

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

WITNESS STATEMENT OF DAMIAN CURNICK LONG

1. I Damian Curnick Long affirm:

Background

2. I am the Chief Executive Officer (CEO) and Secretary of the Civil Contractors Federation QLD Ltd (CCF QLD), which is a Queensland branch of Civil Contractors Federation (CCF). I was appointed to this role in March 2017.
3. I am authorised to make this affidavit on behalf of the CCF QLD.

Other Appointments

4. I am currently the Chairperson of Q-Leave. I was appointed to this role in 2025 after being a director since 2016. Q-Leave is the portable long service leave scheme for the Building and Construction Industry in Queensland.
5. I also sit on the board of Construction Skills Queensland. I was appointed to this role in 2016. Construction Skills Queensland is the trading name of the Building and Construction Industry training fund.

Education and Experience

6. I hold a Bachelor of Civil Engineering (Hons) from La Trobe University.
7. I hold a number of other qualifications including a graduate certificate from the Australian Institute of Company Directors along with a number of practical qualifications such as First Aid and CPR and a Construction White Card.
8. I have worked in the Civil Construction field since 1999. Prior to this, I worked as a builder's labourer and site manager, whilst completing my engineering degree.

Exhibited hereto and marked DCL-1 is a full copy of my current resume.

Civil Contractors Federation

9. CCF is a federated organisation registered with the Fair Work Commission. It has branches in all states and territories in Australia and has around 1,800 contractor and associate members nationally. Each branch is overseen by an elected board of members and their respective local management teams. A National Board, consisting of one representative from each state and territory, governs the nationwide organisation and establishes the overarching national policy agenda.
10. CCF QLD is the peak industry body representing the civil construction sector in Queensland. CCF QLD supports civil contractors and associated businesses by providing leadership, resources, and a strong voice on critical issues impacting the industry, and it represents the interests of all employers in the civil construction and maintenance industry in Queensland.
11. In my role as the CEO of CCF QLD I manage the business in line with our strategic plan. A key part of the role is to advocate on behalf of industry to all levels of government. Our advocacy is evidenced based. CCF QLD has a number of committees comprised of members of industry with experience in the subject matter of the committee. The HR/IR committee, for example, comprises HR/IR representatives of members with support of other industry professionals. In addition, I travel throughout the state, visiting construction sites and offices of members to discuss current challenges. Also under my control is a Registered Training

Organisation and an events team which provides further industry engagement. The combined effect of these elements of our business is to give us a very clear understanding of the needs, concerns and issues of businesses in the civil contracting sector.

Industry Liaison Groups

12. Between 2018 and 31 May 2023 I was a member of the industry liaison group, called the Procurement Industry Advisory Group (**PIAG**) set up under the Department of Energy and Public Works (**DEPW**), which subsequently became the Department of Housing and Public Works (**DHPW**).
13. In 2023, PIAG transitioned into the Procurement Ministry Advisory Council (**PMAC**), which performed a similar role.
14. PIAG / PMAC was a collection of industry leaders across various procurement categories in Queensland, and its role was to review procurement policies in Queensland applicable to projects of the DHPW. PIAG / PMAC was an advisory body. It was not involved in operational decision making. Meetings of PIAG / PMAC were ordinarily chaired by the then Minister of DEPW / DHPW, namely Minister Mick de Brenni. These meetings involved discussions on a variety of topics.

Exhibited hereto and marked DCL-2 is a bundle of documents comprising emails and minutes relating to the PIAG and PMAC meetings.

Date	Document / attachments	Exh page number
Undated	PIAG Terms of Reference	7
31/5/17	PIAG Meeting Outcomes	11
27/9/17	PIAG Meeting Outcomes	17
1/3/18	PIAG Meeting Outcomes	21
26/7/19	Email from Sharon Bailey re Ethical Supplier Mandate	25
25/10/19	Email from Peter Lacey – attaching presentation slides regarding Best Practice Principles and Ethical Supplier Mandate	27
19/7/21	Further Email from Sharon Bailey re Ethical Supplier Mandate	28
19/3/19	PIAG Meeting Outcomes	30
15/7/19	PIAG Meeting Outcomes	35
20/11/19	PIAG Meeting Outcomes	39
20/11/19	PIAG Agenda Item Paper - Procurement	44
9/6/21	PIAG Meeting Outcomes	45
31/8/21	Email from Sharon Bailey re Ethical Supplier Mandate and “Buy Queensland” procurement approach	49
19/11/21	Further Email from Sharon Bailey re Ethical Supplier Mandate	51

Undated	PIAG Updated Terms of Reference	53
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15. Between 2015 to current I have been a member of the industry liaison group set up by the Department of Transport and Main Roads (**DTMR**) one is called the "Contractors Industry Liaison Group" (**CILG**). The other is a sub-group, under the CILG, known as the "Combined Industry Meeting". These were variously attended by the senior members of the DTMR, as well as by representatives of CCF, QMCA and Consult Australia. These meetings were designed to facilitate frank and open conversations between DTMR and industry.
16. Exhibited hereto and marked DCL-3 is a bundle of documents relating to the Combined Industry Meeting and Contractors Industry Liaison Group.

Date	Document / attachments	Exh page number
26/4/19	Email from Kelly Horgath – attaching Combined Industry Meeting minutes of 20/3/19 and Prequalification for BPP and BPIC FAQ	57
13/2/24	CILG meeting minutes	59
29/2/24	Action Summary of CILG meetings	61
13/8/24	CILG meeting minutes	63

17. In around late 2020 DTMR also set up a project called the "Collaborative Procurement and Delivery Model Taskforce" which was established to allow collaboration between government and industry groups, as to issues of procurement and delivery on DTMR construction projects. Initially, this project considered BPPs and BPICs, but subsequently its focus shifted to other aspects.
18. Exhibited hereto and marked DCL-4 is a bundle of documents relating to the Collaborative Taskforce.

Date	Document / attachments	Exh page number
2/9/21	Email from Deanne Hawkswood – attaching slides Collaborative Procurement and Delivery	66
1/12/22	Email from Deanne Hawkswood attaching key result areas and measures for application on BPP projects consultation draft	68
31/1/22	Email from Deanne Hawkswood attaching Collaborative Procurement and Delivery Model – Concept Paper	71
8/2/22	Email from Deanne Hawkswood detailing feedback on Collaborative Procurement and Delivery Model – Concept Paper	74

6/7/22	Email from Deanne Hawkswood attaching BPP Prequalification consultation draft and National Prequalification System for Civil Construction Contracts consultation draft	77
6/10/22	Email from Deanne Hawkswood key result areas for BPP	78

Implementation of BPICs by DHPW

19. The first government department to consider implementation of, and implement, BPICs was the DHPW.
20. In around October 2019, the PMAC commenced reviewing a proposed procurement policy called Best Practice Principles (**BPPs**). The BPP had been in place since approximately 2018 and included:
 - (a) best practice workplace health and safety (**WHS**) systems and standards;
 - (b) best practice commitment to apprentices and trainees; and
 - (c) best practice industrial relations.
21. Out of BPPs, DHPW developed the Best Practice Industry Conditions (**BPICs**). This document took the form of a draft enterprise agreement (**EA**) and contained specific employment conditions. The PMAC was provided with some high level verbal guidance on how BPPs and BPICs would be rolled out.
22. The Construction, Forestry, and Maritime Employees Union (**CFMEU**) was not present at the PMAC meetings. However, it was widely accepted as fact that the CFMEU was behind the introduction of BPICs. For example, the first version of the BPICs that was presented to the PMAC was modelled on the EA with the CFMEU in respect of Cairns Convention Centre (Email attached) and that draft document expressly named CFMEU as a party to the agreement. I recall that there was a verbal discussion with Peter Lacey in which it was suggested that this first BPICs was based upon the enterprise agreement agreed with the CFMEU by the contractor for the construction of the Queen's Wharf building project.

Exhibited hereto and marked DCL-5 is an email from Peter Lacy attaching the EA that was presented to PMAC which named the CFMEU as a party.
23. BPICs was, in effect, a pattern enterprise agreement which was intended to apply to all State agencies. When the first version of BPICs came out on about October 2019, it was intended to apply only to building projects of the DHPW that were valued over \$100 million and any other declared projects. It was anticipated that BPICs would then be rolled out to DTMR for use on its projects and subsequently to the "renewables energy" and "water" projects.
24. Initially, the PMAC was told that compliance with the BPICs was not mandatory, rather it was aspirational and parties would need to make "best endeavours" to meet those conditions. However, in practical terms compliance with BPICs became mandatory by virtue of the way the various policies and processes operated. I will outline how below.
25. First, to tender for a BPICs project of the DHPW, contractors were required to undergo BPICs pre-qualification. This required contractors to sign a document stating they will commit to implementation of BPICs and to push BPICs down the supply chain. Then, their sub-contractors also had to be pre-qualified in a similar way. Only contractors who were pre-qualified could then submit expressions of interest and tenders for projects where BPIC applied. Thus, contractors had to sign documents which contractually bound them to implement BPICs and to push compliance down the supply chain. (There was no BPICs pre-

qualification requirement for the DTMR projects. Whilst the DTMR issued some documents suggesting this policy will be introduced, the DTMR never in fact implemented it.

26. Second, the State government, through the DHPW, created an additional layer of compliance requiring contactors to comply with BPICs, namely it implemented the Ethical Supplier Mandate. This policy was developed as a way to audit compliance by suppliers with BPICs. According to this policy, non-compliance with the BPICs resulted in accumulation of demerit points, which in turn negatively impacted the contractor's prospects of bidding for government work. The effect of this policy was to mandate compliance with BPIC.
27. The DHPW also sought to establish a tri-partite panel comprising of representatives from the government (selected by the Minister), industry, and unions to adjudicate on the non-conformances with the Ethical Supplier Mandate. I was asked to nominate persons who could represent the industry on this panel, but I refused to provide nominees as I had concerns with establishment of such a panel (e.g. as it would not be impartial, and panel members would have conflicts of interest). I understand a panel may have ultimately been established, but I am not aware if it was required to adjudicate on any cases.
28. Third, compliance with BPICs was considered during some stages of the tender, which impacted the selection of the preferred tenderer.
29. Fourth, while "on paper" policies and guidance suggested that compliance with BPICs was not mandatory but aspirational, BPICs related policies created scope for pressure and coercion to be applied on the contractors and subcontractors to comply with it. Prior to 2022, there was a raft of Federal Legislation that gave contractors a degree of protection under industrial legislation at the Federal Level. I note those provisions and our advocacy around them to the State below.
30. I am aware (from discussion I've had with Damian Vassallo, who was a Senior Project Manager) that Vassallo Constructions received correspondence from the principal contractor for the Mackay Hospital project stating that Vassallo Constructions required an EA with the CFMEU if they wanted to tender as a subcontractor for that project.

BPICs pre-qualification process

31. In terms of BPICs pre-qualification process implemented by the DHPW, members of CCF QLD reported to me that there was a significant backlog in terms of the approval of the applications lodged. I recall speaking with Logan Timms (Executive Director, DHPW) in about March 2024, when I asked him what was going on with the delays. He informed me that there was a significant backlog with review of the prequalification applications as there were so many applications.
32. Sometime after that discussion, I decided to go online and review the list of companies which had BPICs pre-qualification, and to check which of those had EAs with the CFMEU. I did not save a copy of these search results. However, I recall that there were dozens of contractors listed on the DHPW website which had BPICs pre-qualifications (including civil contractors, building trades, plumbers, carpenters, builders, foreman). Based on my review at the time:
 - (a) there were only three civil construction companies that had BPICs pre-qualifications, namely Mainland Civil, Delta Group and a further smaller contractor, whose name I cannot recall, whereby the former two companies had long-term EAs with the CFMEU;
 - (b) most of the other companies that I randomly selected and checked also had EAs with the CFMEU.
33. On 22 April 2024, an email was sent by Andrew De Zilva (Director, Building Category Management, DHPW) to various persons which contained a list of contractors who had applied to obtain BPICs pre-qualification. I was not a party to this email, but it was forwarded to me by Andrew Chapman. In that email he asked recipients to provide "advice" and

"concerns" regarding the ability of those contractors to meet the minimum pre-qualification requirements. Andrew Chapman responded to that email raising his concerns with the fact that the government involved various third parties (including unions) in this confidential process. I understand that Andrew Chapman raised this concern because the email address [REDACTED] was a group email address for an industry liaison group which included representatives of the unions, including Michael Ravbar.

Exhibited hereto and marked DCL-6 is a copy of the chain of the above email chain dated 22 April 2024.

Position of the CCF QLD

34. The CCF QLD was against introduction of BPICs for the following key reasons:
- (a) We considered the policy had the potential to cause breaches of legal requirements. In that regard, I note the following documents issued by the ABCC which refers to the relevant legal provisions:
 - (i) Letter dated 15 November 2019 addressed to Theresa Moltoni, Managing Legal Practitioner Director, IRIQ.
 - (ii) Letter dated 4 May 2020 addressed to Theresa Moltoni, Managing Legal Practitioner Director, IRIQ.
 - (iii) A document titled "Queensland government procurement policy: best practice policies (BPPs).

Exhibited hereto and marked DCL-7 to DCL-9 are copies of the above documents issued by the ABCC. These were forwarded to me by Theresa Moltoni.

35. Other industry stakeholders, namely Master Builders Queensland (**Master Builders**) and Queensland Major Contractors Association (**QMCA**) were also against introduction of BPICs for essentially the same reasons.

36. CCF QLD, Master Builders and QMCA variously expressed their position:

- (a) at the industry liaison meetings with the DHPW and the DTMR; and
- (b) in correspondence and submissions to the DHPW and the DTMR and to relevant Ministers;

37. On 10 July 2020, several industry groups sent a letter (which was co-signed by Priscilla Radice (Infrastructure Association of Queensland), Stephen Tait (Chamber of Commerce & Industry Queensland), Paul Bidwell (Master Builders), and myself (CCF)), to the Hon. Anastacia Palaszczuk, the then Premier and Minister for Trade. In that letter we expressed industry's ongoing concerns with Queensland Government procurement policies and practices, requested Government stop the progression of the BPPs and the Ethical Supplier Mandate and urgently consider immediate removal of those policies from the construction industry. That letter expressly referred to the fact that:

- (a) there has been no comprehensive assessment of the effectiveness of both policies, and in particular the financial impact on both the business and the Government; and
- (b) these policies were introduced with minimal consultation, where in the limited time available the industry rallied to provide comprehensive feedback that has been largely unaddressed.

Exhibited hereto and marked DCL-10 is the letter dated 10 July 2020 addressed to the Hon. Anastacia Palaszczuk.

38. On 24 August 2020, we received a response from the Government, which acknowledged the receipt of our letter dated 10 July 2020.

Exhibited hereto and marked DCL-11 is the letter dated 24 August 2020 from the Government.

Crown Law Advice provided to the DHPW

39. In about July 2020, I had a discussion with Sharon Bailey (Deputy Director General of Queensland Government Procurement) around the legality of BPICs. She told me that Crown Law provided an advice on the legality of BPICs which stated that what they were doing in respect of BPICs was completely legal. I asked to see the Crown Law advice and the questions provided to Crown Law, but my request was refused on the basis that this advice was legally professionally privileged.

Implementation of BPICs by the DTMR

40. On 20 December 2020, Deanne Hawkswood provided me with a copy of a draft Transport BPICs for consultation. This was the first time I had seen a copy of the proposed Transport BPIC.

Exhibited hereto and marked DCL-12 is a copy of that Transport BPIC.

41. After BPICs policy was implemented by the DHPW, on or about 11 January 2021, the DTMR informed me that they were also going to be implementing BPICs to their projects (**Transport BPICs**). From my recollection, it then only took the DTMR a few months to make relevant adaptations to BPICs and commence applying it to their projects.

Exhibited hereto and marked DCL-13 is a letter from the Honourable Mick de Brenni MP (Minister for Public Works and Procurement), dated 11 January 2021, addressed to Rebecca Andrews (Australian Industry Group).

42. On 28 January 2021, in response to this correspondence, industry groups, including CCF (through me) sent letters to the Premier and Minister for Transport and Main Roads (the Honourable Mark Bailey MP) wherein we reiterated our concerns with the adoption of BPIC.

Exhibited hereto and marked DCL-14 is a copy of an email dated 28 January 2021, sent by Rebecca Andrews to the Premier and attaching this correspondence.

43. In about June 2021, Deanne Hawkswood (General Manager, DTMR) emailed copies of draft versions of Transport BPICs in respect of the Coomera Connector Project for consultation.

Exhibited hereto and marked DCL-15 are copies of this Transport BPICs.

44. On 7 June 2021, Amanda Yeates (Deputy Director General, DTMR), sent an email to me and others stating that whilst the DTMR intended to work closely with DEPW as the policy owner, the DTMR was going to be the lead in respect of implementation of BPIC to projects of the DTMR.

Exhibited hereto and marked DCL-16 is the email dated 7 June 2021.

45. In terms of the first version of the Transport BPICs (being exhibit DCL-12), the main change from BPICs of the DHPW related to wage classifications and rates. At that time, I asked Amanda Yeates where the DTMR obtained those wage rates from, and she told me that they looked at industry rates and averaged them. I told Amanda that is not how we determine rates in the industry (rather, they are determined by supply and demand, and the companies own operating environment. In response, she stated that that is what the government policy required them to do, and they were going to set minimum levels of wages via BPICs.

46. In about April 2022, QMCA prepared a draft BPICs guidance note for subcontractors, which was supported by the CCF QLD. That guidance note was emailed to the DTMR for comment and feedback.

Exhibited hereto and marked DCL-17 is a copy of the email dated 12 April 2022 which attached the final version of this guidance note.

47. In my experience, ordinarily government departments have a lot of flexibility in interpreting policies that apply to them. However, over the course of my dealings with the DTMR, I found out that the DTMR had very little flexibility in terms of how BPICs would apply to their projects. In particular, the DTMR representatives (namely Amanda Yates and Neil Scales) told me that they were having meetings with heads of the DHPW (noting that DHPW was the "policy owner" of BPICs), and at those meetings they were told how BPICs was going to work; how the "Transport BPIC" needed to look (namely, similar to the EA for Queens Wharf); and that they needed to make it a contractual requirement that principal contractors implement BPICs on projects.
48. Some representatives of the DTMR (namely Dean Misso, Deanne Hawkswood and Julie Mitchell), told me that: they did not want BPICs to be implemented to their projects, they were resisting implementation of BPICs; however, they were given a Ministerial direction that BPICs had to apply, and they had to comply with that direction.
49. During my dealings with the DTMR, I observed that the DTMR ran as much interference with implementation of BPICs as possible. For example, the DTMR managed to resist implementation of "BPIC pre-qualification" requirement (which applied to the DHPW projects) and they accepted terms of an EA with Australian Workers Union (**AWU**) in respect of certain projects instead of requiring an EA with the CFMEU (such as the Centenary Bridge Upgrade project).
50. Deanne Hawkswood (Chief Procurement Officer, DTMR) confided in me and told me that CFMEU representatives were attending their department procurement meetings regarding the Centenary Bridge Project which related to BPICs, and those meetings were very unprofessional and ugly as the CFMEU representatives were yelling and using profanities, telling representatives of the DTMR what they had to do.
51. Whilst DTMR had stopped liaising with industry on the topic of BPICs at this point in time, I was, from time to time, kept in the loop, informally, by Ms Hawkswood.
52. Initially, the DTMR had limited liaison with the industry in respect of BPICs. However, as the unions became more active, created more disruptions, and caused delays and cost increases to the projects, I noticed a shift in that the DTMR became more open to discussions with the industry about issues caused by the CFMEU.
53. On 2 August 2023, Paul Schmidt (Executive Director, Program Management and Delivery, DTMR) emailed me the following three attachments relating to BPP prequalification for the DTMR projects:
- (a) "Best Practice Industry Conditions for Transport Civil Construction Projects, Guidance Note" dated March 2023;
 - (b) "Best Practice Principles (BPP) prequalification, Queensland Supplement to the National Prequalification System (NPS) for Civil (Road and Bridge) Construction Contracts" dated August 2023; and
 - (c) "Prequalification for Best Practice Principles (BPP) and Transport Best Practice Industry Conditions (BPIC), Frequently Asked Questions".

Exhibited hereto and marked DCL-18 is a copy of the email dated 2 August 2024 with the attachments.

54. On or about 3 April 2024, I received a copy of a document with a heading "Transport BPIC lessons learned meeting - key messages V1". This document was prepared by DTMR for the purpose of formulating strategy to brief back to the minister of the impacts. It raises various concerns with application of BPICs including the following:
- (a) "BPIC has/is creating industrial unrest";
 - (b) "Perception that BPIC has reset on the cost of labour";
 - (c) "CFMEU is of the opinion that the Qld Gov has done a deal with them";
 - (d) "The conduct and behaviour of the unions is atrocious and unacceptable – fears for contractor staffs mental health";
 - (e) "The BPIC reads like a CFMEU document – this is problematic";
 - (f) "There is a rising tide of workers not on BPIC rates, who want BPIC rates – this creates unsustainable cost escalation";
 - (g) "Small sub-contractors are declining to price, particularly in regional areas – they don't want to run two sets of books"; and
 - (h) "The issue is the interference with the way the projects are run – pay rates are not the issue".

Exhibited hereto and marked DCL-19 is a copy of a document with a heading "Transport BPIC lessons learned meeting - key messages V1".

55. On 4 April 2024, Sharon Pollock on behalf of Deanne Hawkswood emailed me:
- (a) a copy of the Transport BPIC update presentation which was given by the DTMR; and
 - (b) a copy of the Transport BPIC as at February 2024.

Exhibited hereto and marked DCL-20 is a copy of the email dated 4 April 2024 with the relevant attachments.

56. I cannot recall whether it was sent to me, or I accessed it online, but I obtained a copy of a document titled "Transport Infrastructure Project Delivery System Volume 3 – Requirements; National Prequalification System for Civil (Road and Bridge) Construction Contracts, Incorporating Asphalt Prequalification" dated June 2022, which was a draft version of the document intended for consultation.

Exhibited hereto and marked DCL-21 is a copy of that document.

57. On 2 September 2024, Deanne Hawkswood emailed me a copy of a document titled "CONFIDENTIAL CONSULTATION DRAFT: Overview of Best Practice Industry Conditions in Transport and Civil Construction Projects (Transport BPIC)". She asked me to review that document and provide feedback. I reviewed that document and suggested some amendments to it.

Exhibited hereto and marked DCL-22 is a copy of the email dated 2 September 2024 with the attachment.

Exhibited hereto and marked DCL-23 is a copy of the marked-up version of the document which contains my proposed changes and comments in tracked changes.

Application of BPICs to water and renewable energy projects

58. BPICs was first introduced by the DHPW and applied to projects of that department. It was then rolled out to project of the DTMR and picked up rail infrastructure. Subsequently, BPICs were also developed for “renewable energy” and “water” projects of the Department of Energy and Public Works.

Sunwater BPIC

59. On or about 15 March 2023, Andrew Chapman provided me with a copy of a draft document titled “Sunwater Limited (Spurnwater) Best Practice Industry Conditions” (**Sunwater BPIC**).

Exhibited hereto and marked DCL-24 is a copy of the Sunwater BPIC.

Renewable Energy BPIC

60. CCF QLD and QMCA were not initially consulted on BPICs in respect of renewable energy projects. Andrew Chapman of QMCA raised this issue with the DHPW, and subsequently both CCF QLD and QMCA were provided with the draft Renewables BPIC.

Exhibited hereto and marked DCL-25 is a copy of correspondence where Andrew Chapman requested that CCF QLD and QMCA be consulted about the draft Renewables BPIC.

61. On a date I cannot recall, Sharon Bailey provided me with a copy of a draft document titled “Standard Best Practice Industry Conditions – Renewable Energy Projects 2023-2027” (**Renewable Energy BPIC**).

Exhibited hereto and marked DCL-26 is a copy of the Renewable Energy BPIC.

62. After I was provided with this document, the Department of Energy and Public Works released a copy of a draft document titled “Queensland Renewable Energy Procurement Policy” dated April 2024 (**Renewable Energy Policy**).

Exhibited hereto and marked DCL-27 is a copy of the Renewable Energy Policy.

Impact of BPICs

63. Implementation of BPICs caused significant issues for the civil construction industry, as well as for the broader construction industry in general. The following observations in respect of impact of BPICs are based on extensive consultations with members of CCF QLD.

Productivity

64. BPICs have been very damaging to the industry from a productivity point of view. CCF QLD / members of the CCF QLD used estimator models which could estimate project costs based on various costs and parameters. When wage rates applicable under BPICs were included, the costs of the projects increased by 17% to 30%.

65. Certain clauses in BPICs have a particularly negative impact on productivity. In particular:

- (a) Clauses in respect of fixed rostered days off (**RDOs**) and other non-gazetted days off which restrict the flexibility of works sites, and by extension the ability of their workforce to navigate flexible working solutions that suited all parties. These clauses were designed to provide time off and push normal time into overtime, all at great cost to the contractor and the state of Queensland. See, by way of example, Clause 35 of the Renewable Energy BPIC.
- (b) Clauses placing restrictions on flexibility of work force numbers. Productivity is based on a competitive assessment of materials, plant and labour use for a particular work item. Dictating labour numbers that don't align with this will cause cost increases.

- (c) Clauses in respect of inclement weather that are over and above current Workplace Health & Safety Codes of Practice and are often abused in their interpretation. They result in additional days off (that is, in addition to the RDOs).
- (d) Clauses relating to excess meetings (for example toolbox, safety, union) reducing available working hours per day.
- (e) Clauses creating positions of non-working union delegates. These positions do not contribute to completion of work. In addition, if implemented post tender and not part of the work place agreement of the contractor it adds additional cost not allowed for.
- (f) Clauses permitting union disruption through excess right of entry, as they are weaponised by the unions (in particular the CFMEU) to disrupt work on sites.
- (g) Clauses relating to union approval of subcontractors. As a result, only union aligned subcontractors are approved, and workforce levels maintained at peak levels regardless of the actual requirement. Subcontractors are selected based on performance and price. Restricting access to a wider range of subcontractors risks performance and price. Contractors also use contractors they can trust and rely on. Being dictated to use CFMEU aligned contractors can negate these benefits.
- (h) Clauses which prohibit productivity schemes unless agreed with the union. I note in this regard that Clause 36 of the Renewable Energy BPIC provides as follows:

36. PRODUCTIVITY SCHEMES

Productivity Schemes will be prohibited unless written Policy has been reached between the Employer and the Union

- (i) Clauses which dictate material supply regardless of the fact that conformity has been demonstrated. Contractors will select the cheapest conforming material in their tenders. Dictating otherwise adds cost both to direct cost of material and also possible supply delays.
66. Since the introduction of BPICs, our members reported that on some of the BPICs sites there was as little as approximately two productive days of work per week.
67. Since the CFMEU have been placed into administration (and BPICs policy has been suspended), our members reported that things have improved such that productive working days have increased from two days per week, to four days per week, due to the CFMEU not being able to negatively interfere with the performance of work on projects.
68. In my opinion, BPICs has been the most damaging policy to the productivity of the construction industry and affordability of capital works in this State that I have come across.
69. CCF QLD made submissions to the Queensland Productivity Commission, which among other things also addressed BPICs, and recommended that BPICs suspension become a permanent removal.

Exhibited hereto and marked DCL-28 and DCL-29 are copies of the submissions made by the CCF QLD to the Queensland Productivity Commission.

Labour and Costs

70. BPICs had a significant impact on direct labour costs. Before the introduction of BPICs, labour rates were based on approved EAs, whereas after the introduction of BPICs, direct labour

rates were based on BPICs equivalent rates even for non-BPICs projects. In total, CCF QLD members reported an average total cost increase on their projects of 28% as a direct result of BPICs.

71. Our engagement with members noted a 34% increase in direct labour costs under BPIC rates when BPIC was first implemented. A similar pattern was noticed with subcontractor labour costs, where introduction of BPICs caused subcontractors to increase the pricing labour component to align with BPICs (again, not limited to BPICs projects).
72. BPICs increased labour costs across the whole construction industry. All construction projects in Queensland compete for the same pool of employees. The introduction of BPICs meant that to retain employees, all projects had to compete against the higher BPICs rates of pay. This cost increase was borne by private sector projects as well as construction for the State Government, including the housing industry. The effect of this policy directly contributed to the rising cost of housing. BPICs had the effect of taking wages and conditions in tenders out of a competitive environment. Historically, high-rise construction rates were always at a premium to civil construction rates, but introduction of BPICs increased civil construction rates to a level similar to high-rise construction.
73. BPICs restricted the number of subcontractors available for projects as in a buoyant market subcontractors can often decide not to get involved with BPICs and unions when they have alternative work available. Moreover, contractors which are available, then became more expensive because they increased their rates in line with BPICs, and because they can increase their profit margins due to limited competition.
74. BPICs negatively impacted the ability to attract and retain labour on all non-BPICs projects. For example, in respect of the Bruce Highway (Cooroy to Curra) Section D project discussed in the CCF QLD submissions to the Queensland Productivity Commission (see exhibit 29, being submissions made in advance of the interim report), BPICs did not apply to section D1. On that stage, the relevant contractors were Bielby Holdings and BMD. I understand they performed that contract on the basis of their standard civil industry enterprise agreements with standard civil EA rates applied to it. However, section D2 was tendered for after the implementation of BPICs to DTMR projects. This meant that the successful tenderer, CPB Contractors, was required to apply BPICs to the project. I was informed by Terry Cogill from Bilby Holdings, that due to the far superior wage rates and conditions, which CPB Contractors was forced to apply on D2, workers from D1 left to work on D2.
75. I am aware that, due to increased labour costs brought about by the introduction of BPICs, DTMR agreed to pay compensation to some contractors who were forced to increase the wages paid to workers, on non-BPIC projects, so that they were able to retain workers.

Exhibited hereto and marked DCL-30 is a copy of the CILG meeting minutes for a meeting held on 18 August 2023, where the matter of compensation on non-BPIC projects was discussed.

76. The formation and implementation of BPICs ignored the foundations of enterprise bargaining where enterprise agreements are negotiated in good faith and with genuine agreement between employers and their work force at the level of each enterprise, not at an industry level. Our members reported that BPICs resulted in less flexibility in negotiating EAs as they established a new norm.

Safety

77. CCF QLD has not seen any data that demonstrates the implementation of BPICs improved safety on sites. Data from public projects is somewhat transparent but not so for private projects. However, whistleblowers working on large private building projects, operating under BPICs and union EAs have stated that the safety record is worse.

Industry Experience with the Codes

78. In my role as CEO of CCF, I regularly liaise with executives and managers of Queensland based

civil contractors as to laws and policies which impact the construction industry.

79. Through this consultation I have developed an appreciation as to the general industry experience regarding the operation of the Federal Building Codes, the *Building Code 2013* (Cth) and its successor Code, the *Code for Tendering and Performance of Building Work 2016* ("**the Building Codes**"), their impacts on the industry and the industry's view of their efficacy.
80. Whilst there were elements to the Building Codes that the industry felt imposed burdensome compliance requirements upon contractors, the overwhelming view of CCF members is that the Building Codes were a net positive for industry which contributed to productivity and helped reduce unlawful behaviour.
81. Industry is of the view that the position under the Building Codes stands in contrast to the position under BPIC. Industry is of the view that productivity suffered under BPIC regimes and costs escalated on relevant projects.

Key Benefits

A "big stick"

82. A key component of the Building Codes was the threat that companies which failed to comply with its provisions might lose, for a period of time, the ability to tender for Federal Government funded work.
83. The statutory mandate requiring compliance with the Building Codes assisted in the enterprise bargaining process. In effect, it was prescriptive of what a workplace or enterprise agreement could or could not contain. Faced with the threat of losing the ability to tender for lucrative Federal Government funded work, contractors could not be impressed upon by unions to agree to terms that did not comply with the Code.
84. The Building Codes also provided strong obligations to include its compliance requirements in subcontracts and supply arrangements.
85. It is the experience of CCF members, who operated under this framework, the threat of losing Federal Government funded work stood as a particularly "big stick" to encourage compliance. By this I mean that the potential benefits of non-compliance were substantially outweighed by the consequences which would follow. The loss of the ability to tender for Federal Government work stood as a much more significant deterrent than the prospects of fines imposed by the Courts. Unions negotiating with contractors knew that contractors would not be willing to take this risk by ignoring provisions of the Building Codes.

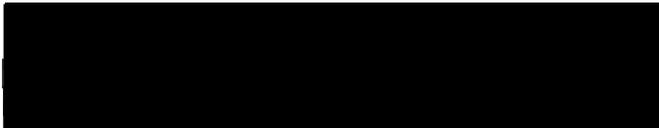
A well resourced and dedicated Regulator

86. One of the factors which was key to the success of the Code regime was the role of the Australian Building and Construction Commission ("**ABCC**").
87. The experience of members was that, as a dedicated Construction Industry Regulator, the ABCC was highly engaged in ensuring compliance by the industry with the provisions of the Building Codes. ABCC investigators had specialised knowledge as to the workings of the construction industry and understood the laws and regulations that applied. The ABCC performed a supervisory role in respect of the Building Codes.
88. It appears to me, and to members who have discussed the matter with me, that the ABCC took a more active role and more frequently sought to enforce building related laws and regulations than we now see with the Fair Work Ombudsman ("**FWO**"). This is not a criticism of the FWO, but reflects the wide purview and limited resources of that organisation, as compared to the dedicated and construction industry specific nature of the ABCC.
89. In my view, the strength of the Code came from it having clear consequences for non-compliance and the fact that participants in the scheme knew it would be enforced by a well-resourced regulator. The ABCC played a significant role in this.

CCF Recommendations

- 90. For the reasons outlined above, and with the benefit of hindsight, having had the opportunity to consider the practicalities of operating under a regime governed by the Building Codes and the current regime, the CCF is of the view that the provisions of the Building Codes were a net positive for the industry and the public generally.
- 91. The CCF support changes being made to government procurement, such as the removal of BPIC policies.
- 92. Further, whether any reforms take the form of a formal Code or other mechanism, the CCF supports the abolition of jump up clauses in government enterprise agreements and would support further reforms which aim to ensure that government procurement policies remove barriers to entry onto projects and maximise industry participation.

I affirm the contents of this statement are true.


Signature of Deponent

BRISBANE
Place Date 5/2/26

Before me (signature of witness)

- Justice of the Peace (JP #)
- Notary public
- Lawyer
- Other authorised person (specify)

Full name of witness (please print)