Submission to Department of Employment and Workplace Relations

3 March 2026

Introduction

On 15 December 2025, the review of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023 and the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Closing Loopholes Reforms) commenced and Ms Susan Boothe was appointed by the Minister for Employment and Workplace Relations to conduct the review (Review).

The measures implemented by the Closing Loopholes Reforms were extensive as they touched on most aspects of the employment relationship, went beyond the direct employment relationship casting a wide net to impact contracting arrangements and expanded the remit and role of unions.

The stated aim of these reforms was to *'improve the workplace relations framework for a range of reasons but most importantly to close loopholes to protect Australian workers and strengthen the Work, Health and Safety (WHS) framework.'* [1]

Master Builders maintains its opposition to the majority of these reforms and states that it is now evident that rather than 'closing loopholes' they are having an adverse impact and have done nothing to improve or support workplace productivity.

Master Builders repeats its previous media statements that warned that these reforms would '*add further complexity and administrative burdens for businesses*' and that *'the cumulative impact…on the economy will be devastating and will leave the building and construction industry hamstrung in its ability to meet the housing targets set by the Federal Government*'.[2]

Fundamentally, the reforms have increased the risks associated with operating in the building and construction industry.

This is not ideal given the ambitious National Housing Accord target which aims to deliver 1.2 million new homes across Australia over the five years up to June 2029.

Forecasts indicate that we will fall short of the Government's target. After the first 12 months of the Accord period, we are already 60,000 homes short which means, year on year we now need to build an ambitious 255,000 homes to reach the Government's goal. In addition, the Infrastructure Australia's 2025 Infrastructure Market Capacity report, outlined the significant growth with the 5 year Major Public Infrastructure Pipeline increasing by $29 billion to reach $242 billion.

Flailing productivity is also a key cause for concern.

Over the past decade, no industry has performed worse than construction when it comes to productivity. The effects of this have been grim: ever deteriorating housing affordability, insufficient volumes of new home building and delays in the delivery of new homes. The poor performance of construction productivity means that it costs more to create the vital infrastructure that we need. As a result, government capital and infrastructure budgets don't stretch as far. One of the most problematic aspects of weak construction productivity is the way it infects other parts of the economy and erodes the buying power of families' pay packets.

Regulations act as one of the biggest drains on productivity in the construction industry and is one of the first things mentioned by industry participants when asked about our productivity challenges. In

[1] Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 Explanatory Memorandum.
[2] IR Bill amendments make a bad Bill worse – Master Builders Australia

last year's landmark report, the Productivity Commission[3] identified the regulatory burden as one of the main culprits behind our industry's poor productivity performance.

The burden of regulatory costs can be jaw dropping: in December 2025, the Productivity Commission estimated that regulatory costs add between $135,000 and $320,000 to the ticket price of a newly built house. Regulation means that new apartment buyers need to come up with an extra $40,000 to $175,000.

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.

A strong and flexible industrial relations system underpins a competitive, modern and productive economy.

Latest ABS figures indicate that the total value of building and construction work done in the year ending June 2025 totalled $324.6 billion in value, an amount directly equivalent to 11.7 per cent of total GDP.

Every $1 million worth of building activity supports around $2.5 million in activity across the economy. Therefore, any moves that would have an adverse impact of such activity must be avoided or else we will see a further deterioration in productivity and economic growth across the country.

The industry is critical to economic growth and addressing the current cost of living crisis, but without supportive policy settings, including a workplace relations framework that support growth the industry is severely hamstrung.

Policy settings must support housing supply; the Closing Loopholes Reforms do not.

Under these reforms:

- Engaging independent contractors is riskier due to the uncertainty surrounding the definition of employment, the change to the defence to sham contracting and the increase in penalties associated with breaches.
- Enhanced rights of workplace delegates and union officials to enter workplaces could open the door to unsavoury conduct and behaviour outlined by a litany of Royal Commissions and reports, most recently of which the inquires by Geoffrey Watson into the activity of the CFMEU in Queensland and Victoria. This is causing anxiety across the industry, particularly when contemplating what the industry looks like post-administration of the CFMEU.
- Ambit claims by the Transport Workers Union (TWU) risk that the industry will be strangled by claims for regulated road transport contractual chain orders targeting the supply chains for building and construction products and materials.

[3] Productivity Commission, *Creating a more dynamic and resilient economy*, Inquiry Report 10 December 2025

Master Builders has not addressed all of the measures the subject of this Review. This does not indicate a support for those provisions but simply that in some cases, it is too early to tell, for example:

- the creation of the unfair contracts jurisdiction in the Fair Work Commission (FWC) has not yet been tested. We maintain that this was unnecessary, and the lack of claims indicates that there was in fact no 'loophole' to close with respect to the operation of the same jurisdiction in the Federal Court;
- the right to disconnect has only applied to small businesses for a short time; and
- the role of the 'opt out' provision under section 15AB of the *Fair Work Act 2009* (FW Act) to the extent that they preserve independent contracting arrangements.

On that basis this submission specially addresses:

- Independent contracting in the building and construction industry.
- Enhanced union rights.
- Minimum standards for road transport workers.

Workplace Relations in the Building and Construction Industry

Master Builders supports policies that promote safer and more productive workplaces but also encourages governments to consider the broader consequences of legislative and regulatory changes. Key to this is independent contracting which is critical to the industry's conventional structure and successful execution of work, and the Government must safeguard its rights.

The current industrial relations framework raises concerns about the benefits for workplaces; a common-sense, practical approach is needed with a focus on quality over quantity of legislation and regulation; the regulatory burden of the FW Act, in addition to industry specific modern awards is drowning our industry, particularly small businesses.

Balancing minimum conditions for workers with equal rights for employers while promoting job creation is crucial, and any legislation and regulation should be clear and simple to understand, reducing confusion and complexity for businesses.

To ensure the workplace relations framework supports productivity we recommend:

- Preserving freedom of association laws and avoids any change that gives unions more say or more rights than ordinary everyday workers and make sure right of entry rules are strengthened and properly enforced.
- Recognising the needs for small business and encourage them to take on new workers.
- Improving bargaining laws to help workers and businesses quickly and effectively put in place arrangements without ineffective red-tape and lengthy delays.
- Ensuring that employers and employees are recognised as the two most important parts of an employment relationship.
- The system be fair and simple to reduce disputation and enhance compliance.
- The system includes appropriate and effective consequences for those who breach laws.
- Preserving and strengthen fundamental economic principles that underpin a free, stable and productive economy.

These principles underlie our submission to this Review.

Key Recommendations

- Clarity and certainty be returned to reduce the risks associated with independent contracting.
- The provision permitting entry by union officials to assist HSR be repealed, in the alternative, to ensure the provision operates as intended, more safeguards must be added to prevent misuse and abuse of such a broad right of entry power.
- Amend the legislation to give the FWC greater scope to tailor the workplace delegates rights term in Modern Awards to suit industry specific circumstances.
- Amend the legislation to exclude the building and construction industry from the application of regulated road transport contractual chain orders. This could operate in a similar way to the exclusion of the sector from multi-employer bargaining.[4]

[4] See section 23B and 186(2B)

Independent contracting in the building and construction industry

It is a core policy position of Master Builders that we support the use of independent contracting as a legitimate and legal method of engagement and oppose measures that seek to undermine or erode its standing as a lawful and acceptable practice.

The entire building and construction industry is underpinned by a comprehensive system of relationships between contractors that is inherent in terms of both conventional industry structure and necessary in performing the tasks associated with construction work. This ensures:

- the labour force experiences high levels of utilisation;
- construction costs are not inflated due to delay or damages claims;
- delivery of much needed personal and public infrastructure (and the entire every day-built environment) is achieved in a productive way; and
- levels of employment, innovation and entrepreneurship that flow from a high concentration of SME and family businesses are supported.

There are currently over 262,000 independent contractors engaged in the building and construction industry alone, representing around twenty percent of the total number within all sectors of the economy.

It is clear that this form of engagement is vital to the ongoing and future successes and economic output of the building and construction industry.

The use of independent and subcontracting within building and construction is a long-standing and legitimate method of engagement. This is a model that underpins the entire operation of the industry, both domestically and internationally, and has done so for many decades.

This contracting-based approach is deployed in building and construction simply and solely because of the phased way in which all building work is performed. It is not used as a method to undermine wages, deprive workers from job security, or to avoid the use of directly employed labour.

It is the only way in which building and construction work can be performed in a manner that ensures improvements to the built environment are delivered efficiently and affordably.

There are several identified reasons for the prevalence of independent contracting in the building and construction industry:

- the production process on construction projects comprises a diverse range of tasks. Many workers are only required at one point on a project. Production therefore tends to be carried out by a collection of subcontractors working under the supervision of a head contractor;
- demand for housing and commercial buildings is sensitive to the economic cycle. As demand is uncertain, the environment encourages the use of contract labour;
- fluctuations in employment mean workers enter from other industries during periods of high labour demand; and
- the building and construction industry is historically cyclical and demand for both employees and contractors vary.

This model has a number of embedded complexities:

- a builder or head contractor may utilise dozens of different sub-contractors or sub-sub-contractors over the life of a project;
- those sub-contractors can be all operating on the same site at the same time;

- sub-contractors may be working on numerous sites at any one time, often for different head contractors;
- the work performed by sub-contractors is often technical and specialised, involving practices, activities and equipment that are unique and distinct from other forms of construction work;
- the use of sub-contractors at a particular time is dependent upon the particular phase of construction and is therefore dependent upon factors that are fluid and beyond the control of a builder/head contractor; and
- the work performed by specialised sub-contractors is often of a type that requires specialised tasks not necessarily known to the sector more broadly.

The complexities of construction work are well known and are supported by a range of reports and reviews focussed on the sector. For example, in its 1999 Report "Work Arrangements on Large Capital City Building Projects" the Productivity Commission described the underpinnings of the industry as follows:

> *"Work on any one project is generally concentrated at a particular site, is of finite duration, and requires a broad range of skills which are usually provided by a combination of enterprises, many of which specialise by trade. From an industrial relations perspective, this means many enterprises and their workers need to coexist at the one workplace. In addition, appropriate sequencing of tasks is critical to successful completion of a building project. The level of complexity increases with project size, and is high on large capital city projects."*[5]

The same report goes on to explain how the underpinning 'Contractual chain' within building and construction operates as follows:

> *"The production process for buildings involves a complex sequence of interdependent tasks from the design through to the finishing stages, that require different types of specialist workers. Typically, the client (increasingly institutional investors) has very little to do with either the design or construction of the building. The design phase is usually undertaken by specialist consultants, while management of the construction work is awarded to a head contractor, who usually employs only a small workforce on site for project-wide duties. Most of the construction work is sub-let to specialist subcontractors, who may employ up to 90 per cent of workers on a site. Thus, there is no direct relationship between head contractors, who have ultimate responsibility for a project, and the majority of employees on site. Selection of head contractors and subcontractors is often done on the basis of tender bids. Costs of market entry are low for many types of subcontracting and so the bidding process can be highly competitive at that level."*[6]

The Closing Loopholes Reforms have added to this complexity.

The new definition of employment makes genuine independent contracting riskier.

Part 15 now provides a set of interpretive principles for defining employment with reference to a multi-factorial assessment to determine the status of an employee and employer.

We maintain our concerns that this could have significant consequences and ramifications for determining the status of an 'independent contractor' which will cause confusion, complexity and negative outcomes for the building and construction sector.

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[5] Productivity Commission, 1999, page XVII
[6] Ibid, pages XIX to XX

The key elements of this new definition will mean that the new approach will be one where the 'real substance, practical reality and true nature' of the employment relationship is considered rather than looking to the freely agreed and clear terms of a written contract.

The amendment, per the Explanatory Memorandum, is aimed at overcoming the recent High Court decisions in Personnel Contracting[7] and Jamsek[8]. These decisions created clear, simple rules and certainty to both parties about who is an employee vs who is an independent contractor.

There were no sound grounds, reasons or evidence as to why the previous approach required such drastic change. The tests endorsed by the High Court provided independent contractors in building and construction with significant certain and simplicity. The previous approach was effective and operated on the correct basis that legal rights and obligations existing under the contract are decisive in determining the worker's status if:

- the rights and duties of the parties are comprehensively set out in a written contract; and
- the contract is not a sham and has not otherwise been varied.

In other words, if people want the arrangement to be 'independent contractor' and this is freely agreed, then that is what sets the status and there is no need to look further.

The Closing Loopholes Reforms have:

Re-introduced uncertainty and complexity

The certainty provided by the approach determined by the High Court[9] to businesses but particularly small business tradies and those who engage them is extremely important in building and construction. In the long term the current approach will disincentivise small business entrepreneurship and discourage the formation of more small businesses which are crucial to the future of building and construction.

In particular, the application of multi-factorial tests in building and construction is problematic.

These tests are broad, complex and not designed to work in building and construction. For example:

- Control: If the relationship is an employment relationship, the company generally has the right to direct what and how work is to be performed by employees, especially lower-level employees. In contrast, independent contractors currently retain a relatively high level of discretion in the work they perform and how they fulfil their duties. Work in construction will involve being subject to site safety rules, a phased approach to how construction works are undertaken, and under the coordination of a project or site supervisor.

- Working arrangements: A company usually sets the general working conditions of its employees, including work hours and location. Independent contractors normally set their own work hours or locations, or both. Work in construction is usually subject to rules about the times it can be performed (e.g., council restrictions, site hours etc) and has to be performed at a specific location (e.g. you can't build a wall at home during times that suit the individual performing the work.)

[7] Construction, Forestry, Maritime, Mining and Energy Union & Anor v Personnel Contracting Pty Ltd [2022] HCA 1
[8] ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2.
[9] ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2

Embedded future uncertainty and complexity through the built into multi-factorial test

The multifactorial approach is, by design, completely and inherently uncertain both now and for the future.

The Explanatory Memorandum freely admits that and states *"There is no exhaustive list of factors that will be relevant to a 'multi-factorial' assessment, ensuring a flexible approach that will enable the ordinary meanings of 'employee' and 'employer' to continue to adapt to changing social conditions, market structures and work arrangements."*

Master Builders continues to fail to understand why Government would want to create such a significant barrier and disincentive to those who make the decision to work for themselves, have control over their own affairs and desire to be their own boss. Such aspirations should be supported by Government, not discouraged.

Ignored that the previous approach allowed for deeper analysis when circumstances required it

The previous approach allowed for circumstances where one party didn't believe the arrangement was genuinely independent, or the efficacy of the contract is challenged by one party or the other.

In the Personnel Contracting case, the High Court noted that in certain cases it may be appropriate to consider the totality or substance of the relationship when considering the multiple indicia of employment – but this is not the case where the contractual terms are exclusively in writing and this is not under challenge. The Court said:

> *"Where no party seeks to challenge the efficacy of the contract as the charter of the parties' rights and duties, on the basis that it is either a sham or otherwise ineffective under the general law or statute, there is no occasion to seek to determine the character of the parties' relationship by a wide ranging review of the entire history of the parties' dealings. Such a review is neither necessary nor appropriate because the task of the court is to enforce the parties' rights and obligations, not to form a view as to what a fair adjustment of the parties' rights might require."*

Opened the door for independent contractors to be forced into employment arrangements

There is a very real and likely prospect that independent contractors will have their status jeopardised and be forced into arrangements that either alter their status to become employees or be treated as such. Such a prospect is completely unnecessary and unwarranted.

This coupled with the change to the defence to sham contracting makes genuine independent contracting riskier.

The Closing Loopholes Reforms watered down the previous defence to sham contracting by removing the element of 'recklessness' such that it will only involve a 'reasonable belief' element.

This now means that employers who make a mistake and classify an arrangement as one of 'independent contractor' will be guilty of an offence of 'sham contracting'.

The application of the 'reasonableness', or 'reasonable person' test is one of the most oversimplified and paradoxically confused legal concepts within our common law system. Fundamentally the fact that the test exists, and requires judges to consider its application, highlights the apparent paradox that innately exists within its application. The need for judges, barristers, solicitors, and evidence is indicative that the test often cannot be applied simply, particularly where circumstances are fluid, and the application of facts and circumstances to law changes over time. Fundamentally, where this test can be avoided by the application of an objective or qualitative test in its favour, it should be; and this is one of those cases.

There was a plethora of existing case law which had assisted in understanding the previous test and related obligations. The previous obligations are well known and understood.

Further, we maintain that the evidentiary basis for this was unclear, in fact, rather than 'closing a loophole' this measure implemented long standing ALP policy.

One ground cited to justify the need for the change was the recommendations in the Black Taskforce Final Report. This report was the subject of a Treasury Consultation Paper in 2018 which considered changing the provisions in the FW Act.

However, that consultation paper noted [at p.15] that "it is difficult to estimate the size of the issue around sham contracting" and referred back to the Taskforce Final Report suggesting it contains evidence. However, the Final Report [at page 231] actually stated "we do not have specific estimates on the size of the sham contracting problem" and found that while "it may be growing" it was "an area which requires further examination".

On top of this, Part 11 increased a range of civil remedy provisions under the FW Act. The effect of these amendments has increased a range of penalty provisions, in some circumstances by up to ten times.

The evidence shows that increased penalties for businesses simply do not work as a method to enhance legislative compliance. Enhanced compliance can only be achieved through making laws that are simple, clear and easy for business to understand and comprehend – which is the exact opposite of the direction adopted in relation to workplace laws in recent decades – made worse by many of the provisions contained in the Bill which remove some of the last remaining vestiges of legislative clarity and replace them with more ambiguity, uncertainty and complexity.

Recommendation

- Clarity and certainty be returned to reduce the risks associated with independent contracting.

Enhanced union rights

Over the last two years, the systemic and entrenched patterns of bad behaviour in the CFMEU have risen to the surface, in a number of unsurprising exposé, the conduct of the CFMEU has been laid bare.

This includes their conduct in relation to work, health and safety rights, and general rights to enter building and construction sites.

The industry was not, however, surprised by these revelations. Multiple inquires and reviews have highlighted these illegal and unsavoury behaviour over many decades.

One of the most recent was the Final Report of the Heydon Royal Commission[10] which devoted some 1160 pages to the building and construction sector alone. Of the five volumes in the Final Report, 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."*[11]

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."* [12]

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."*[13]

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[14] 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;*

[10] *Royal Commission into Trade Union Governance and Corruption Final Report, December 2015,*
[11] Royal Commission into Trade Union Governance and Corruption Final Report, December 2015, Volume 5, Chapter 8, para 1
[12] Ibid at para 2
[13] Ibid at para 3
[14] Royal Commission into Trade Union Governance and Corruption, Interim Report (2014), Vol 2, ch 8.1, p 1008.

(b) *<u>officials prefer to lie</u> rather than reveal the truth and betray the union;*

(c) *the reputations of <u>those who speak out</u> about union wrongdoing become the s<u>ubjects of baseless slurs and vilification</u>."*

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 <u>reinforce those conclusions</u>"*[15]

Further:

> *"The conduct identified in the Commission is <u>not an isolated occurrence</u>. 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."*[16]

Of the seventy-nine recommendations made for law reform in the Final Report, 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 *<u>"longstanding malignancy or disease</u>"*[17] within the CFMEU and that lawlessness within the union was commonplace, with over 100 adverse court finding against the union since 2000.

Similarly, the Cole Royal Commission found[18]:

"In the building and construction industry throughout Australia, there is:

- *a) widespread disregard of, or breach of, the enterprise bargaining provisions of the Workplace Relations Act 1996 (C'wth);*
- *b) widespread disregard of, or breach of, the freedom of association provisions of the Workplace Relations Act 1996 (C'wth);*
- *c) <u>widespread departure from proper standards of occupational health and safety</u>;*
- *d) widespread requirement by head contractors for subcontractors to have union-endorsed enterprise bargaining agreements (EBAs) before being permitted to commence work on major projects in State capital central business districts and major regional centres;*
- *e) widespread requirement for employees of subcontractors to become members of unions in association with their employer obtaining a union-endorsed enterprise bargaining agreement;*
- *f) widespread requirement to employ union-nominated persons in critical positions on building projects;*
- *g) widespread disregard of the terms of enterprise bargaining agreements once entered into;*
- *h) widespread application of, and surrender to, inappropriate industrial pressure;*
- *i) <u>widespread use of occupational health and safety as an industrial tool</u>;*
- *j) widespread making of, and receipt of, inappropriate payments;*
- *k) unlawful strikes and threats of unlawful strikes;*
- *l) threatening and intimidatory conduct;*

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[15] Heydon Report, Chapter 5, page 396
[16] Ibid.
[17] Heydon Royal Commission, Volume 5, p401
[18] Final Report of the Royal Commission into the Building and Construction Industry, Vol 1 – Summary – p 5-6

m) underpayment of employees' entitlements;
n) disregard of contractual obligations;
o) disregard of National and State codes of practice in the building and construction industry;
p) disregard of, or breach of, the strike pay provisions of the Workplace Relations Act 1996 (C'wth);
q) disregard of, or breach of, the right of entry provisions of the Workplace Relations Act 1996 (C'wth);
r) disregard of Australian Industrial Relations Commission (AIRC) and court orders;
s) disregard by senior union officials of unlawful or inappropriate acts by inferior union officials;
t) reluctance of employers to use legal remedies available to them;
u) absence of adequate security of payment for subcontractors;
v) avoidance and evasion of taxation obligations;
w) inflexibility in workplace arrangements;
x) endeavours by unions, particularly the Construction, Forestry, Mining and Energy Union (CFMEU), to regulate the industry; and
y) disregard of the rule of law."

As has more recently been widely reported, union misconduct has remained common place in the building and construction industry. Unfortunately, despite the work of the Administration, bad actors continue to be able to operate in the industry. It is clear more needs to be done with the Administration only the first step in a series of reforms needed to redress the systemic illegal and behavioural issues in the industry.

Over many years, feedback from members has regularly describe instances of contemporary conduct, culture and practices that could easily be mistaken as instances set in the late 1970s. This feedback is supported by reference to contemporary evidence sources outlined below.

In 2024, documents filed by the Fair Work Commission (FWC) in Federal Court proceedings seeking to put the CFMEU into administration claimed the CFMEU has breached workplace law 2,600 times in more than 20 years, accumulating $24 million in fines. The FWC said the union had "ceased to function effectively" as it looked to secure the appointment of administrators.[19]

The abuse of WHS for unrelated industrial purposes by building unions, while well documented, remains an extremely unfortunate feature of the building and construction industry.

The Cole Royal Commission[20] 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.

[19] 7 August 2024 Report by ABC -CFMEU broke the law 2,600 times, Fair Work claims in court documents https://www.abc.net.au/news/2024-08-07/cfmeu-broke-law-fair-work-commission-claims/104196488 accessed 24/10/25
[20] *Final Report of the Royal Commission into the Building and Construction Industry, Vol 1 – Summary – p 5-6*

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[21]:

> *"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.*
>
> *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[22] 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*

[21] Ibid – Vol 6 – p.102
[22] Ibid p103

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[23].

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

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.[24]

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,

[23] *Construction, Forestry and Maritime Employees Union v Fair Work Ombudsman (Cross River Rail Appeal) (No 2)* [2024] FCAFC 55
[24] Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (No 2) [2023] FCA 1302 (fedcourt.gov.au)

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.

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.

Finally, Master Builders must highlight the findings of the Watson report *Violence in the Queensland CFMEU* which detailed allegations of disturbing and violent incidents including towards women and children, Watson reporting that:

> *"There is a plain and consistent theme running through the operations of the CFMEU in Queensland – that theme is the CFMEU's utter contempt for the law, its disregard for laws and rules, its refusal to be bound by ordinary norms of behaviour, and its attempt to take advantage of its acting outside the law"*

To be clear, Master Builders does not oppose the capacity for officials of registered organisations to enter worksites, or for BCI participants to join such organisations. We recognise the role and importance these organisations play in Australian workplaces.

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.

In response, Master Builders produced the [Breaking Building Bad] document which outlines a range of measures targeted at removing the behaviours widely reported over the last 2 years.

Measures outlined in that document, that respond to concerns regarding the (mis) use of right of entry and work health and safety powers, go to the heart of the cultural issues in the industry, key recommendations include:

- making it an offence for officials or delegates to exploit or abuse workplace safety rights for non-safety purposes;
- repealing and replace right of entry provisions in the Work Health and Safety Act 2011 and the equivalent provisions of the equivalent State Acts with new provisions which provide that prior written notice of entry is to be provided except where the permit holder has a reasonable concern that:
  - there has been or is contravention of the Act and
  - that contravention gives rise to a 'serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard';
- making it clear that the burden of proving that a permit holder has a suspicion that is reasonable for the purposes of s 117(2) or a concern that is reasonable for the purposes of s 119A lies with the person asserting that fact;
- requiring that permit holders exercising rights under safety laws must leave a site within a reasonable time if requested to do so by a SafeWork inspector who is on the site;
- requiring that right of entry to worksites on safety grounds can only be exercised by persons holding a valid ROE permit; and
- ensuring persons seeking entry on safety grounds are also subject to a 'three strikes' rule.

Since 2024, Master Builders has been working with the Administrator and the National Construction Industry Forum to look for ways to rid the industry of these systemic and long-term cultural issues.

However, these measures are just a first step and Master Builders maintains its concerns regarding amendments that now enable a HSR to be assisted by a union official without a WHS right of entry permit. This undermines a crucial safeguard desperately needed in the building and construction industry.

In conjunction with the expanded delegates rights to enter sites and engage with industry participants industry are on high alert regarding how these arrangements might be used.

Assistance for HSRs

The Closing Loopholes Reforms introduced new rights that expanded the ability of a Health and Safety Representative (HSR) to obtain assistance in the workplace, from a union official to perform their role and functions as the HSR, which was available under the WHS legislation.

This removed the requirement for a union or registered organisation official to hold a Fair Work Entry permit for the purposes of access to a workplace where the attendance related to providing assistance to a HSR. This expansion caused great concern to Master Builders who strongly advocated against the expansion and removal of the entry permit threshold.

Primarily these changes adopted the recommendation of the 2018 Review of the Model Work, Health and Safety laws carried out by Marie Boland (Boland Review) but were also said to be aimed at strengthening workplace health and safety outcomes, ensuring HSRs could access appropriate expertise in an efficient and effective manner and ultimately reduced the administrative burden/barriers that previously blocked a HSR from obtaining assistance.

The Boland Review's recommendation responded to the decision of *Australian Building and Construction Commissioner v Powell*[25] (Powell) which considered access to a workplace by an assistant who is also a union official.

The Boland Review observed that:

> *'The potential effect of Powell on the operation of the model WHS Act is that a union official accessing a workplace as an assistant to a HSR under ss 68(2)(g) and 70(1)(g) of the model WHS Act will require an entry permit under Division 3 of Part 3-4 in Chapter 3 of the Fair Work Act 2009 (Cth) (an FW Act entry permit).'*[26]

In response the Boland Review recommended that '*Safe Work Australia work with relevant agencies to consider how to achieve the policy intention that a union official access a workplace to provide assistance to a HSR is not required to hold an entry permit under the FW Act or another industrial law, taking into account the interaction between Commonwealth, state and territory laws*'.

However, the Boland Review highlighted that the policy intent of these provisions was not clear:

> *'The Explanatory Memorandum to the model WHS Act does not make clear whether the original policy intention was that a union official entering a workplace as an assistant to an HSR must hold a WHS entry permit (and therefore have an FW Act entry permit).*[27] *The 2008 National Review also does not clarify the issue—Recommendation 106 on the functions and rights of HSRs does not explicitly list the right to request assistance from other persons or experts despite this being suggested in stakeholder comments'.*[28]

In Master Builders view, the decision in Powell was correct and the policy intent was clear; a union official should be required to hold the appropriate right of entry permit for the purpose of entering a workplace to assist a HSR. The claim that the policy intent of the provision was not clear or that there are appropriate safeguards in place to prevent misuse, misunderstands the right of entry permit arrangements.

The legal requirement for an entry permit holder to hold both a WHS entry permit and a Fair Work Entry permit arises under the WHS legislation.

The fundamental purpose behind this was to attempt to unify the regulation of workplace entry powers so as to regulate entry permit holders and maintain high and consistent behavioural and suitability standards.

The FWC, who is responsible for the issue of entry permits, both for Fair Work and WHS entry permits, based on an application process that considers a number of factors, including whether the applicant has satisfied the 'fit and proper' person test. The FWC is also responsible for the compliance and enforcement of the relevant provisions relating to entry permits. It is important to note that these provisions relate to federal WHS legislation, and do not apply to state or territory legislative requirements.

Jurisdiction-specific requirement will also require the entry permit holder who is seeking to exercise right of entry powers to also hold the Fair Work entry permit as described above.

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[25] *Australian Building and Construction Commissioner v Powell* [2017] FCAFC 89.
[26] At pg 67
[27] Safe Work Australia, *Explanatory Memorandum—model Work Health and Safety Bill*, Safe Work Australia, Canberra, 2016, para 293 (s 71(4) applies in relation to *certain* HSR assistants who are or who have been WHS entry permit holders).
[28] Boland Review pg. 67

Entry permits issued under the FW Act, require the applicant to satisfy the 'fit and proper' person test.[29] The FWC must consider several 'qualification' matters[30] prior to issuing an entry permit to the applicant which includes:

- Completion of training about the rights and responsibilities of a permit holder;
- Whether the applicant has been convicted of an offence against an industrial law or a law of the Commonwealth, State, Territory or a foreign country in prescribed circumstances;
- Whether there has been any previous order against the person or any other person under the FW Act or any other industrial law relating to the action taken by the applicant;
- Whether the applicant has previously held an entry permit, including review of any conditions imposed or the reasons for suspension or cancellation;
- Any other matters that the FWC considers relevant.

To exercise right of entry under the FW Act, there are certain criteria that must be met in order for the entry to be valid and lawful. This includes having a copy of the original entry permit issued by the FWC on their person and complying with the minimum notice requirements prescribed under the FW Act. In most circumstances, 24 hours written notice must be provided prior to entry to the workplace for the purposes of discussions with workers or to investigate a suspected contravention of the FW Act.

In the alternate, to exercise right of entry under the WHS legislation, the entry permit holder must hold both the WHS entry permit as well as a Fair Work entry permit.

There are vast differences in the notice requirements for WHS entry. Whilst the entry permit requirements remain the same, in the circumstances where an entry permit holder requires entry to site for the purposes of investigating a breach or suspected breach of the WHS legislation, there is no written notice requirement but for the WHS entry permit holder must have a reasonable suspicion before entering the site that the contravention has occurred or is occurring[31]. Notice of entry must then be given 'as soon as is reasonably practicable after entering a workplace[32].

As outlined earlier this has been the subject of many on-site disputes where the WHS entry permit process has been used as a guise to enter site for the purposes of an underlying industrial relations agenda.

It is noted that a failure to comply with the entry notice requirements, including holding a valid entry permit, will result in significant penalties against the permit holder, where proven. There are numerous decisions available for both WHS and FW Act breaches by entry permit holders.

Importantly and of concern is that the support person entering the workplace to carry out functions associated with those of the HSR, are not regulated by the powers and obligations of an entry permit holder under the FW Act, and is only limited to complying with the health and safety requirements of the PCBU (as prescribed by the WHS legislation) whilst that person is on-site or in the workplace.

There is a lack of clear delineation of duties being carried out by these persons, whilst on-site or within the workplace, as well as what rights and protections the PCBU may have if the support person steps away from its 'supportive' role and attempts to exercise right of entry powers.

The most crucial concern for Master Builders, and the building and construction industry generally, is the need to ensure that WHS laws contain <u>no</u> capacity for exploitation, abuse or misuse.

29 *Fair Work Act 2009* (Cth), s513.
30 *Fair Work Act 2009* (Cth), s513(1).
31 *Work Health and Safety Act 2011* (Cth), s117.
32 Ibid, s119.

As outlined above 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 industry.

Master Builders urges that, so far as possible, avenues for exploitation of the WHS framework are closed.

Recommendation

- Repeal the provision; or
- Ensure the provision operates as intended by the Boland Review by adding more safeguards on its use for example requiring them to have demonstrated specific knowledge or expertise in relation to the safety issue being investigated.

Enhanced delegates rights

Part 7 of the FW Act now provides for a range of new rights and protections for workplace union delegates. These include:

- new definitions for 'delegates' rights term' and 'workplace delegate';
- a requirement that all modern awards, new enterprise agreements and new workplace determinations include a delegates' rights term;
- a new general protection in Division 4 of Part 3-1 applicable only to union workplace delegates; and
- giving workplace delegates rights in relation to representing the industrial interests of members, and other persons eligible to be a member, of the relevant employee organisation, including in a dispute with their employer.

Further section 350C now provides that union workplace delegates are entitled to:

- reasonable communication with those members, and any other persons eligible to be such members, in relation to their industrial interests; and
- for the purpose of representing those interests:
  - reasonable access to the workplace and workplace facilities where the enterprise is being carried on; and
  - unless the employer of the workplace delegate is a small business—reasonable access to paid time, during normal working hours, for the purposes of related training.

Section 350A creates specific protections for workplace delegates. These protections prohibit an employer from:

- unreasonably failing or refusing to deal with a workplace delegate;
- knowingly or recklessly making a false or misleading representation to a workplace delegate; or
- unreasonably hindering, obstructing or preventing the exercise of the rights of a workplace delegate.

At the time of the passage of the laws, Master Builders complained of the lack of clarity regarding how these provisions could be applied and interpreted, for example, the meaning of 'reasonable communication' is unclear as is the meaning of 'reasonable access'.

The reforms also required that a delegate rights term be inserted into all Modern Awards. The Explanatory Memorandum states that it was expected that through a process to be carried out by the FWC:

> *'…details of various supporting rights for workplace delegates be included in modern awards and enterprise agreements, which would allow them to be tailored to particular industries and enterprises'*[33]

It was expected that the clarity lacking in the FW Act provisions would be provided through the FWC process and the insertion of the term in the Modern Awards.

However, as a result of the Federal Court decision in *Construction, Forestry and Maritime Employees Union v Australian Industry Group*[34] the clarity that the FWC had attempted to provide has been overturned, with industry now left with uncertainty as to the practical operation of these provisions.

Specifically, the Federal Courts decision now means that:

- A workplace delegate is entitled to represent the industrial interests of all members of the organisation, and persons eligible to be members, who work in the enterprise in which the delegate works, regardless of whether they are employees of the delegate's employer. In contrast the FWC held that this representation right should be limited to those employed by the employer of the delegate.

- A workplace delegate has a broad right to communicate with any person in relation to an industrial interest as opposed to the FWC's conclusion that such a right should be limited to communication for the purpose of representing the industrial interests.

- The exercise of their rights as a workplace delegate overrides any requirements that they comply with their duties and obligations as an employee and that they not hinder, obstruct or prevent the normal performance of work.

The Federal Court's expansive interpretation of these provisions will permit workplace delegates unprecedented free rein on constructions sites, for example:

- The expansive representation rights not linked to a particular employer increase union reach across construction sites where numerous employers interact.
- Delegate communications and activities may lawfully interfere with normal work when exercised "reasonably," heightening the risk of delays and disputes.
- Employers have reduced ability to enforce site policies or limit delegate access; paid training entitlements may increase cost and cause workforce disruption
- Multi-employer sites face greater coordination burdens and higher risk of breaching s 350A through ordinary supervisory decisions, all of which collectively create operational, industrial, and compliance challenges for construction projects.

Recommendations

- Allow the FWC greater scope to tailor term to suit industry specific circumstances. This may involve legislative change that would see the decision of the Federal Court overturned.

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[33] Para 85 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7072_ems_63e58127-2cdd-4b6c-8248-fdd8a3389e30%22

[34] [2025] CAFC187

Minimum standards for road transport workers

The provisions with respect of the road transport industry are having a direct impact on the building and construction industry.

The reforms established a new jurisdiction for the FWC to:

- Set minimum standards orders, minimum standards guidelines for the road transport industry.
- Empower the FWC to make orders in relation to the 'road transport industry contractual chain' and 'contractual chain participants'.

It is now clear, at least to the TWU, that these orders and regulations operate beyond the traditional road transport industry, with a recent application to the FWC applying to the building and construction industry.

On 18 December 2025, the TWU filed an application for a road transport contractual chain order (RTCCO) in the concrete industry (Application). The application specifically mentions large building and construction companies who engage those operating in the concrete industry.

If approved, the RTCCO would set minimum standards for the concrete industry and be legally binding on all parties to the road transport contractual chain (RTCC).

The work to be covered by the proposed RTCCO is the carriage of concrete in vehicles configured to cart 5 m3 of concrete or more (concrete cartage work).

Concrete cartage work includes the collection, transport and delivery of concrete using a prime mover that is fitted with a concrete agitator.

The proposed RTCCO would cover the following persons in the RTCC.

The Primary Parties being the first contract or arrangement in the RTCC.

Under the Application, they will typically include a large building and construction company (e.g. specifically listed in the application, Downer, Lendlease, CIMIC Group, John Holland, Multiplex and Mirvac) (described as "*the Client*" in the Application).

The parties to subsequent contracts or arrangements in the RTCC are captured and described as "*secondary parties*" in the RTCC.[35]

While not currently clear these are most likely to be secondary building and construction companies under the "Client" acting as a head contractor.

The Application also states that the RTCCO will cover a "*regulated road transport business*".[36] This umbrella term would capture:

- a concrete company that itself engages regulated road transport contractors or employees to deliver concrete; or
- intermediary "fleet owners" who engage regulated road transport contractors or employees to deliver concrete,

[35] *Fair Work Act 2009* (Cth) s 15RA(2)(b).
[36] *Fair Work Act 2009* (Cth) ss 15RA(7), 15F, 15R.

because the definition includes:[37] a person that receives services under a services contract, where the services contract provides for the performance of work in the road transport industry; or a person that is a constitutional corporation.

The proposed RTCCO purports to represent a "minimum standard" that should be apply when road transport businesses engage or employ employees and regulated road transport contractors to perform concrete cartage work in a contractual chain.

Items 1 to 14 of the claim do not on their face appear to be about a contract chain but about setting minimum standards between regulated road transport businesses (concrete companies and/or fleet owners) and regulated road transport contractors. This issue may simply be a matter of drafting.

Item 15 appears to be about record keeping concerning these minimum standards.

Item 16 imposes an obligation on Clients and as such may concern the contract chain.

Items 17 to 22 concern the contract chain and largely imposes obligations on Clients and creates rights for Clients to exercise against regulated road transport businesses in the contract chain.

Item 23 creates a process to empower the FWC to resolve disputes arising under the RTCCO.

Master Builders has a range of concerns with the Application.

Lack of clarity

Section 536PF(2) of the FW Act requies that the coverage of the regulated road transport contractual chain order is clear.

On the basis of the material provided, discussions regarding who should be involved in these proceedings and inconsistent terminology used throughout the Application, Master Builders has significant concerns that the coverage of the order is not clear.

The Application also appears to contain matters that are prohibited.

Section 536PR of the FW Act sets out the terms that must not be included in a road transport contractual chain order. At ss (1)(d) this include a *'matter relating to work health and safety that is otherwise comprehensively dealt with by a law of the Commonwealth, a state or a Territory'*.

There are clearly terms within the Application that deal with work health and safety matters, for example, section 4 of the proposed order titled 'training and instruction' section 6 titled 'consultation on hazard, risks and SOPs' and section 9 titled 'provision of personal protective equipment'.

Further, as required by section 4 and 5 of an application for a regulated road transport contractual chain order a number of matters must be dealt with in support of the making of an order.

The information provided in the Application is insufficient to justify such an order.

Should this Application progress and apply in the way it appears to be intended, it simply represents yet another handbrake on the industry, adding cost and complexity and stifling its efforts to deliver on the Housing Accord Targets and significant infrastructure pipeline

[37] *Fair Work Act 2009* (Cth) s 15R

The majority of building products and materials, including concrete, are delivered to site by road on a truck, whether that is directly from the manufacturer or through a distributor. Under the Application those receiving goods at construction sites would be captured by these orders. This would include not only large building and construction companies but SME's operating in the sector.

At the time of the passage of the reforms, the Regulatory Impact Statement (RIS) estimated that the cost per business impacted by these changes will be $58,894.23.40. It also estimates an average annual increase in wages over the next 10 years of $403.8 million. Additionally, the RIS notes that: 'as road transport is a derived cost for many types of goods, there may be flow-on impacts to other goods and services in other industries'.

Such an outcome is not only unacceptable, it is unworkable.

Recommendation

- Amend the legislation to exclude the building and construction industry from the application of regulated road transport contractual chain orders. This could operate in a similar way to the exclusion of the sector from multi-employer bargaining.[38]

[38] See section 23B and 186(2B)