

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

*The case for the introduction of a code of practice and an independent regulator*

1. Counsel Assisting proposes that the Commissioner consider recommending:
  - 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 code.

**A. Introduction**

2. The Commission of Inquiry (**Commission**) has already received extensive evidence detailing the prevalence of illegitimate and unlawful conduct within the Queensland construction industry.<sup>1</sup>
3. The Commission has also heard how the Labor Government’s “Best Practice Industry Conditions” (**BPICs**) entrenched excess and unproductive work practices on major construction projects.<sup>2</sup> Whilst the current Government has put an end to BPICs, many unproductive work practices persist, and productivity in the Queensland construction industry is down 9% since 2018.<sup>3</sup>
4. This combination of illegitimate conduct and unproductive work practices has increased both the cost of, and the delays associated with, building and construction work across the State: the direct cost of the BPICs to Queensland has been estimated to be as much as \$19.9bn.<sup>4</sup>
5. The Commission’s terms of reference direct the Commissioner to make recommendations, including in relation to whether any law or policy change is required.<sup>5</sup> The implementation of a code of practice and the establishment of an independent regulator would drive improvements to safety and productivity on construction sites in Queensland and deliver value for money for Queensland taxpayers in relation to government funded construction projects.
6. In support of this proposal, Counsel Assisting will call Mr Nigel Hadgkiss AM and Mr Wayne Jenkinson to give evidence. Messrs Hadgkiss and Jenkinson have extensive experience in regulatory roles in the construction industry. Messrs Hadgkiss and Jenkinson will give evidence as to the improvements in industry practices that a properly administered code can deliver. They will also explain, by reference to their experience with codes of practice in other jurisdictions, the particular features a code should include to ensure that the potential improvements are realised.

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<sup>1</sup> See, without limitation: *Ex GWN-1 – Statement of Graeme Newton executed 9 March 2026*; *Ex DNJ-1 – Witness Statement of Don Johnson dated 12 March 2026*; *Ex GW-6 – Watson SC Public Report redacted by Counsel Assisting*.

<sup>2</sup> See, e.g., *Ex DL-1 – Witness Statement of Damian Long (including amendments)* at [64]-[76].

<sup>3</sup> QPC Report at p 5.

<sup>4</sup> Queensland Productivity Commission, *Final report of the Queensland Productivity Commission on Opportunities to improve productivity of the construction industry October 2025 (QPC Report)* at p 421.

<sup>5</sup> *Commissions of Inquiry Order (No. 2) 2025 (Terms of Reference)* at [5]; Terms of Reference at [3(f)].

7. This outline deals with the following matters in turn:

Part B: The mechanics of a code

Part C: A brief history of the use of codes in Australia

Part D: The benefits of an effective code

Part E: The features of an effective code

Part F: The need for an independent regulator

## **B. The mechanics of a code**

8. The basic premise of a code is that the government will leverage its purchasing power to incentivise contractors to adopt practices that give effect to the government's priorities: for example, productivity, safety, freedom of association, and compliance with statutory obligations.<sup>6</sup>
9. Specifically, a code can make a construction contractor's eligibility to tender for government funded building work conditional on the contractor complying with the requirements of the code.<sup>7</sup>
10. To that end, a code will generally:
- a) prescribe a set of rules or standards that reflect the government's goals in relation to best practice workplace relations;
  - b) require contractors who wish to tender for, or be involved with, government funded construction work to comply with those rules or standards; and
  - c) provide a mechanism by which contractors can be excluded from involvement with government funded construction work should they fail to commit or adhere to those rules or standards.
11. A code does not pursue its objectives by targeting unions.<sup>8</sup> Instead, whilst all industry participants are expected to comply with the requirements of a code, the consequences of non-compliance rest with contractors. A code then achieves its objectives in two ways:
- a) *first*, the risk of being excluded from government funded building work motivates the contractor to adhere to, and indeed insist that other industry participants adhere to, the standards of conduct prescribed by the code on the sites on which the contractor operates; and
  - b) *second*, the contractor being able to point to its obligations under the code provides the contractor with a cogent justification for refusing to facilitate or turn a blind eye to unlawful and unproductive behaviours by workers and unions on the sites on which it operates.<sup>9</sup>
12. A code is then in many respects the antithesis of the BPICs – whilst the BPICs inflated labour costs on production projects, a properly designed and administered code promotes productivity.

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<sup>6</sup> Statement of Nigel Hadgkiss dated 8 April 2026 (**Hadgkiss Statement**) at [16].

<sup>7</sup> Hadgkiss Statement at [16]-[17].

<sup>8</sup> Statement of Wayne Jenkinson dated 8 April 2026 (**Jenkinson Statement**) at [29].

<sup>9</sup> Hadgkiss Statement at [19]; Jenkinson Statement at [30(b)].

### C. A brief history of the use of codes in Australia

13. A comprehensive history of the use of codes by both Federal and State Governments is set out in the Hadgkiss Statement.<sup>10</sup> Relevant aspects of that history are summarised below.

Year	Code / Legislation	State / Cth	Associated regulator(s)
1997	<i>National Code of Practice for the Construction Industry 1997 (1997 Code)</i>	Cth	Building Industry Taskforce (BIT); Australian Building and Construction Commission (ABCC)
2005	<i>Building and Construction Industry Improvement Act 2005 (BCII Act)</i>	Cth	ABCC
2013	<i>Fair Work (Building Industry) Act 2012 (Cth) (FWBI Act)</i>	Cth	Fair Work Building Industry Inspectorate (FWBC)
2013	<i>Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry (Victorian Guidelines)</i>	VIC	Construction Code Compliance Unit (CCCU)
2013	<i>Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry (QLD Guidelines)</i>	QLD	Building and Construction Compliance Branch (BCCB)
2016	<i>Code for the Tendering and Performance of Building Work 2016 (2016 Code)</i>	Cth	ABCC

**Table 1:** Selection of codes previously implemented by Federal and State Governments.

14. The *1997 Code* was published jointly by the Commonwealth, State, and Territory Governments as an intergovernmental administrative policy, and represented the first attempt at a code at the Federal level. The *1997 Code* established minimum standards in relation to, *inter alia*, the industrial relations practices of contractors who sought to work on government funded building projects.<sup>11</sup>
15. From 2003, there were a number of further reforms introduced by the Howard Government to give effect to the recommendations of the *Royal Commission into the Building and Construction Industry (Cole Royal Commission)*.<sup>12</sup> Those reforms included the introduction of more prescriptive “guidelines” to supplement the *1997 Code*; the legislating of the *BCII Act*; and the establishment of the BIT and, subsequently, the ABCC to enforce the *1997 Code* and supplementary guidelines.<sup>13</sup>
16. Following the 2007 Federal Election, successive Federal Labor Governments progressively dismantled the framework that had been established for regulating behaviour in the construction industry: the *1997 Code* was replaced with the watered down *Building Code 2013 (2013 Code)*; the ABCC was abolished; and the *BCII Act* was replaced with the *FWBI Act*.<sup>14</sup>

<sup>10</sup> Hadgkiss Statement at [7]-[15]; Hadgkiss Statement at Annexure NH-7. The first example of such a code appears to have been the *Code of Practice for the Construction Industry* introduced by the New South Wales Government in 1992 in response to the findings of the Gyles Royal Commission – Hadgkiss Statement at [15].

<sup>11</sup> Hadgkiss Statement at [7].

<sup>12</sup> RH Cole RFD QC, *Final Report of the Royal Commission into the Building and Construction Industry: Summary of Findings and Recommendations*, February 2003 (**Cole Final Report**).

<sup>13</sup> Hadgkiss Statement at [4(b)]-[4(c)]; [8].

<sup>14</sup> Hadgkiss Statement at [9].

17. As that framework was dismantled, a number of State Governments moved to implement State based codes to plug the resulting regulatory gap. The first comprehensive State based code introduced was the Victorian Guidelines, which were complemented by the establishment of the CCCU and were subsequently further formalised in a Victorian Code.<sup>15</sup> Several months later, the Queensland Government introduced the QLD Guidelines,<sup>16</sup> which effectively replicated the content of the Victorian Guidelines and were administered by the newly established BCCB.<sup>17</sup> Each of the Victorian Code and QLD Guidelines were short-lived.<sup>18</sup>
18. The re-election of a Federal Coalition Government in late 2013 brought with it a renewed focus on misconduct and unproductivity in the construction industry.<sup>19</sup> The two most significant reforms during successive Coalition Governments from 2013 were the re-establishment of the ABCC by the *BCIP Act*, and the introduction of the *2016 Code* as a legislative instrument.<sup>20</sup>
19. More recently, the Albanese Government has repealed the *2016 Code* and disbanded the ABCC.<sup>21</sup> Since those changes took effect in early 2023, there has not been a code or regulator in place at the Federal level.<sup>22</sup>

#### **D. The benefits of an effective code**

20. The evidence suggests that effective codes, administered by an independent regulator, consistently deliver improvements in productivity, protect freedom of association, and promote compliance with statutory industrial relations obligations.
21. One of the most compelling empirical data points is the number of working days lost to industrial disputes. At a Federal level, there is a clear statistical correlation between the level of industrial disputation in the construction industry and the implementation of the *2016 Code*. Specifically:
  - a) in the four-year period from **2013 to 2016** (representing the period in which there was no effective code and no operational ABCC), the number of days lost to industrial disputes in the construction industry sat at **11.8 days per 1000 employees**. That was more than four times the “all industries” average of 2.5 days per 1000 employees;<sup>23</sup>

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<sup>15</sup> Hadgkiss Statement at [4(a)]; [15(b)].

<sup>16</sup> Hadgkiss Statement at [15(c)]; Jenkinson Statement at [9]. Whilst the *Building and Construction Code of Practice 2000 (QLD Code)* has applied to building and construction work in Queensland since 2000, the QLD Code is not a “code” in the sense referred to in this Outline. In each of its various iterations the QLD Code has consistently covered a broader range of matters, regulated the conduct of industry participants in far more general terms, and has never addressed workplace relations practices with any degree of prescription – see, in that regard, Hadgkiss Statement at [146]; Jenkinson Statement at [11].

<sup>17</sup> Jenkinson Statement at [13].

<sup>18</sup> Each of the Victorian Guidelines, Victorian Code and the QLD Guidelines were repealed following Labor winning government in Victoria and Queensland in November 2014 and January 2015 respectively.

<sup>19</sup> Hadgkiss Statement at [10].

<sup>20</sup> Hadgkiss Statement at [10].

<sup>21</sup> Hadgkiss Statement at [11]; *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth).

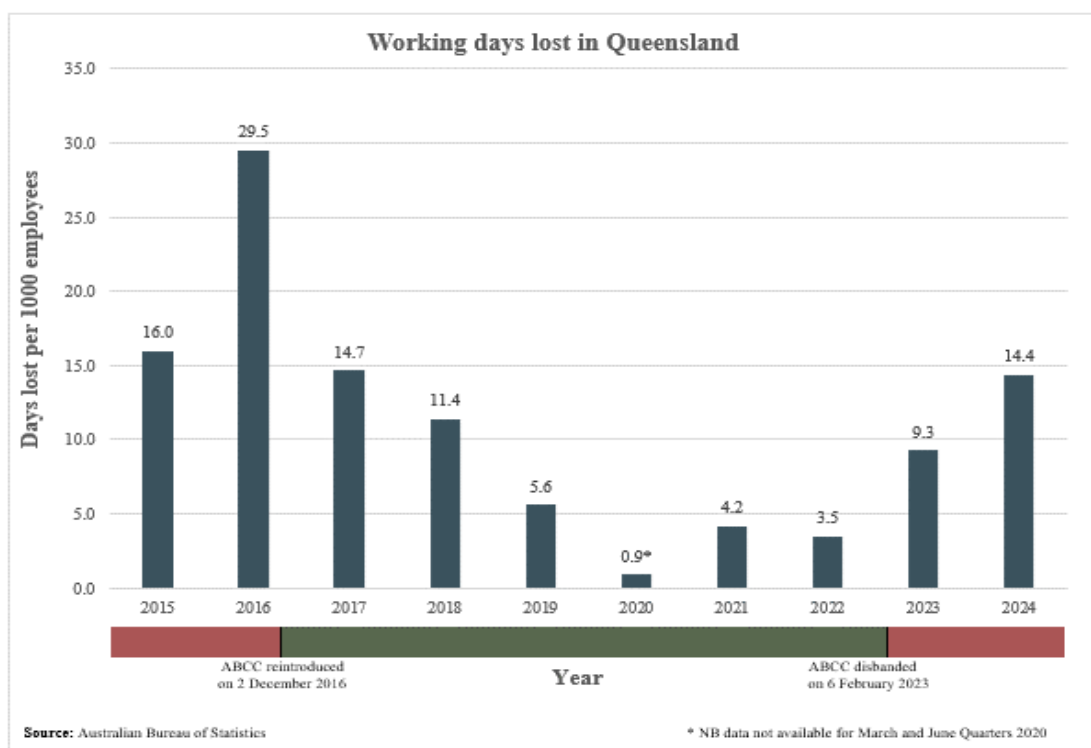
<sup>22</sup> Hadgkiss Statement at [12].

<sup>23</sup> Hadgkiss Statement at [27(a)].

b) in the six-year period from **2017 to 2022** (being the period in which the *2016 Code* was in effect and the ABCC was operational), the number of days lost to industrial disputes in the construction industry fell to **4.7 days per 1000 employees**. That was less than twice the “all industries” average of 2.4 days per 1000 employees;<sup>24</sup> and

c) in the three-year period **2023 to 2025** (following the abolition of the *2016 Code* and the disbanding of the ABCC), the number of days lost to industrial disputes increased to **6.8 days per 1000 employees**. That was more than two and a half times the “all industries” average of 2.6 days per 1000 employees.<sup>25</sup>

22. A similar correlation was apparent between the level of industrial disputation in Queensland and the (albeit brief) period in which the QLD Guidelines were in force:



**Figure 1:** Working days lost in Queensland 2015 - 2024<sup>26</sup>

23. Previous independent analysis identified similar trends in relation to the work of the BIT and ABCC prior to the disbanding of the ABCC in mid-2012: a 2014 report of the Productivity Commission acknowledged that the activities of the first incarnation of the ABCC had likely reduced industrial disputation in the construction industry;<sup>27</sup> and a 2013 report by Independent Economics concluded

<sup>24</sup> Hadgkiss Statement at [27(b)].

<sup>25</sup> Hadgkiss Statement at [27(c)].

<sup>26</sup> Jenkinson Statement at [33]-[34].

<sup>27</sup> Productivity Commission, *Productivity Commission Inquiry into Public Infrastructure, Inquiry Report*, 27 May 2014 vol 2 at pp 536-538.

that the productivity improvements resulting from the activities of the BIT and the ABCC in the period 2002 to 2012 was somewhere in the range of 10 to 21 percent.<sup>28</sup>

24. The evidence of Hadgkiss and Jenkinson reflects these statistical trends,<sup>29</sup> and is perhaps most succinctly expressed by Hadgkiss:

*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.*<sup>30</sup>

#### **E. The features of an effective code**

25. Hadgkiss and Jenkinson identify a number of features of a code that are integral to ensuring a code delivers the desired improvements to behaviour and productivity. Those features are as follows:
- a) prohibitions on unproductive work practices;
  - b) rules that preserve the integrity of right of entry legislation;
  - c) measures that protect freedom of association;
  - d) a requirement to provide a workplace relations management plan; and
  - e) features to assist with the code's implementation.
26. Hadgkiss identifies the Victorian Code and *2016 Code* as “commendable models” of effective codes incorporating these features.<sup>31</sup> Jenkinson expresses a similar sentiment in respect of the *2016 Code* and the Queensland Guidelines.<sup>32</sup> The significance of each of these features is briefly summarised below, with a more comprehensive explanation as to the importance of each feature being found in the Hadgkiss and Jenkinson Statements.

#### *Prohibitions on unproductive work practices*

27. There are a number of unproductive work practices that are still prevalent in the Queensland construction industry and that have the effect of unnecessarily delaying and inflating the cost of construction work. The evidence of Hadgkiss and Jenkinson identifies a number of specific practices that a code should prohibit, including:
- a) minimum manning arrangements;<sup>33</sup>
  - b) restrictions on the types of employment that may be offered;<sup>34</sup>

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<sup>28</sup> Independent Economics, *Economic Analysis of Building and Construction Industry Productivity:2013 Update*, 26 August 2013 at p vi.

<sup>29</sup> Hadgkiss Statement at [21]-[29]; Jenkinson Statement at [31]-[34]; [56]-[59].

<sup>30</sup> Hadgkiss Statement at [21].

<sup>31</sup> Hadgkiss Statement at [150].

<sup>32</sup> Jenkinson Statement at [59] (noting the QLD Guidelines effectively replicated the terms of the Victorian Code).

<sup>33</sup> Hadgkiss Statement at [36]-[39].

<sup>34</sup> Hadgkiss Statement at [40]-[43].

- c) restrictions on the order of any redundancies (including “last on / first off “);<sup>35</sup>
- d) requirements to involve unions in resourcing decisions;<sup>36</sup>
- e) limitations on a contractor’s freedom to allocate work;<sup>37</sup>
- f) prescription of the terms on which subcontractors may be engaged;<sup>38</sup> and
- g) the use of unregistered written agreements.<sup>39</sup>

28. A code proscribing practices of this kind would serve as an antidote to the inefficient practices that were promoted by the BPICs. Reducing the prevalence of such practices would in turn improve productivity in the industry as contractors are permitted to resource work more efficiently.<sup>40</sup>

Rules that preserve the integrity of right of entry legislation

29. An ongoing challenge facing construction contractors in Queensland is that of union officials attempting to enter construction sites other than in accordance with the legislated right of entry framework (and indeed without always notifying the site occupier of their presence).<sup>41</sup> Rights of entry other than in accordance with the legislated framework disrupt productive work, present a risk to safety, and often serve as a precursor to the organising of unlawful industrial action.<sup>42</sup>

30. Hadgkiss and Jenkinson give evidence that contractors can be reluctant to oppose non-compliant entries because the union officials involved will often threaten to retaliate with industrial disruption and delay should the entry not be facilitated.<sup>43</sup> In that context it is critical that a code mandates observance of the legislated right of entry framework. A code incorporating such a requirement allows contractors to point to their obligations under the code, and the potential loss of government funded building work should they not comply, as a basis for refusing to accommodate requests from union officials that they facilitate non-compliant rights of entry.<sup>44</sup>

Rules that protect freedom of association

31. Construction sites are highly unionised environments, and there is a historical practice of industry participants being pressured to join, support, and work with the building and construction unions.<sup>45</sup>

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<sup>35</sup> Hadgkiss Statement at [44]-[46].

<sup>36</sup> Hadgkiss Statement at [47]-[51].

<sup>37</sup> Hadgkiss Statement at [52]-[55].

<sup>38</sup> Hadgkiss Statement at [56]-[57].

<sup>39</sup> Hadgkiss Statement at [58]-[62]; Jenkinson Statement at [46]-[51].

<sup>40</sup> Hadgkiss Statement at [32]-[35]; Jenkinson Statement at [57].

<sup>41</sup> Hadgkiss Statement at [65]-[66]; Jenkinson Statement at [42]-[45].

<sup>42</sup> Hadgkiss Statement at [69].

<sup>43</sup> Hadgkiss Statement at [65]-[68]; Jenkinson Statement at [43].

<sup>44</sup> Jenkinson Statement at [45].

<sup>45</sup> Hadgkiss Statement at [73].

32. In that context, measures are required to protect freedom of association and the right of workers to decide whether or not to join a union. Examples of practices that threaten that freedom and that should be prohibited by any code include:

- a) illegitimate practices that exert pressure on workers to join a union (including “no ticket no start” and “show card days”);<sup>46</sup>
- b) any requirement that workers disclose their union membership status;<sup>47</sup>
- c) the hiring of non-working shop stewards;<sup>48</sup>
- d) the excessive display of union paraphernalia on construction sites;<sup>49</sup> and
- e) the harassment of workers who participate, or do not participate, in industrial activity.<sup>50</sup>

#### A requirement to provide a workplace relations management plan

33. Each of the *2016 Code*, Victorian Code, and QLD Guidelines required that tenderers for government funded building work submit a workplace relations management plan (**WRMP**).<sup>51</sup>

34. A WRMP is a document that sets out how a contractor proposes to ensure that the requirements of the applicable code will be met on a particular project. The process of preparing a WRMP serves to educate contractors on their obligations under the applicable code and requires contractors to give genuine consideration to how those obligations will be satisfied.<sup>52</sup> A WRMP is also then a document against which the contractor’s compliance can be easily assessed.<sup>53</sup>

35. Because of the time investment required to prepare a WRMP, previous iterations of codes have only required contractors to produce a WRMP in relation to work packages of a certain scale or value. Applying such a threshold ensures that the benefits derived from requiring a contractor to develop a WRMP exceed any associated administrative impost.<sup>54</sup>

#### Features to assist with the code’s implementation

36. There are three further features that Hadgkiss and Jenkinson identify as necessary to include in any code to ensure the benefits of the code are fully realised.

37. The first is to require contractors to ensure that their *subcontractors* are complying with the code. The potential for a contractor to be excluded from Government funded construction work if its subcontractors are non-compliant encourages self-regulation, whereby contractors become

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<sup>46</sup> Hadgkiss Statement at [77]-[81].

<sup>47</sup> Hadgkiss Statement at [82]-[83].

<sup>48</sup> Hadgkiss Statement at [93]-[96].

<sup>49</sup> Hadgkiss Statement at [88]-[92].

<sup>50</sup> Hadgkiss Statement at [84]-[87].

<sup>51</sup> Hadgkiss Statement at [102]; Jenkinson Statement at [52].

<sup>52</sup> Hadgkiss Statement at [100]; Jenkinson Statement at [54].

<sup>53</sup> Hadgkiss Statement at [98]; Jenkinson Statement at [55].

<sup>54</sup> Hadgkiss Statement at [101].

motivated to insist on compliance by other industry participants.<sup>55</sup> This mechanism transfers much of the burden of enforcing compliance from the regulator to the industry participants themselves.<sup>56</sup>

38. The second is to require that a code covered entity is also complying with the requirements of the code in respect of its other (non-government funded) construction work. A code applying beyond government funded projects is ultimately necessary to secure industry wide reform.<sup>57</sup>
39. The third is to ensure that the code applies to any “related entity” of a code covered entity. This ensures that contractors cannot avoid the consequences of non-compliance by setting up “clean skin” entities to bid for and undertake government funded building work. It also accelerates the rate of reform through the industry as a greater number of industry participants are obliged to comply with the requirements of the code.<sup>58</sup>

#### **F. The need for an independent regulator**

40. Hadgkiss and Jenkinson explain that an industry code will deliver greater improvements in behaviour and productivity when administered by an independent regulator. An independent regulator serves a number of important functions: educating industry participants on the expected standards of conduct; monitoring suspected instances of non-compliance; and, where necessary, instituting appropriate enforcement action (including by recommending that non-compliant contractors be excluded from government funded building work).<sup>59</sup>
41. The observations of Hadgkiss and Jenkins as to the need for an *industry specific* regulator are consistent with the conclusions of each of the Gyles, Cole and Heydon Royal Commissions, the latter of which justified such a recommendation in the following terms:

*Given the high level of unlawful activity within the building and construction sector, it is desirable to have a regulator tasked solely with enforcing the law within that sector.*<sup>60</sup>

42. Given the difficulties in detecting many of the practices and arrangements that a code is designed to prevent, it is also important that the regulator is vested with appropriate coercive powers.<sup>61</sup> The regulator being vested with coercive powers shields a co-operating witness from the criticisms and pressure that might otherwise be applied if the witness’ co-operation was seen as voluntary.<sup>62</sup>

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<sup>55</sup> Hadgkiss Statement at [142]; Jenkinson Statement at [38]-[41].

<sup>56</sup> Hadgkiss Statement at [144]; Jenkinson Statement at [41].

<sup>57</sup> Hadgkiss Statement at [139]; Jenkinson Statement at [35]-[37].

<sup>58</sup> Jenkinson Statement at [36].

<sup>59</sup> Hadgkiss Statement at [126].

<sup>60</sup> JD Heydon AC QC, *Royal Commission into Trade Union Governance and Corruption Final Report*, December 2015, Volume 5, Chapter 8, at para 83. See also Cole Final Report Volume 1 at p 4.

<sup>61</sup> Hadgkiss Statement at [118]-[120]

<sup>62</sup> Hadgkiss Statement at [123].

43. The regulator possessing coercive powers further deters misconduct, and ensures that the regulator can properly investigate and action non-compliance.<sup>63</sup> As the Wilcox Report acknowledged:

*The reality is that, without such a power, some types of contravention would be almost impossible to prove.*<sup>64</sup>

44. Finally, the regulator should be an *independent* body, rather than sitting within any government department. There is otherwise potential for the interests of government as a regulator and the interests of government as a client of construction contractors to come into conflict.<sup>65</sup>
45. The evidence suggests a new regulatory body should be established to perform this role. The existing Queensland Building and Construction Commission (QBCC) lacks the necessary experience and resources to enforce a code of practice relating to workplace relations matters,<sup>66</sup> and indeed a further case study will be presented regarding the CFMEU's influence on the QBCC.

## **G. Conclusion**

46. The Queensland Productivity Commission recently made a similar recommendation for the implementation of a code to govern standards of behaviour in the construction industry:

*Government should provide a clear market signal — via a code of practice — to industry on expectations in relation to site conduct and productivity for entities that choose to tender for Queensland Government funded construction work.*<sup>67</sup>

47. Counsel Assisting endorses the views of the Queensland Productivity Commission.
48. Further, the prevalence of misconduct and unproductive work practices uncovered by this Commission, and the current absence of any code at the Federal level, supports a recommendation for the establishment of an independent regulator to administer any code that is implemented.
49. The evidence suggests that the adoption of these measures will drive improvements in productivity in the Queensland construction industry, will raise the standards of behaviour and conduct of industry participants, and will ultimately deliver greater value for money for Queensland taxpayers.

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Commission of Inquiry into the CFMEU  
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<sup>63</sup> Hadgkiss Statement at [118].

<sup>64</sup> M Wilcox QC *Transition to Fair Work Australia for the Building and Construction Industry*, 31 March 2009 at para 1.4; 1.23.

<sup>65</sup> Cole Final Report Volume 7 at p 73.

<sup>66</sup> Jenkinson Statement at [61]-[62].

<sup>67</sup> QPC Report at p 16. The Government has accepted that recommendation of the Queensland Productivity Commission and is awaiting the report of this Commission.