) was established, and it is noted that this MoU continues to hinder the ability of the ACT Government to achieve the necessary transparency in terms of procurement practices.

Whilst we understand that the MoU was set to be abolished upon the commencement of the Code, the ongoing third-party involvement through the Secure Local Jobs Code Advisory Council now legislates third-party involvement.

Of particular concern is the membership of the Secure Local Jobs Code Advisory Council, which still has Michael Hiscox as a member despite the fact he was removed as Acting Secretary of the ACT branch of the CFMEU by the CFMEU Administrator in August last year. It is reported that Mr Hiscox has launched Federal Court action against Union Administrator Michael Irving KC and his deputy, Michael Flinn.

Master Builders does not support third party involvement in procurement assessment and decisions. Procurement should be solely between the Government and the tenderer. Of significant concern to Master Builders, is the way in which third parties attempt to use the Code to influence and intimidate our members with respect to enterprise agreements.

There is also the compliance and enforcement element of the ACT SLJC, the powers of which sit with the Secure Local Jobs Code Registrar.

Noncompliance with the ACT SLJC can result in suspension or cancellation of a Code Certificate, or the imposition of conditions upon the CCE's ACT SLJC Certificate. Should this occur, this can impact a CCE's ability to successfully tender for and be awarded Territory-funded projects.

Under the Secure Local Jobs Code Complaints and Noncompliance Investigation Guidelines, any person can make a compliant to the Secure Local Jobs Code Registrar for investigation. There is no limitation on that person being a party to the contract to which the ACT SLJC applies, nor a person involved in the contractual chain.

Whilst in theory this is a useful mechanism for a person or organisation to make a compliant about an entity's non-compliance with the Code, Members have reported this mechanism being used to impact on operations of a business for minor misdemeanours or for complaints that might not be relevant to the Code for no other reason but for an underlying industrial relations agenda. Further, where an outcome is decided and the decision to be challenged, it is then directed to the ACT Civil and Administrative Tribunal for further consideration – a cost imposed on both the Territory and the Code Covered Entity.

There is also no data available from the Secure Local Jobs Code Registrar in relation to the number of complaints received, nor the outcome but for the inclusion of conditions/demerit points on the Register. Should this data be made available, it would likely show the complaints process being abused rather than utilised in the manner intended.

Operation Kingfisher

The ACT Integrity Commission, established and governed by the *Integrity Commission Act 2018* (ACT), plays a critical role in investigating, exposing and preventing corruption allegations about current or former ACT public officials and entities. It can also investigate private sector individuals and entities in some circumstances. Its purpose is to 'strengthen public confidence in the integrity of the ACT Government.

Operation Kingfisher relates to an investigation by the ACT Integrity Commission into 'whether public officials within the ACT Education Directorate failed to exercise their official functions honestly and/or impartially when making recommendations and decisions regarding the Campbell Primary School Modernisation Project between 2019 and 2020'.

The focus of Operation Kingfisher relates to the actions and decisions of those public servants involved in, and responsible for, the awarding of the construction contract from one construction company (being recognised as the preferred tenderer) over another construction company who ultimately completed the project.

To summarise, there were particular concerns about the conduct of the Tender Evaluation Team (TET) and the critical issue of why the TET deviated from the Tender Evaluation Recommendation (TER). The evidence presented during the public hearings also provided examples of union interference in the tendering process – whether that be directly or indirectly – and unfortunately, this led to the deviation from the TET recommendation from using the preferred tenderer over the tenderer who ultimately completed the project. It is noted that neither entity were subject to criticism as part of the investigation or public hearings, however, there was a commercial impact on both parties as a result, particularly the original preferred tenderer. The matter is now in the report-writing stage and there is no update on when the report will be published.

Of primary concern, is that this project – in addition to the ACT Government procurement process – also fell under the scope of the *Government Procurement (Secure Local Jobs) Code 2020* (ACT) ('the ACT SLJC). Whilst the conduct under investigation does not relate specifically to the conduct of the parties subject to the Code, it is a useful example of the shadow that corrupt conduct can have over government-funded projects and undermines the intent and integrity of the Code.

Specific provisions of concern

It is worth highlighting a number of sections of the ACT SLJC that Master Builders opposes, and in a number of cases seeks their removal. Any attempt to include similar provisions in a Federal Secure Australian Jobs Code would be strongly opposed.

Section 14 – Employee Representation and Workplace Inductions

This clause sets out the CCE's obligation to respect employees' rights to join or not join a union, ensure new employees receive paid, role-specific induction training, and provide clear information on representation, workplace policies, employment conditions, and health and safety procedures. The CCE must also ensure that inductions also include access to relevant industrial instruments and outline dispute resolution processes and employees' rights to choose their own representative.

Specifically, the requirement in section 14(2)(a) to provide all new employees with an application form for membership of an eligible union is inappropriate and contrary to Freedom of Association principles. If an employee would like to join a union, they are free to do so of their own accord. Similarly, if an employee does not wish to join a union, they should not be forced to do so.

Concerns have been raised previously by Master Builders that this section is in conflict with section 336 of the *Fair Work Act 2009* (Cth).

Section 15 – Recognition of the Right to Collectively Bargain

A CCE is required to inform employees of their right to collectively bargain, choose their own bargaining representative (including the default role of unions for their members), and must facilitate fair, non-coercive participation in enterprise bargaining. They must also provide opportunities—on paid time—for employees and their representatives to attend meetings and negotiations, without influencing or pressuring employees to appoint or revoke any bargaining representative.

In practice, a CCE is required to demonstrate evidence to the Registrar, if requested, that it has complied with this obligation. It is also noted that having an enterprise agreement is not mandatory and can be incorrectly interpreted as a means to commencing bargaining unintentionally if not carried out with due care.

Master Builders notes that the right of employees to bargain with their employer is already contained in the Fair Work Act 2009 (Cth). This section is a top-down approach designed to provide power disproportionately to eligible unions, rather than to workers and employees directly. We consider the entire section should be removed from the Code and make comments on particular sections below.

- **Section 15(2)** is misleading in that it fails to provide a balanced perspective on enterprise agreements. There is no requirement for a company to have an enterprise agreement, and no obligation on a company to commence bargaining for an agreement. This should be included in the section to demonstrate that the ACT Government understands and agrees with this position.

- **Section 15(3)** should be removed in its entirety. This new requirement to hold a meeting with employees and eligible unions, when those eligible unions may not even be appointed as a bargaining representative, is contrary to freedom of association principles, and has no place in a procurement code. As outlined previously and above, Master Builders supports the objectives of the Code. However, we do not consider that adding an obligation to Code Certified Entities to conduct a meeting with employees and union representatives is in any way supporting the objectives of the Code.

- **Sections 15(6)** and **15(7)** should be removed. At the commencement of bargaining with employees and employers, it is appropriate that employees are advised that if they are a member of an eligible union, the union is automatically appointed as the bargaining representative and to change this an employee must appoint another bargaining representative (which may be themselves). Master Builders considers that employees have a right to know that the union is automatically appointed as a bargaining representative if they are a member, and that they have a right to be told the mechanisms by which they can amend that situation. This right is featured in Commonwealth legislation.

- **Section 15(9):** Employers should be able to speak directly with their employees, which may not be able to occur pursuant to 15(9)(b). The union does not control employees. The union has a place and should be able to advise employees and represent them when necessary and requested, but they should not carte blanche represent all employees, nor should unions be able to insert themselves in between employers and employees. This section may also create a situation where an employer is permitted to bargain with non-union employees, but not the employees who are union members until such time as the union decides to become involved in the bargaining.

The ease with which a union or another entity (i.e. a competitor) may be able to raise a complaint against a Code Certified Entity is concerning. Sections 14 and 15 are regularly mentioned and referred to by unions in a coercive manner in relation to enterprise agreements. The objective of the Code is to ensure that the ACT Government contracts with ethical contractors, not merely those that have an enterprise agreement.

Response to Consultation Questions

Issue 1: Key requirements of the Secure Jobs Code

How should a Secure Jobs Code operate to promote and prioritise safe, secure and well-paid jobs?

Master Builders is of the view that a Code would have little work to do in this respect.

If anything, the Code should simply require compliance with existing laws and include consequences with respect to Government tendering where there has been a breach of these laws.

Further, the construction industry generally pays well above award rates of pay. Earning in the industry compared to others is higher than the average[41]. with wages growing 6.5 per cent in over the year to May 2025, which was considerably stronger than the economy-wide average which was 4.5 per cent.

As outlined in the Consultation Paper, the Government has implemented a range of reforms in furtherance of this objective; to add anything further on these matters to a Secure Jobs Code would simply represent additional red tape and regulatory duplication.

What requirements should (or should not) be included? Why/why not?

- **What might the minimum expectations for each of the proposed requirements be?**
- **What other factors need to be considered with respect to these requirements?**
- **How can the Secure Jobs Code best promote fair and harmonious workplaces, including in relation to agreement making?**

As outlined above, the five key themes of the 2016 Building Code must be adopted into any Secure Jobs Code and Master Builders would suggest that these themes are broadly reflective of those matters listed on page 7 of the Consultation Paper. These key themes include:

- Compliance with the law and reporting of breaches
- Limits on agreement content
- Strong freedom of association requirements
- Right of entry requirements
- Prohibition on unregistered written agreements and project agreements

Further, and as outlined throughout this submission, any moves to introduce content similar to that included in the ACT SLJC or the Qld BPIC would be strongly opposed.

As observed in the Queensland PC Final Report any code to apply to Government procurement must include requirements that:

> - *'contractors preclude any unnecessary productivity limiting clauses in their EBAs*
> - *contractors do not include EBA provisions that pass-through conditions to subcontractors (that is, jump up clauses)*
> - *right of entry provisions prevent the misuse of workplace health and safety procedures.*
>
> *The Code should focus on productivity matters and not be used to achieve other objectives, duplicate other policy and regulation or mandate specific clauses or quotas.'*[42]

[41] at 0.5 per cent
[42] Pg.16

Also outlined earlier in this submission are concerns with the role of unions in relation to workplace health and safety and the misuse of that right of entry for industrial purposes.

Further, there should also be no mandatory requirements regarding particular engagement types. For example, the demonisation of labour hire is inappropriate. Recent investigations have revealed the misuse and abuse of labour hire arrangements. Based on the Victorian Watson Report these have been mostly at the hands of criminal elements operating through the CFMEU. Labour hire is a legitimate and necessary form of engaging labour. Any restriction on using legitimate and appropriate labour arrangements would be strongly opposed.

How should a Secure Jobs Code operate to promote inclusive job creation and workforce capability and capacity?

- **How might domestic capability and local supply chains be considered as part of the Secure Jobs Code?**

Are there any requirements that should be considered for inclusion?

There should be no restrictions imposed but encouragement to utilise local labour, where available, and where suitably skilled, etc.

Issue 2: Application of the Secure Jobs Code

Should the Secure Jobs Code apply specific rules in the building and construction sector? If so, provide details.

Yes, if the Government is to progress a Secure Jobs Code, then consistent with the commentary earlier in this submission, specific rules should apply in the building and construction industry. The reasons for this have been outlined earlier in this submission.

Should the Secure Jobs Code apply to subcontractors? If so, what should this threshold be?

No, any Secure Jobs Code should not apply directly to subcontractors.

The Queensland Government has just removed the requirement for the pre-qualification for sub-contractors on government construction projects.

The Queensland PC Final Report observed that the pre-qualification requirement for subcontractors

> *"…restricted competition, made it difficult for smaller and regional firms to participate and effectively required subcontractors to adopt EBA conditions they otherwise would not have adopted. This requirement should be permanently removed.*
>
> *Effort should also be put towards ensuring prequalification requirements, such as rigid thresholds and administratively complex or duplicative processes, are not preventing smaller firms from competing for government tenders. This is discussed in more detail in the section on improving procurement."*[43]

Through the application of any Code, the head contractor will be responsible for compliance, this will necessarily require the head contractor to ensure those they engaged comply with any Secure Jobs Code.

[43] pg.16

For example, the ACT SLJC applies to all parties in the contractual chain – including subcontractors. There is no evidence to support an increase in compliance of subcontractor by being a CCE under the ACT SLJC. From a compliance and enforcement perspective, the onus remains on the head contractor to ensure that all subcontractors (including sub-subcontractors) are always compliant with the ACT SLJC, putting additional and unnecessary burden on the head contractor.

Under the 2016 Building Code, once a building contractor or building industry participant was subject to the Code, it and its related entities were required to comply with the Code on all new projects, including those that were privately funded. Whilst this may have led to some positive effects for the industry, the details of the proposed Secure Australian Jobs Code have not yet been settled, and it is not appropriate to make comment on the intricacies of such detail at this stage.

What types of funding processes (e.g. procurement, grants, other indirectly funded work) should the Secure Jobs Code apply to? Why/why not?

Any Secure Jobs Code should only apply to directly funded Commonwealth procurement.

What financial threshold should apply to the Secure Jobs Code? Should the financial threshold vary across different industries and sectors?

Given the scope and scale of current Federal Government commitments to deliver housing and infrastructure projects, any thresholds must carefully balance these commitments, the capacity of industry to deliver if subject to a Secure Jobs Code.

Any additional compliance requirements that would see this significant pipeline of construction work slowed or delayed should be avoided.

On that basis any Secure Jobs Code should only apply to very high value government contracts. This approach not only appropriately targets the highest risk for Government and contractual parties but also avoids smaller jobs being captured

For example, any moves to replicate the application of the ACT SLCJ would be strongly opposed. The ACT SLJC applies to all territory funded construction work regardless of the value of the procurement.

Under the 2016 Building Code directly funded Commonwealth Government work value of $5 million or more and indirect funding value of $10 million or more, where the Commonwealth provided 50% of the funding was captured.

Master Builders submits any thresholds must be significantly higher than those of the past in order to avoid any intended consequences that would have an adverse impact on building and construction delivery.

Issue 3: Implementation

How should the Secure Jobs Code be implemented?

As outlined throughout this submission, an independent anti-corruption agency should be established to administer the Code when applying it to the Building and Construction Industry.

What are the merits or otherwise of using procurement and grants processes to implement a Secure Jobs Code?

Master Builders acknowledges that Government procurement can play a role in shaping conduct and behaviour across the economy.

Based on past experience with the 2016 Building Code, Master Builders is of the view that this approach, when applied appropriately, can improve the circumstances for the building and construction industry.

Issue 4: Compliance and Enforcement

How might compliance with a Secure Jobs Code be demonstrated, assessed, monitored and measured?

Which parties should be required to (or have standing to) notify the Commonwealth of non compliance with the Secure Jobs Code?

What other compliance mechanisms should be considered and why?

How should non-compliance with the Secure Jobs Code be managed?

- **Is remedial action sufficient for minor non-compliance? Why/why not?**
- **Is contract termination appropriate for egregious non-compliance? What should a penalty regime look like?**

Should additional requirements apply to businesses and other entities with a history of non compliance with matters covered by the Secure Jobs Code or those entities that have failed to meet obligations in previous government engagements?

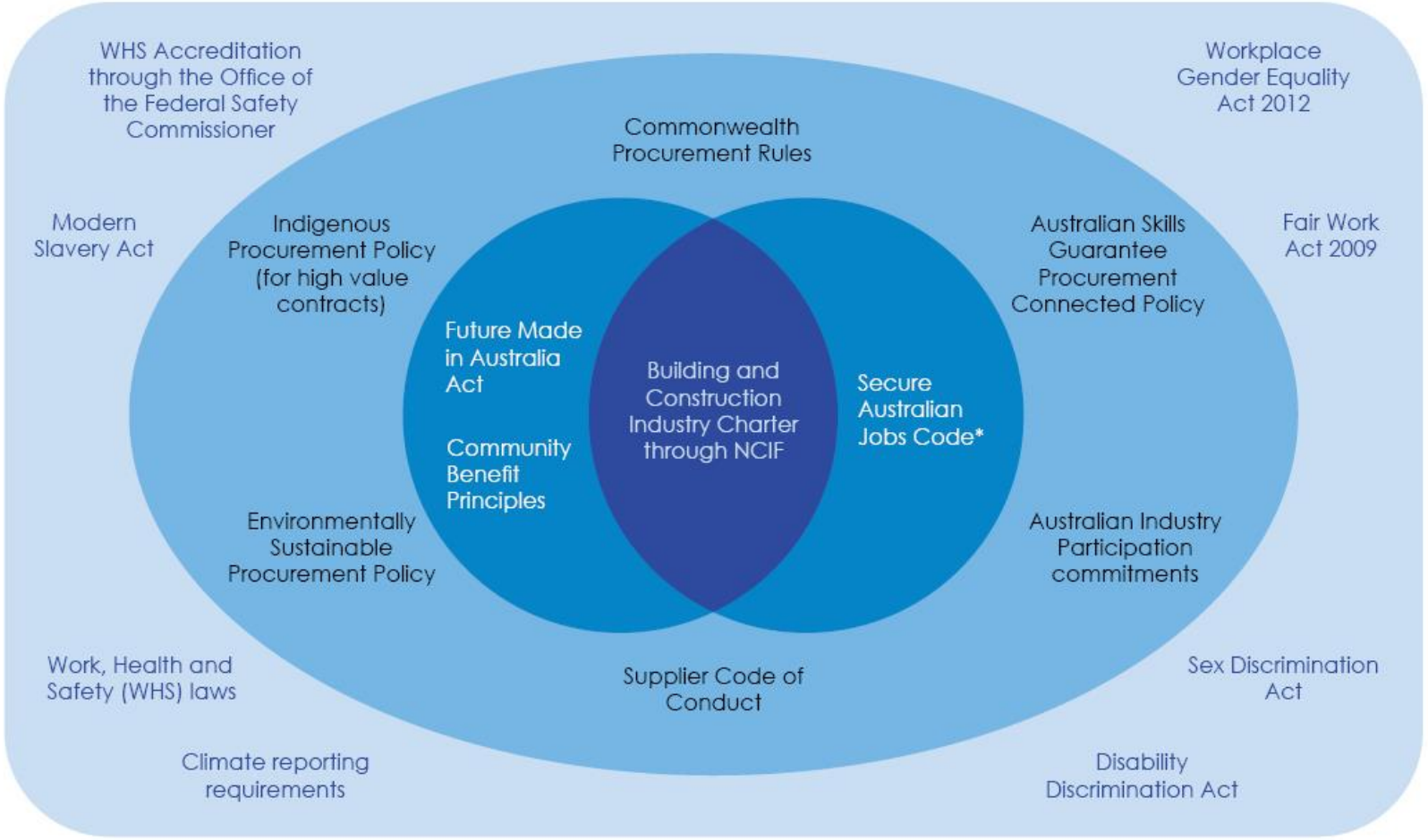
Who should be responsible for assessing compliance with and enforcing the Secure Jobs Code?

As per the 2016 Building Code, and Master Builders Breaking Building Bad submission, the compliance and enforcement of a Secure Australian Jobs Code for the building and construction industry should be conducted by an independent anti-corruption agency.

Earlier in this submission Master Builders has outlined the role and responsibilities of such an agency.

Attachment A

COMMONWEALTH GOVERNMENT PROCUREMENT REGULATORY FRAMEWORK IMPACTING THE BUILDING AND CONSTRUCTION INDUSTRY



*if adopted