Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

Counsel Assisting's further submissions on the re-introduction of a code of practice and independent regulator

3 JULY 2026

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A. Introduction

1. These submissions are further to the written opening submissions of counsel assisting the **Commission** of Inquiry into the CFMEU and Misconduct in the Construction Industry dated 14 April 2026.[1] These submissions should be read with those opening submissions. Those submissions noted the large corpus of evidence that the Commission had heard from witnesses to date about the prevalence of illegitimate and unlawful conduct within the Queensland construction industry.[2]

2. The 14 April 2026 submissions also prefaced the evidence of witness who would deal specifically with two proposed recommendations for the Commissioner's consideration which were that the Commission consider recommending:[3]

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1 See, Exhibit JMC-1: *The case for the introduction of a code of practice and an independent regulator* (**14 April 2026 submissions**).

2 Those submissions drew the Commission's particular attention to witness statements and reports (see, 14 April 2026 submissions (fn 1, above) at [1].

3 14 April 2026 submissions (fn 1, above) at [1].

(a) the introduction of a **code of practice** governing standards of behaviour in the construction industry; and

(b) the establishment of an independent regulatory body to administer and enforce that proposed code.

3. The Commission has heard evidence of the various and significant challenges presently facing the construction industry in Queensland. In addition to the illegitimate and unlawful conduct (referred to above), there is now cogent and compelling evidence before the Commission that a material aspect of the former Labor Government's procurement process – called "Best Practice Industry Conditions" (**BPICs**)[4] – have entrenched excess and unproductive work practices on a number of the State's largest construction projects.

4. Mr Damian Long, Chief Executive Officer and Secretary of the Civil Contractors Federation Queensland Ltd., gave detailed evidence about the formulation of BPICs. Mr Long's experience includes being a member of groups and committees which provide advice and feedback to government on procurement processes.[5] BPICs were purportedly a part a process of making the former Government's approach to "making an informed decision to improve its current Queensland Procurement Policy".[6]

5. Mr Long's witness statement should be read in full.[7] Ultimately, Mr Long's evidence was that, rather than supporting a best practice procurement process, BPICs have had a negative impact on productivity and an increase in direct labour costs. Mr Long recalls the first version BPICs being released by the former Government in about October 2019.[8] An important part of his detailed evidence is the references to the types of BPIC clauses that have been in force over time. He described BPICs generally as "in effect, a pattern enterprise agreement which was intended to apply to all State agencies".

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4 An illustrative example of the development of BPICs is given by Mr Damian Long (see, these submissions at [4]). BPICs were part of an overarching approach to purportedly improving the former Government's 'Queensland Procurement Policy' (QPP). BPICs were developed on a project-by-project basis and sat either beneath or alongside a set of 'Best Practice Principles' (BPPs). See,

5 Exhibit DL-1 – *Witness Statement of Damian Long (including amendments)* (**Long Statement**).

6 Letter dated 11 January 2021 from the Honourable Mick de Brenni MP, former Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement to Ms Rebecca Andrews, State Head – Queensland, Influence and Policy, Australian Industry Group (forming part of: Long Statement, Annexure DCL-13, pp 320-321).

7 In this paragraph, Mr Long's evidence is drawn primarily from his statement (fn 5), at [64]-[76] (unless separately footnoted).

8 Long Statement (fn 5) at [23].

6. Mr Long's evidence about the cost impacts of BPIC has some particularly compelling support from the Queensland Productivity Commission (**QPC**). Paragraph 11 of the Order in Council establishing the Commission (**COI Order**)[9] requires the Commission to "have regard to the […] QPC inquiry into construction productivity to ensure there is no duplication of the economic focus of that inquiry".[10]

7. On 24 October 2025, the QPC released its final report, *Opportunities to Improve Productivity of the Construction Industry* (**QPC final report**),[11] to the Queensland Government. The QPC modelled the cost impact of BPICs to the Queensland community and its report devotes an entire appendix to an explanation of that modelling.[12] The QPC estimated that the **direct costs** of the BPICs to the Queensland community have been as high as $19.9 billion, with further, **indirect costs**, between $4.9 billion to $18 billion.[13] The QPC has also warned of the potential *future* net impacts of BPICs. About this, the report succinctly states:[14]

> **Net impacts**
>
> BPICs create an estimated net economic cost to Queensland of $5.7 billion to $20.6 billion over the period 2024–25 to 2029–30.
>
> The main beneficiaries of the policy are construction workers and landlords, while those adversely impacted by the policy are the general public (as taxpayers and users of public infrastructure), renters, and first home buyers.
>
> Even if spillover effects to the broader private construction market are ignored, benefits to construction workers are only around two-thirds to half of the costs borne by taxpayers.

B. The need for legislative and policy change – an overview

8. Even at this stage of the Commission's work, it is submitted that legislative and policy change is required. As explained in the 14 April 2026 submissions, reviewing whether law or policy change is needed within the construction industry falls squarely within the

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9 *Commissions of Inquiry Order (No. 2) 2025*.

10 As mentioned on several occasions in open hearing by the Commissioner, parties were free to adduce other evidence that was contrary to what was contained in the QPC final report, should they choose to do so. (See, paragraph [11] of these submissions, below.)

11 The QPC published its report to the public on 21 January 2026. Its final report is available for download at https://www.qpc.qld.gov.au/content/inquiries/construction-productivity.html.

12 See, QPC final report (fn 11), *Appendix C: Modelling of BPICs*, pp 403-428.

13 This amount is calculated on a net present value (NPV) basis. See, Queensland Productivity Commission, *Final Report of the Queensland Productivity Commission on Opportunities to Improve Productivity of the Construction Industry October 2025* (**QPC Report**) (fn 11), p 421.

14 QPC Report (fn 13), Appendix C, pp 421-22.

matters into which the Commission has been directed to inquire.[15] Those submissions also detailed how industry codes and regulators had been utilised to address similar challenges in other Australian jurisdictions.[16]

9. The evidence the Commission subsequently received from Mr Nigel Hadgkiss[17] and Mr Wayne Jenkinson[18] further described the benefits that the codes and regulatory models of other had delivered for those jurisdictions. Their evidence was also directed at the potential benefits that could be achieved by the re-introduction of a similar code and regulator here in Queensland.

10. On 11 June 2026, following the completion of the examination of Messrs Hadgkiss and Jenkinson, the Commissioner issued Directions for the parties represented before the Commission to file any submissions in relation to Counsel Assisting's proposal for the re-introduction of a code and regulator.

11. Subsequently, on 18 June 2026, the CEPU and ETUQ wrote to the Commission foreshadowing an application that they be permitted to file expert evidence to contest earlier reports of the Queensland Productivity Commission. Assuming the CEPU and ETUQ are afforded the leave sought, the substance of that further expert evidence is not presently known to Counsel Assisting, and this submission is necessarily concerned with the evidence as it presently stands. This submission does, however, put the other parties represented before the Commission squarely on notice of the recommendations that Counsel Assisting seeks to have the Commissioner make.

12. To that end, in accordance with the Directions above, Counsel Assisting:

    (a) submits that, having regard to the evidence received by the Commission to date, the Commissioner can be satisfied that a well-designed code of practice, administered by a properly resourced independent regulatory body, has the potential to address various unproductive, unlawful, and illegitimate industrial relations practices that persist in the Queensland construction industry;[19]

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15 This is the combined effect of the COI Order (in particular, paragraphs [3(f)] and [5]. See, 14 April 2026 submissions (fn 1) at [5].))

16 14 April 2026 submissions (fn 1).

17 Exhibit NCH-1: *Witness Statement of Nigel Clive Hadgkiss dated 8 April 2026* (**Hadgkiss Statement**).

18 Exhibit WXJ-1: *Witness Statement of Wayne Jenkinson dated 8 April 2026* (**Jenkinson Statement**).

19 This submission should be read with the 14 April 2026 submissions (see, fn 1), in which Counsel Assisting initially set out the case for the re-introduction of a code of practice and regulator.

(b) notes that the re-introduction of a code of practice was a recommendation made by the Queensland Productivity Commission in its 2025 Report;[20] and

(c) encourages the Commissioner to now, consistent with the Commissioner's functions under the *Terms of Reference*,[21] make a similar recommendation to that offered by the Queensland Productivity Commission.

13. With an estimated $119 billion in government funded construction work over the next four years (including $7.1 billion associated with delivering the 2032 Olympic and Paralympic Games),[22] and a number of enterprise agreements covering major construction projects shortly to be renegotiated,[23] Counsel Assisting encourages the Commissioner to make any recommendations as promptly as possible.

C. A code of practice and an independent regulator should be re-introduced

14. The evidence disclosed three clear justifications for the re-introduction of a code of practice and an independent regulator:

(a) *first*, such measures have historically served to improve productivity, reduce project costs, and ultimately deliver better value for money for taxpayers;

(b) *second*, such measures have advanced freedom of association on construction sites; and

(c) *third*, such measures have otherwise reduced the incidence of misconduct.

15. Counsel Assisting addresses each of these justifications in further detail below.

The productivity and cost-saving opportunity

16. Messrs Hadgkiss and Jenkinson were unequivocal in their views that the re-introduction of a code of practice and independent regulator in Queensland would likely improve productivity and reduce project costs in the Queensland construction industry. They presented as credible and authoritative witnesses, and explained that the observations and

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20 QPC Report (fn 11), pp 16, 46, 119-120.

21 *Commissions of Inquiry Order (No. 2) 2025.*

22 Queensland Government, Budget Paper 3, Budget Capital Statement, 2026-27, p 5.

23 See examples in Table of Agreements at Annexure 1.

suggestions they offered were based on their extensive industry experience[24] and the consistent feedback they had received from other industry participants.[25]

17. Mr Hadgkiss observed:

> *In every jurisdiction where I have observed an active regulator administering an effective code, there have been corresponding improvements to productivity, safety, and freedom of association within the industry.*[26]

18. Mr Hadgkiss gave evidence that his first-hand observations, during both his time with the Victorian Construction Code Compliance Unit (**CCCU**), and with the Australian Building and Construction Commission (**ABCC**), was that the relevant regulatory body administering the then in-force code brought about improved compliance with industrial laws and a reduction in the level of industrial disputation.[27] When challenged on these observations, he described as "ridiculous" the suggestion that the work of the ABCC did not bring about an improvement in productivity.[28]

19. Mr Hadgkiss's views as to the potential benefits of a code of practice, and the experience and observations on which those views are based, are comprehensively detailed in the Hadgkiss Statement.[29] Mr Hadgkiss ultimately offered the assessment that a properly designed code:

> *…would almost assuredly deliver a marked improvement to productivity, safety, and compliance in the Queensland building and construction industry*.[30]

20. Mr Jenkinson was similarly definitive in his views that a well-designed code and regulator would drive efficiencies on construction sites.[31] He recalled how, during the period in which the 2013 Queensland Guidelines were in force:

> *Industry representatives consistently remarked to me that the 2013 QLD Guidelines and the establishment of the BCCB were welcome developments for the industry and were contributing to improved productivity and more stable industrial environments on construction sites.*[32]

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24 Hadgkiss Statement at [1]-[6]; Jenkinson Statement at [5]-[10].

25 TN 2929 ln 16-18; TN 1422 ln 46 – TN 1433 ln 5.

26 Hadgkiss Statement at [21].

27 Hadgkiss Statement at [23]-[24]; see also TN 1402 ln 25-33; TN 2979 ln 26-35.

28 TN 2957 ln 27-31.

29 See, e.g., Hadgkiss Statement at [2]-[23].

30 Hadgkiss Statement at [150].

31 Jenkinson Statement at [21]-[22]; Jenkinson Statement at [31]-[32]; TN 1448 ln 24-30; TN 1452 ln 33-45; TN 1453 ln 12-18; TN 1457 ln 1-12.

32 Jenkinson Statement at [21].

21. During cross-examination by the CFMEU Administrator, Mr Jenkinson reiterated that his observations throughout his time with various industry regulators supported a conclusion that an effective regulator would likely bring about improvements in productivity:

> MR JENKINSON : *[M]y observations in my time in those roles leads me to believe that there is a correlation between an effective regulator in the industry and increased productivity on the ground.*[33]
>
> […]
>
> MR JENKINSON : *I can say from - again, just from my experiences and observations from time on the ground, is during that the time that there was an effective regulator in the industry, there was fewer days lost to unlawful industrial action.*[34]

22. Again, a fulsome record of Mr Jenkinson's views as to the potential benefits of a code of practice, and the basis for those views, can be found in the Jenkinson Statement.[35]

23. Each of Messrs Hadgkiss and Jenkinson were cross-examined at some length as to whether Australian Bureau of Statistics data supported their conclusions as to the potential productivity benefits of a code of practice and industry regulator. The limitation of that line of cross-examination is that productivity is necessarily multi-factorial, and will be informed by a range of variables. Messrs Hadgkiss and Jenkinson consistently emphasised that their conclusions were based principally on their extensive experience in regulatory roles and the feedback they had consistently received from industry participants.[36] That being the case, the foundation for each of Messrs Hadgkiss and Jenkinson's respective conclusions was not meaningfully disturbed by the line of cross-examination pursued by the CFMEU Administrator, and the Commissioner ought place significant reliance on Messrs Hadgkiss and Jenkinson's considered observations.

24. In any event, in the course of the CFMEU Administrator's cross-examination of Mr Hadgkiss, the CFMEU Administrator tendered a 2014 Report from the Australian Government Productivity Commission.[37] Tellingly, even that report acknowledged that the most reasonable conclusion was that the work of the BIT/ABCC had in fact improved

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33 TN 2923 ln 16-19.

34 TN 2924 ln 45 – TN 2925 ln 2.

35 See, e.g., Jenkinson Statement at [25]-[32].

36 TN 1452 ln 33-45; TN 2929 ln 10-22; TN 2936 ln 27-31; TN 2925 ln 8-10; TN 2927 ln 33-36; TN 2945 ln 41 – TN 2946 ln 1; TN 3001 ln 1-14.

37 Exhibit A2: *Additional bundle of four documents provided for the purpose of cross-examination of Mr Jenkinson and Mr Hadgkiss* (**CFMEU Administrator Bundle**).

productivity, albeit not to a degree that could necessarily be discovered with any statistical precision in aggregate data for the entire construction industry.[38]

25. A code is ultimately no more than the Government using its purchasing power to drive positive changes in industry behaviour and standards. A well-designed code that prohibits unproductive work practices represents a potential panacea to the wastage and inefficiencies embedded by the Labor Government's "Best Practice Industry Conditions", which the Commission will recall one witness described as:

> *The most damaging policy to the productivity of the construction industry in this state that I have come across*.[39]

26. Whilst it is acknowledged that there are a number of competing data sets, and indeed Counsel Assisting anticipates that the CFMEU Administrator will attempt to make much of any statistical discrepancies, there is nevertheless sufficient evidence for the Commissioner to be satisfied that a code of practice represents an opportunity to improve productivity and efficiency.

27. In circumstances where:

    (a) none of the other parties represented before the Commission have to date called any witness to contradict Messrs Hadgkiss and Jenkinson's conclusions;

    (b) the conclusions of Messrs Hadgkiss and Jenkinson as to the potential productivity benefits and cost saving implications of a code of practice evidence withstood robust cross-examination;

    (c) the Queensland Productivity Commission has recently recommended the re-introduction of a code of practice;[40] and

    (d) even the material that the CFMEU Administrator has put before the Commission acknowledged that arrangements of the kind now proposed likely had a positive effect on productivity,

    the Commissioner should accept that a well-designed code, administered by a properly resourced regulator, has the potential to deliver improvements to productivity, and reduce inefficiencies, in the construction industry.

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38 CFMEU Administrator Bundle, p 10.

39 Long Statement at [68]; see also TN 685 ln 19-40.

40 QPC Report (fn 11), p 16, 46 (Recommendations 6 and 7), 119-120.

28. Indeed, even if the Commissioner were to find that a code of practice and properly resourced regulator represented no more than an *opportunity* to improve productivity and efficiencies in an industry as expansive as the Queensland construction industry, then given the significant volume of taxpayer funded construction work forecast to be undertaken over the next four years,[41] that potential alone should move the Commissioner to recommend the re-introduction of the proposed measures.

The implications for freedom of association, safety, and right of entry

29. Having regard to the potential productivity and cost-saving opportunity, the Commissioner recommending the re-introduction of a code of practice and independent regulator should not be dependent on those measures concurrently delivering other benefits for the construction industry and its participants.

30. Nevertheless, it should be recalled that Messrs Hadgkiss and Jenkinson gave extensive evidence as to how a code of practice will also serve to protect freedom of association.[42] Mr Jenkinson's evidence on that point has not been challenged, and the challenge to Mr Hadgkiss's evidence was confined to suggestions that: (i) there were already legislative prohibitions on discrimination on the basis of union membership; and (ii) that prohibiting the display of union paraphernalia would curtail the freedom of association of those who wished to display it. However, as Mr Hadgkiss explained:

    (a) the difficulty with the existing prohibitions is that they are often not enforced;[43] and

    (b) whilst the display of union symbolism may be an expression of one worker's industrial association, it too often has the practical consequence of impinging on the freedom of association of others.[44]

31. Similarly, Mr Hadgkiss gave evidence of how a code of practice that preserves the integrity of right of entry laws can limit the frequency with which union representatives enter and move around a construction site without proper justification.[45] It is axiomatic that reducing the frequency with which non-essential personnel are moving around an active construction site will in turn reduce the incidence of preventable accidents. That

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41 Queensland Government, Budget Paper 3, Budget Capital Statement, 2026-27, p 3.

42 Hadgkiss Statement at [21]; Hadgkiss Statement at [72]-[74].

43 TN 3011 ln 42-47.

44 Hadgkiss Statement at [89]-[90]; TN 3013 ln 24-33; TN 1432 ln 35 – TN 1433 ln 39.

45 Hadgkiss Statement at [63]-[69]; see also Jenkinson Statement at [42]; TN 1430 ln 39-46.

being the case, it would be reasonably open for the Commissioner to conclude that a code of practice may also improve safety on construction sites,[46] particularly if that code concurrently requires contractors to confirm their adherence to applicable workplace health and safety laws.

32. For completeness, both Messrs Hadgkiss and Jenkinson explained how the potential loss of government funded building work under a code of practice had motivated contractors in other jurisdictions to push back against illegitimate and unlawful behaviours on site in circumstances where the more expedient course may have otherwise been to acquiesce or accommodate those behaviours.[47] Plainly enough, a reduction in illegitimate and unlawful behaviours is in itself a worthwhile end, and the potential for a code and regulator to drive improvements in the behaviour of industry participants is simply a further reason supporting a recommendation for the re-introduction of these measures.

D. The components of any new code

33. It being clear that the re-introduction of a code represents a significant opportunity to drive improvements in relation to, at the least, productivity and costs savings, the question is then what that code should look like.

34. Messrs Hadgkiss and Jenkinson gave extensive evidence as to the particular components of a code of practice that, based on their extensive experience developing and administering such codes, they considered to be integral to a code delivering on its potential. Those components can be broadly summarised as:

    (a) prohibitions on certain unproductive work practices;[48]

    (b) measures that protect freedom of association;[49]

    (c) rules that preserve the integrity of right of entry laws;[50]

    (d) a requirement that contractors prepare workplace relations management plans;[51] and

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46 There is certainly not a proper foundation for a finding, as was seemingly invited by the CFMEU Administrator, that an industry code would somehow increase the number of deaths on construction sites.

47 Hadgkiss Statement at [18]-[20].

48 Hadgkiss Statement at [30(a)]; Jenkinson Statement at [28].

49 Hadgkiss Statement at [30(c)]; Jenkinson Statement at [28(c)].

50 Hadgkiss Statement at [30(b)]; Jenkinson Statement at [28].

51 Hadgkiss Statement at [30(d)]; TN 1463 ln 38-45.

(e) mechanisms to assist with the code's implementation.[52]

Prohibitions on unproductive work practices

35. Arguably the simplest way for a code to bring about improvements in productivity and reduce inefficiencies is for the code to prohibit certain practices that prevent work being completed efficiently.

36. As Mr Hadgkiss explained:

> *One of the most significant drivers of productivity in the building and construction industry is contractors making a competitive assessment of the labour required to complete a particular piece of work - if a contractor can resource a package of work more efficiently through, for example, adopting more productive work practices or engaging the most suitable workers, the contractor will be better placed to deliver a competitive tender that completes the work in a more timely and cost effective manner*.[53]
>
> (Emphasis added)

37. Messrs Hadgkiss and Jenkinson helpfully identified various unproductive work practices that previous codes of practice have proscribed and that, in their respective opinions, presented an unnecessary impediment to work being resourced and completed efficiently. Those practices included, in general terms:

(a) minimum manning arrangements;[54]

(b) restrictions on the use of casual and daily hire employment;[55]

(c) restrictions on the order of redundancies;[56]

(d) obligations to consult with unions on resourcing decisions;[57]

(e) limitations on a contractor's freedom to allocate work;[58]

(f) prescriptions on the terms on which subcontractors may be engaged;[59] and

(g) the use of unregistered written agreements.[60]

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52 Hadgkiss Statement at [136]-[144].
53 Hadgkiss Statement at [32].
54 Hadgkiss Statement at [36]-[39]; see also TN 1424 ln 1-16.
55 Hadgkiss Statement at [40]-[43]; See also TN 1424 ln 17-27.
56 Hadgkiss Statement at [44]-[46]; see also TN 1428 ln 9-36.
57 Hadgkiss Statement at [47]-[51].
58 Hadgkiss Statement at [52]-[55]; see also TN1427 ln 1-10.
59 Hadgkiss Statement at [56]-[57]; Jenkinson Statement at [47]-[49].
60 Hadgkiss Statement at [58]-[62]. See also Jenkinson Statement at [46]-[51]; TN.1427 ln 18-22.

38. A detailed explanation of the vice of each of these practices can be found in the statements of Messrs Hadgkiss and Jenkinson.[61] Messrs Hadgkiss and Jenkinson's evidence that these practices have detrimental implications for productivity and project costs was considered and cogent, and absent any contradiction, should be accepted.

39. In that context, this submission then deals only with those components of a code identified by Messrs Hadgkiss or Jenkinson in respect of which there has been some challenge to the appropriateness of a code including such a term.

Minimum manning

40. Mr Hadgkiss was challenged on the appropriateness of a proscription on minimum manning clauses. When it was suggested to Mr Hadgkiss that minimum manning arrangements produced safer workplaces, Mr Hadgkiss disagreed: he emphasised that headcount needed to be determined on a case-by-case basis, rather than by reference to a one size fits all minimum,[62] and observed that responsible employers would take into account the number of workers needed to manage workplace hazards and emergency situations.[63]

41. When it was suggested to Mr Hadgkiss that minimum apprentice ratios were important in addressing skill shortages, Mr Hadgkiss quite cogently observed that artificial ratios do little to advance the skills of the apprentices involved:

> MR HADGKISS: [T]*o have apprentices sitting around without meaningful work is preposterous. If they're not required, they're not required. You cannot create work for them if there's no work there. So how are they going to learn their skills when they're sitting around making up numbers?*[64]

Restrictions on the types of employment

42. Mr Hadgkiss described as "commonsense" the proposition that prohibiting a contractor from engaging casual and daily-hire workers would inhibit the ability of contractors to meet fluctuating resourcing requirements.[65] That evidence accorded with his earlier observation that:

> *...restrictions on the type of employment that may be offered deprive employers of the flexibility required to meet those fluctuations and curtail the ability of the*

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61 See, in particular, Hadgkiss Statement at [32]-[62]; Jenkinson Statement at [38-51]; see also TN 1423 ln 24.

62 TN 2993 ln 1-11. See also TN 1424 ln 1-16.

63 TN 2992 ln 27-31.

64 TN 2995 ln 45 – TN 2996 ln 3.

65 TN 2997 ln 47.

> *tenderer to acquit the work in the manner that it deems most efficient. That again leads to over-resourcing of projects and the total cost of completing work being higher than it otherwise would be.*[66]

43. However, whilst the CFMEU Administrator questioned Mr Hadgkiss on his assumptions as to the CFMEU's *motives* for opposing daily hire,[67] Mr Hadgkiss's evidence as to *benefits* of proscribing restrictions on the use of casuals and daily hire was never meaningfully challenged.

Clauses requiring a contractor to consult with union(s) about resourcing decisions

44. Mr Hadgkiss was challenged on the appropriateness of including clauses that require a contractor to consult with the relevant union about resourcing decisions. Specifically, it was put to him that a requirement to consult doesn't strictly require the contractor to obtain the union's approval.[68] That line of cross-examination overlooked, and failed to engage with, Mr Hadgkiss's earlier evidence that:

> *…once the union is aware that a decision is to be made regarding resourcing, the union will inevitably seek to influence that decision. I have personally observed cases where the means deployed to influence such a decision have extended to threats, intimidations, and sabotage. In that context, it is important that contractors are able to make decisions about the resourcing on a project free from any obligation to run those decisions past a union.*[69]

Restrictions on the terms on which subcontractors may be engaged

45. It was suggested to Messrs Hadgkiss and Jenkinson that a prohibition on "project agreements" (being a restriction on the terms on which subcontractors may be engaged) might be at odds with the objective of the Federal Government's "same job same pay" laws.

46. First, that line of questioning misapprehends the mechanics of the "same job same pay" legislation, which has effect only consequent to the Fair Work Commission making an order that certain labour hire employees are to be paid a protected rate of pay – it is not legislation of universal or default operation.

47. Second, that line of questioning says nothing about the *merits* of the legislative objective being pursued by the Federal Government. If a state government considers that a different

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66 Hadgkiss Statement at [42].

67 TN 2998-2999; see also Hadgkiss Statement at [43].

68 TN 3000 ln 30-39.

69 Hadgkiss Statement at [50].

legislative objective – one that encourages competition, productivity, and recognition of relative contributions – is a more desirable objective, then short of legislative inconsistency, there is no reason why a state government should not pursue that preferable legislative objective through a mechanism that, in this case, would prohibit the use of unproductive "project agreements". Mr Hadgkiss succinctly explained the rationale for prohibiting prescriptions on the terms on which subcontractors may be engaged:

> MR HADGKISS: *It depends on a case-by-case basis. If Mary works harder than Jane, she should get remunerated accordingly. It shouldn't be one size fits all.*[70]

48. Mr Hadgkiss had earlier pointed out the obvious downside of arrangements of the kind that the CFMEU Administrator appeared to be seeking to protect:

> *Because such clauses set baseline conditions for subcontractors, they act as a disincentive for subcontractors to compete against each other to offer greater productivity and efficiency - they effectively preclude subcontractors competing on price and performance in the manner they otherwise would in an efficient market.*[71]

49. This concern with project agreements was echoed by Mr Jenkinson:

> *The problem with project agreements is that they effectively eliminate the ability for subcontractors to compete on labour costs (which is generally the largest component of a subcontractor's cost base). The elimination of competition between subcontractors on labour costs invariably results in higher project costs*.[72] (emphasis added)

50. For completeness, Counsel Assisting notes there has to date been no challenge to Messrs Hadgkiss and Jenkinson's suggestion that any new code should proscribe:

    (a) restrictions on the order of redundancies;

    (b) limitations on a contractor's freedom to allocate work; or

    (c) the use of unregistered written agreements.

Measures that protect freedom of association

51. Messrs Hadgkiss and Jenkinson identified various practices that are prevalent on construction sites but that undermine freedom of association, including "no ticket, no

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70 TN 3003 ln 33-34.
71 Hadgkiss Statement at [57].
72 Jenkinson Statement at [49].

start", "show card days", and discrimination against workers based on their union membership status.[73] As mentioned above, Messrs Hadgkiss and Jenkinson each expressed a view that a well-designed code would do much to protect freedom of association.[74]

52. The high point of the CFMEU Administrator's challenge to Messrs Hadgkiss and Jenkinson's evidence on this matter was when it was suggested to Mr Hadgkiss in cross-examination that the *Fair Work Act 2009* (Cth) (***FW Act***) already contain provisions that made it unlawful for a person to coerce or discriminate against another person because of their union membership status.[75]

53. That line of questioning failed to engage with Mr Hadgkiss's earlier evidence that unlawful behaviour of this kind was too often perceived by contractors as simply the cost of doing business, and that the sanctions available under a code of practice had proven far more effective in ensuring that relevant laws and standards are complied with than monetary fines or penalties.[76] Relatedly, Mr Hadgkiss explained the importance of proscriptions on discrimination in general terms being supplemented by more specific proscriptions on particular discriminatory practices[77] – obviously enough, a proscription on observable industrial practices is easier to enforce than generalised prohibitions on discrimination that require proof of the respondent's motivations.

54. Mr Hadgkiss also gave evidence about the challenges accompanying the excessive proliferation of union paraphernalia on site.[78] When it was put to Mr Hadgkiss that the display of union paraphernalia on site was not always a product of union coercion, Mr Hadgkiss responded:

> MR HADGKISS: *[T]here were numerous cases where employers came forward saying that the union are demanding that all people who come on site will have to wear a CFMEU, or whatever it is, logo, and you will pay for it. You will pay for their shirts, their overalls, their helmets and all the memorabilia that goes on it.*[79]

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73 Hadgkiss Statement at [72]-[96]; TN 1431 ln 9 -1433 ln 21.
74 Hadgkiss Statement at [21]; Hadgkiss Statement at [72]-[74].
75 TN 3009-3011.
76 Hadgkiss Statement at [18]-[20].
77 Hadgkiss Statement at [76].
78 Hadgkiss Statement at [88]-[92].
79 TN 3013 ln 29-34.

55. Similarly, when it was suggested to Mr Hadgkiss that he hadn't identified any particular misconduct by union officials that was said to have been emboldened by a saturation of union paraphernalia on site,[80] Mr Hadgkiss's response was definitive:

> MR O'GRADY: *In your statement, you don't identify any particular conduct said to have been emboldened by the presence of union paraphernalia, do you?*
>
> MR HADGKISS: *In my statement, no, but I would have been happy to provide it in spades.*
>
> MR O'GRADY: *And you don't identify any case in which union paraphernalia caused unlawful conduct?*
>
> MR HADGKISS: *In my statement, no, I do not. But again, there are numerous examples*.[81]

56. For completeness, Counsel Assisting observes there has been no challenge to Mr Hadgkiss's claims that freedom of association is enhanced by a code of practice that prohibits both the display of signs that harass employees who participate (or do not participate) in industrial activity,[82] and the hiring of non-working shop stewards.[83]

Rules that preserve the integrity of right of entry laws

57. Messrs Hadgkiss and Jenkinson both noted the frequency with which union officials take it upon themselves to enter construction sites other than in accordance with the legislated right of entry frameworks,[84] and explained how that practice presented risks to both safety and productivity.[85]

58. During cross-examination, the CFMEU Administrator suggested to Messrs Hadgkiss and Jenkinson that restricting entry to the circumstances contemplated by the FW Act interfered with the right of occupiers to control who could enter their premises. It is not the case, however, that an employer permitting a union official onto site in any circumstance would result in the contractor being disqualified from government funded building work:

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80 C.f. Hadgkiss Statement at [90].
81 TN 3013 ln 40 – TN 3014 ln 5; see also Hadgkiss Statement at [89]-[90].
82 Hadgkiss Statement at [84]-[87].
83 Hadgkiss Statement at [93]-[96].
84 Hadgkiss Statement at [63]-[69]; Jenkinson Statement at [42].
85 Hadgkiss Statement at [63]-[69]; Jenkinson Statement at [42].

> MR O'GRADY: *And if they're in breach of the code, they run the risk of losing their capacity to bid for government work.*
> MR HADGKISS: *Not on just one occasion like that. It would have to be a systemic course of conduct.*
> MR O'GRADY: *Well, there's nothing in the code that says it's got to be a systemic course of conduct.*
> MR HADGKISS: *No, it's just like punishment generally within the law. It's on a case-by-case basis.*[86]

59. As the Cole Royal Commission previously observed, there is significant scope for entry and inspection powers to be misused by union officials on construction sites, where typically more than one, and sometimes many, employers are operating from the same premises, is substantial.[87] It is that vulnerability of construction sites, coupled with the observations of Messrs Hadgkiss and Jenkinson as to the risks accompanying non-compliant entries, that justifies a fetter being re-introduced on the rights of contractors to facilitate non-compliant entries. As Mr Hadgkiss explained, a prohibition of the kind contemplated provides contractors with a justification for resisting attempts by union officials to force their way onto site in circumstances where the fear of industrial disputation should the entry be refused may otherwise result in many contractors perceiving the facilitation of the non-compliant entry as simply the path of least resistance.

The use of workplace relations management plans

60. Again, Messrs Hadgkiss and Jenkinson gave extensive evidence in relation to the benefits of requiring tenderers for government funded building work to produce a workplace relations management plan (**WRMP**).[88] WRMPs were a feature of each of the Victorian Code, Queensland Guidelines, and 2016 Code.[89]

61. Messrs Hadgkiss and Jenkinson explained that WRMPs served an educative function, and also provided a document against which a contractor's compliance with the requirements

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86 TN 3006 ln 6-17.
87 Cole Final Report Volume 7, p 94.
88 Hadgkiss Statement at [98]-[103]; Jenkinson Statement at [53].
89 Jenkinson Statement at [52].

of the code and other industrial relations laws could be assessed.[90] Their respective evidence as to the benefits of requiring WRMPs has not been challenged.

62. The CFMEU Administrator suggested to both Messrs Hadgkiss and Jenkinson in cross-examination that the WRMP process was susceptible to corruption. However, that was the only attack made on their evidence in respect of the potential benefits of WRMPs, and it was an attack for which there is no evidentiary foundation. In any event, each of Messrs Hadgkiss and Jenkinson rejected that proposition, noting there had never been a suggestion of corruption during their time with various regulators,[91] and that such risks were moderated if a contractor who was dissatisfied with the outcome of a WRMP assessment had the right to have that assessment reviewed.[92]

63. The evidence before the Commission overwhelmingly supports the inclusion of a WRMP framework in any new code.

Mechanisms to assist with a code's implementation

64. There has also been no challenge to date to Messrs Hadgkiss and Jenkinson evidence in which they identified various other features that a code of practice should incorporate to maximise the prospect of that code delivering the desired improvements in productivity, efficiencies, and standards of behaviours. Those features included that:

    (a) contractors should be required to demonstrate that they are also complying with the code on any privately funded building projects on which they are engaged;[93]

    (b) contractors should be required to ensure that any subcontractors they engage on government funded building work are also complying with the requirements of the code;[94]

    (c) the code should apply to "related entities" of any code covered entity;[95] and

    (d) the code should require the regulator to notify the ASX if a code-covered entity is found to have breached its obligations under the code.[96]

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90 Hadgkiss Statement at [98]-[99]; Jenkinson Statement at [54]-[55].
91 TN 2942 ln 4-14; TN 3017 ln 34-42; TN 3018 ln 1-8.
92 TN 2938 ln 30-47; TN 3017 ln 27-30.
93 Hadgkiss Statement at [139].
94 Hadgkiss Statement at [142]-[144]; Jenkinson Statement at [38]-[41].
95 Jenkinson Statement at [35]-[37].
96 Hadgkiss Statement at [138].

65. In circumstances where the rationale offered for the inclusion of these features in a code was sound, and the asserted benefits of including such features has not, at least to date, been contradicted, Counsel Assisting considers that these features should be incorporated into any new code that the Commissioner recommends be introduced.

E. Draft Guidelines

66. There are significant similarities between each of the Victorian Code, the Queensland Guidelines, and the 2016 Code.

67. Having regard to the available evidence, Counsel Assisting considers that the former Queensland Guidelines provide a commendable model for a "code of practice" that could be readily re-introduced in Queensland. To that end, Counsel Assisting has enclosed with this submission, at **Annexure 2**, the Draft Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (**Draft Guidelines**).

68. The only material differences between the former Queensland Guidelines and the Draft Guidelines are:

    (a) at Part 2.5, it is proposed to delete the reference to the Federal Building Code, as there is presently no such code in existence;

    (b) at Part 3.1, it is proposed to remove the requirement that a contractor demonstrate compliance with the code in respect of its past activities;

    (c) at Part 4, it is proposed to proscribe that the sorts of unproductive and/or inefficient practices with which Part 4 is concerned must not be given effect by a "Workplace Arrangement" – a newly defined term extending to any agreement, understanding, practice, policy, procedure or arrangement, whether written or otherwise;

    (d) at Part 4, it is proposed to introduce an express prohibition on Workplace Arrangements that restrict the ability of a contractor to substitute RDOs for another day. That clause is intended to balance the employee's right to a day off work with the need for the efficient arrangement (and, if desired, continuous performance) of work on the site;

    (e) at Part 4, it is proposed to explicitly confirm that the requirement that there be no relaxation of right of entry provisions extends to the right of entry provisions contained in the *Work Health and Safety Act 2001 (*Qld*)*;

(f) at Part 4, it is proposed to introduce a new requirement that a Workplace Arrangement not provide for non-working workplace delegates;

(g) at Part 5, it is proposed to introduce a requirement that WRMPs detail the measures the contractor will have in place to advance the recruitment and retention of women. The importance of such measures was a matter emphasised during consultations with union representatives;

(h) Part 7.1, it is proposed to introduce a requirement that lost time through any work health and safety matter, or purported work health and safety matter, is reported. This is an extension of the requirement to report any lost time through industrial action and ensures that safety-related lost time is reported, lest it is not otherwise done so.

(i) at Part 8, it is proposed to require that WRMPs detail the measures the contractor will implement to improve productivity and/or cost outcomes as against any previous BPIC Arrangement that may have been in place. This requirement is introduced in response to the concerns that the Queensland Productivity Commission identified as to the enduring consequences of BPIC Arrangements, as well as the evidence received by this Commission as to the implications BPIC Arrangements had for the completion cost of major construction projects;[97] and

(j) at Part 9, it is proposed to introduce a proscription on Workplace Arrangements that undermine the demarcation of union eligibility and coverage. Whilst questions of coverage are ultimately determined by union rules, this addition is intended to ensure that the boundaries of union coverage are not practically undermined on construction sites as a consequence of an arrangement entered into between a union and contractor. The Commission has heard evidence of a "turf war" between the CFMEU and AWU on civil construction projects[98] that has disrupted productive work and been the catalyst for a variety of unacceptable behaviours. Prohibiting Workplace Arrangements that circumvent the boundaries of union coverage may help cool inter-union tensions and the poor behaviours and disruptions that result.

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97 Noting that there may be other and contradictory evidence as noted in Paragraph 5 above.

98 See for example Exhibit SLS-1: *Witness statement of Stacey Schinnerl dated 28 November 2025* at [16]-[17]; see also TN 578 ln 5-21; TN 582 ln 31 – TN 584 ln 6; TN 591 – TN 592; TN 593 ln 1-30.

F. The role of an independent regulator

69. Messrs Hadgkiss and Jenkinson gave detailed evidence as to the form any regulatory body should take, the role that regulatory body should play, and the powers and resources that the regulatory body ought to be vested with to ensure it can effectively discharge that role.[99]

70. Amongst other matters, Messrs Hadgkiss and Jenkinson suggest that, based on their respective experience:

    (a) the regulator should be established to serve educative, investigative, advisory, and enforcement functions;[100]

    (b) the regulator must be vested with appropriate powers to enable it to effectively discharge, at the least, its investigative and enforcement functions;[101] and

    (c) the regulator should be established as an independent body.[102]

71. Those suggestions, and the rationale for them, has not, at least to date, been challenged.

72. Whilst the CFMEU Administrator put to each of Messrs Hadgkiss and Jenkinson that previous regulators had focussed disproportionately on the CFMEU, Messrs Hadgkiss and Jenkinson both vehemently resisted that suggestion.

73. In the case of Mr Hadgkiss:

> MR O'GRADY: *You'd agree with me that that reflects a significant imbalance between the number of prosecutions brought against employers when compared to the prosecutions brought against –*
>
> MR HADGKISS: *No, on the contrary, it reflects the - the state of the affairs that we were confronting. The unions were blatantly breaching the law, and if builders did the same, they would be brought to task.*[103]

74. In the case of Mr Jenkinson:

> MR JENKINSON: [W]*e would have taken an educative approach many years ago had the CFMEU been prepared to work with us, as employers usually did, when we identified contraventions. The CFMEU long displayed …no intention or desire to work with us as the regulator, unlike the employers who we identified*

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99 Hadgkiss Statement at [104]-[135].

100 Hadgkiss Statement at [105]-[106]; see also TN 1437 ln 39 – TN 1438 ln 3.

101 Hadgkiss Statement at [117]-[124].

102 Hadgkiss Statement at [132]-[135].

103 TN 2951 ln 36-43.

> *as underpaying various employees from time to time. That's why… we had such a high rate of litigation against the CFMEU and a low rate against employers*.[104]

75. Similarly, Mr Jenkinson disavowed the idea that there was any basis for the CFMEU to consider that they were "under attack" by past regulators (and indeed there is no evidence to suggest that was the case):

> MR JENKINSON: *I don't think the CFMEU had grounds to think they were under attack. We were an independent statutory authority who was there to police the workplace relations laws across the entire industry.*
>
> […]
>
> MR JENKINSON: *I don't accept that they should have had that understanding. All they needed to do to have us stop attacking them, if that's what they thought we were doing, was to comply with the law*.[105]

76. If the Commission is minded to recommend the re-establishment of a regulatory body, then the unchallenged evidence of Messrs Hadgkiss and Jenkinson as to what that regulatory body should look like ought be given significant weight.

G. Conclusion

77. The significant volume of construction work forecast in Queensland over the coming years amplifies the potential cost to Queensland taxpayers of inefficient and unproductive work practices. The imminent re-negotiation of a number of significant enterprise agreements covering construction work on many of the State's largest infrastructure projects means that without prompt action, there is a risk those inefficient and unproductive work practices may be entrenched for a further four years.

78. In that context, having regard to the evidence presently available to the Commission, Counsel Assisting encourages the Commissioner to recommend the re-introduction of a code of practice and independent regulator as a matter of priority.

H. Consultation on a new code of practice

79. Separate to the formal hearing process, the Commission has undertaken a consultation process with industry stakeholders in relation to a discussion paper that was released on 31 March 2026. That discussion paper was distributed to some 106 stakeholders, who were each invited to lodge written submissions in relation to seven issues:

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104 TN 2918 ln 19-25.

105 TN 2913 ln 18-20; TN 2915 ln 45-47.

(a) The desirability of Queensland having a code;

(b) The key elements that should be included or exclude from such a code;

(c) The benefits of using a code relative to other mechanisms;

(d) The costs and/or benefits of specific parts of previous construction codes;

(e) The timing and implementation of such a code; and

(f) The mechanism and costs of implementation and enforcement of such a code.

80. Meetings were also conducted with a number of these stakeholders for the purpose of affording them an opportunity to provide verbal feedback on the discussion paper.

81. The feedback provided by the stakeholders has been anonymised, as was promised as part of the consultation process, and Counsel Assisting does not rely on the feedback received for the purpose of these submissions save for two points. First, the feedback received discloses broad support from industry (although admittedly not from unions) for the re-introduction of a code of practice. Second, is a union-initiated point about the attraction and retention of women (see paragraph [68(g)], above).

82. A summary of the feedback received is attached at **Annexure 3** to this submission.

James McLean, Counsel Assisting
Commission of Inquiry into the CFMEU
and Misconduct in the Construction Industry
3 July 2026

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

Annexure 1

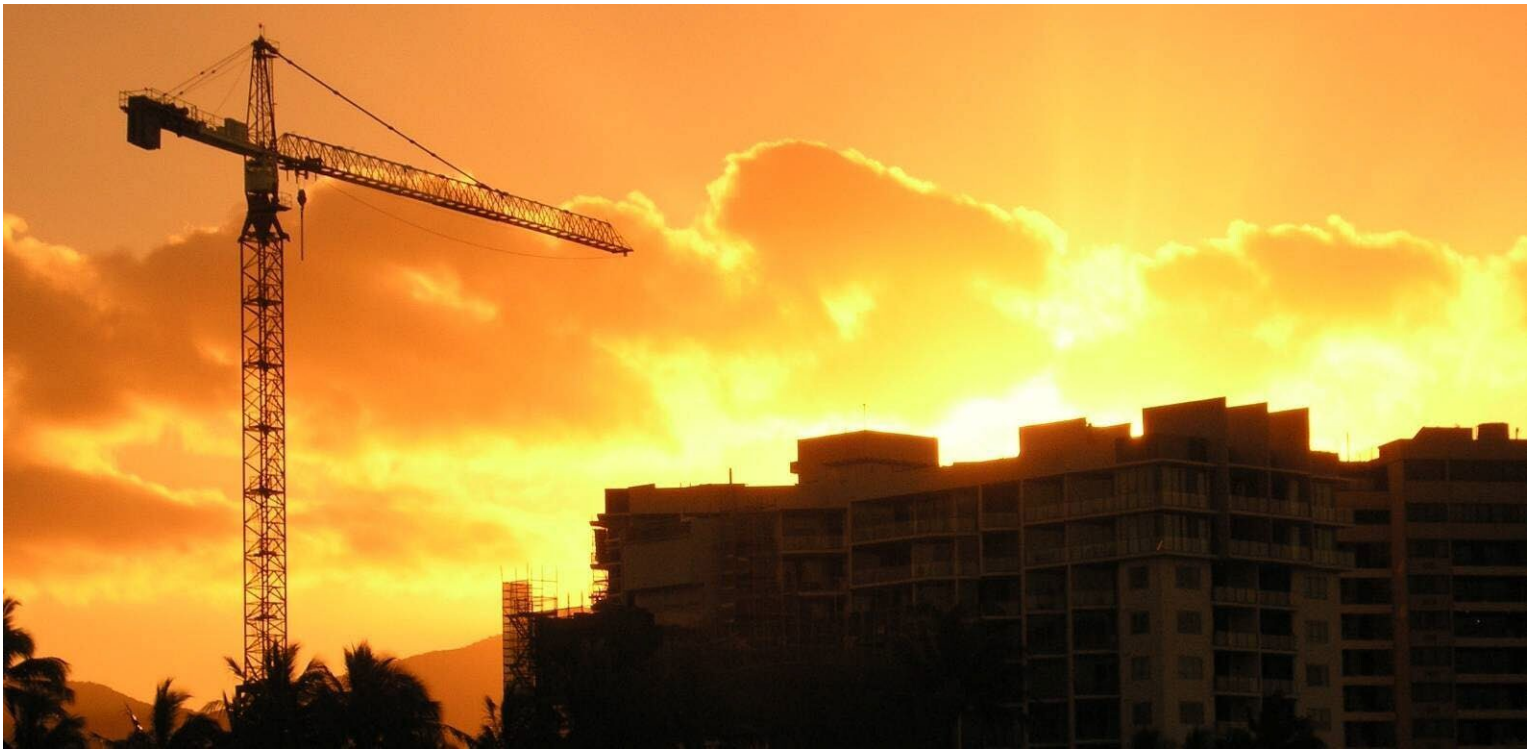
Annexure 1: Table of Agreements

No.	EA	Nominal Expiry Date
1.	GBJV Centenary Bridge Upgrade Works Greenfields Agreement 2022	23 December 2026
2.	Klenner Murphy Electrical Pty Ltd and CEPU Electrical Division Queensland Enterprise Agreement 2023 - 2026	31 July 2026
3.	Rail Control Systems Australia Pty Ltd and CEPU Electrical Division Queensland Cross River Rail Project Enterprise Agreement 2025-2027	31 July 2027
4.	John Holland Queensland Pty Ltd Gold Coast Light Rail Stage 3 Project Agreement	21 October 2026
5.	Perigon Pty Ltd and CEPU Electrical Division Queensland Enterprise Agreement 2023 - 2026	31 July 2026
6.	Multiplex Australasia Pty Ltd (Queens Wharf Project) Union Collective Agreement 2022	1 November 2026
7.	Navaska Construction Pty Ltd (Queens Wharf Project) Union Collective Agreement 2022	1 November 2026

No.	EA	Nominal Expiry Date
8.	ADCO Constructions Pty Ltd and CFMEU Union Collective Agreement 2023-2027	2 July 2027
9.	J Hutchinson Pty Ltd and CFMEU Union Collective Agreement 2023-2027	2 July 2027
10.	John Holland Queensland Pty Ltd and CFMEU Union Collective Agreement 2023–2027	2 July 2027
11.	Lendlease Construction and CFMEU (Queensland and Northern Territory) Collective Agreement 2023-2027	2 July 2027
12.	Mirvac Constructions (QLD) Pty Limited and CFMEU Union Collective Agreement 2023-2027	2 July 2027
13.	Multiplex Australasia Pty Ltd and CFMEU Union Collective Agreement 2023-2027	2 July 2027

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

Annexure 2



Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry

[insert date]

Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry

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1. Introduction

The Queensland Code of Practice for the Building and Construction Industry (the **Queensland Code**) was published in [insert date]. The Code outlines the Government's expectations for the principles and standards of behaviour to be observed within the building and construction industry in Queensland.

The Queensland Code provides for the development of Implementation Guidelines (**Guidelines**) to expand on the priorities and objectives of the Queensland Code. The following Guidelines have been developed to assist effective workforce management at all levels of the building and construction industry that achieves the objectives of the Queensland Code. In particular, these Guidelines support:

- **Proactive management of workplace relations.** Workplace relations practices shall ensure the strict rule of law applies so all parties are protected from unlawful conduct.
- **Cost efficiency and productivity**
  Projects are to be delivered on time and within budget with real value for money for the Government and the Queensland taxpayer
- **Workplace Health and Safety and Rehabilitation**
  Parties shall achieve and maintain high standards in workplace health and safety and rehabilitation management and practices
- **Innovation and continuous improvement**
  Parties are to demonstrate a commitment to innovation and continuous improvement in workplace and workforce management practices at the enterprise and project levels, and in the industry generally.

These Guidelines reflect the Queensland Government's commitment to greater flexibility, innovation and productivity within the State's building and construction industry to ensure that the Queensland Government maximises tax payer value-for-money on publicly funded building and construction projects.

2. Application and Scope

2.1 Application

These Guidelines shall apply from [insert date] to all publicly funded building and construction work, as defined in section 11, exceeding $2 million in value that is the subject of an expression of interest or request for tender by the Queensland Government.

For the purposes of the application of the requirements of Section 5 (the requirement to provide a Workplace Relations Management Plan) publicly funded building and construction work shall mean:

a) **building construction projects exceeding $10 million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding $10M.

b) **road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding $20 million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding $20M.

From [insert date], all parties and related entities must comply with these Guidelines from the date that party first expresses an interest in, tenders for, or enters into a contract to perform public building and construction work to which these Guidelines apply.

2.2 Contract documentation and project management procedures

Client agencies and head contractors are responsible for ensuring the application of, and compliance with, these Guidelines by:

- ensuring that compliance with these Guidelines is an integral component of their contract management systems and procedures; and
- all expressions of interest, tender and contractual documents clearly set out the requirements specified in these Guidelines.

While the form of wording may vary according to the contract form and the type of service supplied, the relevant contractual documents must incorporate a warranty by the head contractor, subcontractors, other contractors, consultants and/or related entities (as applicable) to comply with all aspects of the Queensland Code and these Guidelines.

Relevant contractual documents must also incorporate the consent of the head contractor, subcontractors, other contractors, consultants and/or related entities (as applicable) to allow Building Construction Compliance Branch (**BCCB**) officials and other Queensland Government authorised personnel to:

- inspect any work, material, machinery, appliance, article or facility;
- inspect and copy any record or document relevant to the project; or
- interview any person, as is necessary to demonstrate compliance with the Queensland Code and these Guidelines.

Head contractors will be required to ensure that their subcontractors consent and allow BCCB officials and other Queensland Government authorised personnel to monitor and investigate compliance as indicated in these Guidelines through relevant contractual provisions and documentation.

2.3 Notification of any threatened, impending, possible or probable or actual unlawful industrial conduct.

Head Contractors and consultants undertaking work covered by the Queensland Code and these Guidelines must notify the Director, BCCB and the client agency of any threatened, impending, possible, probable or actual unlawful industrial conduct or breach of these Guidelines within 24 hours of becoming aware of the threatened, impending, possible, probable or actual unlawful conduct or breach.

Parties with an obligation under the Code and Guidelines will also be required to provide the BCCB with advice of their response (actual and/or proposed) to the threatened, impending, possible, probable or actual unlawful industrial conduct or remedy to the breach as soon as practicable after becoming aware of the threatened, impending, possible, probable or actual unlawful industrial conduct or remedy to the breach.

2.4 Scope

A party interested in performing public building and construction work is expected to strictly comply with these Guidelines from the date that party first expresses interest in, tenders for, or enters into a contract to perform public building and construction work to which these Guidelines apply. A party will also be required to comply with Sections 3, 4, 7, 8 and 9 of these Guidelines (except where expressly exempted) when undertaking privately funded building and construction work in Queensland where expressions of interest or tenders are called for after [insert date].

These Guidelines apply solely to parties who participate in on-site activities.

These Guidelines are intended to apply to all forms of procurement methods including but not limited to: traditional fully documented/lump sum contracts, public private partnerships (**PPPs**), alliance contracts, managing contractor arrangements -design and construct (**D&C**); construction management procurement method and any other project funding arrangements or other procurement methods that may be introduced from time to time to reflect changes in Queensland Government contractual and delivery practices.

To achieve the objectives of these Guidelines outlined in section 1 a party must require and actively ensure compliance with these Guidelines by any party with whom it contracts, or enters into an arrangement, to undertake public building and construction work.

A client agency may seek to waive elements of these Guidelines, but only in exceptional circumstances where it is considered in the public interest to do so. In instances where waiver is sought, the client agency chief executive officer must fully document the reasons for seeking the waiver and submit these to the Responsible Minister for consideration. Following a request from the Responsible Minister, the [insert appropriate Minister] may either approve or not approve the waiver.

Related entities of any party that first expresses interest for, tenders for, or enters into a contract to perform public building and construction work are also required to comply with these Guidelines in respect of any building and construction work they undertake in, or connected with, Queensland.

An entity is a related entity of a tenderer if it is engaged in building and construction work and:

- the entity is connected with the tenderer as defined below; or
- it is a body corporate which is related to the tenderer as defined below.

Connected means the entity:

a) can control, or materially influence, the tenderer's activities or internal affairs; or

b) has the capacity to determine or materially influence the outcome of the tenderer's financial and operating policies; or

c) is a member of the tenderer; or

d) is financially interested in the tenderer's success or failure or apparent success or failure.

Related means the body corporate—within the meanings in the *Corporations Act 2001* (Cth):

a) is a holding company of the tenderer; or

b) is a subsidiary of the tenderer; or

c) is a subsidiary of a holding company of the tenderer; or

d) has one or more directors who are also directors of the tenderer; or

e) without limiting the above, controls the tenderer.

2.5 Relationship with the ~~Federal Building~~ Code [insert date]

~~The Commonwealth Government issued the Building Code 2013 (the National Code) effective from 1 February 2013. The National Code is a statutory instrument pursuant to s.27(1) of the Fair Work (Building Industry) Act 2012 (Cth).~~

These Guidelines support the Queensland Code of Practice for the Building and Construction Industry. ~~and are to be interpreted in a manner that ensures that they do not contravene the National Code.~~

2.6 Relationship with the Fair Work Act 2009

a) These Guidelines do not require, encourage or promote conduct that would constitute a contravention of the *Fair Work Act 2009* (Cth).

b) To the extent that any provision of these Guidelines, or a party's compliance with any provision of these Guidelines, would, but for this Section 2.6, require, encourage or promote conduct that would constitute a contravention of the *Fair Work Act 2009* (Cth), that provision is of no effect.

c) Subject to paragraph (f) below, if any party that is required to comply with these Guidelines considers that a provision of these Guidelines would, but for this Section 2.6,

   i) require, encourage or promote conduct by them or any of their contractors, or

   ii) apply to or in relation to them or any of their contractors in a manner, that would constitute or give rise to a contravention of the *Fair Work Act 2009* (Cth), that party must within 7 days give notice to the BCCB of the reasons why and circumstances in which that party considers the provision would so require or apply, and must thereafter provide the BCCB with any further details of the reasons and circumstances that the BCCB may reasonably require.

d) Without limiting the generality of paragraphs (a) and (b) above, if the BCCB considers at any time that a provision of these Guidelines would or may, but for this Section 2.6, require, encourage or promote conduct that would constitute a contravention of the *Fair Work Act 2009* (Cth), the BCCB may issue (and may modify or withdraw from time to time) a Practice Direction declaring the extent to which and the circumstances in which the relevant provision is inoperative while the Practice Direction is in force, and the relevant provision is inoperative and is to be disregarded accordingly.

e) For the avoidance of doubt, if a party acts in reliance on a Practice Direction issued by the BCCB, conduct undertaken in such reliance does not constitute non-compliance with the Guidelines.

f) Parties are not required to notify the BCCB under paragraph (c) in relation to provisions of the Guidelines where the BCCB has issued a Practice Direction specifying that the provision is inoperative in the relevant circumstances.

3. Legal and Related Obligations

3.1 Legal obligations relating to employment

As a minimum, a party must comply, and demonstrate ~~past~~ compliance required by these Guidelines, with all applicable:

- legislation
- court and tribunal orders, directions, and decisions; and
- industrial instruments.

An industrial instrument is an award or agreement, however designated, that:

- is made under or recognised by an industrial law; and
- concerns the relationship between an employer and the employer's employees.

Where a party cannot demonstrate ~~past~~ compliance required by these Guidelines, consideration will be given to the extent of non-compliance and the capacity for future compliance.

3.2 Practices designed to avoid compliance with legal obligations

A party must not enter into, participate in, or facilitate arrangements or practices designed to avoid its own legal obligations, or the legal obligations of others. Without limiting the forgoing, this includes arrangements or practices:

- that are sham contracting arrangements;
- that are designed to avoid or circumvent strike pay obligations;
- that are designed to avoid or circumvent strict conformance with their right of entry requirements in accordance with applicable legislation; or
- that undermine freedom of association.

When undertaking building and construction work, contractors must implement on-site practices and procedures which:

- ensure proactive management of industrial relations for compliance with the objectives of the Queensland Code and these Guidelines;
- encourage cost efficiency and productivity
- provide workplace health, safety and rehabilitation management and practices;
- promote innovation and continuous improvement.

3.3 Unregistered written agreements

A party must not enter into an unregistered written agreement with any third party or parties. An unregistered written agreement is an individual or collective agreement that has not been certified, registered, lodged or otherwise approved under an industrial law, but is concerned with the relationship between an employer and its employees and/or registered or unregistered industrial association. However, it does not include common law agreements made between an employer and an individual employee.

3.4 Independent contractors

Genuine independent contractors undertake a legitimate form of work on Queensland Government building and construction sites and must not be discriminated against.

Arrangements that constrain or otherwise constrict the use of independent contractors and the terms of their engagement are inconsistent with the Guidelines.

This includes terms of an enterprise agreement that (in effect) requires a contractor to ensure where it engages subcontractors, that these subcontractors and their employees will receive terms and conditions of engagement (or terms no less favourable) as they would receive if they were engaged as employees of the head contractor.[1]

4. Workplace Arrangements

The Queensland Code stipulates that workforce management will ensure workplace health and safety; industrial relations; training and skill development are integrated within the organisational procedures, practices and performance standards of the organisation.

Effective workforce management at all levels of the construction industry is a key contributor to achieving the key priorities and objectives of the Queensland Code. The Queensland Government is committed to continuous improvement by ensuring service providers achieve an effective workforce-management focus at the enterprise and project levels and in the industry generally.

The following Workplace Arrangements, however described or implemented, are inconsistent with the requirements of the Guidelines:

a) Parties are prohibited from applying direct or indirect coercion or pressure on another party to make over-award payments. Further, no contractor or consultant is allowed to unduly influence, enter into any agreement, or issue a contract, subcontract or industrial instruction that directly or indirectly binds or otherwise pressures or coerces another party into making over-award payments.

b) Payments to industry superannuation, redundancy and income protection funds which provide for contributions in excess of award and legislative requirements are prohibited ~~are matters to be~~ unless decided by each employer subject to applicable legislation.

c) Provisions should not require, or have the effect of coercing or pressuring, any third party including labour-hire firms or group apprenticeship schemes or similar providers to set particular terms and conditions, including the making of an over-award payment.

d) Parties are prohibited from requiring or attempting to unduly influence another party to have particular Workplace Arrangements in place. This includes, but is not limited to, the imposition, or attempted imposition, of a requirement for a contractor to apply project-specific wages and conditions. It is the responsibility of a contractor to negotiate with its employees the form and content of their Workplace Arrangements free of any coercion or undue influence. Provisions that impose a site allowance by the head contractor will be non-compliant with the Queensland Code and these Guidelines.

e) Parties shall not negotiate or implement Workplace Arrangements that restrict the efficient performance of work or contain provisions that restrict productivity improvement. Without limiting the foregoing, the following will be non-compliant with the Queensland Code and these Guidelines if the Workplace Arrangement is not otherwise required by a relevant Commonwealth or state law:

   i) no ratios of employees. A Workplace Arrangement must not prescribe or limit the number of employees or workers a company may engage on a particular site or work area, or within their company in general. This includes references to permanent, temporary and casual employees, or the source of labour a company may engage;

   ii) no one-in-all-in arrangements. A Workplace Arrangement must not allow for situations where one-in-all-in practices occur, such as in relation to overtime;

[1] Agreements that invoke an 'average' of wages from enterprise agreements other than the agreement of the head contractor would also be inconsistent with these guidelines.

iii) no last on, first off clauses. A Workplace Arrangement must not contain selection criteria for redundancy that ignore the employer's operational requirements, such as last on, first off clauses. Similarly, an industrial instrument should not contain clauses that determine redundancy solely by reference to the seniority of employees, or by reference to the engagement of other sources or types of labour;

iv) no restrictions on labour. A Workplace Arrangement must not contain a provision that restricts an employer's short or long-term labour requirements (including casual labour; part-time labour; labour hire or the source of labour etc) nor provisions that stipulate the terms and conditions for the labour of any person not a party to the industrial instrument. Accordingly, a Workplace Arrangement must not include provisions that require an employer to consult or seek the approval of a third party to the employment relations (such as a union) over the number, source, type (for example casual, contract) or payment of labour required by the employer; and

v) no prohibiting of all-in payments. A Workplace Arrangement must not preclude the employer from making all-in payments. For this purpose, all-in payments mean payment to an employee for work done that is made on an hourly, daily or weekly basis and which is in lieu of payment for all or some entitlement specifically provided for by legislation or awards, such as annual leave loading or overtime. A payment to a subcontractor is not an all-in payment for the purpose of this definition. All-in payments are not to include statutory obligations, such as superannuation contributions. Arrangements where the intended outcome is to avoid employer/ employee obligations are illegal and inconsistent with these Guidelines.

vi) no restrictions on the arrangements of rostered days off (RDOs). A Workplace Arrangement must not prevent an employer from substituting an RDO for another day.

f) No relaxation of the right of entry provisions for officials of industrial organisations. A Workplace Arrangement must not seek to relax or circumvent the legislative provisions or processes in relation to the right of entry for officials of industrial organisations and/or provide for a person or entity that is not a party to the instrument to monitor its operation. For this purpose, any reference in an industrial instrument to right of entry must provide for entry in the same terms as Part 3-4 of the *Fair Work Act 2009* (Cth) and/or any relevant and applicable Queensland legislation These procedures govern access to employer and employee records and/or the holding of discussions with employees. Attempts to avoid right of entry requirements for union officials by allowing delegates or shop stewards to have access to employer and employee records and/or the holding of discussions with employees, and/or the exercise of a right of entry under the *Work Health and Safety Act 2001* (Qld) are inconsistent with these Guidelines. Any breaches of this requirement may be deemed a significant breach of the contract.

g) An employer must not allow, and an instrument must not provide for, a person or entity that is not covered by the instrument to monitor its operation. Monitoring does not include activity required or permitted under Commonwealth or State law, or monitoring by a Queensland Government or Commonwealth Government agency to ensure compliance with the Queensland Code and these Guidelines.

h) No 'standing' authorisation to cease work. A Workplace Arrangement must not provide an entitlement for employees to take paid time off to attend union activities (subject to modern award and legislative obligations).

i) A Workplace Arrangement that attempts to negate or render ineffective the application of the Queensland Code and these Guidelines is inconsistent with these Guidelines.

j) An industrial instrument must not make provision for project agreements to apply in whole or in part, other than for major contracts as defined by the client. (See Section 6 for further details on project agreements.)

k) If an industrial instrument provides for a site allowance (howsoever described), the amount of the allowance must be specified in the industrial instrument, or the instrument must contain an objective and predictable method of determining the allowance amount.

l) A Workplace Arrangement must not provide for non-working workplace delegates.

5. Cost, efficiency and productivity

The Queensland Code states that key contributors to quality and value for money outcomes in the building and construction industry are an improved workplace and management culture, better employer and employee relationships, and improved industrial relations planning and management.

All parties must ensure their tenders or expressions of interest strictly comply with the Queensland Code and Guidelines.

5.1 Obligations in Expressions of Interest or tender response

The requirement to provide a Workplace Relationship Management Plan (**WRMP**) as specified in this section will apply to:

a) **building construction projects exceeding $10 million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding $10M.

b) **Road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding $20 million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding $20M.

The requirement to provide a WRMP does not extend to future privately funded building and construction work or to publicly funded building and construction work under the aforementioned threshold although the tenderer is encouraged to adopt a WRMP to meet the obligations of the Guidelines.

The WRMP must address the following matters:

a) Sourcing of labour requirements (e.g. trade packages, direct employees, labour hire, apprentices)

b) how Workplace Arrangements will be regulated, including the provision of any industrial instruments;

c) how the head contractor will ensure subcontractors will comply and remain in compliance with the Code and Guidelines;

d) engagement of the required labour including, but not limited to, selection processes for engaging contractors, apprentices and other labour procurement arrangements; reference checks and inductions;

e) approach to developing and maintaining a productive workforce, ensuring the optimal use of labour requirements (e.g. approach to managing inclement weather and heat, RDOs); and sourcing, selection and training of suitably experienced construction supervisors;

f) utilisation of major plant and equipment and the minimisation of unproductive time;

g) approach to relationship management with employees, employee representatives and/or unions including, but not limited to, the approach and process for communicating and consulting with the workforce;

h) approach to the use and engagement of labour hire;

i) approach to managing third party site access;

j) approach to ensuring compliance with statutory workplace rights including, but not limited to, freedom of association, freedom from unlawful coercion and freedom from unlawful discrimination;

k) approach to performance and conduct management of labour (e.g. disciplinary process to be applied);

l) identification of industrial relations risks in relation to the project and details as to the proposed approach to managing those risks, including but not limited to, the following:

i) approach to dispute resolution;

ii) approach to dealing with demarcation disputes;

iii) response to industrial action (both threatened, impending, probable and actual, lawful and unlawful; protected and unprotected) including in respect of subcontractors;

iv) approach to management of disputes in relation to rights of entry; and

v) approach to minimising lost time or limitations due to industrial disputes.

m) approach to the management of subcontractors, outlining:

i) the measures to be taken to select subcontractors who have the skills, capacity and resources to comply with legislative requirements, employment obligations and the WRMP (to the extent relevant);

ii) contractual conditions to be imposed on subcontractors to ensure they comply with legislative requirements, employment obligations and the WRMP (to the extent relevant);

iii) how dealings with subcontractors and other contractors are to be managed including, but not limited to, identification of representatives and methods for engaging with those representatives; and

iv) how subcontractor compliance with the workplace relations requirements will be monitored and enforced

n) Be able to demonstrate how it will:

i) achieve the objectives of the Queensland Code and these Guidelines on the project; and

ii) deliver the project on time and within budget.

For example, a tenderer must be able to demonstrate how the objectives of the Queensland Code and these Guidelines relating to costs and improved efficiency and productivity can be met in the context of any of the following (if applicable to the tenderer):

1. restrictions on when work can be performed, such as mandated or fixed rostered day off schedules and one-in-all-in arrangements;
2. the potential for unexpected costs or increased costs during the life of a project, such as site allowances which are not quantifiable at the time of contracting;
3. adoption of a pattern agreement to a project or an industry and which has terms and conditions that are not specific to, or reflect, the needs of the enterprise; and
4. impositions or restrictions on the engagement and/or utilisation of labour.

o) Demonstrate that it has a track record of delivering construction projects on time and within budget. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such objectives in the future.

For example, where a tenderer has failed to deliver construction projects on time and within budget in the past as a result of industrial relations matters, that tenderer must be able to identify:

i) the reasons for the failure; and

ii) the steps it has taken to address those matters for future projects.

p) Demonstrate that it has a track record of adopting efficient and productive work practices. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such objectives in the future.

q) Demonstrate what Workplace Arrangements a contractor will institute to provide improved productivity and/or cost outcomes as against a BPIC Arrangement that a contractor was or is subject to upon entering into the Workplace Arrangements.

r) Measures to support the recruitment and retention of women.

A model WRMP is available at [insert link].

5.2 Contractor obligations

A successful contractor must:

- Comply with its WRMP.
- Act in accordance with its tender response.
- Require compliance with these matters set out above by any party with whom it contracts, or enters into an arrangement, to undertake public building and construction work, to the extent applicable to that party.
- Comply with any reasonable request for access and information from the BCCB or other authorised Government officer.
- Submit to and cooperate with any investigation process by the BCCB or other authorised Government officer on any matters pertaining to compliance with the Queensland Code and Guidelines, including investigations into claims made by a contractor as to its ability to comply with the Queensland Code and Guidelines.

6. Project agreements

The Queensland Code provides that certified agreements, project agreements and multi-employer agreements can provide scope for employers and their employees to improve working conditions and gain a competitive edge by ensuring value for money and quality outcomes. Parties are encouraged to make certified agreements appropriate to their circumstances.

This section does not apply to privately funded building and construction work.

Project agreements on public building and construction projects may only be considered for major contracts as defined by the client. Consideration of a project agreement will be at the discretion of the client agency. Other than in exceptional cases, project agreements will not be permitted on projects worth less than $100 million.

In relation to public building and construction work, the client must not agree to project agreements or project awards unless there is a clear and demonstrable benefit to the Queensland Government in doing so and the use of a project agreement is approved in advance by the Attorney-General on the recommendation of the Responsible Minister. Approval for the use of a project agreement rests with the Attorney-General.

In deciding whether to seek [insert approving Minister] approval for the use of a project agreement, the following must be considered:

- the degree of commitment demonstrated by the parties to the proposed agreement to improving productivity and workplace relations;
- the form of improved time or cost performance compared to what might reasonably be expected in the absence of a project agreement; and
- past performance and the parties' history of maintaining strict compliance and abiding by agreements.

The client agency Chief Executive Officer is accountable for decisions to seek approval of a project agreement and must state the reasons for seeking approval for such an agreement in writing to the responsible Minister. The reasons must satisfy the public interest and include objective and detailed grounds and clearly demonstrate the benefit to the project and the Queensland Government.

Subcontractors must be involved in the process of developing a project agreement before it is finalised.

7. Dispute settlement, industrial action, strike pay and payments[2]

The Queensland Code provides that:

- all parties are required to make every effort to resolve grievances or disputes with their employees and applicable unions at the enterprise level, in accordance with the procedure outlined in the relevant award or workplace arrangements.
- the client of the head contractor shall be advised during the progress of the work, and at the earliest opportunity within 24 hrs, of any industrial relations or WH&S matter which may have an impact on the construction program, the head contract, other related contracts or project costs.
- no payment shall be made to employees for time spent engaged in industrial action, unless payment is legally required or properly authorised by an industrial tribunal (where this is permitted by relevant industrial legislation).
- No payments, commissions, gratuities or similar payments shall be made directly or indirectly by any contractor or their representatives to a union delegate, union official, union representative or agent or to any union-controlled account or fund however described, for any reason. Payment of any monies is a breach of these guidelines.

7.1 Dispute Settlement

Grievances or matters under dispute are to be dealt with at the workplace between the appropriate level of management, employees and where applicable, union representatives.

Agreements should contain arrangements providing graduated steps for discussion of disputes involving higher levels of authority to which the matter in dispute can be referred if it cannot be resolved.

Reasonable time limits should be allowed for each stage of relevant dispute settlement processes. While dispute settlement procedures are being followed the parties are to ensure that:

- industrial action does not occur;
- the circumstances that existed prior to the dispute prevail; and
- work continues as normal without detriment to any of the parties.

Dispute settlement provisions must allow an employee to have freedom of choice in deciding whether to be represented, and, if so, by whom. Accordingly, dispute settlement provisions must allow for an employee to raise an issue either directly with their employer or through a representative of their choice.

An enterprise agreement may contain its own dispute settlement process that gives a third party the ability to arbitrate or otherwise impose an outcome to settle the dispute. In such cases, the clause must contain an express limitation that any outcome determined by the third party cannot be inconsistent with the Queensland Code and these Guidelines or inconsistent with legislative obligations.

Where a dispute relates to WH&S issues, the procedures contained in the relevant WH&S legislation shall be strictly followed. Parties must take all reasonable steps to resolve grievances or disputes at the enterprise level at the earliest opportunity, in accordance with the procedures outlined in the relevant industrial instrument or other workplace arrangement. Any time lost through industrial action, either lawful or unlawful, and/or through any WH&S matter or purported WH&S matter must be reported to the BCCB as soon as practicable or within 24 hours of the commencement of the lost time.

The head contractor must report any grievance or dispute, including any threatened, possible probable or impending dispute, relating to workplace relations or WH&S matters (purported or otherwise) that may impact on project costs, related contracts or timelines to the BCCB and the client agency within 24 hours of it becoming aware of the grievance or dispute.

[2] This section replaces Section 5.3.2 of the Queensland Code of Practice for the Building and Construction Industry.

The head contractor must provide regular updates to the BCCB and the client agency about the steps being taken to resolve such grievances or disputes.

The head contractor must implement procedures to enable such reporting to occur at the earliest opportunity. All lost time information as a consequence of lawful and unlawful industrial conduct must be accurately recorded and provided to the BCCB and client agency on a timely basis.

7.2 Industrial Action

Parties must take all reasonable steps to resolve industrial action which adversely affects, or has the potential to adversely affect, the delivery of a project or other related contracts on time and within budget.

Contractors must report any threatened or actual industrial action that may impact the project, project costs, related contracts or timelines to the BCCB and the client agency as soon as practicable and within 24 hours of the threatened or actual industrial action. The contractor must provide regular updates to the BCCB and the client agency about the steps being taken to resolve the threatened or actual industrial action.

Contractors must take all steps reasonably available to them to prevent or bring to an end unprotected industrial action occurring on, or affecting the project, including by pursuing legal action where possible. Contractors will be required to use their best endeavours to pursue legal remedies to protect their rights and obligations under the Code and Guidelines. A failure to instigate appropriate legal remedies may be considered to be a breach of the Guidelines.

Contractors must also report any request by any industrial organisation or their representative for payment of any kind in relation to a threatened, impending, possible, probable or actual industrial dispute.

8. Workplace health and safety and rehabilitation

Consistent with the National Code, the Queensland Code provides that workplace health and safety obligations must be actively addressed by all industry participants

All parties must meet their WH&S obligations according to relevant laws.

8.1 Achievement of the workplace health and safety objectives of the Queensland Code and these Guidelines

A tenderer must have policies and practices and be able to demonstrate how they will achieve the objectives of the Queensland Code and these Guidelines in relation to workplace health, safety and rehabilitation including how it will promote the highest standards of safety practice in the industry.

8.2 Effective workplace health and safety risk management

A tenderer must have policies and practices and be able to demonstrate:

- detailed risk management processes that can be applied to both the design and construction phases of the project;
- processes for reviewing, updating and communicating the WH&S and Rehabilitation Management Plans;
- a documented 'Fit-for-Work' policy and procedures applicable on all projects[3];
- provision of adequate WH&S and rehabilitation resources during the project, including human resources, financial resources and technical resources;

[3] A framework for alcohol and drug management in the workplace is available at [insert link].

- emergency response and incident management processes, including identification of personnel with specific responsibilities and proposed engagement with emergency services prior to and during the project;
- processes for the preparation and communication of task specific safety procedures (e.g. SWMSs), including sample procedures for addressing high risk construction activities (e.g. work at heights);
- processes for ensuring all persons working on the project receive necessary information and training, including general induction training, site induction training and task-specific training;
- reporting and investigation of incidents resulting in (or with the potential to result in) personal injury and property damage;
- strict adherence to lawful right of entry provisions;
- appropriate WH&S and rehabilitation performance monitoring, auditing and reporting processes for the project, including frequency and responsible personnel;
- appropriate systems for case management and rehabilitation of injured workers;
- appropriate record-keeping and document management systems.

A tenderer must be able to demonstrate that it has a track record of delivering construction projects safely. However, if this is not possible, the tenderer must demonstrate what actions it has taken to achieve such a track record in the future.

For example, where a tenderer has failed to deliver construction projects safely in the past, that tenderer must be able to identify:

- the reasons for the failure; and
- the steps it has taken to address those matters for future projects.

8.3 Commitment of senior management to safety

A tenderer must have policies and practices that demonstrate its senior managers are proactively involved in, and committed to, achieving safety objectives and improving safety outcomes on the project.

Such commitment may be demonstrated by:

- recognition under the Queensland Government prequalification systems and/or WH&S Queensland's Zero Harm at Work Program;
- the tenderer's WH&S policy;
- governance structures and reporting requirements that enable senior management to understand and respond to WH&S issues on the project including the identification of WH&S and rehabilitation personnel, WHS and rehabilitation responsibilities and accountabilities and WHS and rehabilitation reporting lines.

8.4 Consultation and issue resolution

A tenderer must have policies and practices and demonstrate how it will engage with other parties about safety on the project and resolve safety issues that arise in order to achieve the objectives of the Queensland Code and these Guidelines, including how it will promote the highest standards of safety practice in the industry as well as the delivery of the project on time and within budget.

A tenderer must have a process for each of the following:

- **Consultation with workers and employee representatives,** which addresses: determination of designated work groups, election/training of health and safety representatives, establishment of health and safety committees, agreement on specific roles/rights for Health and Safety Representatives (**HSRs**) and committee members, establishment of WH&S right of entry protocols and the procedural requirements for consultation (e.g. how consultation is to occur – in person, via email, through HSR);
- **Consultation, cooperation and coordination with other stakeholders**, which addresses: transfer of knowledge and information before and during the project, allocation of WH&S roles and responsibilities, collaboration about risk management and emergency response and

communication/reporting protocols. Relevant stakeholders may include (depending on the project) other contractors/consultants, residents or occupiers near the project site; utility/asset owners and emergency services;

- **WH&S issue/dispute resolution**, which addresses: reporting of WH&S issues to the tenderer, roles and responsibilities for responding to issues reported, consultation requirements, protocols for involving third parties (including regulators, employee representatives, other stakeholders, independent bodies/experts, etc) and timelines for resolution/escalation; and
- **Engagement with regulatory authorities**, which addresses: proactive engagement and relationship building with relevant regulators; consultation with regulators regarding safety issues and best practice, provision of information regarding the project to regulators and responding to the exercise of regulatory powers and/or enforcement action.

9. Freedom of association and right of entry

Consistent with the National Code, the *Fair Work Act 2009* (Cth) and the Queensland *Industrial Relations Act* *2016* ~~*1999*~~, all parties have the right to freedom of association. This means that parties are free to join or not to join an industrial organisation of their choice and that they are not to be discriminated against or victimised on the grounds of membership or non-membership of an industrial organisation. A person cannot be forced to pay a fee to an industrial organisation if not a member.

The Guidelines require:

- All contractors must adopt policies and procedures that promote freedom of association;
- Practices which do not promote freedom of association are inconsistent with these Guidelines. By way of example, the following practices are inconsistent with these Guidelines:
  - providing the names of new staff, job applicants, contractors or subcontractors to unions other than as required by law;
  - no ticket, no start signs, show card days or any other similar practices that imply that union membership is anything other than a matter for individual choice;
  - employers unlawfully encouraging or discouraging employees to join a union;
  - using employee representatives, site delegates or other union representatives to administer site induction processes. Administering site induction processes is a responsibility of site management and cannot be delegated. These process are to be undertaken by site management. Where there is a requirement in any enterprise agreement for employee representatives, site delegates or other union representatives to administer site induction processes, then any such process must be overseen by, and actively involve, site management;
  - discriminating against or disadvantaging elected employee representatives;
  - using forms requiring the employee to identify their union status, or requiring employers and contractors to identify the union status of employees or subcontractors;
  - refusing to employ, or terminating an employee's employment, because of their union status;
  - an employer refusing a reasonable request from a workplace delegate to represent an employee or employees in relation to grievances and disputes or discussions with members;
  - the request, threat or imposition, or attempted imposition, of a requirement for any contractor, subcontractor or employer to hire any individual nominated by a union or to employ a non-working shop steward or job delegate. Practices or arrangements which facilitate non-working shop stewards or job delegates are inconsistent with the Queensland Code and Guidelines;
  - a requirement by a Union that an employer display Union or other logos, mottos or other signage at the worksite or on property or equipment supplied by an employer; and

- any requirement that a person pay a bargaining fee, however described, to an industrial association of which he/she is not a member, in respect of services provided by it.

- A Workplace Arrangement must not seek to relax or circumvent the legislative provisions or processes in relation to the right of entry for officials of industrial organisations (see further, part 4 above) and/or provide for a person or entity that is not a party to the instrument to monitor its operation. For this purpose, any reference in an industrial instrument to right of entry must provide for entry in the same terms as Part 3-4 of the *Fair Work Act 2009* (Cth) and/or any relevant and applicable Queensland legislation. These procedures govern access to employer and employee records and/or the holding of discussions with employees. Attempts to avoid right of entry requirements for union officials by allowing delegates or shop stewards to have access to employer and employee records and/or the holding of discussions with employees are inconsistent with these Guidelines. Any breaches of this requirement may be deemed a significant breach of the contract.

- An employer must not allow, and an instrument must not provide for, a person or entity that is not covered by the instrument to monitor its operation. Monitoring for this purpose does not include activity required or permitted under Commonwealth or State law, or monitoring by a Queensland Government or Commonwealth Government agency to ensure compliance with the Queensland Code and these Guidelines.

- A Workplace Arrangement that recklessly or deliberately ignores or seeks to undermine the boundaries of union coverage as defined by union rules of membership is inconsistent with these Guidelines.

10. Queensland Government oversight and administration of these Guidelines[4]

The Queensland Government and its agencies are committed to the implementation of the Queensland Code and these Guidelines. Breaches of the Queensland Code and these Guidelines may result in sanctions being imposed. These may include:

- Commercial sanctions;
- Remedies under the contract;
- Disciplinary action where the breach is by a public sector employee.

Commercial sanctions

Commercial sanctions for breaches of the Guidelines are based on the Government's right as the client to choose with whom they do business. Sanctions will depend on the nature and seriousness of the breach and on any lack of commitment shown to the requirements of the Code. The sanction imposed may involve one or more of the following:

- A formal warning;
- Partial exclusion from tendering for a specified period (i.e. a reduction in the number of tendering opportunities);
- Full exclusion from tendering for any work for an unspecified period;
- Review of prequalification accreditation;
- Publication of the breach.

Contractual remedies

Client agencies may choose to exercise the right to seek remedies under relevant clauses of the contract.

Where it is suspected that the breach of the Guidelines involves an infringement of a law or statute, the matter will be referred to the relevant administering agency. The monitoring of compliance with specific statutory requirements remains the responsibility of the relevant government agencies that administer those requirements.

[4] The following section replaces the monitoring and compliance provisions contained in Section 6 of the Queensland Code.

10.1 Monitoring compliance

Attorney-General

The [insert responsible Minister] has overall responsibility for the implementation and management of these Guidelines. The Attorney-General will report on performance and incidents of non-compliance with the Guidelines to Cabinet at least annually.

The Building Construction Compliance Branch (BCCB)

The BCCB, within the [insert Department] will have operational responsibility for monitoring compliance with the Guidelines, investigating suspected breaches and reporting non-compliance.

Monitoring activity will include desktop and field audit activities, site visits, site inspections, inspection and copying of any relevant documentation, interviewing relevant stakeholders and post contract review any other activity that will enable the BCCB to determine a party's compliance or otherwise with the Queensland Code and Guidelines.

Where a tenderer is required to submit a WRMP the BCCB will assess the WRMP for compliance with the Guidelines and report to the client agency on its findings.

The BCCB will also:

- promote awareness of the Queensland Code and these Guidelines to all stakeholders through a range of information products and educational activities;
- liaise with relevant Commonwealth and other government agencies, including Fair Work Building and Construction, on matters relating to the operation and compliance with the Guidelines;
- make recommendations for sanctions in the event of a proven breach of the Guidelines; and
- make recommendations to further develop the effectiveness of the Guidelines to deliver improved productivity and value for money for publicly funded projects.

The BCCB will respond to reports of alleged breaches of these Guidelines and conduct audit activity on its own initiative.

The avenues already available to individuals in the private sector who wish to raise issues associated with the performance of government agencies, including representations to government Ministers, Members of Parliament and the Ombudsman are unaffected by these Guidelines.

The BCCB will provide feedback to the head contractor and client agency as appropriate, including where alleged breaches of the Guidelines are identified.

The BCCB must give the party alleged to have breached the Guidelines an opportunity to make submissions to the BCCB. The BCCB may, or will if requested by a party, liaise with the relevant industry association representing the party alleged to have breached these Guidelines.

After the party has been given the opportunity to respond to the alleged breach of the Guidelines, the Director, BCCB or delegate will provide a notice of the outcome of the investigation to the party and to the client agency. Notification of any proven breach may be accompanied by a recommendation for any sanction or remedial action. Action in response to the notification, including sanction, is to be timely to ensure the breach is remedied and future breaches are discouraged. Such action is to be reported to the BCCB within 14 days of receipt of the notice of outcome from the Director, BCCB.

Review of a decision made under these Guidelines

Any party wishing to contest or appeal any action or decision made by the BCCB under these Guidelines in relation to alleged non-compliance with these Guidelines may request a review of that action or decision by writing to the Director-General, Department of Justice and Attorney-General within 14 days of the date of the letter advising of the action or decision.

The review will be conducted by a person appointed by the Director-General Department of Justice and Attorney-General who, in the Director-General's opinion, has relevant experience.

The review is to be conducted in an informal manner and taking into account those matters considered during the process in light of the matters raised in the letter requesting the review. It is intended that there will be no delay to a project as a result of the conducting a review.

The person conducting the review shall provide a written report to the Director-General who, in turn, will respond to the person requesting the review and provide the report to the Attorney General. The report and response must be completed within 28 days of the request for review.

Breaches by agencies and agency employees

The Government has made adherence to these Guidelines a key measure of agencies' performance. Chief Executive Officers are responsible for ensuring their agency's compliance with the Guidelines. Proven breaches by a client agency will be reported to the Chief Executive Officer of the client agency. The client agency CEO will provide advice to the BCCB of remedial action taken to remedy the breach and stop a recurrence (including any disciplinary action where the breach is by a public sector employee).

Industry associations

Industry Associations are expected to contribute towards making the Queensland Code and Guidelines operate effectively. Where a Head contractor, contractor, consultant or related entity is found to have breached the Code, the circumstances of the breach may be referred to the relevant association for appropriate action under the association's rules or code of practice.

Notification to client agencies

Where a tendering party is to be subject to an industrial instrument that has been approved by Fair Work Commission, the party must include details of any areas wherein the instrument does not conform with the requirements of these Guidelines and for any related entity or entities in any declarations it makes to client agencies in relation to compliance with these Guidelines.

11. Definitions[5]

The following are explanations of terms used in these Guidelines:

a) **Building and construction work** includes:

i) all organised activities concerned with demolition, building, landscaping, civil engineering, process engineering, mining and heavy engineering; and
ii) building refurbishment or fit out, installation of building security systems, fire protection systems, air conditioning systems, computer and communication cabling, building and construction of landscapes;

but excludes

iii) mining operations, maintenance, landscaping such as lawn mowing, pruning and other horticultural activities and cleaning buildings.

For the purposes of the application of the requirements of Section 5 (Workplace Relations Management Plan) publicly funded building and construction work shall mean:

i) **building construction projects exceeding $10 million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed to be

[5] Definitions are to be drawn from the Section 7 of the Queensland Code of Practice for the Building and Construction Industry.

High Risk/Significant projects under the PQC System, or other building construction projects involving State Government funding exceeding $10M.

ii) **Road and rail transport infrastructure, bridgework and other civil engineering construction projects exceeding $20 million in value that are the subject of an expression of interest or request for tender** and shall include those projects assessed by the Department of Transport and Main Roads to be High Risk/Significant projects, or other civil construction projects involving State Government funding exceeding $20M.

b) **BPIC Arrangement** means a Workplace Arrangement that was implemented in the period 2019 – 2025 and that gave effect to some aspect of the Best Practice Industry Conditions (or an earlier iteration thereof).

c) **Building and Construction Compliance Branch (BCCB)** means the Branch established within the Department of Justice and Attorney-General which has operational responsibility for the administration of the Guidelines.

d) **Client** means the project, building or facility owner or their agent. In relation to public building and construction work means the client agency.

e) **Client agency** means any department or statutory body as those expressions are defined in the *Financial Accountability Act 2009* and any government owned corporation and its subsidiaries where the shareholding Minister has given a notification pursuant to section 123 of the *Government Owned Corporations Act 1993* that enters into a contract for building and construction work with the head contractor.

f) **Consultant** means a professional acting as an organisation or individual such as an architect, engineer, quantity surveyor, project manager, building scientist or the like, commissioned to advise on or undertake planning, design, supervision or specific technical advisory activities relevant to a project or building.

g) **Contractor** means an organisation, entity or individual responsible for the performance of the work specified under a contract.

h) **On-site** includes the primary construction site(s) or any auxiliary or holding sites, where building and construction related work is performed.

i) **Over-award payment** means any payment and/or benefit above that set out in the relevant award, registered agreement and/or legislation and includes payments provided for in workplace arrangements.

j) **Party** includes, but is not limited to, clients, agents of clients, head contractors , subcontractors, suppliers, consultants, employees, unions including their officials, employees and members and industry associations while undertaking a representative role.

k) **Head contractor** means the party with whom the client agency enters into a contract for building and construction work as nominated under the Queensland *Work Health and Safety Regulation 2011.*

l) **Privately funded building and construction work** means building and construction work in Queensland that is not publicly funded building and construction work.

m) **Public building and construction work** means publicly funded (in whole or in part) building and construction work undertaken by, or on behalf of a client agency.

n) **Responsible Minister** means, in relation to a client agency, the Minister responsible for the portfolio within which the client is located.

o) **Tender** means an offer in writing, which includes price, bids, quotations and consultant proposals in response to an invitation to execute work or supply goods.

p) **Tenderer** means any party responding to an expression of interest or submitting a tender for public building and construction work, including head contractors, contractors, subcontractors and suppliers.

q) **WH&S** means work, health and safety.

r) **Workplace Arrangement** means an agreement, understanding, practice, policy, procedure or other arrangement whether written or not.

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

Annexure 3

Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

Stakeholder Engagement Report

Queensland Code of Practice for the Building and Construction Industry

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Executive Summary

What this report records

This report records feedback and input from the stakeholder engagement undertaken to test whether Queensland should adopt a building and construction Code, supported by guidelines, in a similar form to that applied by the then-Government in 2013.

The report is structured against seven questions/issues in the Commission's Discussion Paper. The input recorded here is consultation, distinct from the evidence before the Commission's formal hearings.

The report seeks to factually report what took place during the consultation process. To the extent that it draws conclusions, it does so where stakeholder feedback on key questions and themes aligns, diverges or conflicts.

It is ultimately for the Commissioner to determine whether to recommend a policy change as a result of its work.

The headline

Among the industry, employer and integrity stakeholders there was near-consensus that Queensland should have a Code, at least in principle. One peak body stands as the exception, withholding its support, arguing that the case for it is yet to be sufficiently made.

However, union representatives were sceptical of the case for a Code and rejected it as a conduct-and-restriction instrument, while accepting that procurement can be used for positive purposes such as apprentice development and promotion of gender equity.

One union stakeholder further argued that a Code cannot achieve cultural change, and that the cultural change already under way was an industry-wide matter that extended beyond any single union.

Among supporters, stakeholders gravitate towards a 'procurement lever' as the workable foundation for a Code by pre-conditioning access to Government contracts on demonstrated compliance with the Code.

Where stakeholders divide

Scope. Views range from a broad and detailed instrument to a narrow integrity-focused instrument. Others would confine a Code so that it does not restrict what may be bargained into agreements.

Timing. Some stakeholders wanted the evidentiary case settled before any instrument is drafted. Others pressed to move now to an exposure draft.

Two points of unexpected common ground

A standard that binds all parties. One industry stakeholder observed that compliance with a code binds only the contractor and pressed for a Code that applies to all parties to a construction project. Similarly, unions emphasised the importance of shared duties.

The National Construction Industry Forum charter as the vehicle for culture. One industry stakeholder and one union stakeholder both pointed to the National Construction Industry Forum

charter, not a Code, as the instrument most likely to change culture and behaviour. That is rare agreement and it bears directly on what a Code can be expected to achieve.

The timing challenge

Industry stakeholders highlighted that enterprise bargaining to replace current agreements was imminent, suggesting the efficacy of any Code requires its early implementation.

Purpose and status

This report details the feedback and findings from stakeholder engagement on a Queensland Code of Practice for the building and construction industry (a **Code**).

The report maps findings against the seven questions/issues in the Discussion Paper of 31 March 2026 (**Discussion Paper**) by the Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry (the **Commission**):

- the desirability of a Queensland building and construction Code
- the elements to include or exclude
- the benefits of a Code relative to other mechanisms such as legislation or regulation
- the costs and benefits of specific parts of earlier codes
- the timing of implementation
- the mechanisms and costs of implementation and enforcement
- what is needed to make a Code work effectively in Queensland.

This version reflects engagement to 30 June 2026.

Confidentiality

Written submissions responding to the Discussion Paper are quoted throughout this document and have been de-identified, along with comments provided in meetings and roundtables, in line with an undertaking provided to participants that:

> "A summary of stakeholder engagement will be prepared, and a version of this document may be made public (though comments will be de-identified).
>
> This stakeholder engagement summary may contain material from this meeting either in aggregated form or, in limited cases, a direct quote. If a direct quotation from you is intended to be attributed publicly, we will discuss this with you further and explore options to meet any concerns (for example, anonymising or omitting the quote).
>
> Other than that use, the material will be treated in confidence and will not be for public dissemination."

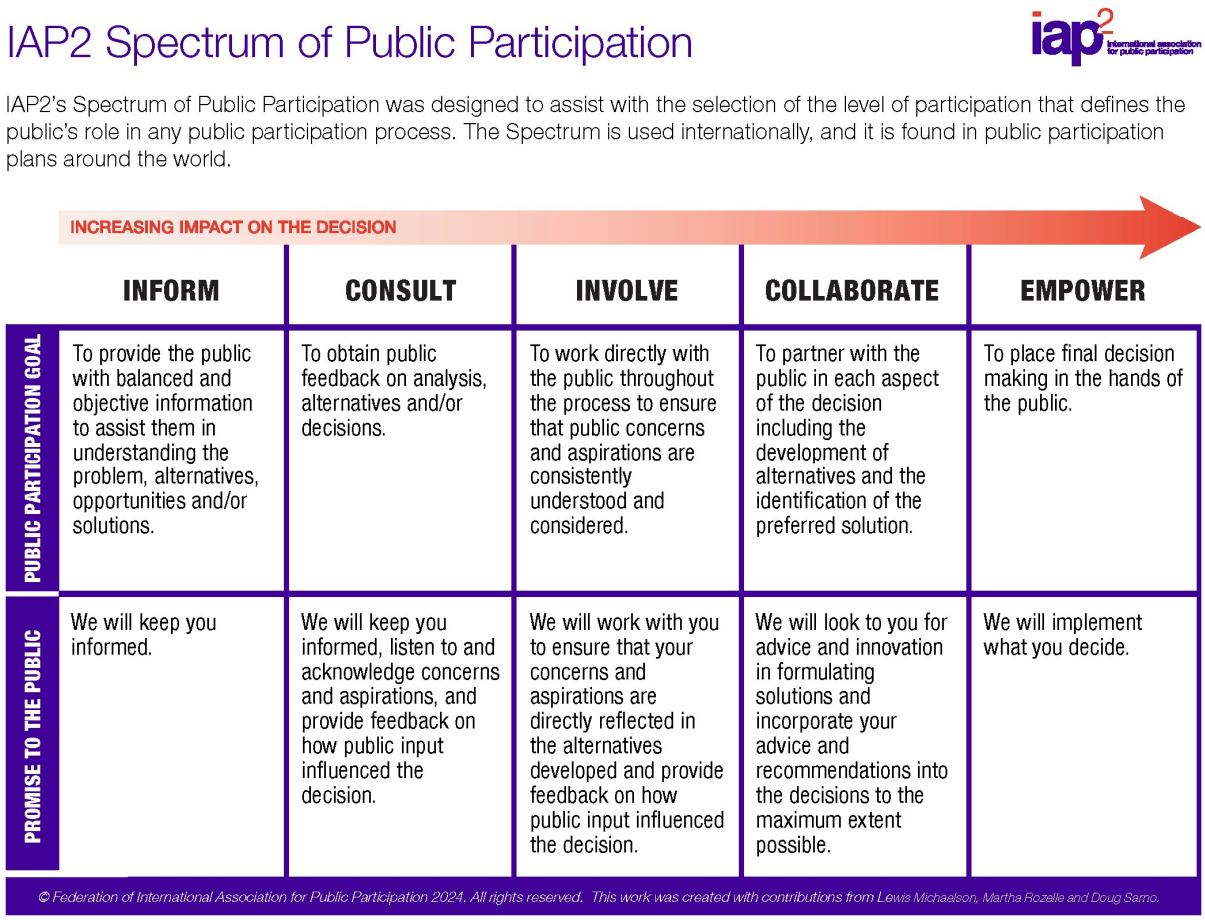
Nomenclature

For the purposes of this engagement, the terms 'building and construction Code', 'Code' and 'Construction Code' have been used interchangeably throughout discussions with stakeholders, with specific reference to the Discussion Paper on a building and construction Code, released by the Commission in late March 2026. It is not intended to pre-suppose an outcome of the Commission's consideration of this matter.

The 'Code' discussed in this report is the proposed instrument applied through procurement, just as the July 2013 Implementation Guidelines for the Queensland Code of Practice for the Building and Construction Industry applied. The existing 'Code of Practice for the Building and Construction Industry' is itself under review by the Queensland Government.

Engagement approach

The program sits at the 'Consult' level of the International Association for Public Participation (**IAP2**) spectrum: we undertake to listen, acknowledge the concerns raised, and show how the input has shaped the advice.



IAP2 Spectrum of Public Participation

IAP2's Spectrum of Public Participation was designed to assist with the selection of the level of participation that defines the public's role in any public participation process. The Spectrum is used internationally, and it is found in public participation plans around the world.

INCREASING IMPACT ON THE DECISION

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

Image 1: IAP2 Spectrum of Public Participation

Background and context

Under terms of reference dated 1 August 2025, the Queensland Government appointed Stuart Wood AM KC to conduct the Commission.

The terms of reference include reviewing whether any law or policy change is needed in the construction industry or more generally (paragraph 3(f)). Accordingly, this engagement addresses whether Queensland should reintroduce an amended building and construction Code, applied through procurement, in the manner of the July 2013 Implementation Guidelines for the Queensland Code of Practice for the Building and Construction Industry.

It follows a recommendation of the Queensland Productivity Commission to reintroduce a building and construction code as part of its report into the construction industry to the Government in October 2025.

Several regulatory settings have recently changed. The Best Practice Industry Conditions (**BPIC**) were suspended in November 2024. A new Queensland Procurement Policy commenced on 1 January 2026. The Code of Practice for the Building and Construction Industry, updated in March 2025, is under review by the Queensland Government.

In late March 2026, the Commission released a Discussion Paper on the possible reintroduction of an amended Queensland construction industry Code. The Discussion Paper sought feedback on seven issues, which structure this report.

On 14 April 2026, Counsel Assisting filed a submission making the case for a Code and an independent regulator. That submission sets the foundation on which this engagement has been conducted.

Engagement methodology

The methodology below records the tools used, the approach to engagement, recording and attribution of feedback, and the composition of the engagement.

Engagement tools

The Commission released the Discussion Paper publicly on 31 March 2026. It was distributed by direct email to one hundred and six stakeholders, across priority stakeholder tiers and Olympics-related stakeholders. The Discussion Paper was subsequently also shared with two other peak bodies and their members at their request.

Stakeholders were invited to make written submissions against seven questions or themes. The written submissions were supplemented by direct engagement. One-on-one meetings were held with selected stakeholders, while some peak bodies chose to attend a roundtable, allowing an organisation's submission to be tested against the views of its individual members.

Method and sequencing

Each meeting opened with unprompted discussion before structured prompts were introduced. This follows qualitative research method and avoids anchoring responses.

Meetings were recorded and transcribed for an accurate record. The transcripts are working records for the Commission and were not taken as evidence.

Some participants have already given, or may later give, evidence to the Commission separately.

Distinction between evidence and stakeholder engagement

There is a distinction between evidence tendered or received at a hearing of the Commission, and the views communicated during the consultation process. It is important that opinion offered in consultation is not mistaken as evidence or as a finding of fact. Adverse comment about third parties is recorded as the speaker's opinion only.

Attribution follows the basis on which each contribution was given:

- written submissions responding to a public paper are named
- roundtable participants were given an undertaking that their comments would not be attributed in any public-facing report
- one-on-one participants were consulted on a protocol allowing de-identified or, with consent, attributed use.

The stakeholder register records the basis for each source.

Issue 1: The desirability of Queensland having a building and construction Code

Issue 1 tests the threshold question of desirability: whether Queensland should have a building and construction Code.

Support for introducing a Code was broad among industry, employer and integrity bodies. Every such stakeholder that expressed a view supported a Code, at least in principle, with one qualified exception.

That support did not extend to union representatives, who questioned the case for a Code and would oppose an instrument modelled on the conduct-and-enforcement codes of the past. The substantive disagreement among supporters regards scope and design, which is addressed in Issue 2.

> "[A code should provide] guardrails around the industry … both unions and employers … everyone sticks within the lines."
>
> – Industry stakeholder

Stakeholders on the need for a code

Stakeholders in support of a Code include:

- A Government agency, which considered a Code highly desirable, as a control against corruption risk and a means of setting clear integrity standards
- Peak bodies, which variously support a code that:
    - is broad and detailed, framed around productivity and lawful conduct
    - is practical and targeted, focused on productivity and lawful site management without duplicating existing legislative obligations
    - protects subcontractors and small businesses
    - is directed at lawful conduct, integrity and productivity
    - is targeted, proportionate and focused on measurable outcomes
    - provides a clear and consistent framework for publicly funded work.

Roundtable participants confirmed support across a range of contractors, pressing on design rather than questioning the case for a Code. A separate roundtable showed support for reintroducing a Code tied to procurement, with questions focused on how it should be designed rather than whether it was needed.

The position of one industry stakeholder was that whether Queensland should have a Code 'depends', because the value of a Code relies on how it sits alongside the parallel processes now under way, in particular the NCIF charter, the negotiation of new enterprise agreements and any developments at the Commonwealth level. It saw a Code as a logical way to lock in recent improvements, provided alignment is managed so that a Code does not add misalignment, reporting burden and cost.

Another peak body supported the principle of a Code from the perspective of investors and market participants, provided it is targeted, proportionate and focused on measurable outcomes such as lawful conduct, safety, fair competition, transparent procurement and freedom of association. Its support was conditional on a Code that preserves a level playing field, is clear about which work it would reach, and does not recreate the cost, delay and investment impacts it associated with earlier arrangements. Those conditions are developed in the additional-issues section.

Support was conditional, however

Support was, in most cases, conditional on the scope and design of a Code and its guidelines.

Two peak bodies conditioned support on a Code that complements existing law rather than duplicating it. Even the strongest supporters raised duplication as a risk to be managed, a caution that runs through several written submissions and meetings.

Another peak body does not oppose a Code in principle, but does not support one on the basis of the Discussion Paper. It argued the Discussion Paper does not establish why a Code is necessary, and that the case lacks a draft instrument and a regulatory impact statement – matters for Government as part of any future decision to adopt a Code. On that basis, it reserves its detailed position, while not opposing reform that is targeted, evidence-based and proportionate.

Union representatives' view was that the matters a Code would reach are already regulated, under the *Fair Work Act 2009* (Cth) (**Fair Work Act**) and the *Work Health and Safety Act 2011* (Qld) (**Work Health and Safety Act**), and that the answer to any regulatory shortfall is to resource and refocus the existing regulators rather than create a new instrument.

Union representatives drew a distinction between procurement used positively – as it was historically for apprentice and women's-employment requirements and site-safety standardisation – and procurement used as what it called a 'reverse' or 'blue' BPIC to restrict the content of agreements, which it would oppose.

Issue 2: The key elements that should be included or excluded from such a Code

Issue 2 is a question of scope: how far a Code should reach, and how tightly it should fix conditions. One peak body offered a test that runs through the analysis below – that a Code be necessary, clear, enforceable and proportionate. Where an organisation's agreed position and its members' views diverge, both are recorded.

Spectrum of positions

Positions range from a broad productivity instrument to a narrow conduct-and-procurement one.

At the broad end, three peak bodies seek a detailed Code:

- One, which would restrict productivity-limiting clauses in enterprise agreements, such as union vetoes over rostered days off and out-of-hours work, and jump-up clauses that pass head-contractor conditions to subcontractors
- Another which sought similar guardrails, with demarcation provisions requiring lawfully made and registered agreements and revenue-linked penalties backed by exclusion from tendering; and
- Another, which pairs a detailed productivity focus with discipline, identifying prohibited agreement and project content without restating industrial relations or work health and safety law.

In the middle, three bodies argue for a narrower Code focused on lawful conduct, integrity and procurement:

- One, which framed it as an enforcement-and-procurement instrument with credible penalties and whistleblower protection, while warning against a parallel industrial relations regime
- Another, which emphasised subcontractor protection, sought a negative licensing model, and would exclude jump-up clauses and any expansion of right of entry; and
- Another, which stressed procurement integrity and procedural fairness, and asked that the Code recognise existing professional regulation rather than duplicate it.

Another peak body would limit the Code to union conduct. It opposed obligations on employers and any extension into the residential sector, and pointed to the National Construction Industry Forum (**NCIF**) Blueprint as already covering the ground.

Construction Peak Body Roundtable

A roundtable of construction industry peak body members surfaced views that qualified the organisation's broad support for a code. Notably,

- some members went further than the submission, questioning whether the industry still needs delegates or rostered days off, while wary of new compliance burden and sceptical of mandated drug-and-alcohol testing
- some questioned whether a procurement Code is the right instrument, preferring a site-level constitution for on-site committees

- some wanted a regulator able to resolve disputes on site quickly, while others preferred clearer rules that reduce the need for one.

The roundtable also pointed to matters better handled outside the Code. Union flags and stickers were read as a signal of control, but members were firm that the Code should not make contractors police them. On safety, the preferred fix was to wind back recent Work Health and Safety Act changes rather than load the question onto the Code.

> "The [concrete] pour would be done at 2am, finished by 6, out of the heat of the day … the union said no, and put the program back massively."
>
> – Industry stakeholder

Another peak body set out the most detailed account of what a Code should prohibit – agreement and project terms that limit productivity or management prerogative:

- fixed rostered-day-off patterns, and restrictions on ordinary working days across a seven-day week
- requirements for union approval of working hours or subcontractor engagement
- paid union activity time, union-directed pre-starts, and sign-off rights over resourcing and redundancy
- jump-up, uplift and pass-through clauses affecting subcontractors and labour hire, which it regards as a serious cost to small business.

Beyond prohibited content, the peak body sought:

- protection for freedom of association, including against pressure to join a union or to disclose membership
- safety kept in legislation and approved codes, with site-shutdown powers confined to the work health and safety inspectorate
- right-of-entry notices that specify the suspected contravention, its location and who is affected, so statutory rights are not exercised on boilerplate grounds
- behavioural standards directed at psychosocial risk, with a contractor able to refuse access to a person who cannot meet them
- transparency where payments or benefits flow to third parties, and employee choice over redundancy, income protection and training funds in place of mandated funds.

It argued these costs have risen without a corresponding benefit to workers or a gain in productivity.

Another industry stakeholder identified four matters as critical, framed by productivity:

- the prohibition of jump-up clauses
- flexible rostered days off
- limits on the weaponisation of work health and safety

- self-selection of subcontractors in place of union or agreement-led influence over that choice.

It added a fifth, psychosocial safety, which it argued should sit on at least the same footing as physical safety.[1]

On jump-up clauses, this stakeholder accepted that such clauses exist in part to counter shell-company and sham-subcontracting arrangements used to lower wages.[2] On flexible rostered days off it pointed to the cost of closing a site, which it put at between $1 to 5 million a day.[3] Its treatment of the weaponisation of work health and safety, and of psychosocial safety, is developed in Issue 6 and the additional-issues section.

Union representatives approached the content question from the opposite direction, stating they would resist a Code that restricts what may be bargained, on the basis that the Fair Work Act already defines permitted and prohibited content, and that some matters a Code might exclude are protections workers rely on. That position is recorded in the union perspectives section.[4]

> "Those matters we might pursue during bargaining are there to lift a workforce and provide fairness across a work site."
>
> – Union stakeholder

Common ground

Across the spectrum, several inclusions attract wide industry support:

- jump-up clauses should be addressed
- right of entry should be confined to what the law already allows
- enforcement should carry real consequences, paired with whistleblower protection
- contractors should not be made the auditors or police of the Code, a lesson from earlier federal codes
- duplication with existing law should be avoided.

Several stakeholders expressed a view that a Code should bind all parties on site, not contractors alone. One industry stakeholder argued that a procurement instrument binds only the contracting party, and pressed for standards enforceable across everybody, including union representatives.[5]

How prescriptive a Code should be

A separate question is how far the Code should fix particular conditions. One industry stakeholder argued productivity should come from competition and genuine bargaining rather than numbers set in a Code. Another peak body treated the Code's value as what it enables in the next bargaining round, and cautioned that a Code attempting too much could lose its force. Multiple

[1] Meeting with an industry stakeholder (2026).
[2] Meeting with an industry stakeholder (2026).
[3] Meeting with an industry stakeholder (2026).
[4] Meeting with union representatives (2026).
[5] Meeting with an industry stakeholder (2026).

industry stakeholders said that a Code restoring contractors' bargaining position with unions would define its success.

Further elements raised

Several elements from the Discussion Paper's content list drew specific comment:

- One industry peak body sought protection for security of payments
- Another sought provisions on sham contracting and collusive tendering, and greater tendering transparency
- Multiple submissions supported a clear pathway for the settlement of disputes.

Worker wellbeing

A worker-wellbeing provider raised an element absent from the written submissions: worker mental health. It proposed the Code support practical measures, such as induction pathways to support services, framed on the productivity benefit of keeping experienced workers in the industry.

Assessment

The divergence on reach is the central challenge for calibrating a Code. Most stakeholders accepted these are matters of design, and given the spread it is almost inevitable that some will feel their submissions were not reflected.

The four tests proposed by the one industry peak body give a neutral basis for resolving them provision by provision at the drafting stage – that a Code be necessary, clear, enforceable and proportionate.

Issue 3: The benefits of using a code relative to other mechanisms

Issue 3 asks what a Code offers that legislation or regulation does not. Stakeholders who support a Code identified two benefits:

- its reach into government procurement
- its capacity to be adapted over time.

They returned to one condition – that a Code complement existing law rather than duplicate it.

The procurement lever

The clearest benefit is that a Code operates as a procurement lever. Multiple stakeholders saw a clear benefit of a Code that sets procurement conditions and operates as a lever in enterprise bargaining.

An industry peak body framed it the same way, as a practical procurement and performance instrument that can be more operationally specific than primary legislation. It pointed to the 2013 Queensland Implementation Guidelines as the working example – obligations that sat alongside existing law and applied through tendering. A government agency also assessed that a procurement Code can be stood up faster than a new statutory regulator, the slower and costlier alternative.

> "[Industry would be empowered if it could enter negotiations and say] … I'm sorry, it's not my fault; I have to do this because the code says I have to do it."
>
> – Government agency

Flexibility

A Code is perceived to be more readily adjusted than legislation. One industry peak body viewed this adaptability as a benefit, noting that procurement settings can be changed quickly, where legislation gives greater predictability. However, it cautioned that the downside is the speed with which the previous Code was unwound. On its view the Code should be anchored closely enough to legislation, and supported by review and transition commitments, that a change of government does not destabilise it.

Complement, not duplicate

The most consistent theme is that a Code can only work if it complements existing law, with stakeholders variously suggesting:

- a Code sit alongside the Fair Work system, warning against a parallel industrial relations regime
- it identify prohibited content for covered work while leaving industrial relations and safety law where it sits
- it recognise existing professional regulation

- it avoid overlap with Commonwealth regimes, where demarcation, payments, agreement content and right of entry already sit with the Fair Work Commission, the Fair Work Ombudsman, the CCC or the courts.

Whether a code adds enough

The one industry stakeholder that withheld its support pointed to existing frameworks, and the NCIF Blueprint, as already covering much of the ground, and argued the benefit of a new Code over enforcing existing law has not been demonstrated.

Another industry group prefers enforcement through existing channels, by a negative licensing model administered by the Queensland Government's Office of Industrial Relations (**OIR**).

Union representatives argued that the Fair Work Act and the Work Health and Safety Act already regulate the relevant conduct, and the better course is to resource and refocus those regulators.[6]

> "When statute exists to deal with these matters, statute should be allowed to do the job it's there to do."
>
> – Union stakeholder

One industry stakeholder accepted a role for procurement but doubted it is sufficient alone: because a procurement instrument binds only the contracting party, change pursued through procurement alone will not reach the other parties whose conduct matters.[7]

Assessment

The benefits most consistently identified are the procurement lever and the capacity to adapt, attributes missing from the current legislative regulatory regime. The recurring condition is that a Code adds value where it conditions compliance with the ability to tender for government work.

[6] Meeting with union representatives (2026); submission to the Commission (2026).
[7] Meeting with an industry stakeholder (2026).

Issue 4: The costs and/or benefits of specific parts of existing or previous construction codes

Issue 4 looks to experience with codes that have operated before – the previous Queensland code, administered through the July 2013 Implementation Guidelines, and the Commonwealth codes, in particular the 2016 Code administered by the Australian Building and Construction Commission (**ABCC**).

The previous Queensland code

Multiple stakeholders referred to the previous Queensland code as a procurement instrument rather than an enforcement one, run by a small unit within the OIR, with around five staff and three inspectors at its peak. Site access was voluntary, secured through contractors' workplace relations management plans rather than statutory entry powers, and inspectors held but did not use work health and safety powers.

The benefit identified was behavioural: the Code gave contractors a basis to decline union demands by pointing to a government requirement, backed by the prospect of exclusion from future tenders. It noted that the model never ran long enough for those contractual consequences to be fully borne out, that the work health and safety basis for inspectors was confusing, and that the Code was stood up quickly by Cabinet and framed in anticipation of legal challenge.

> "[Major contractors were] more scared of the code, by far, than workplace legislation. Workplace legislation was a drop in the ocean."
>
> – Government stakeholder

Another industry peak body also treated the same period as its model, regarding the July 2013 Implementation Guidelines as the architecture a new Code should follow. A roundtable identified the workplace relations management plan as the device that made the earlier regimes work: it required a contractor to set out how it would meet its obligations and gave head contractors a basis to hold subcontractors to a consistent standard.

The Commonwealth codes and the ABCC

Stakeholders drew on lessons from the Commonwealth codes. At a roundtable the principal benefits identified were:

- relief from the requirement to obtain union agreement over particular work practices, regarded as a productivity gain
- the ABCC's compliance support, which checked draft enterprise agreements and published permitted and prohibited clauses, giving contractors certainty
- an independent structure that could adjust quickly where something was not working.

The costs members identified were concentrated in audit and reporting:

- obligations that turned site managers into auditors, checking lunch rooms and counting flags rather than planning work

- mandated drug-and-alcohol testing, described as a productivity impost that did not achieve its purpose
- audits that could take three days, with an entire site team offline.

A construction peak body pointed to a more recent Queensland example to the same end, describing the Buy Queensland audit and Ethical Supplier Mandate process as heavy-handed, with one audit running beyond $250,000 to surface a minor and already-corrected matter. It cited this as a model to avoid.

Union representatives drew the opposite lesson from the same period. Their account was that the ABCC used safety to keep unions off site rather than as a safety measure, and it pointed to prosecutions over stickers and flags while substantive safety breaches went unaddressed.[8]

> "You combine a code with coercive powers in that environment, and it's a combustion sort of situation."
>
> – Union stakeholder

Union representatives further contrasted this with positive uses of earlier procurement settings, including more women apprentices on BPIC projects and the standardisation of site safety.[9]

The lesson on penalties

Several submissions raise financial penalties, and the matter was discussed in multiple meetings. A government stakeholder's assessment, from advising large contractors under the earlier federal regime, was that fines operate as a cost of doing business for major contractors and do not change behaviour.

A roundtable was to the same effect, recalling that penalties were treated as a cost of doing business and often delayed for years, by which time the conduct had achieved its purpose.

The consequence that did change behaviour was the prospect of losing the ability to tender, which could extend to related companies in a corporate group.

General cost and benefit

One peak body framed the question generally: the benefits of a Code are greatest where it improves consistency, reduces uncertainty and supports fair and efficient delivery, while the costs arise where provisions are unclear, overly broad, duplicative or administratively burdensome.

Another framed the same balance as certainty against overreach: a Code's principal benefit is certainty, and its principal risk is overreach that raises cost, reduces subcontracting flexibility and dents investor confidence on privately financed renewable energy projects.

[8] Meeting with union representatives (2026).
[9] Meeting with union representatives (2026).

Assessment

The experience supports a consistent approach. A Code earned its place where it operated as a procurement lever backed by a consequence serious enough to matter – under the federal regime, the risk that related companies in a corporate group would lose the ability to tender.

The ABCC's service of checking draft agreements was valued for similar reasons. The recurring complaint was the audit and reporting burden the 2016 Code placed on contractors, with the policing of paraphernalia and mandated testing as instances of the same problem.

Issue 5: The timing of implementation of such a Code

Issue 5 deals with when a Code should take effect and how its introduction should be staged. Not all stakeholders agree on timing, but those with the strongest views argue it is urgent in light of upcoming enterprise bargaining.

The case for urgency

The strongest statements of urgency came from the two construction peak bodies tying timing to the bargaining calendar:

- One pointed to the alignment of enterprise agreement expiries around June 2027, so that a Code needs to be in place before that round to shape it, and to projects being bid now, including Olympics work and Gold Coast fast rail, where the absence of settled labour rates leaves contractors without cost certainty
- Another made the same connection, reporting that negotiations for plumbers and electricians are under way with the builders' round to follow.

A third peak body supported implementation as soon as practicable, and a roundtable supported an interim step identifying non-permissible clauses ahead of the round, but it cautioned that commencement without transition would create avoidable disputes where existing agreements or tenders were later found non-compliant.

> "They don't know which way to go. They've got no clear direction … people have been corralled."
>
> – Industry stakeholder

Staging the rollout

A second group treated timing as a matter to be managed rather than rushed:

- One peak body proposed a staged introduction – an exposure draft, targeted consultation, supporting guidance, a reasonable transition before enforcement, and a formal review – noting that the Discussion Paper contemplates implementation in early 2027, which makes a staged approach more important, not less
- And one standalone peak body went further, declining to support implementation without a drafted instrument and a regulatory impact assessment.

Managing the transition

A construction peak body treated transition as a critical issue in its own right, concerned that a Code introduced without a managed transition could render a large part of the industry ineligible to tender before contractors could comply.

Another made a related point in seeking a reasonable transition before enforcement.

A third framed the risk around legacy arrangements, asking for a defined transition period, clear commencement rules for new tenders and contracts, and guidance on how existing agreements would be treated.

Another peak body would implement a Code only after a formal Impact Analysis Statement covering cost, productivity, competition, regional workforce and investment, the publication of draft provisions and guidance, a reasonable transition for projects already in procurement or financing, and alignment with the Queensland Procurement Policy 2026.

Deliverability and developments at federal level

A government agency suggested the transition depends on the model chosen. The previous code was stood up quickly by Cabinet, which shows a procurement-based Code can be implemented without a long lead time; a standalone statutory regulator would take considerably longer. It also cautioned that timing must account for federal developments, including the prospect of a competing Commonwealth code, which would require current legal advice before a state Code took effect.

Union representatives did not engage timing on its merits, treating it as premature: they could not give meaningful feedback on commencement without knowing what work and which entities a Code would cover, which it identified as the prior question.[10]

> "This is going to operate in a vacuum to anything else that's happening."
>
> – Union stakeholder

One industry stakeholder framed timing as a question of alignment rather than urgency, concerned that a Code introduced out of step with the NCIF charter and Commonwealth developments would create misalignment and cost.[11]

Assessment

The urgency identified by some stakeholders is real: major enterprise agreement negotiations fall due around June 2027, and projects are being bid now without settled labour rates.

A procurement-based Code can be implemented on that timeframe; a standalone regulator cannot.

The path that meets the urgency without outrunning the work is an exposure draft, released early enough to shape the bargaining round and allow the transition stakeholders call for.

[10] Meeting with union representatives (2026).
[11] Meeting with an industry stakeholder (2026).

Issue 6: The mechanisms and costs of implementation and enforcement of such a Code

Issue 6 concerns how a Code would be enforced, who would administer it, and what that would cost. The consultation converges on the operative consequence – exclusion from government work – and divides on the body needed to apply it, from a small compliance unit to a dedicated regulator.

Two questions remain open: which body administers the Code, and how it would interact with a federal Code or regime.

The consequence for non-compliance

The enforcement mechanism stakeholders returned to is the loss of government work. A government agency identified the lever as contractual: a contractor found not to comply is reported to the agency that owns the contract, which can exclude it from future tenders. In its view, major contractors treat fines as a cost of doing business, and the consequence that changes behaviour is the prospect of losing future work.

A government agency also stressed that a Code operating as a procurement instrument has no power to impose financial penalties; a penalty regime would require legislation and is the province of a statutory regulator. Some stakeholders nonetheless argued for penalties:

- One peak body sought revenue-linked penalties alongside exclusion from tendering, and a procurement condition that the state not contract with any party lacking a lawfully negotiated and registered agreement
- Another sought credible penalties paired with whistleblower protection
- Another industry group proposed a check applied earlier than the contract: an enterprise agreement lodged with a senior Queensland Government reviewer for a compliance certificate before it goes to ballot, without which a contractor could not use it to tender. In consultation, this was linked to a productivity test, the reviewer withholding it unless the contractor could show the productivity obtained for the concessions in an agreement.

A regulator

There is no consensus on whether a standalone regulator is warranted.

One industry peak body argued one is necessary – a Code without enforcement will not succeed – and described a dedicated regulator that would:

- adjudicate the boundary between industrial, safety and criminal matters so that police and the safety regulator act on a consistent view
- assess workplace relations management plans at the tendering stage, which procuring agencies are not equipped to do
- act as an advisory point for industry, as the ABCC once did.

Another distinguishes a regulator confined to the Code from a broader industry regulator, favouring a body that vets enterprise agreements and helps contractors comply.

A third peak body also wanted a body charged with the Code and was specific about its make-up: in consultation it was cautioned that the previous unit was staffed by former federal investigators with limited industrial relations knowledge, with decision-makers sought who had genuine industrial relations and construction expertise, able to resolve a dispute quickly rather than leave it to the courts.

For conduct on site, it proposed a near-term mechanism not dependent on new statute – an application to the Queensland Industrial Relations Commission (**QIRC**) to suspend a work health and safety entry permit, paired with a duty on contractors to report the conduct and an interim suspension of site access, accepting that procedural fairness would be required. The family violence/intervention order regime was cited as an analogous example of a system that could provide interim or injunctive relief while the substantive issue could be contested.

"There isn't a regulator we can go to and say, 'Can you please help us?'"

– Industry stakeholder

A government agency was more cautious. It accepted industry appetite for a standalone authority, but noted such a body would take a long time to establish and be costly to resource. It also noted a constitutional difficulty: the ABCC's powers rested on the Commonwealth's authority over the employees of constitutional corporations, which a state regulator may not be able to replicate.

One industry stakeholder's central concern was timeliness – the impact of an incident is immediate while the remedy is slow, so a site can be shut quickly but not reopened quickly even where there is no issue.[12] It raised a resourced response capability, on the model of a strike team able to attend incidents quickly and combine enforcement with education, while noting that Queensland's geography makes timely attendance unlikely.[13]

Union representatives do not support a new body, on the basis that bodies should not be created where regulators already exist, and that the answer is to resource and refocus the existing health and safety regulator, with education before enforcement and hazard data published so the regulator can target high-risk areas.[14] They pointed to the existing low-cost dispute pathway through the QIRC as the appropriate route for entry and obstruction disputes.[15]

"(The safety regulator is) good on policy, hopeless on implementation."

– Union stakeholder

Who administers the code?

The administering body remained unresolved. The procurement consequence already has an owner: the Code sits within the Queensland Government Procurement Office within Housing and Public Works, which would take contractual action against a non-compliant contractor.

[12] Meeting with an industry stakeholder (2026).
[13] Meeting with an industry stakeholder (2026).
[14] Meeting with union representatives (2026).
[15] Meeting with union representatives (2026).

The compliance and inspection function is open. Under the previous code it sat within the OIR, but that unit only inspected and reported.

One peak body proposed a negative licensing model administered by the OIR. Another took the view that the function might sit with the OIR, as the natural home of industrial relations expertise.

A government agency stressed that any such function be independent of work health and safety inspection, to avoid confusion about which role an inspector is performing. An industry body added that, wherever it sits, responsibilities should be clearly allocated between agencies, principals and contractors. The placement is a decision for government, not a settled feature of the model.

Cost

The cost depends on the model. The previous compliance unit was small – around five staff and three inspectors at its peak – and inexpensive to run. An industry peak body cautioned that resource-intensive, inconsistent or unclear enforcement creates delay and cost without improvement, and that a Code supported by clear guidance achieves compliance at lower cost.

Another peak body reached the same conclusion, favouring simple compliance checks and clear escalation over audit-heavy processes. A standalone statutory regulator sits at the other end of the range, carrying the ongoing resourcing costs that led a government agency to treat it as a longer-term question.

Federal government considerations

Any model must account for the Commonwealth. A government agency noted that the federal Secure Australian Jobs Code seeks to capture projects funded wholly or partly by the Commonwealth, which could extend to state-funded work and clash with a state Code, and treated the interaction as requiring current legal advice before a state Code took effect.

Assessment

The mechanism stakeholders agree on is the loss of government work, applied through the procurement contract.

A Code on its own cannot impose financial penalties, which is the principal limit on the enforcement it can carry without legislation. The primary divergence of views is over the body that applies the consequence: a government agency described a deliverable near-term model, a small compliance unit that inspects and reports with the procurement office taking contractual action.

The difference is largely one of cost and time to establish, set against the constitutional reach a state regulator could claim. The administering body remained unresolved, and the interaction with a federal Code remains a live matter.

Issue 7: What is needed to make a Code work effectively if it were introduced?

Issue 7 asks what would make a Code work in practice, drawing together the conditions stakeholders attach to their support: clarity of purpose and drafting, involving the unions, an identified enforcement body, durability against legal change, and a managed and reviewed introduction.

Clarity of purpose and drafting

A government agency put clarity of purpose first: a Code cannot be designed until the government is clear about what it is for, which it understood to be a change in conduct on site, with the model following from that intent. On the instrument itself:

- One peak body asked for plain language, supported by examples and guidance, applied consistently across agencies and project types
- Another asked for a clear statement of scope, model clauses, and examples of compliant and non-compliant provisions, treating these as the difference between a Code that operates and a set of policy statements
- A third sought clarity on the points that have caused dispute, including that project agreements have no standing in law and that right of entry and the relevant union are defined precisely.

Bringing the unions along

Multiple industry stakeholders made the involvement of the unions their central condition, concerned that a Code imposed without genuine consultation could provoke a more combative response and work against the collaborative relationship it sought. One put the emphasis on genuine consultation with contractors, subcontractors and employee representatives before commencement and during review, drawing the lesson from 2013, when in its view the Code came in too quickly.

> "Let's involve the union now in the development of the code … We don't want to go backwards."
>
> – Industry stakeholder

One union stakeholder went further than consultation: a Code cannot change culture, culture change is already under way through the NCIF and is an industry-wide matter rather than a union one, and a punitive Code would set it back.[16]

One industry stakeholder reached a similar conclusion, pointing to the NCIF charter – developed across unions, companies and industry bodies – as the instrument best placed to drive behaviour, with a Code giving structure to those behaviours rather than supplanting them.[17]

[16] Meeting with union representatives (2026).
[17] Meeting with an industry stakeholder (2026).

A body to enforce it

Two industry stakeholder groups treated an enforcement body as necessary for a Code's effectiveness. One industry stakeholder added a condition of a different kind – for a Code to work it must be enforceable across all parties on site, not only the contractor bound through procurement, because shared responsibilities such as psychosocial safety cannot be met where only one party carries the obligation.[18]

Durability and the federal interaction

One construction industry group emphasised that a Code must withstand regulatory and legislative change so it is not undone by developments at either level of government.

Another made durability a central condition and offered a design answer: a Code anchored to productivity, and able to show value to taxpayers, is harder to unwind on a change of government than one seen as directed at unions. It proposed a reciprocal behavioural and cultural standard applying to all parties on site, which in consultation was considered to give the Code legitimacy beyond the politics of the day, and was firm that the Code should not be capable of being cast as a return to earlier industrial settings. It and a government agency both stressed alignment with federal developments.

A managed and reviewed introduction

Several stakeholders made the manner of introduction a condition of success, calling for:

- a realistic transition period and a formal review after an initial period
- a review directed at whether the Code is improving productivity, reducing disruption and supporting value for money
- a drafted instrument and a regulatory impact assessment
- a code which framed effectiveness as a targeted, integrity-focused Code that complements existing law and carries credible enforcement, rather than a parallel industrial relations regime.

Assessment

The conditions stakeholders set are consistent with one another and with their positions on the earlier issues.

A Code will work, on the consultation as a whole, if its purpose is settled before drafting, the instrument is plain and applied consistently, the unions have been brought into its development, a body is identified to enforce it, and it is introduced with a transition and reviewed in operation.

These are conditions stakeholders place on their own support, and several remain open, chiefly the enforcing body and the federal interaction, developed in Issues 5 and 6.

[18] Meeting with an industry stakeholder (2026).

Union perspectives

This section records the union groups' view as a coherent perspective on its own terms, rather than distributing it across the seven issues. It draws on the submission of union representatives and a consultation meeting.

> "It's been over 17 years since there's been a fatality on a [major union] enterprise-agreement site."
>
> – Union stakeholder

The framework already regulates the field

Union representatives' core proposition was that the existing legislative framework already regulates the relevant roles and conduct comprehensively.[19] They pointed to the Fair Work Act, the *Fair Work (Registered Organisations) Act 2009* (Cth), the *Industrial Relations Act 2016* (Qld) and the Work Health and Safety Act as the source of detailed rights, obligations and accountability for workplace delegates, union officers, health and safety representatives and entry permit holders.

On that view, the conduct matters before the Commission concern the alleged misuse of legitimate statutory roles, not deficiencies in the framework that defines them, and the remedy for misuse is to apply and resource the existing law rather than build a parallel instrument.[20]

The Code as conceived

Union representatives were sceptical of the case for a Code and would oppose an instrument modelled on the conduct-and-enforcement codes of the past, drawing a distinction between procurement used positively and procurement used as a restriction on bargaining.[21]

One central concern is that a Code would operate as a 'reverse' or 'blue' BPIC, restricting the content that may be bargained into agreements. It argued that the Fair Work Act already defines allowable and prohibited content, that a further list of excluded matters would be problematic, and that some matters a Code might exclude are protections workers rely on, including against exploitation.[22]

They also pressed a prior question of scope: they could not give meaningful feedback on a Code without knowing what work and which entities it would cover, in particular how 'construction' is defined and whether the instrument would reach state-funded work only or also federally funded work.[23]

Right of entry and safety

Union representatives would leave right of entry to the statute. Where a matter is regulated under the Fair Work Act or the Work Health and Safety Act, it should not be addressed in a Code, and

[19] Union representatives, submission to the Commission (2026).
[20] Union representatives, submission to the Commission (2026); Meeting with union representatives (2026).
[21] Meeting with union representatives (2026).
[22] Meeting with union representatives (2026).
[23] Meeting with union representatives (2026).

any misuse of entry rights should be dealt with through the existing low-cost pathway in the QIRC.[24] On entry as a safety question:

- one union stakeholder pressed to restore no-notice entry for work health and safety purposes, on the basis that the notice requirement introduced in late 2024 delays the immediate response that resolves safety matters quickly[25]
- another stakeholder framed entry as a safety asset, pointing to a long period without a fatality on its enterprise-agreement sites and to the absence of any link between right of entry and the construction fatalities recorded over the past year.[26]

> "[You don't want to be] stuck at the gate, umming and ahhing about whether you can get on and help workers."
>
> – Union stakeholder

Enforcement and the regulator

Union representatives did not support a new enforcement body, on the basis that bodies should not be created where regulators already exist, and that the proper course is to resource and refocus the existing health and safety regulator.[27] They put education ahead of enforcement, and argued the regulator should publish hazard data, drawing on the workers' compensation data it already holds, to target high-risk areas.[28] It was critical of the regulator's capacity in practice, and of strong policy paired with weak implementation; that criticism is recorded as opinion.[29]

Culture, and the limits of a Code

Representatives argued that a Code cannot change culture, and that punitive codes have made culture worse.[30] They cited culture change in the NCIF and in industry-wide leadership and compliance with existing positive-duty obligations, framing culture as an industry matter that extends well beyond any single union, including the treatment of women and the conduct of middle management.[31]

Positive uses of procurement

Union representatives were not opposed to a procurement lever as such, pointing to historical uses it regarded as positive:

- apprentice numbers on government projects
- women's employment on government infrastructure
- the standardisation of site safety arrangements before the law required them.[32]

[24] Meeting with union representatives (2026).
[25] Meeting with union representatives (2026).
[26] Meeting with union representatives (2026).
[27] Meeting with union representatives (2026).
[28] Meeting with union representatives (2026).
[29] Meeting with union representatives (2026).
[30] Meeting with union representatives (2026).
[31] Meeting with union representatives (2026).
[32] Meeting with union representatives (2026).

On this view the question is what a government wants to use procurement for, and procurement directed at training, equity and safety stands in contrast to procurement directed at restricting agreements.[33]

[33] Meeting with union representatives (2026).

Additional issues raised in consultation

This section records matters raised in consultation that fall outside the seven questions. It is organised by theme, drawing on all stakeholders.

It is recorded for completeness: several matters are for government or other instruments rather than necessarily the Code, and the same evidence discipline applies – untested consultation input, attributed on the basis each contribution was given.

Scope and application of a Code

The matter raised most often outside the seven questions was the scope of a Code: what work it would bind, and which entities. It maps to none of the seven questions but determines how stakeholders read all of them.

One peak body put the most developed position on this question, and made it its primary recommendation. It sought a narrow and clearly defined concept of a ‘government project’, so that privately financed projects are not captured merely because they interact with government policy.

It proposed that such a project be treated as a government project only where the State is the principal procuring entity and provides the majority of construction capital, or where it is expressly declared one by regulation or ministerial instrument. Its concern was that a broad definition would extend Code obligations, and the cost, delay and investment risk it associated with them, across a large privately financed pipeline that differs in delivery model from government-funded construction. It sought requirements scalable to project size, funding source and risk, no retrospective application to projects already procured, financed or under construction, and no reintroduction of Best Practice Industry Conditions for renewable energy projects by another route.[34]

Union representatives raised a similar question, treating the definition of ‘construction’ and the reach of a Code into state-funded as against federally funded work as the prior question that determines its overall view.[35]

A related concern was the flow-on effect of Code obligations onto privately funded work: because the model historically required a contractor to apply the Code across its work to be eligible for government work, a contractor’s willingness to tender could be affected by obligations attaching to its private projects.[36]

Demarcation and union coverage

Demarcation – which union covers which workers and which work – was raised by the employer and contractor stakeholders as a source of disruption on site and as something a Code might address.

[34] Industry peak body, submission to the Commission (2026).
[35] Meeting with union representatives (2026).
[36] Industry peak body, submission to the Commission (2026).

One industry group suggested a Code, with Fair Work Commission regulation alongside it, that insists on lawfully made and registered agreements, so that a 'greenfields agreement' is reached with the union holding majority 'coverage' rather than assembled to suit the parties.[37]

The stakeholder pointed to a greenfields agreement made with several unions where the enterprise was not in fact new, and to the litigation that followed, as the kind of contest a coverage test would head off.[38] Its mechanism was for the Fair Work Commission to assess agreements on the basis of coverage, as it does for the 'better off overall test', with the resourcing to do so, which on its account would move the contest off the projects and reduce the cost of agreed parties litigating between themselves.[39] It saw the same contest emerging around the 2032 Olympics work and pressed for coverage to be settled before that program accelerates.[40]

Another industry stakeholder described coverage as a dispute at the gate. Entry is sought on an assertion of coverage that a contractor cannot readily test, and on its account no party, the unions included, has settled who covers whom.[41] It would require an entrant to demonstrate coverage rights before access.[42]

A roundtable confirmed that demarcation between the principal construction unions is a live problem on site, and participants were open to a Code assisting, noting the limitations where there is an overarching federal regime.[43] One industry stakeholder observed that the Fair Work Commission has approved agreements that entrench demarcation, and accepted that a Code might help a party hold a line in bargaining without making that outcome certain.[44]

A government stakeholder urged caution. It argued that demarcation disputes already sit within the powers of the Fair Work Commission and the Fair Work Ombudsman, so a Code that opened a separate process would duplicate them and added delay.[45]

Union representatives did not raise demarcation. Consistent with their position that right of entry and agreement content belong to the federal system, they would be expected to resist a Code reaching into union coverage; that is an inference from their general stance rather than a position they put.[46]

Apprenticeships, training and the skills pipeline

The skills pipeline was raised by union representatives and echoed by industry, against a shortage all parties expect to sharpen as the Olympic and energy programs compete for labour.

> "They can go and earn better money flipping a burger at KFC or Hungry Jack's."
>
> – Union stakeholder, on why it is difficult to retain apprentices

[37] Meeting with an industry stakeholder (2026).
[38] Meeting with an industry stakeholder (2026).
[39] Meeting with an industry stakeholder (2026).
[40] Meeting with an industry stakeholder (2026).
[41] Meeting with an industry stakeholder roundtable (2026).
[42] Meeting with an industry stakeholder roundtable (2026).
[43] Meeting with an industry stakeholder roundtable (2026).
[44] Meeting with an industry stakeholder (2026).
[45] Meeting with a government agency (2026).
[46] Meeting with union representatives (2026).

Union stakeholders identified low apprentice wages, the removal of trade-to-apprentice ratios, and weak on-site mentoring as the causes of low completion, and pointed to the training levy and Construction Skills Queensland model as the kind of market intervention that works.[47]

One described its own mentored apprenticeship scheme and high completion rate, and linked apprentice conditions to those captured in BPIC; another asked that trainees be considered alongside apprentices.[48] [49]

Pathways for women, and diversity including First Nations

The attraction and retention of women, and diversity including First Nations employment, were raised by union representatives.

Union stakeholders recalled that BPIC quotas increased the number of women apprentices on covered projects, while cautioning that quotas change the workplace rather than the underlying culture, and raised First Nations employment as another area addressed historically through procurement-linked quotas.[50]

Tested on whether a Code might oblige contractors to show arrangements directed at attracting or retaining women, their response was that quotas lift numbers while culture change requires leadership and compliance with existing positive-duty obligations.[51]

Psychosocial health and mental wellbeing

Psychosocial health was a prevalent theme, raised across industry and union groups. One industry stakeholder argued psychosocial safety should sit on at least the same footing as physical safety, and that it has advocated this into the NCIF charter.[52] It observed that:

- the safety regulator is neither resourced nor equipped to address psychosocial breaches
- there is a grey line between psychosocial safety and criminal conduct in which matters fall between agencies
- the prevalence of suicide in the industry is high relative to physical-safety fatalities.[53]

Another industry peak body proposed behavioural standards on site directed at psychosocial risk.

Union stakeholders pointed to the existing psychosocial-hazards code of practice and the sexual-harassment prevention-plan obligation, and argued the gap is enforcement and education rather than the absence of rules.[54]

A worker-wellbeing provider raised worker mental health in an earlier session, proposing practical measures such as induction pathways to support services, framed on the productivity benefit of retaining experienced workers.[55]

[47] Meeting with union representatives (2026).
[48] Meeting with union representatives (2026).
[49] Meeting with union representatives (2026).
[50] Meeting with union representatives (2026).
[51] Meeting with union representatives (2026).
[52] Meeting with an industry stakeholder (2026).
[53] Meeting with an industry stakeholder (2026).
[54] Meeting with union representatives (2026).
[55] Meeting with a worker wellbeing organisation (2026).

Paraphernalia and union-branded content on site

The display of union flags, stickers and banners was raised across several sessions, and is a totemic issue in the regulation of the industry.

The weight of view was that a Code should not make contractors police it. One industry stakeholder, tested directly, said the merchandise itself was not its members' concern – which lay with corruption, intimidation and violence – and that branded content was an issue only to the extent it carried a brand association or was abusive.[56]

A roundtable treated flags and stickers as a real signal of control but was firm that contractors should not be made to police them, and union stakeholders read past prosecutions over stickers as effort misdirected away from substantive safety.[57]

Migrant and visa workers, sham contracting and exploitation

Union representatives raised the exploitation of migrant and visa workers as a risk a restrictive Code could worsen: workers on visas are vulnerable to sham-contracting arrangements and to pressure to accept lower conditions, and protections bargained into agreements guard against a race to the bottom, so restricting agreement content would remove a safeguard.[58]

One peak body's submission raised sham contracting and collusive tendering in similar territory.

Regional and remote project delivery

An industry body raised the particular conditions of regional and remote delivery, which most metropolitan-focused submissions did not, pointing to workforce accommodation – including councils requiring regional camps where local accommodation is insufficient – the transport and fatigue management that follows, and the limits of network connectivity.[59]

Its preference was that a Code not be prescriptive about accommodation, that any treatment sit at the level of principle and be left to contractors' workplace relations management plans, that overlap with the planning framework be avoided, and that local procurement and workforce requirements account for regional market capacity rather than being applied rigidly.

It linked this to enduring regional skills shortages and to renewable energy workforces that are mobile and sequential, and supported culturally appropriate engagement and procurement opportunities for First Nations peoples and Indigenous-owned businesses.

One industry stakeholder made a related point about the geography of any enforcement response, recorded in Issue 6. The shared message is that a Code should recognise regional delivery without imposing prescription that does not fit it.

[56] Meeting with an industry stakeholder (2026).
[57] Meeting with an industry stakeholder roundtable (2026); Meeting with union representatives (2026).
[58] Meeting with union representatives (2026).
[59] Industry peak body, submission to the Commission (2026).

Conclusions

Among the industry, employer and integrity stakeholders there was near-consensus that Queensland should have a building and construction Code supported by implementation guidelines, at least in principle.

> "We're not out there on the rampage with flaming torches and pitchforks … lasting change comes from trust, from evolution, from common ground."
>
> – Industry stakeholder

To the extent that stakeholders had reservations, they were over scope and detail.

There was broad agreement that the principal consequence of non-compliance should be exclusion from tendering for government contracts.

Union stakeholders do not share that view. They were sceptical of the case for a Code, and would oppose an instrument modelled on the conduct-and-enforcement codes of the past, while accepting that procurement can be used for positive purposes.

Views among supporters diverged on the Code's scope, on the enforcement that should sit on top of the procurement consequence, and on matters of detail.

> "[You don't drive culture] by having a government body say, 'These are the rules you're now forced to operate under'."
>
> – Union stakeholder

Where stakeholders agree

Among the supporters, a Code was supported in principle. There was agreement that the consequence of failing to comply with a Code should be exclusion from government work. The procurement lever was the mechanism stakeholders returned to, and it was the point on enforcement where agreement was broadest.

Multiple stakeholders argued that a Code should complement existing law rather than duplicate it. On particular matters of detail, there was agreement that jump-up clauses should be addressed, that contractors should not be made to police the Code, and that enforcement should carry credible consequences and protect whistleblowers.

Two points of common ground across the divide

Two areas of agreement reached across the divide between the supporters and the union groups. They are the most useful findings for a government weighing how a Code might be received.

The first is that a Code should bind all parties on site, not contractors alone. A Code framed as applying to everyone, rather than to employers, is more likely to command acceptance across the field.

The second is that the NCIF charter, rather than a Code, was the instrument most often identified as the vehicle for changing culture and behaviour. One industry stakeholder and one union stakeholder both pointed to it.

Where the consultation divides

Scope

The widest divergence was over scope. Supporters ranged from those seeking a broad productivity instrument, reaching into agreement content and site management, to those seeking a narrow integrity-and-procurement instrument confined to lawful conduct, with a further position that a Code be limited to union conduct alone. The unions sat outside that range, opposing any Code that restricted what may be bargained into agreements.

Enforcement

Supporters accepted the procurement lever, with exclusion from government work as the principal penalty for non-compliance. They divided on what enforcement should include, from revenue-linked penalties and a dedicated regulator to a body confined to vetting agreements and assisting compliance, with a front-end compliance certificate and a near-term route to suspend entry permits also pressed. A procurement Code cannot impose penalties without legislation, so the more ambitious options carried a legislative requirement. The unions would resource the existing regulators rather than build a new one.

Implementation

Views on timing divided over urgency against readiness. The case for moving quickly was tied to the enterprise bargaining calendar and the generational projects linked to the 2032 Olympics, set against the case for a defined transition for legacy agreements and, at the cautious end, the position that a Code should not move to implementation without a drafted instrument and a regulatory impact assessment. Union stakeholders treated timing as premature until coverage was settled.

Scale of contention

The consultation indicates which elements of a Code would be less contested and which more. The gradient below is drawn from the supporters who accepted a Code in principle.

Least contested, and close to common ground among supporters:

- the procurement lever as the operative consequence, with exclusion from government work as the sanction
- addressing jump-up clauses, with care for the legitimate purpose some serve
- a requirement that the Code complement rather than duplicate existing law
- a rule that contractors not be made to police the Code
- credible consequences paired with whistleblower protection
- a managed transition followed by a formal review.

Moderately contested:

- the breadth of scope, between a productivity instrument and an integrity-and-procurement instrument
- the inclusion of psychosocial safety, supported in principle but unsettled in form
- behavioural standards on site
- a front-end compliance certificate gating tender eligibility.

Most contested:

- a dedicated standalone regulator, and any civil penalty regime, both of which require legislation and carry cost, time and, for a state regulator, questions of constitutional reach
- the direction of right of entry, where supporters would confine it to existing law and the unions would restore no-notice entry for safety
- any restriction on the content of agreements, which union stakeholders opposed outright as a ‘reverse’ or ‘blue’ BPIC
- the reach of a Code, and how a ‘government project’ is defined, with one supporter pressing to exclude privately financed renewable energy, storage and transmission projects unless the State is the principal procurer and majority funder.

The timing challenge

Enterprise negotiations for plumbers and electricians are under way, and the major agreements cluster around June 2027. The Discussion Paper contemplates implementation in early 2027. A new Code may influence those negotiations, according to stakeholders.

A staged introduction, through an exposure draft, consultation, guidance, transition and review, is what gives a Code legitimacy and answers the sufficiency concern.

That process takes time the most imminent bargaining rounds do not have. The consultation therefore leaves open how a Code can be introduced through a process durable enough to consider and act on stakeholder feedback in time for upcoming enterprise negotiations.

Stakeholder register

This register records organisations engaged in the consultation on a Code, with the form and date of their engagement and the basis on which their contributions may be attributed. It has been anonymised for the purpose of public release.

SECTOR	ENGAGEMENT	DATE	ATTRIBUTION BASIS
Integrity body	Submission	22 May 2026	Submission de-identified
Government agency	Submission and one-on-one meeting	Submission 24 April 2026; meeting 29 May 2026	Submission and meeting content referenced but de-identified
Industry and employer peak	Submission	1 April 2026	Submission de-identified
Professional body	Submission	9 April 2026	Submission de-identified
Industry and employer peak	Submission	21 May 2026	Submission de-identified
Industry and employer peak	Submission	April 2026	Submission de-identified
Industry and employer peak	Submission and one-on-one meeting	Submission April 2026; meeting 28 May 2026	Submission and meeting content referenced but de-identified
Industry and employer peak	Submission and roundtable	Submission 26 May 2026; meeting 3 June 2026	Submission and meeting content referenced but de-identified
Industry and employer peak	Submission and roundtable	Submission and meeting 10 June 2026	Submission and meeting content referenced but de-identified
Worker wellbeing	One-on-one meeting	2 June 2026	Meeting content referenced but de-identified
Workplace organisation	Submission and meeting	Submission 20 May 2026; meeting 16 June 2026	Submission and meeting content referenced but de-identified
Industry and employer peak	Submission	30 June 2026	Submission and meeting content referenced but de-identified
Industry peak (national)	One-on-one meeting	17 June 2026	Submission and meeting content referenced but de-identified